THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.546 OF 2014

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.64 of 2013 pending on the file of Nandikotkur Police Station, Kurnool District, for the offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA Act.

The second respondent is the defacto complainant and he lodged a written report with the police alleging that he purchased land admeasuring 0-25 cents in Sy.No.687 for establishing LPG Gas godown from one A. Lakshmi Narayana Setty on 27.10.2007 under registered sale deed document No.2961/2007 and took possession on the same day. The revenue records i.e. encumbrance certificate disclosed that the second respondent is the owner of the property. After two years of purchase, one A.B.V. Ramesh and A.B.V. Suresh, sons of A. Lakshmi Narayana Setty occupied the land and sold the land to one Ashalatha d/o Raghunath on 25.09.2009 along with their land vide document No.3446/2009. The concerned sub-registrar registered the said land based upon the registered partition deed document No.1538 dated 04.02.2005 and the title deed of A.B.V. Ramesh and A.B.V. Suresh. Though the above said document was not signed by the Revenue Divisional Officer, the same has been registered. Further, the second respondent stated in the complaint that, unregistered partition deed document No.1538 dated 04.02.2005 was shown as registered document and the document writer one Vijay Kumar prepared the sale deed based on unregistered title deed of A. Ramesh, as if it is of A. Ramesh and A.B.V. Suresh. It is averred in the complaint that, as per the Andhra Pradesh [Rights in Land] and Pattadar Pass Book Act and Rules, 1989, the unregistered document should not be considered as link document. But, on the other hand, the Sub-Registrar, Nandikotkur wrongly registered the land as if it is of A. Ramesh and A.B.V. Suresh vide document No.3446/2009 dated 25.09.2009. The vendor of the second respondent A. Laxminarayna Setty stood as a witness to the said document and father of the Ashalatha/first petitioner signed on behalf of her. Thus, all the above acts are committed in collusion with A. Laxminarayana Setty and his sons sold the land to K. Ashalatha by executing document to deprive the second respondent from enjoying lawful right over the property being a member of Scheduled Caste and such sale of the property in collusion with one another by the petitioners would amount to cheating and inducing the second respondent to part with the property and thereby, the petitioners committed offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA Act. On the basis of the report, the police registered Crime No.164 of 2013 and issued F.I.R.

The present petition is filed by all the accused on the ground that the second petitioner was a teacher in the local school in Nandikotkur. The second respondent was the student of the second petitioner, whereas, petitioners 3 & 4 are the sons of the second petitioner. It is submitted that the second respondent approached the second petitioner for a help to allot land to an extent of Ac.025 cents in Sy.No.687 for establishing LPG gas godown. The second petitioner denied on the ground that the total land is Ac.5-27 cents of land which includes the land to an extent of Ac.0-25 cents is under partition vide partition deed dated 05.05.2005. However, on request of the second respondent, the second petitioner executed a sale deed and on the other hand, the second respondent undertook that the said land will be returned to the second petitioner after getting LPG permission and he further declared that he shall not claim any land and he will return the same. It is submitted that, neither possession was given to the second respondent nor any demarcation was made, as it is an agricultural land. But, to the reasons best known to the second respondent, he did not pursue the matter with the authorities for grant of LPG godown permission at that particular time. Therefore, the sale in favour of the second respondent is only nominal to enable him to obtain license for stocking gas cylinders and it was never acted upon.

It is also further contended that, in the partition, land was allotted to the share of 3rd and 4th petitioners to an extent of Ac.5-27 cents in Sy.No.687. Thereafter, the matter was referred to Lok Adalat and award was obtained. In pursuance of the award passed by the Lok Adalat, petitioners 3 & 4 became owners and executed registered sale in favour of the first petitioner herein on 25.09.2009. It is submitted that, the said land was open land till 2012 and there was no dispute whatsoever raised by any parties herein claiming the land to extent of Ac.0-25 cents in Sy.No.687.

