THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2850 OF 2016

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, registered for the offences punishable under Sections 420,463,464,465,468,471,447 & 506 IPC. The petitioners herein are accused 2 to 4 and the original vendor was arrayed as accused no.1 in the said calendar case.

The second respondent is the complainant. He filed private complaint against the present petitioners/accused 2 to 4 and accused no.1, alleging that he is absolute owner and peaceful possessor of Plot No.109 in Sy.No.145, admeasuring 320 sq.yds, situated at Sardar Patel Nagar, Hydernagar Village, Balanagar Mandal, GHMC Kukatpally Circle, Ranga Reddy District. The second respondent purchased the said plot vide Registered Document No.1434 of 1980 dated 26.05.1980, obtained LRS approval from GHMC vide proceeding No.2154/Cr-14/WZ/GHMC/2008 dated 11.08.2009. Due to domestic financial requirements, the second respondent entered into a registered development agreement with M/s Rube Constructions vide Document No.2378/2013 dated 26.03.2013. As the developer proceeded with leveling work and obtained electricity connection, the second respondent received summons in O.S.No.987 of 2013 from the II Additional Senior Civil Judge's Court, Ranga Reddy District at L.B. Nagar, filed by the first petitioner herein/A-2, thereby, the developer stopped construction to avoid litigation. In O.S.No.987 of 2013, few documents were filed by A-2 and Registered Sale Document No.8918/2013 dated 23.05.2013, sale deed, which is allegedly executed by A-1 in favour of A-2 is without any legally valid title. Accused Nos. 3 & 4 are the attestors of the Registered Sale Document No.8918/2013 dated 23.05.2013. As the second petitioner filed or produced such forged document in the II Additional Senior Civil Judge's Court, Ranga Reddy District at L.B. Nagar, it is an offence. Further, the first petitioner/A-2 along with his henchmen tried to trespass into the property of the second respondent on 19.09.213, highhandedness of first petitioner/A-2 was resisted by the second respondent, as such he approached the KPHB Police, Kukatpally for giving a complaint, but they refused to entertain the complaint, as the dispute is civil in nature. It is also contended that, as per the allegations made in the complaint, the documents filed in O.S.No.987 of 2013 are validated and there are signatures of the witnesses, therefore, requested to take action.

The II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, by exercising power under Section 156(3) Cr.P.C referred the private complaint to the police for investigation and to file final report. On receipt of reference under Section 156(3) Cr.P.C for investigation, the police registered a case in Crime No.1092 of 2013 for the offences punishable under sections 420,463,464,465,468,471,447 & 506 IPC, issued F.I.R and took up investigation.

During investigation, the second respondent examined L.Ws.1 to 6 and also referred the document to APFSL for opinion of handwriting expert (L.W-7). After completion of investigation and after collection of evidence, police filed charge sheet before the II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, for various offences referred supra.

The main allegation made in the charge sheet is that, the signature of the executants in the document is mentioned as 'B. DASHRATHA', but, spelling of signature itself is different in the validated document, it is mentioned as 'B. DASRATHA'. In Sy.No.145, all the registrations were done by using printed proforma by the same executant i.e. 'B. Dasharatha', whereas, the validated document is typed and notarized. But, in the sale deed is a printed proforma, blanks were got filled at the time of execution and that itself shows *prima facie* the ill intention of the accused to knock away the property by creating fabricated document for unlawful gain by forging the signature of the executants which is illegal for the above acts of cheating, forgery, creating a false document for the purpose of cheating and using the same as genuine, forged document. Finally, the investigation disclosed that the second respondent is the absolute owner and peaceful possessor of Plot No.109 in Sy.No.145, admeasuring 320 sq.yd, situated at Sardar Patel Nagar, Hydernagar Village, Balanagar Mandal, GHMC Kukatpally Circle, Ranga Reddy District and purchased the said plot vide Registered Document No.1434 of 1980 dated 26.05.1980, obtained LRS approval from GHMC vide proceeding No.2154/Cr-14/WZ/ GHMC/2008 dated 11.08.2009.

