

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No. 5281 OF 2018**

**ORDER:**

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by the petitioner-accused No. 3 to quash the proceedings in C.C.No. 542 of 2016 on the file of the Court of Judicial I Class Magistrate (Prohibition and Excise) at Mahabubnagar (for short, 'the Court below') registered for the offences punishable under Sections 420 and 120-B of IPC.

2. The Commissioner, Mahabubnagar Municipality – respondent No. 2 lodged a report with police alleging that accused No. 4 and five others got registered a document conveying the property belonging to Municipality at NGO's Colony, Yenugonda, Mahabubnagar, and the open space was already earmarked in the approved layout *vide* L.P.No. 549 of 82. The accused illegally executed a registered sale deed conveying the property earmarked for public purpose which is within the limits of rural police station and therefore sale of the property by accused Nos. 1 and 2 in favour of the petitioner and others would constitute the offences punishable under Sections 420 and 120-B of IPC. On the strength of the complaint of respondent No. 2, a case was registered for the offences referred *supra*, issued FIR and took up investigation. During investigation, the investigating officer examined as many as eight witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of those statements coupled with documentary evidence collected during investigation, charge sheet is filed and it is pending for trial before the Court below.

3. The present petition is filed to quash the proceedings on the ground that the subject land was allotted to the petitioner, he paid consideration of Rs.38,400/- to the Society, obtained physical possession of the property and therefore he is not liable for punishment and proceeding against him would cause immense loss due to ordeal of trial and prayed to quash the proceedings against the petitioner.

4. During hearing, learned counsel for the petitioner has reiterated the grounds urged in the petition while contending that he is *bona fide* purchaser of the property for valuable consideration from the Society on its allotment and thereby not liable to be proceeded with the offences and requested to quash the proceedings.

5. The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such inherent jurisdiction only to give effect to the orders passed under the Code or to prevent abuse of process of the Court or to secure ends of justice. Keeping in mind the power of this Court under Section 482 Cr.P.C., the Apex Court in ***State of Haryana Vs. Bhajanlal***<sup>1</sup> laid down seven guidelines which are as follows:

- "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

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<sup>1</sup> 1992 Supp. (1) SCC 335

- (3) *Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

In ***R.P. Kapur Vs. State of Punjab***<sup>2</sup>, the Apex Court laid down the following principles:

- "(i) *Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;*
- (ii) *Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;*
- (iii) *Where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and*

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<sup>2</sup> AIR 1960 SC 866

- (iv) *Where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."*

Turning to the facts of the present case, the layout was approved for allotment of plots to its members by the NGO's Society and as per the rules under the Municipalities Act, 1/3<sup>rd</sup> of the site is to be earmarked for public purpose *i.e.* for parks *etc.*, and the same has to be conveyed by executing gift deed in favour of Municipality. The case of respondent No. 2 is that the property earmarked for public purpose as per the layout was sold by accused Nos. 1 and 2 to the petitioner and others for valuable consideration allegedly for Rs.38,400/-. Thus, sale of the property by accused Nos. 1 and 2 to the petitioner and others belonging to Municipality, which is deemed to have been vested under the provisions of the Municipalities Act, would *prima facie* constitute the above offences.

6. Section 415 of IPC defines the word cheating as follows:

*"Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."*

Section 420 of IPC deals with punishment for cheating and dishonestly inducing delivery of property. According to it, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Thus, the main ingredient

to constitute the offence is that there must be dishonest inducement to part with any amount or property by one person to other person. In the present case, accused Nos. 1 and 2 induced the petitioner and others to pay money for conveying the property belonging to Municipality without any title thereto. Therefore, such an act would *prima facie* constitute the offence punishable under Section 420 of IPC. Whether the petitioner is a bona fide purchaser or not is a question of fact. When the petitioner conspired with accused Nos. 1 and 2, he is also equally liable to be proceeded.

7. Though learned counsel for the petitioner questioned the proceedings in C.C.No. 542 of 2016 on the file of the Court below, he did not produce the statements of the witnesses recorded under Section 161 (3) of Cr.P.C. during investigation so as to enable the Court to verify as to any of the witnesses stated that the property belongs to Municipality and vested on it and sold the same by accused Nos. 1 and 2 to the petitioner and others. The statements recorded during investigation also form part of charge sheet filed under Section 173 (2) of Cr.P.C. In the absence of those statements, it is difficult to conclude that the petitioner is a *bona fide* purchaser for valuable consideration.

8. In view of my foregoing discussion, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

9. The criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 07-06-2018.

JSK

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**M.SATYANARAYANA MURTHY, J.**