While the matter stood thus, the second respondent started construction activities on the said land for establishing a godown without there being any permission from the Municipal Authorities and without getting permission for conversion of land from agriculture to non-agriculture. The first petitioner was surprised to note the same and immediately the first petitioner filed a suit in O.S.No.66 of 2013 before the Senior Civil Judge, Nandikotkur in the month of September, 2013 and the same is pending as on date. It is further contended that, because of Samaikya Andhra agitation, the orders in I.A.No.176 of 2013 in O.S.No.66 of 2013 are still pending. Subsequently, the first petitioner herein came to know that the second respondent herein falsely represented before the Revenue Divisional Officer in respect to the above said land and got No Objection certificate from the Revenue Divisional Officer for establishing LPG gas godown. Immediately, the petitioners herein filed an appeal before the District Collector and the District Collector stalled further construction activities of the second respondent on the ground that no permission was obtained. The municipal authorities have not accorded any permission as the second respondent has wrongly represented by filing fabricated documents. Apart from the above, the first petitioner herein filed W.P.No.26973 of 2013 before this Court against the illegal construction of the second respondent and to set-aside the no objection granted by the Revenue Divisional Officer. Despite knowledge about the pending proceedings, the second respondent lodged a written report maliciously to bring the petitioners to his terms and settle the score and that the dispute is subject matter of civil suit O.S.No.66 of 2013 pending on the file of Senior Civil Judge, Nandikotkur. Therefore, conversion of civil dispute into criminal litigation is nothing but abuse of process of law and prayed to quash the proceedings against these petitioners.

During hearing, Sri G. Ravi Mohan, learned counsel for the petitioners contended that, when a civil dispute is pending before the competent court and also before revenue authorities, so also a writ petition, lodging a report and registration of crime against these petitioners is nothing but abuse of process of this Court. Learned counsel for the petitioners also drawn attention of this Court to the petition filed before Revenue Divisional Officer to substantiate his contention that O.S.No.66 of 2013 is pending on the file of Senior Civil Judge, Nandikotkur and various proceedings are pending before the revenue authorities. As a writ petition, civil suit and other proceedings are pending, the second respondent cannot be allowed to abuse process of law by lodging a report with the police and prayed to quash the proceedings in Crime No.64 of 2013 pending on the file of Nandikotkur Police Station, Kurnool District.

Whereas, learned counsel for the second respondent Sri T.S. Praveen Kumar would contend that, sale of the property to these petitioners and again sale of the same to the first petitioner by petitioners 3 & 4 would amount to cheating and inducement of this petitioner to part with the amount and it would attract an offence punishable under Section 420 IPC. Mere pendency of civil suit or any other proceedings would not debar the police from registration of crime and therefore, on this ground, the Court cannot quash the proceedings and prayed to dismiss the criminal petition.

Considering rival contentions, perusing the material available on record, the point that arose for consideration is as follows:

"Whether the allegations made in the written report lodged by the second respondent with the police would constitute any offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA Act. If, not, whether the proceedings in Crime No.64 of 2013 pending on the file of Nandikotkur Police Station, Kurnool District be quashed?"

POINT:

It is the contention of the second respondent from the beginning in the written report lodged with the police that he purchased land admeasuring Ac.0-25 cents in Sy.No.687 for establishing LPG Gas godown from one A. Lakshmi Narayana Setty on 27.10.2007 under registered sale deed document No.2961/2007 and took possession on the same day. This fact is not disputed by any of these petitioners, but invented a story that the document has been executed only to enable the second respondent to obtain license for stocking gas cylinders in godown on the promise that the second respondent would not claim any right over the property and return the property after obtaining permission or license for construction of godown. But, this contention cannot be accepted at this stage. The truth or otherwise in such contention shall be decided at the end of the trial.

The other allegation made in the complaint is that, the second petitioner signed as an attestor on the registered sale deed executed in favour of the first petitioner/Ashalatha. Fifth petitioner is a document writer who scribed on the document i.e sale deed in favour of the first petitioner/Ashalatha, based on the information furnished by the petitioners 3 & 4. Therefore, he is also liable for punishment for the offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA Act. Even according to the allegations made in the complaint, the second petitioner/ A. Laxminarayana Setty attested the document executed in favour of the first petitioner/Ashalatha. Fifth petitioner/Vijay Kumar is only a scribe of the document, whereas, the first petitioner is the beneficiary under the document. Therefore, it is contended that they also committed offence punishable under Section 420 IPC.

