THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.1507 of 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ['the Code', for short] is filed by petitioner-A7 requesting to quash the proceedings against him in case in Crime No.109 of 2015 on the file of Guntakal I Town Police Station, Anantapuram District.

2. I have heard the submissions of the learned counsel for the petitioner/A7, of the learned counsel for the de-facto complainant/2nd respondent and of the learned Public Prosecutor (AP) appearing for the 1st respondent.

3. The introductory facts necessary for consideration are as follows:

The 2nd respondent filed a complaint against four accused/persons, under Section 200 of the Code on the file of the Court of the learned Judicial Magistrate of First Class, Guntakal. The learned Magistrate referred the same to the Station House Officer, Guntakal I Town Police Station, for investigation and report. On receipt of the same, the said officer registered the afore-stated crime, on 26.12.2015, against A1 to A4 for the offences punishable under Sections 418, 423, 465, 467, 471 and 109 of Indian Penal Code and took up investigation. The 1st accused therein filed OS.No.85 of 2015 on the file of District Court, Anantapuram, against the 2nd respondent herein for specific performance based on an unregistered contract of sale, dated 02.10.2014, stating *inter alia* that the same was executed by the 2nd respondent in respect of certain immovable properties described in the schedule annexed to the plaint in the said suit. However, the case of the 2nd respondent is that he never executed any such agreement of sale and that the same was a forged document and that the 1st accused illegally gained possession of the antecedent title deeds/link documents of the property and that while A4 scribed, A2 & A3 attested the said forged agreement of sale. During the course of investigation, six witnesses were examined by the Investigating Officer (IO). Thereafter, A5 to A7 were added to the array of accused in the afore-stated crime basing on the investigation thus far made. A5 & A6 were arrested and orders of remand to judicial custody were obtained. They were later released on bail. According to the IO, A5 & A6 made confessional statements before the mediators about the commission of the offence and their roles in the commission of the crime and that basing on such statements certain incriminating material was also seized. A1 to A4 filed Crl.P.490 of 2016 under Section 482 of the Code for quashing the crime. However, this Court while disposing of the same by an order, dated 21.01.2016, directed that the investigation shall go on; however, A1 to A4 shall not be arrested until completion of investigation. A1 & A3 obtained anticipatory bail *vide* orders in Crl.P.No.973 of 2016. In the orders in the said petition, they were directed to report before the IO as and when required. Be that as it may. A5 also filed WP.No.6948 of 2016 requesting to quash the proceedings in the crime. The said writ petition is also coming along with this criminal petition and two other connected matters for hearing and disposal.

4. In this backdrop, the case of the petitioner-A7 in support of his request to quash the proceedings against him is this:

The alleged overt acts in the complaint even if taken as true, yet, the ingredients of the offences punishable under Sections 418, 423, 465, 467, 407 & 109 of IPC would not be attracted insofar as this accused is concenred. The said penal provisions of law would stand attracted when the accused approached the *de facto* complainant with an intention to cheat him for any illegal monetary gain. The penal provisions and the prosecution are being pressed into service obviously to gain an unfair advantage and harass this petitioner. No affidavit has been filed along with complaint by the *de facto* complainant/2nd respondent as per guidelines in the decisions of the Supreme Court. Even as per the complaint filed before the Court of the learned Magistrate, the civil suit is already pending between A1 and the *de facto* complainant/2nd respondent wherein the specific pleas with respect to forgery and the genuineness of the signatures appearing on the disputed document would be examined and determined; and, the document would be sent to forensic expert for obtaining an opinion. Hence, the criminal prosecution against this petitioner is totally premature. And, the overt acts attributed to this petitioner do not attract the ingredients of the afore-stated penal provisions for fastening any criminal liability. Hence, the proceedings of the crime insofar as this petitioner-A7 is concerned are liable to be quashed.

5. The *de facto* complainant-2nd respondent reiterated his case as stated in the complaint filed before the learned Magistrate on the basis of which the crime was registered after a reference of the same was made by the learned Magistrate to the police officer concerned for investigation and report.

6. Learned Public Prosecutor submitted as follows:

During the course of investigation six witnesses were examined. Basing on the evidence and material collected during the course of investigation, A5 to A7, (including the petitioner herein) were included in the array of accused. The investigation so far done revealed that A5 (being the real estate broker), taking advantage of his acquaintance with the *de facto* complainant, who is a busy medical practitioner, secured original documents of the property and handed over the same to A4; that A4 as per the directions of A1 scribed the agreement of sale in question as if it had been executed by the *de facto* complainant/2nd respondent in favour of A1 and handed over the same to A5; that A5 in turn gave it to A1; that A1 through A6 got the signature of the 2nd respondent/*de facto* complainant forged on the agreement of sale by A7, who is an expert in forging the signatures. Thus, the investigation reveals the culpability of the present petitioner-A7 in committing the subject offences along with the other accused. This petitioner-A7 committed forgery of the agreement of sale much before filing the civil suit. Under the said circumstances, inspite of pendency of civil suit, the investigation can be conducted as per the law laid down by the Hon'ble Supreme Court and this Court. As A5 & A7 obtained stay orders with regard to further investigation in the crime, further investigation could not be done by the police.

