

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.715 of 2011

ORDER:

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in F.I.R.No.83 of 2010 on the file of the Kota Police Station, Kota, SPSR Nellore District.

2. The contention of the petitioner is that the allegations are purely civil in nature as the defacto complainant-respondent No.2 already filed O.S.No.209 of 2010 and the same is pending. In view of default clause, there is no question of criminal proceedings. Hence, continuation of criminal proceedings against the petitioner is nothing but abuse of process of law.

3. None appeared for respondent No.2.

4. Per contra, learned Public Prosecutor contended that the petitioner without waiting till the stipulated time dated:25.8.2010, sold the property and executed registered sale deed on 23.8.2010 itself in favour of Nedurumalli Karunakar Reddy which clearly establish the intention of cheating. In view of specific allegations, there is nothing to suggest that there is abuse of process of the Court or prejudice has been caused to the petitioner.

5. Now, the point that arises for determination is:

Whether there is any prima facie material to prosecute the petitioner?

6. A perusal of the record go to suggest that there is an agreement of sale between the petitioner and respondent No.2 dated:21.8.2010. The total consideration is Rs.15,00,000/- per acre and for Ac.0.53cents of land, the total sale consideration amount was fixed at Rs.7,95,000/-. From the date of agreement, defacto complainant paid Rs.2,00,000/- and the petitioner agreed to receive balance sale consideration on or before 25.8.2010. There is also a default clause that, in case the defacto complainant fail to pay and obtain registered sale deed on the stipulated date, he has to forfeit the advance amount and in case, the petitioner could not register the sale deed, agreed to pay double the amount of advance amount to the complainant ie., 4,00,000/-. The complainant-respondent No.2 filed copy of certified copy of sale deed dated:23.8.2010 executed by petitioner in favour of N. Karunakar Reddy. As per agreement of sale dated:21.8.2010, time granted for defacto complainant to pay balance consideration and to obtain registered sale deed is dated:25.8.2010. The sale deed executed in favour of N. Karunakar Reddy is dated:23.8.2010. Therefore, the circumstances, prima facie, clearly made out that the petitioner without waiting even the stipulated time till 25.8.2010, two days before executed registered sale deed in favour of N. Karunakar Reddy.

7. A reading of section 415 of the Indian Penal Code, go to suggest that prima facie the petitioner had no intention to deceive the defacto complainant. Even at the time of entering into agreement of sale dated:21.8.2010 and having received advance of Rs.2.00.000/-, even stipulated time for executing the sale deed is 25.8.2010, without waiting till the said stipulated time, on 23.8.2010 itself, sold the property to Nedurumalli Karunakar Reddy. Accordingly, in view of the above allegations in the complaint and material papers placed before me, I am of the considered view that there is prima facie material to prosecute the petitioner. By filing a civil Suit in O.S.No.209 of 2010, does not bar criminal prosecution against the petitioner. Therefore, there is nothing to suggest that there is any abuse of process of law or prejudice has been caused to the petitioner by the impugned proceedings.

8. In the result, the Criminal Petition is dismissed, while vacating the interim stay granted on 28-01-2011 in Criminal M.P. No.621 of 2011.

Miscellaneous Petitions, if any, pending in this Petition, shall stand closed.

JUSTICE N. BALAYOGI

Dated:13-03-2018

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HONOURABLE SRI JUSTICE N. BALAYOGI



CRIMINAL PETITION No.715 of 2011

Dated:13-03-2017

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