According to the settled law, an attestor cannot be made liable for punishment for the offence punishable under Section 420 IPC, since attestation is only signing of a document, receiving acknowledgment of execution of the document by executant or witnessing execution of a document by the attestor.

The word attestation is defined under Section 3 of the Transfer of Property Act, 1882, which reads as follows:

> "Attested in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time and no particular form of attestation shall be necessary"

In view of the definition of the word 'attestion' referred in the Transfer of Property Act, the attestor can sign on the document even without witnessing execution of the document, but he may sign as attestor on receipt of acknowledgment or when the document is executed in his presence, identifying the person who executed the document. Therefore, attestation has nothing to do with the transaction with the second respondent herein. This question is no more res integra, in view of the law declared in ***Mohammed Ibrahim and Ors. v. State of Bihar and another***[1], . In the facts of the above judgment, A-1 had executed a sale deed in favour of A-2, claiming that the property being sold belonged to A-1. Second respondent therein, filed a criminal complaint that the title to the property sold, belonged to the second respondent and therefore, A-1 had committed offences under Sections 467 & 471 IPC. A-1 pleaded that the property was mutated in his name and he was having its possession and was also paying land revenue for it. This issue before the Supreme Court was whether A-1 had committed an act of forgery, even if the facts alleged by the second respondent were accepted as true. The Trial Court and High Court dismissed the plea of A-1 for quashing the criminal complaint, but the Supreme Court reversed this decision and the appeal was allowed, holding that when a seller executed a sale deed in favour of the purchaser without any title, the seller is liable for defrauding the purchaser. Therefore, purchaser is entitled to prosecute the seller under Section 415 IPC, but a third party cannot do so. At best, the first accused deceived the first petitioner/A-2 therein,

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[1] (2009) 8 SCC 751

subject to proof of the same in appropriate Court. But, he did not make any representation to the first petitioner/A-2 with dishonest intention to part with the property or any valuable security. Therefore, the Court was of the view that the second respondent therein/complainant is not competent to initiate proceedings for the offences punishable under Sections 415 & 420 IPC. Similarly, the Supreme Court in paragraph 21 of the said judgment, made it clear that, A-1 by the act of executing sale deeds in favour of A-2 or A-2 by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner, thereby they are not liable to be prosecuted for the offences punishable under Sections 417, 418, 419 or 420 of the Code wherein, the Supreme Court held as follows:

> "This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

If, this principle is applied to the present facts of the case, scribe and stamp vendor are not liable to be proceeded for the offence punishable under Section 420 IPC, since, the fifth petitioner on the instructions of the purchasers or the vendor or vendee, scribed a document registered in the name of the first petitioner/Ashalatha. Therefore, the fifth petitioner cannot be saddened with any criminal liability for the offence punishable under Section 420 IPC.

At the same time, the attestor is also not liable for punishment, as the attester is not required to know the contents of the documents and the executant need not sign in the presence of the attester, in view of the law declared by this Court in **Yelakala Rangarao and others Vs. State of Andhra Pradesh and another[2],** wherein, this Court discussed about the liability of the attesters and held that they are not liable to be prosecuted for any of the offences merely on the ground that they attested the document. Thus, in view of the law declared by this Court in the above judgment, attestor of the document is not liable to be prosecuted, as such, petitioner nos. 2 & 5 are not liable to be prosecuted for the offence punishable under Section 420 IPC.

Similarly, the first petitioner is only a purchaser to whom no knowledge can be attributed abut the prior sale in favour of the second respondent. In fact, the first petitioner did not dishonestly induce the second respondent to part with any property or money or valuable security to constitute an offence punishable under Section 420 IPC.

Cheating is defined under Section 415 of I.P.C and it is as follows:

> **"415. Cheating:-** 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

[2] 2013 (1) ALD (Crl.) 269 (AP)

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".

