HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.13945 OF 2016

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.2444 of 2014 pending on the file of Judicial Magistrate of First Class, Nalgonda, registered for the offences punishable under Sections120b, 199, 418, 447, 427, 420, 406, 341, 468, 471 read with 34 IPC.

The petitioners/A4 and A5 are father and brother of A1. The 1st respondent – *de facto* complainant lodged report with the police making serious allegations against the petitioners and others that the 1st petitioner also collected amount from the purchasers of plots, whereas the 2nd petitioner, who is working as employee in the Electricity Department at Nalgonda installed electricity poles in the venture and also selling of plots besides making other allegations against the other accused. Based on the complaint, Crime No.27 of 2013 of Narkatpally Police Station was registered and issued FIR for the above offences. Based on the FIR, the Circle Inspector of Police, Shaligouraram, took up investigation, examined several witnesses, recorded their statements under Section 161(3) Cr.P.C and having concluded that there is *prima facie* material against the petitioners, filed charge sheet.

The present petition is filed to quash the proceedings on the ground that none of the allegations made in the complaint do not disclose the commission of offence muchless the above offences and thereby the proceedings against the petitioners cannot be continued and requested to quash the proceedings.

During hearing, learned counsel for the petitioners drew the attention of this Court to several allegations made at pages 9 and 12 of the

charge sheet to contend that the allegations made against the petitioners do not constitute any offences referred above. In support of his contention, he placed reliance in judgment of the Apex Court in **Dasrathlal Chandulal Joshi v State of Gujarat**[1], **Gurcharan Singh v Suresh Kumar Jain and others**[2] and the judgment of this Court in **Cognizant Technology Solutions India Pvt. Ltd, Chennai and another v Iridum Interactive Ltd., Hyderabad and another**[3] .

Whereas, learned counsel for the 1st respondent contended that the allegations made in the charge sheet at pages 9 and 12 coupled with the statements recorded by the police including FIR are suffice to proceed against the petitioners as they discloses the cognizable offence by the petitioners and the proceedings against them cannot be quashed at this stage since inherent power under Section 482 Cr.P.C. can be exercised sparingly in exceptional circumstances and prayed to dismiss the criminal petition.

Undisputedly, A1 is closely related to the petitioners, who are father and brother of A1 V.Sridhar, who is carrying on real estate business and sold plots to various purchasers by executing registered sale deeds. The basic allegations made against the petitioners are extracted here for better appreciation:

> "His father Shekaraiah was retired as a Line Inspector from Electricity Department. He acted as a mediator (broker) for those plots and he has collected plot amount from the victim. His elder brother Srinivas is working as A.E. in electricity department at Noothankal. His two brother-in-laws also working in electricity department. As such he took their help in installations of electricity polls etc in ventures and also selling of plots."

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[1] AIR 1979 SC 1342
[2] 1988 Crl.L.J. 823
[3] 2015(2) ALD (CRL) 452

At the same time, in the penultimate para of page 12 of the charge sheet a bare allegation is made that A4 and A5 are also involved in cheating of the victim. Except this allegation no other allegation is made directly pointing out that the petitioners have committed the above offences. Even according to the statements recorded under Section 161(3) Cr.P.C. by the police during investigation, none of the witnesses did state that the petitioners directly involved in the above referred commission of offences. On the other hand, the victims categorically admitted in their statements before the investigating officer that A1 alone executed the registered sale deeds in their favour on various dates for various amounts conveying title in their favour. Even if the allegations made in the charge sheet coupled with the statements recorded under Section 161(3) Cr.P.C., which are extracted herein above are accepted as true on its face value those allegations do not constitute the above referred offences.

The major allegation made against A5 is that he is working as A.E. in Electricity Department at Noothankal and with his help A1 got installed poles in the venture. Installation of electricity poles in the approved lay out with the help of A5 or any other person do not constitute any offence. Extending help for installation of electricity poles is not at all an offence under any of the penal provisions.

Similarly, A4 allegedly acted as broker and collected amount from the victim, but none of the victim did state anything on what date he collected amount and what was the amount he collected from the witnesses examined during investigation by the investigating agency and recorded their statements under Section 161(3) Cr.P.C. In the absence of any specific allegations against the 1st petitioner/A4, based on such bald allegation without any material, the proceedings against the petitioners

cannot be continued since facing criminal trial is a serious matter, which creates social stigma.

