

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Writ Petition No.28968 of 2016

ORDER:

The petitioner is the sole accused in Crime No.139 of 2014 dated 20.07.2014 of Manchal Police Station, Cyberabad District, registered for the offences punishable under Sections 420, 506 & 504 IPC on the report of respondent No.5-*de facto* complainant. The police after investigation filed charge sheet taken cognizance is the impugment in the present Writ Petition and seeking to quash the proceedings.

2. The police final report from the investigation by examination of 14 witnesses including LWs 13 & 14 the police officials-Investigating Officers, who registered the crime and filed the charge sheet besides LWs 11 & 12 the so-called panchas in identification of the so-called scene of offence with reference to Calendar Case of Pahanies submitted by LW10-Deputy Tahsildar and LW1-complainant, LWs 2 & 3 so-called eye witnesses, LWs 4 to 9 the so-called circumstantial witnesses to speak including previous Sale Deed is that one Jyostna Rani-accused came to the complainant on 06.08.2012 with Srinivas and Gopal stating she was going to sell her land for her necessities which is Survey No.42 to the extent of Ac.7.03 guntas situated in Lingampally Village, Manchal Mandal, and the sale consideration consequently fixed of Rs.59.00 lacs and she has shown Xerox copies of documents of the land, which the complainant verified and there

from agreed to purchase and entered the agreement on even date by payment of Rs.15.00 lacs as advance and time stipulated to register the land on payment of balance consideration on or before 10.09.2012. As per the complaint further averments, the *de facto* complainant with mediators approached said Jyostna Rani-accused with balance consideration on 10.09.2012 to receive and register the land by execution of Sale Deed and she stated that she is on the job to get some extent of land for making a way into subject land and that also going to be registered in favour of the complainant so as to make feasible and one month later the complainant went to her with the mediators and asked to register the land and she closed her doors without response. It is further averred that on 03.12.2012 the complainant issued legal notice to her to receive money and register the Sale Deed, which she acknowledged without reply and when he went along with the mediators again to demand to receive the amount and register the Sale Deed, she threatened to beat them using unsocial elements if they come again to her house and out of doubt the complainant verified at Sub-Registrar Office, Ibrahimpatnam on 05.07.2014 and came to know that she already registered the subject land in the name of Katta Bhaskar Rao and his daughter Katta Sudharani of Nijampet village and Devarakonda Srinivasulu of Secunderabad on 30.08.2013 vide document No.10557/1/2013 and realised that she cheated him and when called her, she scolded in filthy language and again threatened to beat using rowdies and disclosed that she sold away the land to others. It is there from

requested to take action in registration of the crime. The witnesses Srinivas and K.Venu Gopal referred by him also as per the Investigating Officer from the charge sheet averments stated in tune. The Investigating Officer collected copies of the documents from the complainant including from the Sub-Registrar, Ibrahimpatnam. It is further averred that the complainant stated about the land is at Manchal and not as stated earlier at Lingampally in the second statement with variation. It is also referred about the civil suit pending. He also stated about the notice issued to Stamp Vendor C.Prasanna Kumar (LW4), from whom the complainant purchased the stamps for the Sale Agreement, who confirmed about the sale of stamps to the complainant on which the Sale Agreement executed. It is stated that the letter addressed to the learned VII Additional District Judge, Rangareddy District at L.B.Nagar, for certified copies of the Sale Agreement from the pending suit O.S.No.1033 of 2014 as part of investigation. It is referred from further investigation that the accused violated the Sale Agreement terms and executed the Sale Deed later to others and collected from the Tahsildar of Manchal Mandal the revenue records which shows the land mutated in the name of the subsequent alignees supra LWs 6 to 8 and they are in possession. The suit was filed as can be seen from the plaint on 16.09.2014 whereas the crime registered from the report supra dated 20.07.2014 nearly two months before filing of the suit.

3. The contentions in the quash petition are that the dispute is predominantly civil in nature added with criminal flavour and any mere breach of contract by itself no way constitutes the offence of cheating in the absence of showing the dishonest intention from the inception to attract the alleged offence under Section 420 IPC and there is no any basis to say application of the offences under Sections 506 & 504 IPC even and the proceedings are thereby liable to be quashed, that too when the civil suit for specific performance already filed in O.S.No.1033 of 2014. Leave about the earlier suit O.S.No.21 of 2013 filed against the accused and obtained injunction preventing any execution of the Sale Deed in favour of the *de facto* complainant.

4. The submission of the learned Senior Counsel appearing for respondent No.5 to the writ petition-*de facto* complainant is that the offences of cheating squarely attract from execution of the Sale Agreement and subsequent alienation of the property including from the threats the other IPC offences and thereby there is nothing to quash the proceedings when the investigation material is crystal clear on that and merely because there is a civil remedy also available that is not ground for quashing.

