

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO. 1336 OF 2012

ORDER:

Heard both sides.

2. The prayer sought in the writ petition is as under:

“to issue a Writ, Order or Direction more particularly one in the nature of the Mandamus declaring the action of the respondent No. 3 in foisting a false case against the petitioner vide FIR No. 9 of 2012 in a civil matter pending between the 4th respondent and the petitioner as well as between the partner of the petitioner as illegal, abuse of process of law and against the settled principles of law and consequently stay all further proceedings in FIR No 9 of 2012 on the file of the SHO, PS Dabirpura, Hyderabad including arrest of the petitioner.”

3. The brief facts of the case are that the petitioner and his partner Mirza Zafar Ali Baig purchased a plot at Osmania University Employees Colony, Towli Chowki, Shaikpet, Hyderabad from respondent No.5 on 3.4.2008 for a total consideration of Rs.12,00,000/- and paid Rs.11,00,000/- by entering into an agreement of sale. However, respondent No.5 failed to register the same in their favour. Therefore, they were constrained to file suit in O.S.No.771 of 2011 against respondent No.5 for specific performance. In the meanwhile, respondent No.4 approached them in the month July, 2011, and asked to sell away the subject property to him by offering Rs.16,50,000/- towards sale consideration. Therefore, the petitioner and his partner entered into an agreement of sale on 14.8.2011 with respondent No.4 by narrating the fact that they are having an agreement of sale with

respondent No.5. In fact, respondent Nos. 4 and 5 colluded together and respondent No.5 refused to register the sale deed in favour of respondent No.4 or in their favour. There is a specific clause in the agreement entered into with respondent No.4 that if he fails to pay the remaining amount within a period of one month from the date of agreement, the agreement of sale will be terminated and it was also assured that after selling the plot to third parties, they will pay the advance amount to respondent No.4. Therefore, the registration of a crime against the petitioner and his partner vide FIR.No.9 of 2012 for the offence under Sections 406, 420, 506 read with 34 IPC is bad in law.

4. Respondent No.3 filed a counter affidavit stating that on 17.1.2012 respondent No.4 lodged a complaint against one Mirza Zafar Ali Baig and the petitioner herein on the ground that they cheated him by selling a property bearing plot No.774 at Osmania University Employees Colony, Tolichowki, Shaikpet, admeasuring 178.95 sq.yds, by not showing the original documents pertaining to the said property. Based on the said complaint, a case in Cr.No.9 of 2012 was registered for the offence under Sections 420, 406, 506 read with 34 IPC. During the course of investigation, the investigating officer examined as many as four witnesses including respondent No.4 and recorded their detailed statements. As per the statements, a prima facie case is made out against both the accused that they have committed the said offence. In fact, A1 was arrested and was later remanded to judicial custody. While, the investigation was under progress, the petitioner filed WP.No.1055 of 2012 in this Court seeking to declare the action of respondent

No.3 in confining his partner illegally in a civil matter pending between respondent No.4 and his partner and forcing them to make payments to respondent No.4. However, for obvious reasons, the said Writ Petition was withdrawn. It is also stated in the counter affidavit that registration of a criminal case on receipt of a cognizable complaint against the petitioner herein and another does not amount to interference by respondent Police into the civil disputes. Unless and until, a full fledged trial is conducted, it cannot be said that the petitioner has nothing to do with the offence. It is also stated that the investigation is almost completed. At that stage, the petitioner filed the present Writ Petition and obtained interim orders. When the investigation is completed and it is pending for want of arrest of the petitioner, this Court granted stay of all further proceedings whereby the investigating officer was restrained to proceed with the matter and file charge sheet in the appropriate Court. It is specifically denied in the counter affidavit that respondent No.4 has taken the help of respondent No.3 and respondent No.3 illegally confined the partner of the petitioner in the police station on 17.1.2002 and demanded huge amounts and in the process foisted a false cheating case against them. In fact, the petitioner resorted to filing of this Writ Petition only to escape from criminal liability.

5. Respondent No.5 also filed a counter affidavit denying the material allegations made in the affidavit filed in support of the Writ Petition and contended inter-alia that the determination of the disputes involved in the present Writ Petition depends on the investigation of questions of fact by respondent No.3 after

collecting evidence. Therefore, this Court, in exercise of writ jurisdiction, cannot go into the disputed questions of fact when the matter is already under investigation by respondent No.3.

6. Though a detailed counter affidavit has been filed by respondent No.3, no reply affidavit is filed denying the material averments made in the counter affidavit.

7. From the perusal of the material on record, more particularly, in the light of the averments made in the counter affidavit of respondent No.3, it is revealed that respondent No.3 registered a case in Cr.No.9 of 2012 against the petitioner and another for the offences stated supra. Since a cognizable case was made out from the contents of the complaint, a crime was registered. During the course of investigation and after recording the statements of witnesses including respondent No.4, respondent No.3 prima facie opined that the petitioner and his partner have committed the said offence and investigation is almost completed. However, by virtue of the interim orders passed by this Court in the Writ Petition, he cannot proceed further and file a charge sheet. In fact, the truth or otherwise of the allegations made by the petitioner vis-à-vis the allegations made in the counter affidavit can be decided only during the course of full fledged trial by a competent criminal Court. This Court, in exercise of Article 226 of Constitution of India, cannot go into the veracity or otherwise of the statements made by both the parties.

8. From the above, this Court is of the opinion that no further orders are required in the present Writ Petition and accordingly, the Writ Petition is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P. KESHA VA RAO,J

Date: 13.11.2018

KPM