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise power to implement the orders to prevent abuse of process of the law and to secure the ends of justice. Keeping in view the scope of Section 482 Cr.P.C, the Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**[4] consistently held that the jurisdiction of this Court is limited and this Court cannot appreciate evidence available on record while exercising power under Section 482 Cr.P.C. and also in **Umesh Kumar v. State of Andhra Pradesh and another**[5]. In earlier judgment of the Apex Court in **State of Haryana v Bhajanlal**[6] laid down the following seven guidelines:

> *"(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.*
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> *(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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> *(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.*
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> *(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.*

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[4] AIR 1990 SC 494
[5] 2013 (10) SCC 591
[6] 1992 Supp(1) SCC 335

(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."

According to Guideline No.3 of the judgment, if the allegations made in the complaint or charge sheet are accepted on its face value do not constitute commission of offence, the Court can exercise power under Section 482 Cr.P.C. Similarly, Guideline No.7 further permits the Court to exercise power when the complaint or charge sheet is filed to wreck vengeance against any of the accused out of ill-will and spite to settle the scores of private dispute.

In the present case, A1 is owner of the various plots and these petitioners are no way concerned with the sale of property. Mere acting as broker allegedly by the 1st petitioner/A4 and installation of electricity poles with the help of the 2nd petitioner/A5, even if accepted as true, it would not constitute any offences.

Learned counsel for the petitioners drawn the attention of this Court to the principle laid down in **Dasrathlal Chandulal Joshhi's case** referred supra and that the Apex Court while dealing with Section 420 and 471 read with 34 IPC held that when one of the accused with A1collecting donations do not constitute any of the offences. Similarly, this Court in

Cognizant Technology Solutions's case referred supra had an occasion to deal with the ingredients to constitute offence punishable under Sections 406, 409, 410 and 420 IPC and held in para 10 that the offence punishable under Section 418 IPC is concerned whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which cheating relates, he was bound, either by law, or by legal contract to protect, is said to have committed the offence. Here also when the act of the accused attracting the employees of complainant does not amount to cheating, the question of his causing wrongful loss to the complainant does not arise. For the same reason, the offence punishable under Section 420 IPC also do not attract. So, at the outset, even if the complaint allegations are uncontroverted, they do not constitute any offence. Therefore, continuation of criminal proceedings will certainly amount to abuse of process of law and hence, liable to be quashed.

Similarly in para 7, the Court discussed about the ingredients to constitute offence punishable under Section 406 IPC. Criminal breach of trust occurs when a person who is either entrusted with property or got the dominion over the property, and dishonestly misappropriates or converts to its own use that property or if he dishonestly uses or dispossess the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, So, the offence of criminal breach of trust can be perpetrated only when a person is entrusted with property or dominion over the property.

Similarly in para 9 the Court dealt with the ingredients of Section 409 IPC and held that without entrust of property the offence under Section 409 IPC cannot be committed, because the offence under Section 409 IPC can be said to be committed only when a property is entrusted to specific class of persons such as public servant, banker, merchant, factor, broker,

attorney or agent and if they commit criminal breach of trust in respect of that property. So, without entrustment of property the offence under Section 409 IPC also cannot be committed.

In view of the principles laid down in the above judgment to constitute offence punishable under Section 406 IPC there must be entrustment of property and there must be a misappropriation with criminal intention to constitute offence punishable under Section 409 IPC and there must be wrongful loss to a person whose interest in the transaction. But in the entire complaint and the statements recorded by the police, nothing has been stated to constitute those offences.

The Delhi High Court in **Gurucharan Singh"s** case referred supra, laid down the identical principle in para 8 of the judgment and held as follows:

> *"I have given my careful consideration to the rival contentions of the parties. In order to bring the case within the four corners of S.420 IPC, the complaint is required to prima facie cross the hurdle of 'cheating' as defined in S.415 IPC. It has to be shown by the prosecution that there was some inducement on the part of the accused persons and that the said inducement was made fraudulently or dishonestly with a view to deceive the complainant. It has also to be shown by the prosecution that due to deception practiced by the accused persons, the person so deceived had delivered the property to the accused persons or had given consent that the accused person shall retain that property. The learned lower Court after due deliberation has come to the conclusion that none of the ingredients of cheating are applicable to the facts of the case with which I fully concur. There is no material on record to show that the accused persons had induced the complainant with a fraudulent or dishonest intention in accepting the rent. The mode of payment of rent agreed to between the parties was by means of deposit of cheques in the account of the complainant. This mode is always been adhered to."*

If the above principles are applied to the present facts of the case none of the allegations made in the complaint against the petitioners would not attract any of the above referred offences. Therefore, I find no prima facie material to proceed against the petitioners and that to wreck vengeance against A1, who executed registered sale deeds, these petitioners were roped in somehow to settle the private dispute between A1 and the complainant before the Court and it is nothing but abuse of process of the Court.

Accordingly, the criminal petition is allowed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

09.08.2018
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