

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 3569 OF 2011

ORDER:

1. This Criminal Petition under Section 482 of Cr.P.C. is filed seeking to quash the proceedings in C.C. No.144 of 2008 pending adjudication on the file of learned Additional Judicial First Class Magistrate, Karimnagar.

2. It is the case of the petitioner is that under the fear to loose the job if remains in jail for more than 24 hours during Sankranti festival, the petitioner conceded to the command of Sub-Inspector of Police, II Town Police Station, Karimnagar, who sent the petitioner to Registrar's Office with escort of two police constables in mufti dress and got the sale deed executed forcibly through the petitioner. Thereafter, the petitioner filed Suit in O.S.No.46 of 2007 to cancel the sale deed. Later, the said suit was transferred to the Court of Senior Civil Judge, Sirsilla and re-numbered as O.S.No.93 of 2009. The second respondent lent hand loan of Rs.8,200/- to the petitioner in respect of open plot admeasuring 231 square yards, situated in Sy.No.1045, Ramnagar, (Markandeya Nagar), Karimnagar District. The second respondent after sleeping over 24 long years, suddenly woke up on 09.1.2007, approached the police, who for extraneous considerations, registered a crime against the petitioner. The second respondent could not avail civil remedy of recovering amount of Rs.8,200/- from the petitioner within three years from 18.7.1983 and also not lodged any complaint

within three years from the date of any alleged crime, much less 420 IPC. Initiating criminal proceedings after 24 long years, that too in respect of recovery of amount, which is nothing but civil in nature, is extreme abuse of process of Court. The second respondent failed to file a Suit for specific performance against the petitioner or take any steps in getting alleged agreement of sale culminated into the regular sale deed.

3. Further, the petitioner filed Criminal Petition No.2344 of 2007 and obtained stay of all further proceedings in C.C. No.144 of 2008. While so, the Criminal Petition came to be dismissed on 26-4-2010 observing that that the Court was not having any information, much less, lower Court record to know as to whether the trial has commenced in CC.No.144 of 2008 or not. Further, respondent No.2 entered into witness box in O.S.No.93 of 2008 and deposed that the disputed Suit property was registered in his favour vide Document No.293 of 2007. Therefore, the very claim that the petitioner cheated the second respondent is incorrect. O.S.No.96 of 2007 on the file of learned Senior Civil Judge was dismissed on 02-12-2007 and the petitioner filed an appeal before the learned I Additional District Judge, Karimnagar which was numbered as A.S.No.61 of 2010. The cross examination of respondent No.2 clearly indicates change of circumstances in respect of Crime No.5 of 2007 and hence, fresh cause of action has arisen to the petitioner.

4. Learned Additional Public Prosecutor contended that the allegations against the petitioners are in respect of fabricated

and forged document. Investigation was completed and charge sheet was filed and therefore all the objections and contentions raised by the petitioner herein are matter of evidence which are to be decided after the full-fledged trial. It is further submitted that present Criminal Petition is not maintainable since the earlier application filed on the same grounds was dismissed.

5. POINT:

Now the point that arises for determination is,

“Whether the proceedings in C.C.No.144 of 2009 pending adjudication on the file of learned Additional JFCM, Karimnagar are liable to be quashed.”

6. The record clearly goes to suggest that the petitioner was working as Manager in APCO Fabrics, at Manchiryal Depot, Adilabad District. The second respondent-complainant is none other than the co-brother of the petitioner. Basing on the complaint lodged by the second respondent against the petitioner, the Station House Officer, II Town Police Station, Karimnagar registered a case in Crime No. 5 of 2007 for the offence punishable under Section 420 IPC. After thorough investigation, the police filed charge sheet on 31.01.2007 against the petitioner for the offence punishable under Section 420 IPC. The allegation against the petitioner is that on 18.02.1983 he (petitioner) borrowed Rs.8,200/- from second respondent to purchase the land in Sy.No.17, admeasuring 194.13 square yards situated in Markandeyanagar, Karimnagar.

The petitioner handed over the original registered sale deed papers and executed agreement of sale in front of the elders, namely G.Vaikuntam and G.Mallesham who are the relatives of the petitioner and the petitioner promised them to register the sale deed. But the petitioner neither returned the amount nor registered the land in the name of the petitioner.

7. Earlier the petitioner filed Criminal Petition No. 2344 of 2007 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.144 of 2007. On 23.04.2008 this Court granted interim stay of arrest of the petitioner and thereafter the matter did not see the light of the day and the same was listed on 26.04.2010, on which day, the said Criminal Petition was dismissed observing that petitioner is not evincing any interest to prosecute the case and that apparently as the Calendar case is of the year 2008 and as there was no stay of all further proceedings in the aforementioned CC, it is not known as to whether the said case is still pending or whether the same was disposed of, and observing so, this Court was not inclined to entertain the said Criminal Petition and go into the merits of the case.

8. Subsequently, present Criminal Petition is filed under the changed circumstances stating that the charges leveled against the petitioner in the final report are civil in nature and that the act of the police is amounting to abuse of process of law. The petitioner under the fear of loss of job, he conceded the commands of the Sub Inspector of Police, II Town Police

Station, Karimangar and on 12.01.2007, the Sub Inspector of Police, by name, T. Srinivasa Rao, sent him to the Registrar's office with escort of two police constables in mufti dress and got the sale deed executed forcibly in favour of the second respondent. Immediately thereafter, the petitioner filed O.S.No.46 of 2007 which was subsequently transferred to the Court of learned Senior Civil Judge, Sirisilla, and re-numbered as OS.No.93 of 2009. The property in dispute was registered in the name of the second respondent vide Document No. 293 of 2007 in O.S.No.93 of 2009 which was dismissed on 02.12.2010, against which, the petitioner preferred appeal AS.No.61 of 2010 and the same was allowed. Aggrieved thereby, the second respondent preferred Second Appeal Nos. 1422 and 1604 of 2011 and the same are pending adjudication. All the proceedings in O.S.No.93 of 2009 and AS.No.61 of 2010 are subsequent to the disposal of Criminal Petition No.2344 of 2007 on 26.04.2010.