7. On 10.02.2016, this Court while admitting the criminal petition granted the following interim order in Crl.P.MP.No.1447 of 2016:

'There shall be interim stay of all further proceedings in crime No.109 of 2015 on the file of the Station House Officer, Guntakal I Town Police Station, Anantapuram District.'

8. I have bestowed my attention to the matter and I have given earnest consideration to the facts and submissions. The chronology of events and the progress made in the investigation till interim orders are granted by this Court is already noted. Though it is contended on behalf of the petitioner-A7 that even if the averments in the complaint and the alleged overt acts in the complaint are taken to be true, the ingredients of the offences punishable under Sections 418, 423, 465, 467, 407 & 109 of IPC would not be attracted insofar as this accused and that the dispute is predominantly a civil dispute and that at the time of filing the private complaint before the learned Magistrate, the procedure contemplated under law was not followed, what is to be noted is that the learned Magistrate duly referred the private complaint to the SHO concerned for investigation and report and thereafter the crime has been registered and the FIR was issued. Thus, looking at the matter from the point of view of the facts and law, this Court finds that the uncontroverted allegations made in the complaint do disclose *prima face* commission of certain cognizable offences. In the opinion of the IO, the evidence so far collected

and the confessional statements said to have been made by A5 & A6 make out a case *ex facie* against the accused and that the matter requires further investigation and that a considered opinion either way can be arrived at only on the conclusion of the investigation. As already noted, this Court, while dismissing the Criminal Petition filed by A1 to A4 requesting to quash the proceedings in the instant crime, observed that it is not a fit case to quash the proceedings as the investigation is at the initial stage. Thereafter, a little progress and addition of the accused based on such investigation and a further little progress was only made in the investigation. Thus, there was no much of a progress in the investigation in view of the various interim orders of this Court referred to supra. Therefore, the further investigation is stalled on account of the interim orders and the investigation has not reached an advanced stage or rather a conclusive stage. The learned Public Prosecutor submits that further investigation into the matter is required before the IO could express an independent, unbiased and conclusive opinion in the matter. He would further submit that on completion of investigation, it would be clear whether the allegations of forgery, illegal gaining of title documents, fabrication of contract of sale and institution of a suit on such alleged document to make an unlawful gain as are made by the complainant are *prima facie* true or not and that only at the conclusion of the investigation the investigating officer would be in a position to arrive at a final opinion and file a final report either way.

9. No doubt, once a crime is registered and an FIR is issued, the accused persons can always approach the High Court under Section 482 of the Code or under Article 226 of the Constitution of India for quashing of the FIR. In Kamaladevi Agarwal v. State of W.B. and Ors. [(2002) 1 SCC 555], this Court has observed as under:

> "This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should

be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

10. It is also well settled that the power under Section 482 of the Code to quash the FIR has to be exercised either to prevent abuse of process of any Court or to otherwise secure the ends of justice. The Supreme Court also held and reiterated that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guideline or rigid formula and to give an exhaustive list of myriad cases wherein such power should be exercised. The inherent power in the matter of quashing the FIR has to be exercised sparingly and with caution following the tests suggested in the provision of law. Two of the important illustrative parameters to be taken note of while exercising of the inherent power are – (i) 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; And, (ii) 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.

11. The question as to which one of the two versions is correct cannot be prejudged more particularly as the IO has not completed the Investigation and has not formulated an opinion and as he is yet to further investigate into the matter and file a charge sheet or final report with his opinion. Which of the two rival versions is correct and whether the averments in the final report that may be filed at the conclusion of the investigation and the evidence that may be produced in support thereof would eventually make out a *prima facie* or a strong case for proceeding against the accused will have to be decided at a

later stage, but not in the present quash proceedings. In other words, in the instant case, there is no need to prejudge the outcome of the investigation. In the recent decision of the Supreme Court in Tilly Gifford v. Micahel Floyd Eshwar and another [(2018)11 SCC 205], the Supreme Court while noting that while passing the impugned order, the High Court has gone beyond the contours of its power and jurisdiction under Section 482 CrPC to quash a criminal proceeding, further noted that the extent of such jurisdiction has been dealt with by the Supreme Court in numerous pronouncements over the last half century and held as follows: - 'Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.' The precedential guidance in the afore-stated decision of the Supreme Court supports the view of this Court.

12. Therefore, in the well considered view of this Court, at this stage, none of the circumstances which are sufficient to quash the proceedings do exist in the present case. In view of the settled law that the power of quashing a criminal proceeding shall be exercised very sparingly and with circumspection, that too, in rarest of rare cases, this Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations in the complaint/FIR when the investigation is in progress and is stalled while in progress on account of the interim orders obtained by one or the other accused.

13. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioner/A7 to quash the proceedings against

him in the subject crime does not merit consideration and that, therefore, this criminal petition is liable for dismissal.

14. In the result, the Criminal Petition is dismissed. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the petitioner/A7 to raise all the defences, which the facts and law permit, at any appropriate stage.

Pending miscellaneous petitions, if any, shall stand closed.

M.SEETHARAMA MURTI, J

25.06.2018
Vjl