

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4512 of 2018

ORDER:

The petitioner is A.2 among four accused including A.3 died in CC.No.650 of 2015 on the file of learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam, which is outcome of the report of the 2nd respondent in registration of the crime No.485 of 2013 by Waltair III Town Police Station, for the offences punishable under Sections 420, 468, 471 r/w 34 IPC. The learned Magistrate taken cognizance from the police final report and it is impugning the same, the present quash petition filed.

The sum and substance of the accusation is that there is tampering in the agreement between the accused persons and the builder. The loan sanctioned was based on the agreement as if for first floor also and there were corrections in the agreement entered with the builder by striking out the ground and by altering G1 as F1 and ground made as first floor in Sai Sampath Enclave and the schedule also page 5 it is suitably amended by erasing and striking out and making G1 as F1 and ground as first floor also in the boundaries column for ground mentioned as first floor with corrections that agreement was dated 27.04.2006. The loan sanctioned was on 19.05.2006. The very report of the bank manager addressed to the III Town PS dated 17.04.2013 in setting the law in motion speaks the factum at page No.1 it is in saying

A.1-Suryanarayana Rao Sista and his wife Sista Bala Tripura Sundary applied for the home loan to the bank and submitted various documents to avail the loan facility and they submitted the identification proof, particulars proof and income proof also. A3 stood as guarantor since no more and A.4 was the builder. The loan application form title deed document pertaining to the property submitted by them and relying thereon the loan was sanctioned including from their representations dated 19.05.2006. It is further averred that loan sanctioned was for Rs.6,31,907/- and amount disbursed of Rs.3,51,155/- to the builder on 23.05.2006 and for LIC premium Rs.34,907/- and also disbursed Rs.2,45,845/- in favour of the borrower on 26.06.2008 and later failed to repay, the bank was cheated therefrom subsequently in saying the A.1 was postponing the liquidation of the loan components by installments saying he met with accident in between 2005 to 2010 twice and in financial crunch. Though the loan availed was for first floor, so far as first floor concerned, it was already purchased by one P.Satya Rao, a government employee of the Visakhapatnam Steel Plant from the same builder Sampath Enclave. The builder actually executed construction agreement to the petitioner for ground floor G1 and not first floor F1, hence to take action.

There is nothing to show including from the police final report with reference to 15 witnesses examined including the IOs LWs.13 to 15 as to who forged by making G1 as F1

undisputedly the documents were submitted by accused 1 to 3 of whom the guarantor A.3 died. So far as A.1 and A.2 concerned to the extent the offence under Section 471 IPC squarely applies as using as genuine the tampered document with alteration of G1 and F1 and construction of ground floor to first floor, however the offence punishable a maximum of 2 years. By the time the crime registered in June/July 2013 from the report of the defacto complainant referred supra more than 7 years lapsed from date of sanction of the loan referred supra that offence squarely barred by limitation. There is no offence under Section 468 IPC that is made out including from the LW.12 Assistant Director APFSL the opinion is showing tampering and there is no co-relation to say it is tallying with writing of A.1 and A.2 in particular. Once such is the case in the absence of positive showing from the prosecution material including to take cognizance of A.1 or A.2 or both of them tampered a document in using as genuine for the purpose of forgery offence under Section 468 IPC has no application. There remained the offence under Section 420 IPC. Though learned counsel for the petitioners placed reliance on the expression of the Apex Court in **Sirajul Vs. State of Uttar Pradesh**¹ where referring to Article 21 of Constitution of India and bar of limitation under Section 468 Cr.P.C. it is not an authority of quashing the FIR for the delay.

¹ 2015 (9) SCC 201

Thus based on that expression nothing to quash the FIR so far as the offence under Section 420 IPC that too when it shows they blindly believed in according sanction of the loan and after committed default in non-liquidation they ultimately realized the so called deception which is from the inception in submitting documents with tampering for availing of loan. Any such defence is left open. The contention that there is no cheating from the inception to attract the offence of cheating is left open as part of defence.

Accordingly and in the result, this Criminal Petition is partly allowed by quashing the proceedings against the accused for the offences punishable under Sections 468 & 471 r/w 34 IPC by retaining the offence punishable under Section 420 r/w 34 IPC.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 26.11.2018
ska