

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.9253 & 6860 of 2015

COMMON ORDER:

The petitioners in CrI.P.No.9253 of 2015 are accused Nos.1 & 2 and the petitioner in CrI.P.No.6860 of 2015 is accused No.3 in crime No.45 of 2015 registered by Nuzvid Rural Police Station, Krishna District, for the offences punishable under Sections 420, 406 r/w 34 IPC, on the report of the defacto complainants by name YS Prasad and his brother Y Sai sons of Venkataratnam of Kukatpally, Ranga Reddy and Nuzvid respectively.

2. In both the quash petitions of the FIR supra sought by the petitioners, the contentions are that the defacto complainants already filed civil suit in OS.No.9 of 2015 against accused No.1 & 2 and M/s. Pasupuleti Industries Private Limited belongs to A.3 for specific performance with alternative relief for refund of the so called advance amount of Rs.4,55,15,300/- with 24% interest per annum thereon. The prayer in the specific performance suit so far as main relief concerned including for delivery of vacant possession of the schedule property by registration of the sale deed by decreeing for specific performance. Whereas in the complaint it is falsely alleged as if accused Nos.1 & 2 delivered possession to the complainants which is a malafide and false allegation as part of the false implication in the civil lis with criminal flavour. It is also averred that there was no

agreement of sale between the defacto complainants and A.2 and they have falsely created a receipt dated 01.08.2014 in filing the civil suit. There was only understanding between them for an extent of Ac.5 acres out of Ac.17.30 gts to sell @ Rs.1,30,00,000/- per acre, but with evil intention and to grab the entire property the defacto complainant filed the false complaint. It is also averred that A.3 never received any amount from complainants with regard to any transaction between him and the defacto complainants and A.1 and A.2 and there is no any receipt of money by A.3 and never issued any receipt as alleged. It is also alleged that the defacto complainants sent emails to A.2 in relation to the alleged agreement of sale and they did not file those emails before the Court. The subject property mentioned in the private complaint covered by the FIR referred to police by the learned Magistrate. A.1-N.Sitamahalakshmi staying with her daughter in USA and she executed registered GPA authorizing P.Vijaya Saradhi-A2, to manage said property. Even as per the complaint A.3 is not authorized to deal with the said land. The defacto complainants made allegations as to payment of various amounts to A.2 for purchase of the land of A.1 under so called receipts and through banks. There is no any entrustment of amount to A.3 and on the face value of the allegations there is not any criminal breach of trust or misappropriation that attracts against A.3 and except relationship with A.2, A.3 has nothing to do with said land

and there is no any inducement and the alleged inducement to sell the subject land is a false implication to add criminal flavour and no offence under Section 420 IPC even that attracts and thereby the FIR is liable to be quashed. The further contentions in the quash petition of A.1 and A.2 are that the allegations made in the private complaint registered as FIR supra of the defacto complainants against the accused 1 to 3, so far as A.1 and A.2 concerned and in particular against A.2 also it is vague as anything including false A.2 Vijaya Saradhi role is only as GPA and even on face value therefrom there are no ingredients to attract any of the offence under Sections 406 or 420 IPC and the FIR is liable to be quashed.

3. The learned counsel for the petitioners in both the quash petitions who obtained interim order of stay of investigation (all further proceedings in connection with the crime, it is in force) reiterated the above contentions in seeking to quash the FIR proceedings. Whereas the learned counsel for the defacto complainants contends that there are no grounds to quash the FIR which makes out prima facie case against the 3 accused persons let the investigation shall go on and sought for dismissal of the petitions it is premature to quash the FIR by pre-judging the investigation. Learned Public Prosecutor also submits that let the investigation shall go on for not a case to quash FIR.

4. Heard both sides and perused the material on record.

5. The private complaint which sets the law in motion was filed before the learned I Additional JFCM, Nuzvid, on 16.02.2015 and the selfsame date, the learned Magistrate referred to the Rural PS Nuzvid in CF.No.1099 of 2015, invoking Section 156(3) Cr.P.C. to investigate the matter and submit report at an early date. No doubt there is nothing showing the complaint requires investigation by police in invoking Section 156(3) Cr.P.C. and there is nothing even in asking to register a crime from any prima facie cognizable offence made out which is a pre-requisite for registration of the crime and for referring the private complaint to register the crime and investigate from combined reading of Section 154 r/w 156(3) Cr.P.C. No doubt that is not the be all once the allegation makes out a case if at all and application of mind therefrom even the reasons not given as a sole ground to quash the FIR.

6. Now coming to the allegation in the said private complaint concerned, the alleged occurrences happened on 25.07.2014, 01.08.2014 and 16.09.2014 respectively, place of occurrence mentioned as Cherukupallivari Kandrika Village, RS.No.335/1 (22/P) Nuzvid Mandal. It is averred that 1st complainant is resident of Hyderabad and 2nd complainant is resident of Nuzvid and A.1 originally belongs to Nuzvid and A.2 is son in law of A.1, her GPA holder and A.1 by then residing at Vijayawada and A.3 no other brother of A.2 abroad, is looking after the affairs of A.2. A.1 got Ac.17.30 gts