The essential ingredients to constitute the offence of cheating are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

Section 420 IPC deals with cheating and dishonestly inducing delivery of property and it is defined as 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.

In ***V.Y.Jose v. State of Gujarat***[3] the Apex Court laid down following ingredients to constitute cheating.

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> (i) deception of a person either by making a false or misleading representation or by other action or omission;
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> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
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> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
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> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.
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> An offence of cheating may consist of two classes of cases:
> (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
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> (2) When by reason of such deception, the complainant has not done or omitted to do anything which he would

[3] (2009) 3 SCC 78

not do or omit to do if he was not deceived or induced by the accused."

In "***Hridya Rajan Pd. Verma and Ors. v. State of Bihar and another***[4]" the Apex Court discussed about the offence of 'cheating'. In the facts of the above judgment, a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced the complainant to enter into negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***[5]" wherein the Apex Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code of Criminal Procedure could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to the decisions in "***Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill***[6]", "***Rajesh Bajaj v. State NCT***

[4] AIR 2000 SC 2341
[5] 1992 Supp (1) SCC 335
[6] AIR 1996 SC 309

of Delhi[7]" and "***State of Kerala v. O.C. Kuttan***[8]" wherein the principle laid down in Bhajan Lal (supra) was reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in Bhajan Lal (supra) and whether the allegations made in the FIR or the complaint if accepted in entirety did make out a case against the accused-Appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable Under Section 420 of the Indian Penal Code. Scanning the definition of 'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:

> "16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the

[7] (1999) 3 SCC 259
[8] AIR 1999 SC 1044

sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

After laying down the principle the Bench opined that reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly stated nor indirectly suggested in the complaint.

In "***Murari Lal Gupta v. Gopi Singh***[9]" the Apex Court while dealing with the similar case for the offence punishable under Section 406 and 420 of I.P.C. held as follows:

"The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the Petitioner pursuant to which the Respondent parted with the money. It is not the case of the Respondent that the Petitioner does not have the property or that the Petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the Respondent. Merely because an agreement to sell was entered into which agreement the Petitioner failed to honour, it cannot be said that the Petitioner has cheated the Respondent. No case for prosecution Under Section 420 or Section 406 Indian Penal Code is made out even prima facie. The complaint filed by the Respondent and that too at Madhepura against the Petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the Petitioner for coming to terms with the Respondent."

[9] (2006) 2 SCC (Cri) 430

In "***B.Suresh Yadav v. Sharifa Bee and Another***[10]" the Apex Court held that the complainant, who was defendant in the suit, had filed a written statement from which it was manifest that she at all material times was aware of the purported demolition of the rooms standing on the suit property. It was contended in the written statement that the suit properties were different from the subject-matter of the deed of sale. After filing the written statement the Respondent had filed the complaint Under Section 420 of the Indian Penal Code. The Court took note of the fact that there existed a dispute as to whether the property whereupon the said two rooms were allegedly situated was the same property forming the subject-matter of the deed of sale or not and a civil suit had already been filed pertaining to the said dispute. The Court also took note of the fact that at the time of execution of the sale deed the accused had not made any false or misleading representation and there was no omission on his part to do anything which he could have done. Under these circumstances, the Court opined that the dispute between the parties was basically a civil dispute. It is apt to note here that the Court also opined that when a stand had been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, the same assumes significance and had there been an allegation that the accused got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter would

[10] (2007) 13 SCC 107

have been different. Being of this view, the Apex Court quashed the criminal proceeding as that did amount to abuse of the process of the court.

In "***G.V. Rao v. L.H.V. Prasad and Others.***[11]", the Apex Court has held thus:

> "As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney v. State of Bombay [AIR 1956 SC 575] a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B. [AIR 1954 SC 724] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

In "***S.N. Palanitkar and Ors. v. State of Bihar and Another***[12]", it has been laid down by the Apex Court that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.