9. In *NIKHIL MERCHANT Vs. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER* {(2008)9 SCC 677}, the Apex Court in the similar set of circumstances quashed the proceedings. In the case on hand, admittedly the earlier Criminal PetitionNo. 2344 of 2007 was dismissed by order dated 26.04.2010 holding that petitioner is not evincing any interest to prosecute the case and that as the proceedings in Calendar Case are of the year 2008 and as there was no stay of all further proceedings, it is not known as to whether the said case is still

pending or disposed of; holding so, this Court is not inclined to entertain the petition and go into the merits of the case and accordingly dismissed the same. In *GIAN SINGH Vs. STATE OF PUNJAB AND ANOTHER* {(2010) 15 SCC 118}, three judges bench of the Apex Court upheld the view of *NIKHIL MERCHANT's* case (supra) on a similar set of facts and observed that continuation of proceedings against the petitioners would amount to abuse of process of Court and as such they are entitled to the relief claimed.

10. A reference was made to the Honourable Supreme court in *GIAN SINGH's* case (supra) wherein the correctness of the decision of the *NIKHIL MERCHANT* (supra) and *B.S.JOSHI Vs.STATE OF HARYANA* {(2003) 4 SCC 675} and other decisions of Honourable Supreme Court were doubted by two Judge bench of Honourable Supreme Court and a three judges Bench of Honourable Supreme Court after analyzing decisions of Supreme Court on the subject including *C.B.I. Vs RAVISHANKAR PRASAD*{(2009) 6 SCC 351}, and *RUMI DHARIS Vs. STATE OF WEST BENGAL* {(2003 (4) SCC 675} upheld the correctness of view taken in *NIKHIL MERCHANT* and *B.S.JOSHI* cases (supra) and *MANOJ SHARMA AND STATE* {(2008) 16 SCC 1}. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 Cr.P.C. Inherent power is of wide plenitude with no

statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power, namely, (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. . In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. In **NIKHIL MERCHANT** case (supra) almost on a similar set of facts, the Apex Court quashed the proceedings while taking into consideration the parties therein have cleared the amounts due to the bank. In that case also, the allegation against the accused therein was that they have availed loan credit facility by making false representation to avail loan to which the accused therein was not entitled.

11. In the present case, as already discussed hereinabove, the offence alleged against the petitioner is under Section 420 IPC. The civil liability against the petitioner is to execute the sale deed. The petitioner herein alleged that the second respondent took the assistance of the Sub Inspector of Police, by name, T.Srinivasa Rao, who took him to the Registrar's office with two constables in mufti and got the sale deed executed with him. Immediate thereafter, he filed suit O.S.No.46 of 2007 seeking to cancel the said sale deed as it was executed under coercion and threat. The said suit was transferred to another Court and renumbered as OS.No. 93 of 2009, which was dismissed on 2.12.2010, against which, the petitioner preferred appeal As.No.61 of 2010 which was allowed. Aggrieved thereby, the second respondent preferred SA.Nos.1422 and 1604 of

2011 before this Court and the same are pending adjudication. Thus these are the changed circumstances after dismissal of the earlier Criminal Petition No.2344 of 2007 on 26.4.2010 which empowered the petitioner to file present Criminal Petition.

12. Having regard to the facts and circumstances stated hereinabove, it is clear that since Criminal Petition No.2344 of 2007 was dismissed long back on 26.04.2010 and of changed circumstances subsequent thereof, this Court has power to invoke the jurisdiction under Section 482 Cr.P.C. Section 482 Cr.P.C. inheres the High Court to exercise the power to make such order as may be considered necessary to, *inter alia*, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 Cr.P.C. it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C.

13. Thus in view of the foregoing discussion, I am of the considered opinion that the facts and circumstances prevailing at the time of filing Criminal Petition No. 2344 of 2007 and filing of subsequent application vide Criminal Petition No.3569 of 2011 are entirely different. The earlier application in Criminal Petition No. 2344 of 2007 was dismissed as this Court was not inclined to entertain the petition and go into the same since the stage of calendar case was

not known as on the date of hearing the criminal petition. Since the dispute in the case on hand is civil in nature, the petitioner has already filed OS.No.46 of 2009 (old)/ O.S.No. 93 of 2009 (new) which was already adjudicated, against which, AS.No.61 of 2010 preferred by the petitioner was allowed; aggrieved thereon, the second respondent preferred Second Appeal Nos. 1422 and 1604 of 2011 and the same are pending consideration before this Court. Thus the dispute in the present case is absolutely civil in nature. It can therefore be held that the lodging of the criminal complaint by the second respondent is nothing but abuse of process of Court and it can thus be held that he (second respondent) caused the prejudice to the petitioner. In view there of, the criminal petition is liable to be allowed and CC No.144 of 2008 is liable to be quashed.

14. Accordingly the Criminal Petition is allowed and CC.No.144 of 2008 pending on the file of learned Additional Judicial First Class Magistrate, Karimnagar is hereby quashed.

15. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 7TH FEBRUARY, 2018.
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