Due to domestic financial requirements, the second respondent entered into a registered development agreement with M/s Rube Constructions vide Document No.2378/2013 dated 26.03.2013, and later, as the developer proceeded with leveling work, obtained electricity connection and dug bore-well, the first petitioner/A-2 filed O.S.No.987 of 2013 on the file of the II Additional Senior Civil Judge's Court, Ranga Reddy District at L.B. Nagar, for perpetual injunction and summons were served on the second respondent, thereby, the developer stopped construction to avoid future litigation, though there was no interim injunction against the second respondent in the said suit.

The first petitioner/A-2 filed few documents along with O.S.No.987 of 2013 on the file of the II Additional Senior Civil Judge's Court, Ranga Reddy District at L.B. Nagar and one such document among them is Registered Sale Document No.8918/2013 dated 23.05.2013, allegedly executed by A-1 in favour of A-2 is without any legally valid title. In the said document, there is a recital of validation of unregistered sale deed vide file No.2301/AR/2013 dated 20.05.2013. The second respondent being the owner and possessor of the property, surprised about the Registered Sale Document No.8918/2013 dated 23.05.2013, which is a sale deed allegedly executed by A-1 in favour of A-2 and on enquiry, he got the above said validation from the District Registrar, Ranga Reddy District. Further, on verification, it is found that A-3 Nalkela Srikanth and A-4-N. Srinivas i.e the petitioners 2 & 3 herein attested the said Registered Sale Document, thus, all the accused allegedly committed offences punishable under sections 420,463,464,465,468,471,447 & 506 IPC.

The present criminal petition is filed on the ground that the first petitioner/A-2 is possessor of immovable property and purchased the same for valuable consideration under Registered Sale Document No.8918/2013 dated 23.05.2013 and he cannot be made liable for any of offences punishable under the provisions of penal code. Similarly, the second and third petitioners are no way concerned with the fabrication or creation of document, allegedly executed by A-1 in favour of A-2 and just they are attestors and they have nothing to do with the transaction, since they signed on the document as attestors, witnessing the execution of the document. Therefore, petitioners 2 & 3 herein also cannot be proceeded for the offences punishable under sections 420,463,464,465,468,471,447 & 506 IPC.

The dispute is purely civil in nature and when execution of sale deed by 'B. Dasaratha' is in dispute, omission of letter 'h' in the spelling in name of 'B. Dashratha' is not a serious defect and based on such omission of letter 'h', it is difficult to conclude that the document is forged or fabricated. When the dispute is civil in nature, giving cloak of criminal offence to such dispute would amount to abuse of process of the Court and thereby, the proceedings against these petitioners cannot be continued and prayed to quash the proceedings in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, against the petitioners herein.

During hearing, learned counsel for the petitioners contended that the first petitioner/A-2 is possessor of immovable property and purchased the same for valuable consideration under Registered Sale Document No.8918/2013 dated 23.05.2013, executed by A-1, which is validated. Therefore, the first petitioner cannot be made liable for the alleged fabrication of document by A-1. Therefore, he cannot be proceeded with trial in C.C.No.1364 of 2015. Similarly, the second and third petitioners are only attestors and their role was witnessing execution of document i.e. signing on the document. When petitioners 2 & 3 are only attestors, they cannot be made liable for any offences punishable under the provisions of penal code.

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"*

The attester is not required to know the contents of the documents and the executant need not sign in the presence of the attester This Court in **Yelakala Rangarao and others Vs. State of Andhra Pradesh and another**[1] 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

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

document. Thus, in view of the law declared by this Court, the purchaser and the attesters of the document, allegedly created or fabricated, are not liable to be prosecuted. Relying on the principle laid down in the above judgment, learned counsel for the petitioners requested this Court to quash the proceedings in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, against the petitioners herein.

Whereas, the second respondent-Sri Kondavaty Ravi Kumar, appeared as party-in-person and contended that, production of a sale deed in a civil suit O.S.No.987 of 2013 by forging and fabricating the signature of 'B. Dasratha' is a matter of serious concern and it is nothing but, playing fraud on the Court. Further, the second respondent, being a person aggrieved, is competent to file a private compliant in view of Section 195(1)(b)(ii) Cr.P.C and, he placed reliance on the judgment in **Karnati Bhaskar and others v. State of A.P and others**[2] in support of his contention.