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[11] (2000) 3 SCC 693
[12] AIR 2001 SC 2960

An identical question came up before the Apex Court in "***Anil Mahajan v. Bhor Industries***[13]", where the parties entered into Memorandum of Understanding for supply of steel grip tapes stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods in pursuance of the Memorandum of Understanding, the complainant delivered. In the said case, the complainant delivered 56,94,120 reels of steel grip tapes valued at Rs. 3,38,62,860 to the accused during the period 19.08.2000 to 20.11.2000 and out of this amount, the accused made only part payment of Rs.3,05,39,086 leaving balance amount of Rs.33,23,774. The accused did not make further payment despite repeated demands and started giving reasons such as cash flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. Based on the contents of the Memorandum of Understanding, the company filed a complaint against the petitioner therein for the offences punishable under Sections 415, 418 & 420 I.P.C and the Court took cognizance of it and the same is challenged before the Court.

In paragraphs 6,7 & 8 of the said judgment, the Court held as under:

> "6.Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The

[13] 2005 (10) SCC 228

subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

7. The order of the learned Additional Sessions Judge has been set aside by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defense of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

Therefore, keeping in view of the law declared by the Apex Court in the judgments referred supra, there must be a dishonest intention at the very commencement of transaction. The sale transaction in favour of the first petitioner took place long prior to execution of sale deed, as the second respondent purchased land admeasuring 0-25 cents in Sy.No.687 on 27.10.2007, whereas, the document was executed in favour of the first petitioner/Ashalatha in the year 2009 i.e. almost two years after purchase of the land. Even otherwise, first petitioner is not a party to the said document and therefore, she cannot be proceeded for the offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA Act, though she acquired the property under registered document.

Petitioner nos. 3 & 4 are the sons of the second petitioner. But, they did not execute any registered sale deed in favour of the second respondent herein, but, executed registered sale deed in favour of the first petitioner/Ashalatha. The basis for claiming title by them is the award passed by the Mandal Legal Services Authority for partition of the property. In the above award, the second respondent was not a party and the award was obtained without impleading the second respondent and it appears to be a collusive one. Therefore, petitioner nos. 3 & 4 who executed the document in favour of the first petitioner/Ashalatha, without disclosing their right or interest over the land of an extent of Ac.0.25 cents purchased by the second respondent, which at best amounts to an offence punishable under Sections 420 IPC & 3(1)(v) of SC/ST POA Act, but not Section 3(1)(ix) of SC/ST POA Act, as the petitioner nos. 3 & 4 or for that matter, any of the petitioners did not insult the second respondent being a member of Scheduled Caste within the public view in the name of his caste. Therefore, sale or conveyance of property in favour of the first petitioner/Ashalatha for consideration or otherwise may constitute an offence against her, since they sold Ac.0.25 cents of property without any right or title, which in-turn as already sold to the second respondent on 27.10.2007. But, the first petitioner did not lodge any report against petitioners 3 & 4 or anyone of the petitioners. Therefore, the act of the petitioners who allegedly sold the property to the second respondent and sale of property by petitioner nos. 3 & 4 to the first petitioner/Ashalatha do not constitute any offence punishable under Section 420 IPC, but, it would not constitute an offence punishable under 3(1)(v) of SC/ST POA Act. Therefore, taking into consideration, the facts and circumstances of the case, the proceedings against the petitioners 1,2 & 5 for the offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA, Act are hereby quashed.

Similarly, the proceedings against petitioner nos. 3 & 4 for the offences punishable under Sections 420 IPC & 3(1)(ix) of SC/ST POA Act, while permitting the investigating agency to investigate for the offence punishable under section 3(1)(v) of SC/ST POA Act.

In the result, the criminal petition is allowed-in-part, by quashing the proceedings in Crime No.64 of 2013 pending on the file of Nandikotkur Police Station, Kurnool District, against the petitioners 1,2 & 5 for the offences punishable under Sections 420 IPC, 3(1)(v) & 3(1)(ix) of SC/ST POA, Act and proceedings against petitioner nos. 3 & 4 for the offences punishable under Sections 420 IPC & 3(1)(ix) of SC/ST POA Act, while permitting the investigating agency to investigate for the offence punishable under section 3(1)(v) of SC/ST POA Act.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:20.07.2018

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