

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.331 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor for the 1st respondent State.

The present criminal revision case is filed questioning the orders dated 21.11.2017 passed in CrI.M.P.No.650 of 2017 in C.C.No.251 of 2012 on the file of the Court of the II Additional Judicial Magistrate of First Class, Adoni, Kurnool District, dismissing the petition filed under Section 239 Cr.P.C. to discharge the petitioner for the offence under Sections 406, 420, 506 and 509 IPC.

The case of the prosecution is that the petitioner, who is a practicing advocate, acted as a mediator between LWs.1 to 3 for sale of agricultural land admeasuring Ac.6.85 cents situated at Pedda Harivanam Village. The petitioner retained with him the balance sale consideration of Rs.3 lakhs out of Rs.8.5 lakhs and after seven months when the de facto complainant asked to return the balance sale consideration, the petitioner delayed and finally on 12.03.2012 at 8.00 a.m. at his residence stated that he would not return the amount and abused them and threatened the de facto complainant with dire consequences. In those circumstances, the de facto complainant lodged a complaint on 12.03.2012. Pursuant to the said complaint, a crime was registered in FIR.No.35 of 2012 for the offences under Section 506, 420 and 509 IPC.

After investigation, charge sheet was filed. Thereafter, the Court below has taken cognizance of the offence and numbered the case as C.C.No.251 of 2012. Aggrieved by the same, the petitioner filed a petition in CrI.M.P.No.650 of 2017 under Section 239 Cr.P.C. to discharge him of the offences charged against him. On hearing the said petition was dismissed by orders dated 21.11.2017 by the learned II Additional Judicial Magistrate of First Class, Adoni. Aggrieved by the said orders, the present revision case is filed.

Learned counsel appearing for the petitioner mainly contended that the allegations made against the petitioner are false and the matter is purely civil in nature. The allegations do not constitute the offence under Sections 406 and 420 IPC. In fact, the petitioner is one of the legal heirs and he is entitled to his legitimate share in the said property. Pursuant to which, he filed a suit in O.S.No.206 of 2014 for partition of the said property and the same is pending consideration. He also contended that the petitioner filed a case in C.C.No.578 of 2011 for the offence under Section 138 of the Negotiable Instruments Act against the husband of LW.2 in the present case and the same is also pending consideration before the Judicial Magistrate of First Class, Adoni. As a counter blast to the said case, the present case has been foisted against him. If really the de facto complainant is of the opinion that any amount has been retained by the petitioner he could have filed a suit for recovery of money against him. Further, the

main grievance of the de facto complainant is that she and her three sisters sold the subject land to one Kuruva Bandaralla Bassappa for Rs.8,50,000/- through the petitioner, who is the son of their maternal aunt. The said amount has been paid to the petitioner in the presence of the de facto complainant and her three sisters in their house. However, the petitioner has paid a sum of Rs.4,50,000/- towards bank loan and gave Rs.25,000/- each to the de facto complainant and her three sisters retaining a sum of Rs.3,00,000/- with him. When the de facto complainant and her three sisters demanded for the said amount, the petitioner appears to have refused and threatened them. In these circumstances, the complaint was lodged. In fact, the petitioner has already filed CrI.P.No.5020 of 2012 seeking to quash the proceedings initiated against him before this Court. However, on 12.09.2014, this Court was pleased to dismiss the said petition with liberty to the petitioner to take all steps available in law including filing of discharge petition. Pursuant to the said order, the petitioner filed discharge application being CrI.M.P.No.650 of 2017. However, the Court below, on erroneous view of law and fact dismissed the application.

Per contra, the learned Public Prosecutor appearing for the respondent State supported the impugned order.

After hearing the arguments of both sides and having regard to the facts and circumstances of the case and the

material on record, it is revealed that the de facto complainant (LW.1) lodged a complaint before the Isvi Police Station against the petitioner stating that he has retained a sum of Rs.3,00,000/- in respect of a land dealing and refused to part with the same. On the contrary, the specific case of the petitioner is that he is one of the shareholders of the said land and, in fact, in connection with the same, he filed a suit for partition vide O.S.No.206 of 2014 on the file of the Court of the Principal Junior Civil Judge, Adoni. The said suit is pending consideration. The allegations made therein *prima facie* appears to be totally civil in nature since the amount said to have been retained by the petitioner is pursuant to a land dealing. The contents of the complaint as well as the charge sheet would not disclose commission of any offence much less the offences under Sections 406, 420, 506 and 509 IPC. Further, the criminal complaint is lodged only to threaten and coerce the petitioner to come to terms. It is also revealed from the record that there are cases and counter cases against the petitioner and the de facto complainant and her husband. In the light of the civil suits filed vide O.S.No.227 of 2012 and 206 of 2014, this Court is of the opinion that the criminal proceedings initiated against the petitioner is only an offshoot of the said civil litigation.

It is settled law that when a matter, which is purely civil in nature, is converted into criminal litigation by filing a criminal complaint, more particularly, to seek personal

vengeance and coerce the other side, such proceedings will not sustain in the eye of law.

In fact, in **State of Haryana and others vs. Bhajan Lal and others**¹, the Apex Court was pleased to consider the scope of Section 482 Cr.P.C. or Article 226 of the Constitution of India and enumerated categories of cases in which the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, the same are as follows:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act

¹ 1992 Supp (1) SCC 335

(under which a criminal proceeding is instituted) to the institution and continuation of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the case on hand, the facts on record clinchingly prove that there are civil litigations and criminal cases between the parties. On the other hand, the allegations made in the complaint and the charge sheet will not disclose commission of any offence much less the offence as alleged. In these circumstances, this Court is of the opinion that continuation of criminal proceedings against the petitioner would amount to abuse of process of the Court since no *prima facie* material is available to frame the charges against him.

Accordingly, the criminal revision case is allowed.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 13.06.2018.
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