THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION NO.3645 OF 2014

ORDER:

This petition is filed by the petitioners-A.1 to A.13 under Section 482 Cr.P.C. seeking to quash the proceedings in crime No.32 of 2014 of Chikkadapally police station, Hyderabad registered for the offence punishable under Section 420 IPC.

2. Heard the learned counsel for the petitioners, the learned Assistant Public Prosecutor representing the respondent-State, the learned counsel for respondent-defacto complainant and perused the record.

3. Learned counsel for the petitioners would submit that even if the allegations made in the First Information Report are accepted as true and correct, no *prima facie* case for the offence punishable under Section 420 IPC is made out; that to constitute an offence punishable under Section 420 IPC, it is essential that an intention to deceive must be in existence at the time of entering into the disputed agreement; that subsequent failure to abide by the terms and conditions of the agreement would not attract the offence punishable under Section 420 IPC; that there is no conspiracy or connivance as alleged by the defacto complainant; that all the family members including women folk are made accused in the instant crime; that in view of the accident suffered by the defacto complainant, he could not execute the work as agreed between the parties and therefore the petitioners were forced to enter into an agreement with another person and got the work executed; that the earlier agreement between the parties to the litigation was cancelled with mutual consent; that the petitioners are land owners; that as per the subsequent

agreement between the parties, the petitioners are willing to allot and register a flat covered by 1333 square feet in favour of the defacto complainant, but the latter is interested to take some other flat which is not available; that the crime is registered on a reference by the learned Magistrate under Section 156 (3) Cr.P.C.; that a reading of the complaint shows that it is a civil dispute, and hence, continuation of the impugned proceedings is nothing but abuse of process of Court, and ultimately, prays to allow the Criminal Petition.

4. On the other hand, the learned Assistant Public Prosecutor opposed the grant of relief sought in the Criminal Petition.

5. Learned counsel for respondent-defacto complainant would submit that the petitioners-accused clandestinely entered into a Memorandum of Understanding (MoU) dated 06.07.2013 keeping the defacto complainant in dark; that the petitioners-accused would receive due share in the newly constructed complex and did not deliver him the settled share of 1333 square feet of built up area on the first floor and made wrongful gain; that the petitioners-accused intentionally duped the defacto complainant and entered into the MoU on 06.07.2013; that it is a clear case of cheating; that there is oral and documentary material to substantiate the same; that the investigating agency having satisfied with the same, arrested two of the petitioners, and hence, there are no grounds to quash the First Information Report at threshold stage, and ultimately, prays to dismiss the Criminal petition.

6. In view of the contentions put forth by both sides, the point for determination is whether the proceedings in

crime No.32 of 2014 of Chikkadapally police station, Hyderabad can be quashed ?

7. The petitioners herein are owners of premises bearing No.1-4-483 admeasuring 590 square yards situated at Musheerabad, Hyderabad. After due discussions, they entered into a registered Development Agreement-cum- irrevocable General Power of Attorney dated 22.06.2009 with the defacto complainant. On the same day, a supplemental agreement was also entered into between the parties to the Development Agreement. It is alleged in the complaint that petitioners-A.5 and A.10 sold their share in the subject property to one Ahmed Abdul Wasey and petitioners-A.4 and A.6 sold their share to one Abdul Rafey Appapillai, and the same is in violation of clause no.4 of the supplemental agreement dated 22.6.2009. It is further alleged the defacto complainant has been requesting to pay back the amount due to him or in default to register his share as per the above agreement, and the accused have been avoiding and evading to meet the complainant and making him to run from pillar to post. It is further alleged that the defacto complainant applied for encumbrance certificate and came to know that the property pertaining to his share was sold, and thereafter, he requested the accused to pay Rs.56,00,000/- to which he is legally entitled, but the accused did not do so and the petitioners-A.10, A.11, A.8 and A.7 threatened and tried to man-handle him. It is further alleged that the accused induced the defacto complainant to pay an amount of Rs.14,00,000/- to State Bank of Hyderabad, Malakpet prior to entering into the agreement and made him to part with the amount and entered into development agreement on 03.04.2007 but the same could not be materialized and finally on 22.6.2009, agreements were entered into between the parties to this litigation and even the terms of the said agreement are violated by the accused.

