

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.7595 of 2011

ORDER:

This petition under Section 482 of Cr.P.C. is filed seeking to quash the proceedings in C.C.No.128 of 2011 on the file of Special Excise Judicial First Class Magistrate, Ongole, Prakasam District.

2. The contention of the petitioner-sole accused is that the dispute is purely civil in nature and no offence is made out under Section 420 I.P.C. The allegations in the complaint is that the petitioner is the owner of Ac.0.47 cents of land in S.No.100/3, situated at Venganukkalapalem Village, Ongole Mandal and that the second respondent-de facto complainant entered into an agreement of sale with the petitioner on 10.2.2004 through Madikonda Samuel to purchase the land for a sale consideration of Rs.1,10,000/-. The petitioner having received the entire sale consideration, delivered the possession of the said land in favour of the second respondent herein and agreed to execute the registered sale deed on demand. The agreement of sale was attested by Madiknoda Samuel and Ponnamm Anjaneyulu. It is alleged in the complaint that the petitioner sold away the land in Sy.No.100/3 to one Kothuri Anantha Lakshmi under a registered sale deed dated 01.11.2006 without the knowledge of the complainant-second respondent herein.

3. The main contention of the petitioner is that the complainant-second respondent has to file a suit for specific performance of agreement of sale dated 10.02.2004 as the dispute is purely civil in nature. The petitioner issued a reply notice dated 02.02.2007 to the notice issued by the second respondent dated 23.01.2007 advising the second respondent not to indulge in such illegal demands.

4. Heard the learned counsel for the petitioner and learned Public Prosecutor for first respondent. None appears for the second respondent. Perused the material available on record.

5. Now the point that arises for consideration in this petition is whether there is any *prima facie* material to prosecute the petitioner or there is any abuse of process of Court in continuing the proceedings against the petitioner?

6. Learned counsel for the petitioner mainly contends that the dispute is purely civil in nature and no criminal case of cheating is attracted.

7. *Per contra*, the learned Assistant Public Prosecutor contended that there is specific allegation in the charge sheet against the petitioner to the effect of cheating the complainant.

8. There is no denial of execution of agreement of sale dated 10.02.2004 by the petitioner in favour of the complainant-second respondent for an extent of Ac.0.47 cents of land, which was duly attested by the witnesses. The complainant-

second respondent filed a private complaint against the petitioner for the offences punishable under Sections 420, 468 and 473 IPC and the same was forwarded by the concerned Magistrate to the police under Section 156(3) Cr.P.C., who in turn registered a case in Crime No.361 of 2007 for the said offences and after thorough investigation, the Sub-Inspector of Police, Ongole Taluk Police Station filed a charge sheet for the offence under Section 420 IPC. In the charge sheet, specific overt acts are attributed against the petitioner stating that the petitioner, who is the owner of land to an extent of Ac.0.47 cents, situated in Vengamukkalapalem Village executed an agreement of sale in favour of the second respondent on 10.02.2004 and subsequently, he sold away the said land to Kothuri Anantha Lakshmi for a consideration of Rs.50,000/- on 01.11.2006 and executed a registered sale deed vide document No.6247/2006. In the charge sheet, there is specific assertion that the investigation does not disclose an offence under Section 468 and 473 IPC and hence, those sections were deleted and the charge sheet was filed only for the offence under Section 420 IPC.

9. As seen from the above, specific overt acts of cheating the second respondent are attributed against the petitioner in the charge sheet. There is *prima facie* material to prosecute the petitioner for the alleged offence. No material is placed to establish any abuse of process of Court and hence, I find no ground to quash the impugned proceedings.

10. In the result, the Criminal Petition is dismissed.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

30th January 2018

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