

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.2130 of 2011

ORDER:

This petition, under Section 482 of Cr.P.C., is filed by the accused No.1 & 2 seeking to quash the proceedings in C.C.No.567 of 2007 pending on the file of Additional Judicial First Class Magistrate, Yalamanchili.

2. The contention of the petitioners-accused is that seeking enforcement of agreement of sale dated 22.10.2003 entered by the 1st respondent-complainant with the petitioners herein, the 1st respondent filed a suit in O.S.No.62 of 2006 on the file of Senior Civil Judge, Yalamanchili. It is further contended that due to the lapse on the part of the 1st respondent-complainant, sale deed could not be executed and further the 1st respondent himself was not clear about the land for which he was seeking the relief and he had shown the entire extent of Ac.15.64 cents of land in the plaint schedule, but not Ac.10.54 cents. The said suit was dismissed by the trial Court on 23.6.2009 holding that the 1st respondent was not ready and willing to perform his part of the contract and the alternative relief for refund of earnest money was also rejected. The petitioners further contended that the dispute between the petitioners and the 1st respondent is purely civil in nature inasmuch as it revolves around the aspect of fulfilment of reciprocal promise between the parties under the agreement of sale dated 23.10.2003. There is no criminal breach of trust or cheating as alleged in the complaint. In any way, the charge sheet does not disclose any ingredients of whatsoever so as to constitute the offences alleged

against the petitioners. The filing of the civil suit and again lodging the complaint would demonstrate the criminal intention of the complainant to harass the petitioners. To attract an offence of criminal breach of trust and cheating, the first respondent-complainant has to aver that the petitioners, even at the time of entering into the agreement of sale, had the *mens rea* to commit the said offences.

3. Per contra, the learned counsel for the 1st respondent-complainant contended that the 1st respondent was always ready and willing to perform his part of the contract, but it is the petitioners, with criminal intention to cheat the 1st respondent, failed to receive the balance sale consideration and execute the sale deed. It is contended that as against the findings of civil Court in O.S.No.62 of 2006, an appeal is filed and the same is pending and therefore, there is no finality to the findings in the said suit.

4. Learned Public Prosecutor contends that there is specific overt act attributed to the petitioners in the charge sheet alleging that with an intention to cheat the complainant, the petitioners failed to execute the sale deed because of rise in the prices of the land.

5. Heard the learned counsel for the petitioners, learned counsel for 1st respondent and learned Public Prosecutor for 2nd respondent. Perused the material available on record.

6. Now the point that arises for consideration in this petition is whether there is any *prima facie* material to prosecute the petitioners for the alleged offences?

7. A perusal of record goes to show that the petitioners herein and four others entered into an agreement of sale with the 1st respondent on 22.10.2003 for sale of Ac.10.50 cents of land in various survey numbers in Upamaka Agraharam Village, Nakkapalli Mandal, Visakhapatnam District, in which, the petitioners' share of land is to an extent of Ac.4.21 cents. It is also not in dispute that seeking specific performance of agreement of sale or alternatively, to refund the earnest money, the 1st respondent filed a suit in O.S.No.62 of 2006 on the file of Senior Civil Judge, Yelamanchili and that the said suit was presented on 19.10.2006. The present complaint dated 07.02.2007 was lodged by the 1st respondent against the petitioners and the same was referred to police under Section 156(3) Cr.P.C. to the Station House Officer, Nakkapalli Police Station on 11.03.2007, basing on which a case in Crime No.23 of 2007 was registered for the offences punishable under Sections 406 and 420 IPC. After thorough investigation, police filed a charge sheet on 31.07.2007 for the offences under Sections 406 and 420 IPC against the petitioners herein. In the charge sheet, it was alleged that the petitioners-accused and their family members possessed land to an extent of Ac.10.50 cents, situated at Upma Agraharam village, Nakkapalli Mandal. The first respondent entered into agreement of sale with the petitioners and four others for purchase of said land at Rs.1,12,400/- per acre. Out of the total extent of land, the petitioners got Ac.4.21 cents and remaining land fell to the share of Lingolu Satyanarayana Murthy and his wife.

8. It is an admitted fact, which has also been referred in para 42 of judgment in O.S.No.62 of 2006 that Lingolu Satyanarayana Murthy and his wife Krishna Veni have already executed two sale

deeds, both dated 7.4.2004 (marked as Exs.A.10 & A.11 in the suit) for an extent of Ac.4.64 cents and Ac.1.65 cents respectively, in favour of son and daughter-in-law of the complainant, namely, Rajan Raju and Syamala. But, they have not executed the sale deed for an extent of Ac.4.21 cents in terms of the agreement. In O.S.No.62 of 2006, there is a specific finding that the first respondent-complainant was not ready with the balance of sale consideration. With regard to the alternative relief of refund of earnest money, there is also a finding to the effect that though the complainant-plaintiff therein wanted refund of Rs.50,000/- as an alternative relief, he did not file any proof to show that he paid the said amount to the petitioners-defendants therein. It is all the defendants 1 to 4 put together, received Rs.1,00,000/- from plaintiff on the date of agreement of sale and in the said agreement also, there is no mention as to which of the defendant was paid what quantum of amount, out of Rs.1,00,000/-. Observing so, the civil Court rejected the alternative relief for refund of earnest money. Aggrieved by the judgment in O.S.No.62 of 2006, the plaintiff-first respondent herein filed A.S.No.135 of 2012 and the same is pending on the file of II Additional District Judge, Visakhapatnam.

9. Considering the facts and circumstances discussed above, I am of the considered view that the first respondent in pursuance of the agreement of sale, availed the civil remedy by filing O.S.No.62 of 2006 against the petitioners herein, but as he failed to prove his readiness and willingness, his claim was rejected including the alternative relief of refund of earnest money. Aggrieved by the same, he filed A.S.No.135 of 2012 and the same is said to be pending. Had there been any intention at the time of agreement of

sale dated 22.10.2003, sale deeds both dated 7.4.2004 (marked as Exs.A.10 & A.11 in the suit) for an extent of Ac.4.64 cents and Ac.1.65 cents respectively, in favour of son and daughter-in-law of first respondent, would not have been executed, which itself goes to prove that there is no intention of cheating or criminal breach of trust for the petitioners herein at the time of entering into the agreement of sale. The facts as discussed above, clearly goes to show that the dispute is purely civil in nature and there is no prima facie material against the petitioners to establish the ingredients of cheating or criminal breach of trust. Therefore, the impugned proceedings are liable to be quashed against the petitioners.

10. In the result, the Criminal Petition is allowed, quashing the proceedings in C.C.No.567 of 2007 pending on the file of Additional Judicial First Class Magistrate, Yelamanchili as against the petitioners-accused.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

07th February 2018
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