It is further contended that the allegations made in the charge sheet on its face value would constitute offences punishable under sections 420,463,464,465,468,471,447 & 506 IPC against A-2 to A-4 i.e. the petitioners herein. Therefore, the proceedings in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, against the petitioners herein cannot be quashed at the threshold, since, forgery and fabrication of a document is a question of fact which has to be decided at the end of the trial and requested this Court to dismiss this criminal petition.

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[2] 2000 (2) ALD (Crl.) 231 (AP)

Considering rival contentions of the learned counsel for the petitioner and the second respondent/party-in-person and perusing the material available on record, the points that arise for consideration are:-

1. ***"Whether the first petitioner/A-2 in C.C.No.1364 of 2015 is liable to be proceeded with trial, being the possessor of immovable property who allegedly purchased the same for valuable consideration under Registered Sale deed bearing Document No.8918/2013 dated 23.05.2013.***

2. ***Whether petitioners 2 & 3/A-3 & 4 being the attestors of Registered Sale deed bearing Document No.8918/2013 dated 23.05.2013, executed by A-1 in favour of A-2, are liable for punishment for the offences punishable under sections 420,463,464,465,468,471,447 & 506 IPC and proceed against them in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad?***

Before going into the real controversy between the parties, it is apposite to deal with the inherent jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana** v. **Bhajan Lal**[3] this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (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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> (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.

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[3] 1992 Supp. (1) SCC 335

(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 **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others**[4], the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

> "Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

In **R.P. Kapur v. State of Punjab**[5], the Apex Court held as follows:

> (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

[4] AIR 1990 SC 494
[5] AIR 1960 SC 866

> the impugned proceedings would secure the ends of justice;
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> (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;
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> (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 (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.

The Court can evaluate the material and documents on record, but it cannot appreciate evidence. The Court can not record evidence to conclude whether the material produced is sufficient or not for convincing the accused. Therefore, the limited purpose of appreciation of facts is only to come to a conclusion, to proceeding against the accused for the alleged offence committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

P O I N T NOs. 1 & 2

The main allegation made against the first petitioner/A-2 is that, the second respondent purchased property from A-1, who initially purchased the property allegedly from 'B. Dashratha'. A-1 is not the party to the present petition. Even, if, the allegations made in the charge sheet, if accepted on its face value, the first petitioner/A-2 is only a purchaser of Plot No.109 in Sy.No.145, admeasuring 320 sq.yds, situated at Sardar Patel Nagar, Hydernagar Village, Balanagar Mandal, GHMC Kukatpally Circle, Ranga Reddy District. It is not the case of the second respondent that, he purchased the property with knowledge that the document of his vendor-A-1 is forged or fabricated document, which is allegedly executed by 'B. Dashratha' in his favour. Therefore, no knowledge is attributable to the first petitioner/A-2 about the fabrication or forgery of the document, allegedly obtained by A-1 from 'B. Dashratha', which is the basis for tracing the title of A-1. In the absence of attributing knowledge about the fabrication and forgery etc, as contended by the second respondent, as the first petitioner is not liable for any of the offence being bonafide purchaser of property for valuable consideration. Therefore, the first petitioner/A-2 cannot be made liable.

An identical question came up for consideration before the Apex Court in **Mohammed Ibrahim**[1] case. 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, 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.

If, this principle is applied to the present facts of the case, the first petitioner/A-2 is only a purchaser from A-1, who allegedly had no title or claiming title to the property, based on the alleged fraud or fabricated document. In such case, the first petitioner/A-2 cannot be made liable for any of the offences mentioned supra.

The offences allegedly committed are offences punishable under Sections 420,463,464,465,468,471,447 & 506 IPC.

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 and another v. State of Gujarat and another**[6], the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 I.P.C in paragraph 14 and they are as follows:

> "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;
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
> (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."

In paragraph 21 of the judgment in **Mohammed Ibrahim**[1] case, the Supreme Court discussed the scope of Section 420 IPC and the essential ingredients of cheating are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

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[6] (2009) 3 Supreme Court Cases 78

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

In view of the law declared by Apex Court, to constitute an offence punishable under Section 420 IPC, there should not only be cheating, but as a consequence of cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security). When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. Here, the second respondent purchased the property from A-1. Thereby, A-2, the first petitioner herein is competent to lodge a complaint against the first accused, if really he defrauded or cheated the first petitioner/A-2.

