

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Revision Case No.87 of 2018

ORDER:

Aggrieved by the order dated 01.11.2017 in CrI.M.P.No.3325 of 2017 in C.C.No.446 of 2013 passed by the V Additional Judicial Magistrate of First Class, Tirupati, dismissing the protest petition filed by the complainant under Section 200 Cr.P.C praying the Court to take cognizance against A.1 to A.4 for the offences under Sections 420, 464, 109, 403, 406, 423, 427, 465, 471, 120B IPC, the instant CrI.R.C is filed by the complainant.

2) The Inspector of Police, Tiruchanur PS, filed charge sheet against A.1 for the offence under Section 420 IPC. The brief facts of the charge sheet are that the *defacto* complainant and A.1 are acquainted with each other in the field of real estate business. A.1 was in possession of land to an extent of Ac.4-55 cents in Sy.No.362/1, 2, 3 which he purchased from others from 2000 to 2002. On 21.03.2003, he entered into a sale agreement with the complainant in an extent of Ac.3-72 cts in Sy.No.361/1, 2, 3 for a valid consideration. While the agreement was in force, on 17.11.2003, A.1 sold away lands in an extent of one Acre each to A.2 and A.3 vide document Nos.4651/2003 and 4652/2003. While-so, A.1 also executed registered sale deed vide document No.798/2005 dated 03.02.2005 in favour of complainant for the land to an extent of Ac.2-00cts in Sy.No.362/1 and 2.

a) After entering into sale agreement with the complainant, A.1 formed a residential layout in the agreement land and sold away some of the plots existing in Sy.No.362/1, 2 and 3 (total 18 plots in an extent of Ac.1-0215 cents) under registered sale deeds with an intention to cheat the complainant and obtain wrongful gain. Without knowing the same, the complainant after purchasing the lands from the accused under sale deed, sold away total 25 plots showing their survey number as S.No.362/1 & 2. Thus in essence, A.1 sold away the land for which he already entered into agreement with the complainant and also part of the land which he sold to him and thus cheated. The grievance of the complainant was that A.2 to A.4 conspired with A.1 and purchased the lands from him knowing fully well that the said land was originally agreed to be sold to the complainant. However, the police after investigation came to conclusion that the land purchased by A.4 does not come under the boundaries mentioned in the documents of LW.1 and so he cannot be said to be conspired with A.1 to cheat the complainant. In the charge sheet, it is further noted that A.2 and A.3 are concerned, they filed civil suits vide O.S.No.603/2011 and 605/2011 against the persons who purchased plots from the complainant. So also, one Rathnakumar and one Jayakumar, who purchased the lands from the complainant, filed civil suit—O.S.No.623/2011 against A.4 and others before the Principal Senior Civil Judge, Tirupati. Since A.2 and A.3 are bonafidely litigating in a Civil Court in respect of their rights and as the land purchased by A.4 does not come under the boundaries mentioned in the document of

complainant, A.2 to A.4 cannot be said to be conspired with A.1. On these observations, the I.O deleted A.2 to A.4 and ultimately filed charge sheet against A.1 alone for the offence under Section 420 IPC. In the charge sheet it was further mentioned that the allegations of criminal breach of trust, forgery etc., were not established and accordingly, Sections 120B, 403, 406, 423, 447, 464, 465 and 471 r/w 511 IPC were deleted.

3) The Trial Court took cognizance of the charge sheet and registered the case as C.C.No.446 of 2013. Aggrieved, the complainant filed CrI.M.P.No.3325/2017 in C.C.No.446/2013 praying the Court to take cognizance against A.1 to A.4 for the offences under Sections 420, 464, 109, 403, 406, 423, 427, 465, 471, 120B IPC. The Court after perusing the statements of PWs.1 to 7, observed that the conspiracy of other accused with A.1 was not deposed by PWs.1 to 7 and A.2 to A.4 were only purchasers and if at all any offence is committed, that is by A.1 and not by others and accordingly, the dismissed the protest petition.

4) Heard.

5) Learned counsel for petitioners would submit that the Trial Court erroneously dismissed the protest petition as the complicity of A.2 to A.4 is writ-large from the statements of PWs.1 to 7.

6) The point for determination is:

“Whether there are merits in the revision to allow?”

7) **POINT:** As can be seen from the sworn statement of the complainant (LW.1), it is his case that A.1 proposed to sell an extent of Ac.3-72 cents in Sy.Nos.358/1, 362/1, 2, 3, 356/2, 363 situated in Tiruchanur village accounts and accordingly, he entered into an agreement of sale with the complainant on 23.01.2003 and the complainant paid an advance of Rs.3,00,000/- to A.1. He further deposed that subsequently A.1 sold away 18 plots to others by mentioning Sy.No.363 in those sale deeds showing the boundaries of the land mentioned in the agreement of sale. While-so, the complainant who was the agreement holder formed layout of the land and named the layout as “Padmasarovar”. The 18 plots sold by A.1 were covered by Sy.No.362/1 and 2. Since A.1 sold away 18 plots, LW.1 could make layout only in respect of two Acres of land. While-so, on 03.02.2005 A.1 executed a regular sale deed in favour of the complainant for the land situated in Sy.No.362/1 and 2. Before that on 17.11.2003, A.1 sold away an extent of one Acre each to A.2 and A.3 in Sy.No.362/1 and 2 which he already sold away to the complainant. Further, in the year 2011 A.1 sold away 5 plots to A.4 which was already sold to the complainant. A.1 did all these acts with an intention to cheat the complainant. The complainant paid a sum of Rs.4,66,000/- on 02.07.2003 and Rs.3,00,000/- on 11.08.2003 to A.1. The complainant further deposed that A.1 colluded with A.2 to A.4 and cheated him.

a) LWs.2 to 7 are the purchasers of the layout plots either from the complainant directly or from his purchasers. Their grievance is that after

they purchased the plots from the complainant, A.1 to A.4 trespassed into the site and removed the fencing stones and destroyed the developments made by them in their respective sites.

8) A careful perusal of the statements of the LWs.1 to 7 would clearly manifest that the main grievance of the complainant is against A.1 as rightly observed in the charge sheet as well as the impugned order in CrI.M.P.No. 3325/2017. While the agreement entered with the complainant was in force, it is alleged, A.1 sold the same land to others by making 18 plots. He also sold some extent to A.2 to A.4 which was covered by the agreement. Thus the offence if any is mainly committed by A.1 against whom the Trial Court has already taken cognizance. The other accused are concerned, in the charge sheet, it is mentioned that the land purchased by A.4 does not come within the boundaries mentioned in the document of the complainant. Therefore, the complainant cannot have grievance against A.4. A.2 and A.3 are concerned, they have already filed civil suits i.e., O.S.No.603/2011 and O.S.No.605/2011 against LWs.2 to 7, who purchased plots from the complainant and the said civil litigation appears to be pending. Therefore, A.2 to A.4 took up bonafide litigation in the Civil Court. Except making a bald statement that A.2 to A.4 conspired with A.1, the complainant did not produce any cogent material to hold that they are part of the conspiracy. As already stated, A.2 to A.4 already resorted to Civil Court for vindicating their rights and their claims are subject to the result of the civil litigation.

9) So on a conspectus of the facts emanated from the record, the impugned order cannot be termed as illegal or perverse and therefore, it does not warrant interference.

10) Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.07.2018

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