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

6. The facts need not be repeated of the so-called Sale Agreement as per the *de facto* complainant was dated 06.08.2012 for Rs.59.00 lacs on payment of advance of Rs.15.00 lacs by agreeing to pay the

balance of Rs.44.00 lacs on or before 10.09.2012 which is within one month three days from the date of agreement. The so-called legal notice issued by the complainant to the accused was dated 03.12.2012 only and in between even the time is essence of contract no notice even given demanding to execute the Sale Deed by receiving balance consideration, but for the so-called say of oral requests or demands to receive balance consideration and execute the Sale Deed. Even to say that there is a so-called subsequent say by accused to the complainant to execute the document by providing pathway also, there is no basis. Even after the legal notice received dated 03.12.2012 and not responded. The Sale Deed by accused to third parties was dated 30.08.2013 vide document No.10557/1/2013. The complaint was filed only on 20.07.2014. There is more than 20 months gap from legal notice dated 03.12.2012 with no reply even after personal visit to accused by complainant before than she abruptly closed the doors and he with mediators returned back. Thus, there is no meaning in his waiting with no reason for about 20 months despite no response supra that too even stated subsequently the accused sold under the registered Sale Deed dated 30.08.2013 in favour of others i.e., LWs 6 to 8. There is no necessity even to wait after came to know of the registered document of sale. What he stated he came to know as if only on 05.07.2014 is unbelievable on its face from the above, leave about the fact that after notice not responded from 03.12.2012 including not cooperating to register by receiving balance even earlier after expiry of the stipulated time by 10.09.2012, that unexplained delay in filing

the report on 20.07.2014 is suffice to say there is abnormal delay though there is no bar of limitation for the offence under Section 420 IPC. The fact that the Sale Deed executed to others on 30.08.2013 may be a breach of contract committed by the accused contrary to the terms of the agreement executed in favour of the complainant as observed by the Investigating Officer from the investigation. However that itself constitute the offence of cheating defined under Section 415 IPC from the inception of entering Sale Agreement dated 06.08.2012 with time for performance fixed till 10.09.2012 is the core question. Mere breach of contract will not constitute the offence of cheating is the settled law in the absence of saying deception from the inception of entering into the contract for sale. It is not a case of the contract for sale entered with deceptive mind on 06.08.2012 and it is not even a case of even subsequently from the time stipulated to perform by 10.09.2012 refused to register and indicating any deceptive mind from the inception for what was stated promised to register even taken a subsequent execution of the Sale Deed on 30.08.2013 that is long after 10.09.2012 by which date time fixed for specific performance lapsed.

7. Here, one of the contentions of the learned counsel for the accused is that the time fixed was the essence of contract, which was not performed and the agreement is lapsed thereby and thus it is not a bar to subsequent execution of the Sale Deed. Though it is premature so to answer, there is a force in said contention from the very

complaint and the investigation charge sheet and the documents show particularly from the agreement time stipulated to perform by 10.09.2012 it is that too when civil suit already filed and pending. Leave apart there is earlier to it a civil suit against the accused preventing registration of the document in favour of the complainant of the year 2013.

8. Having regard to the above, from the dispute is predominantly civil in nature and mere breach of contract by itself even does not constitute the offence of cheating in the absence of showing dishonest intention from the inception of entering into the contract for sale, which is lacking as discussed supra, no offence of cheating that attracts to the facts of the case on hand.

9. In this regard in **Visa Holdings v. State of Kerala**¹ it is categorically observed of the Apex Court referring to **Uma Shankar Gopalika v. State of Bihar** [(2005) 10 SCC 336] among others that as per the settled position of law, however breach that attract, 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 from the inception. Intention to cheat developed later thus even cannot amount to cheating.

10. Now, even coming to the offences under Sections 506 & 504 IPC, the prerequisite for the offence under Section 504 IPC is intentional insult gives provocation to any person by intending or

¹ 2015(8) SCC 293

knowing of same likely to cause breach of public peace or to commit such other offence. Here, it is not the case. Thus, there is no offence under Section 504 IPC. Even coming to the criminal intimidation under Section 506 IPC defined under Section 503 IPC, mere use of the words not sufficient in the absence of showing fear and alarm caused to the mind of the so-called victim and that is not even the report or statement of the complainant so also of the witnesses and once that prerequisite is lacking, there is no offence of criminal intimidation.

Accordingly and in the result, this Writ Petition is allowed and the proceedings in C.C.No.255 of 2015 on the file of the learned XXII Metropolitan Magistrate, Ibrahimpatnam, Cyberabad, are hereby quashed. The bail bonds of the petitioner-accused, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

30.11.2018
MVA

Dr. B. SIVA SANKARA RAO, J