of land at Cherukupallivari Kandrika Village, in July 2014 through A.2, GPA holder of A.1, and A.3 entered into contract for sale to purchase said land of Ac.17.30 gts of A.1 at Rs.30,00,000/- per acre and through the 2nd complainant paid Rs.1 crore cash that was received by A.2 in the presence of A.3 on 25.07.2014 and passed a receipt and at that time the 1st complainant drawn on Andhra Bank 2 cheques for Rs.82,00,000/- and given to A.2 who encashed the same. Further later on 01.08.2014 Rs.1.5 crores received by A.2 through A.3 that was paid by the 1st complainant and passed a receipt. Later as asked by A.2 and A.3 cheque for Rs.70 lakhs drawn on Axis bank on 16.09.2014 given by the complainants. It is further averred that as per the accused Nos.1 & 2 consent complainants taken possession of the property as it may take time for registration. On 18.09.2014, A.2 through email confirmed the receipt of the amount. Thus out of total consideration of Rs.5.20 crores, A.1 and A.2 received Rs.4.02 crores and without handover the pattader passbooks and without receiving the balance consideration and without registration of sale deed they are postponing negligently, A.1 and A.2 and A.3 residing at Hyderabad not responding. The complainants came to know that property earlier sold by the accused to Donepudi Srirama Krishna of Rayanagar, Gannavaram Mandal, Krishna District and D.Kishore of Nuzvid and thereby cheated. Through email dated 09.02.2015 even demanded accused are not responding

and thereby liable for cheating. It is the sum and substance of the FIR in registration of the crime from the complaint referred to police by the learned Magistrate. The email communication given by A.2 not filed and as to how much received and what extent of property sold and at what rate per acre or for the total even email notice stated sent by complainants to any of the accused not even filed among 6 documents referred in the private complaint, but for respective receipts dated 25.07.2014 obtained by 2nd complainant from A.2 only Photostat, dated 01.08.2014 obtained by 1st complainant from A.2 Photostat, Andhra Bank Kukatpally Branch account copy, account copy of Axis Bank dated 16.09.2014, copy of GPA in favour of A.2 and the property title document of A.1. Whatever the allegations so far as the FIR concerned clearly shows even A.1 according to the very complaint Para 6 page 2 confirmed about receiving of the amounts in total by acknowledged through emails message, where is the question of cheating much less from the inception to deceive to attract the offence under Section 420 IPC defined in Section 415 IPC therefrom. Leave it as it is, whatever the allegations so far as A.3 concerned, he was only present at the alleged time of payment to A.2 as GPA holder of A.1 received by A.2, where is the question of cheating by A.3 when it is not the A.3's property and it is not A.3 received any amounts and misappropriated much less any entrustment against any accused totally lacking. Further

even coming to A.2 therefrom he is only GPA holder of A.1 undisputedly and copy of GPA also given and it is not even the case of A.2 as GPA holder misappropriated any amount and cheated thereby. What all stated is A.1 already acknowledged entire amount received through A.2 either in cash or by cheques as the case may be leave about in the presence of A.3 or not.

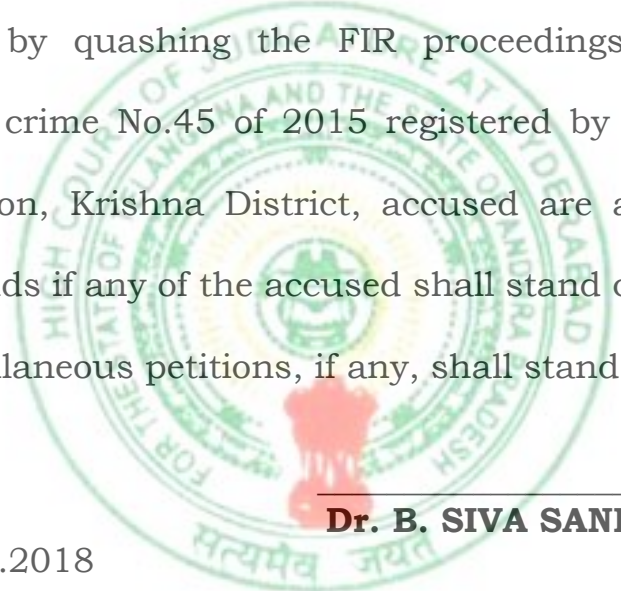
7. Having regard to the above, there is no any prima facie case to attract the offence of cheating. Further it is a false allegation in the complaint engineered though civil suit was filed subsequent to it for specific performance in OS.No.9 of 2015 on 28.02.2015 where it is mentioned in the prayer portion Para 12(d) also for delivery of possession of the schedule property from crystal clear including from reading of plaint averments particularly Paras 4 to 9 which includes the cause of action Para no where mentioned about delivery of possession and specifically asked for delivery of possession. Suffice to say from the above, leave apart the GPA executed by A.1 in favour of A2 copy already received by the complainants having aware of the contents which they mentioned in the private complaint and plaint clearly speaks there is total extent of Ac.27 acres land in S.No.19/1, 2 & 22/B of Cherukupallivari Kandrika belongs to A.1 and she executed the GPA in favour of A2. It is mentioned that sale deed already executed for 10 acres of land to Donepudi Srirama Krishna and out of remaining land of 17 acres and

odd intended to sale and thereby authorized the GPA with full powers to sell land on her behalf. What all referred in the plaint and private complaint of land agreed to be sold is for survey No.22/B and not 17 acres or 27 acres which include for survey Nos.19/1 & 2.

8. Having regard to the above, there is no any offence of criminal breach of trust or cheating that attracts against any of the petitioners/accused.

9. Accordingly and in the result, this Criminal Petition is allowed by quashing the FIR proceedings against the accused in crime No.45 of 2015 registered by Nuzvid Rural Police Station, Krishna District, accused are acquitted and the bail bonds if any of the accused shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 05.12.2018
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