HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3648 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 and A2 seek to quash the proceedings against them in Cr.No.67 of 2018 of Shameerpet PS registered for the offences under Sections 407, 408, 417, 420, 465, 468, 469, 471 r/w 109 IPC.

2) The factual matrix of the case is thus:

a) The 2nd respondent lodged compliant dated 16.02.2018 before the police alleging that her husband late D.S.Chanda Mohan Reddy and A1 are brothers and they were founder promoters of Prajay Engineers Syndicate Limited (PESL) having shares in the ratio of 50:50. At present the complaint holds 11.78% of the equity shares whereas A1 holds 17.61% of the shares. Substantial portion of the shareholding is held by people who are under the control of A1. When her husband fell sick in 2007, A1 took complete control of PESL and after the death of her husband in 2012 A1 became Chairman-cum-Managing Director of PESL. However, A1 stepped down as MD on 14.11.2017 and inducted his son—Rohit Reddy (A3) as MD w.e.f. 15.11.2017. Now, A1 is controlling the company through A3.

b) It is further alleged that the complainant is the joint owner of the properties admeasuring:

a) Ac.2-13 gts. in Sy.No.57/1;

b) Ac.2-24 gts. in Sy.No.40;

c) Ac.3-19 gts. in Sy.No.57/1;

d) Ac.3-20 gts. in Sy.No.58;

e) Ac.7-31 gts. in Sy.No.68 and

f) Ac.3-20gts in Sy.No.57/P situated in Masjidpur Village, Shameerpet Mandal, R.R.District (Prajay Homes) along with her late husband and A1 and A2. She sold some plots from her share subsequent to the death of her husband. She was referred as one of the absolute owners of the agricultural land measuring Ac.42.14 gts. in Prajay Homes.

c) It is further alleged that A1 kept her and other shareholders in darkness and she came to know on 25.04.2017 PESL was put on notice by Registrar of Companies against their proposed action of striking off due to various defaults. She came to know that A1 in the capacity of promoter and MD completely misappropriated and misused the property of PESL to his own use.

d) It is further noticed that the affairs of PESL have been completely mismanaged by A1 and A3. Crores of rupees have been siphoned off from PESL and invested into other companies and entities in which A1 and his family members are the beneficiaries. The share of the complainant in the sale proceedings were not given to her. Their acts are prejudicial to the interest of shareholders, bankers and employees etc. In view of the misdeeds, the complainant informed A1 and others that she would not be willing to consent for further transactions of sale of plots/built-up homes in Prajay Homes till everything is sorted out.

e) Recently she came to know A1 and A2 executed a sale deed bearing document No.3092/2017 dated 28.07.2017 registered on 04.10.2017 in the name of complainant. She never executed the said document. Thus, they forged her signatures and thumb impressions to sell the property illegally.

f) The complainant filed O.S.No.1565 of 2017 on the file of XVI Additional District Judge, Ranga Reddy at Malkajgiri seeking permanent injunction against A1 in respect of certain plots of the land. Despite having clear knowledge about the suit the accused entered into various agreements in respect of suit schedule property without her express and written consent.

g) The details of agreements/sale deeds entered into by PESL represented by A3 or A1 are as under:

i) Agreement of sale-cum-GPA executed by Rohit Reddy and P.Purnima vide document No.125/18;
ii) Agreement of sale-cum-GPA executed by Rohit Reddy and P.Purnima vide document No.126/18;
iii) Sale deed bearing document No.127/18 executed by Rohit Reddy in favour of G.Narsing Rao and
iv) Agreement of sale-cum-GPA executed by Rohit Reddy in favour of Sujeet Kumar vide document No.128/18.

The complainant thus prayed to investigate into the offences.

Investigation is reported to be pending.

Hence, the instant petition.

3) Heard arguments of Sri Vedula Venkata Ramana, learned senior counsel appearing for Sri K.P.Vijay Kumar, learned for petitioners and Sri Avinash Desai, learned counsel for second respondent.

4) Severely fulminating the complaint allegations, learned counsel for petitioners would submit that the allegations would disclose that *defacto* complainant and accused are close relations and there are disputes between them relating to the company affairs. The *defacto* complainant filed O.S.No.121 of 2018 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad on 14.02.2018 for partition of joint family properties. She also filed O.S.No.1565 of 2017 in the Court of XVI Additional District Judge, Ranga Reddy District at Malkajgiri for permanent injunction seeking to restrain petitioners/accused from alienating the land situated in Masjidpur. Besides, she filed the instant complaint mainly alleging that the accused sold the properties showing her as vendor by forging her signatures. Since she has not disclosed about the source of her information, it can be inferred that the said allegation is only a suspicion. Since the original sale deeds executed will be with the buyer, there is no occasion for the *defacto* complainant to go through the sale deeds and assert that her signatures and thumb impressions were forged. Hence, the allegation of forgery is inherently improbable. He further argued that as per her allegations, the company has executed three agreements of sale without her consent and permission which is absolutely false. M/s.PESL had got development agreement for Masjidpur lands wherein it got 64% share and hence

under the terms of development agreement, the company executed agreements of sale with which the *defacto* complainant has no concern at all. At any rate, since Masjidpur lands are not part and parcel of the partition suit, the complaint allegations that agreements and sales entered into by the accused are intended to cheat her and deprive her right in the company properties is preposterous and untenable. Learned counsel thus argued that when the complaint allegations are baseless and complaint is lodged with an ulterior motive, the same is liable to quashed as per the decision in ***State of Haryana vs. Ch. Bhajan Lal***[1]. Learned counsel further argued since the complaint allegations relate to family disputes and they do not *prima facie* disclose the commission of cognizable offence, the police ought to have conducted a preliminary enquiry to confirm that there indeed exists the commission of cognizable offence. He placed reliance on the judgment of the Apex Court in ***Lalita Kumari vs. Government of U.P.***[2]. He thus prayed to allow the petition.