8. The material on record reveals that the petitioners herein, being owners of premises bearing No.1-4-483 admeasuring 590 square yards situated at Musheerabad, Hyderabad, entered into a registered Development Agreement-cum- irrevocable General Power of Attorney dated 22.06.2009 with the defacto complainant. On the same day, a supplemental agreement was also entered into between the parties to the Development Agreement. There is also record to show that the defacto complainant met with an accident and could not complete the construction as agreed between the parties in the Development Agreement-cum- irrevocable General Power of Attorney dated 22.06.2009. So, the petitioners handed over the aforestated property to a new developer by canceling the earlier agreement with mutual consent of both the parties. Thereafter, an MoU was entered into between the petitioners-accused and the defacto complainant on 06.07.2013 wherein the owners agreed to give built up area of 1333 sft to the latter. But, the same has not been given yet and the matter appears to have been dodged by the petitioners-accused for one reason or the other inspite of repeated demands by the defacto complainant. Thereupon, the defacto complainant was forced to file a complaint before the learned IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and the same was referred under Section 156 (3) Cr.P.C. to police concerned, and upon that, the instant case was registered for the aforesaid offence.

9. In support of his contention, the learned counsel for the petitioners relied on the following decisions.

(a) In *Alpic Finance Limited v. P.Sadasivan,*[1] wherein it is held thus:

> "Here the main offence alleged by the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive

[1] 2001 SCC (Cri) 565

is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. ..... It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

(b) In *S.W. Palanitkar & others v. State of Bihar & another*[2], wherein it is held thus:

"From the material that was placed before the Magistrate, even *prima facie*, it cannot be said that there was conspiracy or connivance between the other appellants and Appellant 7. If the appellants have committed breach of agreement, it is open to Respondent 2 to seek redressal in a competent court or forum to recover damages. In order to constitute an offence of cheating, the intention to deceive should be in existence at the time of when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

(c) In *Murari Lal Gupta v. Gopi Singh*[3], wherein it is held thus:

".. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case

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[2] 2002 SCC (Cri) 129
[3] (2006) 2 SCC (Cri) 430

of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which the agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. ..."

(d) In *Vesa Holdings Private Limited & another v. State of Kerala & others*[4], wherein it is held thus:

"From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

10. There is no dispute about the aforesaid settled proposition of law. As seen from the entire material placed on record, the dispute between the parties to the litigation is civil in nature. The essential ingredient to constitute an offence punishable under Section 420 IPC is that intention to deceive a person must be in existence at the time of entering into the

[4] (2015) 8 SCC 293

agreement or MoU, as the case may be. As per the records produced before the Court, the defacto complainant had taken the subject property admeasuring 590 square yards situated in Musheerabad, Hyderabad to develop the same vide registered Development Agreement-cum- irrevocable General Power of Attorney dated 22.06.2009, and the parties also entered into a supplementary agreement on that day in respect of the said property, but in view of the accident, the defacto complainant could not develop the said property in terms of the above documents. The material on record would also show that there was a failure on the part of the petitioners-accused in discharging their obligation as per the MoU dated 06.07.2013. The record also establishes that criminal law is set into motion in order coerce the petitioners-accused to abide by the terms and conditions of the MoU dated 06.07.2013. The aggrieved party has to work out the remedies available to it in competent civil court. There is no *prima facie* element of cheating or intention from the date of inception or conspiracy on the part of the petitioners-accused. A civil litigation cannot be converted into a criminal one in order to execute an agreement or MoU, as the case may be, said to have been entered into between the parties. Under these circumstances, there is no justification to proceed with the investigation of the instant crime. Hence, continuation of the impugned proceedings would be abuse of process of court.

11. Accordingly, the Criminal Petition is allowed. The proceedings in crime No.32 of 2014 of Chikkadapally police station, Hyderabad are quashed.

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

DR.SHAMEEM AKTHER, J

DATED: 23.02.2018
DRK

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

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23.02.2018