5) In oppugnation, while severely opposing the petition, learned counsel for 2nd respondent would argue that the factum of agreements and sale deeds executed by the accused is not disputed by them and though the original sale deeds are with the respective purchasers, the complainant is very much aware whether she was one of the vendors of those sale deeds or not. Since she has not executed the sale deeds, which fact is emphatically known to her, she came to know that she was

---

[1] AIR 1992 SC 604
[2] (2014) 2 SCC 1

cheated by the accused by forging her signatures and executing sale deeds and therefore, in order to safeguard her rights and properties she filed civil suits for partitions and injunction and at the same time since the act of accused in forging her signatures and executing sale deeds in her name is a criminal offence, she also launched criminal prosecution. He would submit that when the acts of the accused give rise to both civil and criminal actions, the complainant can initiate both proceedings and accused cannot harp that since civil suits are already filed, criminal proceedings are not maintainable. He relied upon the decision of the Apex Court in ***Vijayander Kumar vs. State of Rajasthan***[3]. Learned counsel would conclude that the allegations are grave inasmuch as the accused colluded together and transferred valuable properties to third parties by forging the signatures of the complainant and the magnitude of the loss occasioned to the complainant can be divulged only after full-fledged investigation. He thus prayed to dismiss the petition.

6) The point for determination is:

"Whether there are merits in the petition to allow?"

7) **POINT**: The main plank of argument of learned counsel for petitioners is that the accused never cheated the complainant and the sales and agreements were made on behalf of PESL which entered into a development agreement with the third parties with which complainant has nothing to do and further, the lands of Masjidpur are not claimed by the complainant as she did not show them in the partition suit.

---

[3] (2014) 3 SCC 389

Therefore, transfers effected by them cannot be dubbed as offence of cheating. Regarding the allegation of forgery, their contention is that since the original sale deeds are with the purchasers which contain the signatures and thumb impressions of the complainant, she cannot emphatically say that she was not a signatory of those sale deeds. It is also their contention that since the complainant already filed suits for partition and injunction, the criminal prosecution is not maintainable.

8) The law on the aspect of simultaneous launching of civil and criminal proceedings is no more *res integra*. If the same act of a person propulsive of both civil and criminal prosecution, the victim can initiate both proceedings. This principle is laid down in ***Vijayander Kumar***'s case (3 supra) wherein the Apex Court held thus:

> *"Para 12: Learned Counsel for the Respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint discloses a criminal offence or not. This proposition is supported by several judgments of this Court as noted in paragraph 16 of judgment in the case of **Ravindra Kumar Madhanlal Goenka and another v. Rugmini Ram Raghav Spinners Private Limited** ((2009) 11 SCC 529= (2010) 3 SCC (Crl.) 1011)."*

9) When the instant case is scrubbed on the above touchstone, the criminal proceedings cannot be quashed merely because the complainant has, besides choosing civil proceedings, also initiated criminal proceedings provided the compliant allegations project a *prima*

facie material for launching criminal prosecution. In this regard, the emphatic case of the complainant is that A1 in the capacity of Promoter and Managing Director misappropriated and misused the property of PESL to his own use. A1 and A3 have siphoned off crores of rupees from PESL and invested in their companies in which A1 and his family members are beneficiaries. The share of the complainant in the sale proceedings are not given to her. Since their acts were prejudicial to the interest of shareholders, bankers and employees, the complaint says she informed to A1 and others that she will not be willing to consent for further transactions of sale of plots/built up homes. In spite of the same, accused have executed sale deeds and agreements as narrated in the complaint. In some of those documents her signatures and thumb impressions were forged. Hence, she seeks for a detailed investigation to exhume the various misdeeds of the accused and the magnitude of the loss caused to the complainant and other share holders. In my considered view, the complaint allegations project *prima facie* material to carry out investigation.

10) In ***Lalita Kumari***'s case (2 supra) the Apex Court in unequivocal terms held registration of FIR is mandatory under Section 154 of the code, if the information discloses commission of a cognizance offence and no preliminary inquiry is permissible in such a situation. Therefore, there is no gainsaying for petitioners to argue that a preliminary enquiry is must before registering FIR. Whether the complainant herself executed the sale deeds and whether her signatures and thumb

impressions are forged on the relevant documents is a matter of fact to be thoroughly investigated. Similarly, whether the accused have diversified the funds of the company into their interested ventures or not so as to cause loss to share holders is to be investigated and determined. The instant case, in my considered view, will not fall within the set of pigeon holes of ***Bhajanlal***'s case (1 supra) to order quashment of the proceedings.

11) This Criminal Petition is devoid of merits and hence dismissed. The investigating agency shall proceed with the investigation.

As a sequel, miscellaneous application pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 19.06.2018
Murthy