Admittedly, the first petitioner/the second accused did not make any false representation to A-2 with dishonest intention to part with any property or valuable security. Therefore, there is absolutely no *prima facie* material to constitute an offence punishable under Section 420 IPC against any of the petitioners/A-2 to A-4.

The other offence allegedly committed by the petitioners is punishable under Sections 463,464 & 465 IPC.

The word 'forgery' is defined under Section 463 I.P.C, Section 464 IPC deals with making a false document and Section 465 IPC deals with punishment for forgery.

In **Sushil Suri v. Central Bureau of Investigation**[7], the Supreme Court discussed about the basic elements that constitute forgery as:

(1) the making of a false document or part of it and
(2) such making should be with such intention as is specified in the section
    a. to cause damage or infringe to
        i. the public, or
        ii. any person, or
    b. to support any claim or title; or
    c. to cause any person to part with property, or
    d. to cause any person to enter into an express or implied contract; or
    e. to commit fraud or that fraud may be committed

Here, in the facts of the above judgment, identical to the present case, the petitioners committed no such act referred supra. Even otherwise, Section 463 IPC only defined the word 'forgery'. Section 464 IPC deals with making of false document.

According to Section 464 IPC, a person is said to make a false document or false electronic record:

First :- Who dishonestly or fraudulently

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

[7] AIR 2011 SC 1713

(c) affixes any digital signature or any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature.

with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed executed transmitted or affixed by or by the authority of a person by whom or whose authority he knows that it was not made, signed, sealed, executed, or affixed or,

Secondly:- Who, without lawful authority, dishonestly, or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any person, whether such person be living or dead at the time of such alteration; or

Thirdly:-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature or any electronic record, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

The punishment prescribed for the offence of 'forgery' as per Section 465 IPC, is punishment of imprisonment of either description for a term which may extend to two years, or fine, or with both. Section 468 IPC deals with forgery for purpose of cheating.

On a cogent reading of Sections 463,464 & 465 IPC., the person who forged the document i.e. the sale deed allegedly executed by 'B. Dashratha', if really forged, he, alone shall be liable for any of the offences punishable under Sections 465 & 468 IPC, but not these petitioners/A-2 to A-4, being the purchaser from A-1 and attestors of the sale deed executed by A-1 in favour of A-2.

The other offence allegedly committed by the petitioners is punishable under Section 447 IPC.

The word 'Criminal trespass' is defined under Section 441 IPC, as, whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence is said to commit "criminal trespass".

Section 447 IPC deals with punishment for criminal trespass and whoever commits criminal trespass with an intent to commit an offence or intimidate, insult or annoy any person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Here, the allegations made in the complaint did not disclose any such act by any of the petitioners herein/A-2 to A-4 to constitute an offence under Criminal Trespass. In the absence of any allegations in the charge sheet to constitute an offence, on its face value, the Court cannot proceed to try the petitioners herein/A-2 to A-4 for the offence punishable under Section 447 IPC.

The other offence allegedly committed by the petitioners is punishable under Section 506 IPC i.e punishment for 'Criminal Intimidation'.

The word 'Criminal Intimidation' is defined under Section 503 IPC as whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

The punishment prescribed for the offence of criminal intimidation is defined under Section 506 IPC, as, whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

On close scrutiny of entire material on record, there is absolutely no allegation that the petitioners/A-2 to A-4 committed any act, as specified in Section 503 IPC to constitute an offence punishable under Section 506 IPC. As the allegations made in the charge sheet did not disclose on its face value, that the petitioners committed offences punishable under Sections 420,463,464, 465,468,471,447 & 506 IPC, this Court by exercising its inherent jurisdiction can quash the proceedings, since filing of such criminal proceedings would amount to abuse of process of this Court and the whole idea behind Section 482 Cr.P.C is to prevent abuse of process of the Court by disgruntled litigant against anyone. If the allegations do not constitute specific offences referred supra, the proceedings against them to try, make them to appear before the Court on various dates would cause substantial loss to these petitioners.

In "***Ramdev Food Products Pvt.Ltd v. State of Gujarat***[8]", the Apex Court relying on "***Pepsi Foods Ltd. v. Judicial Magistrate***[9]" held as follows:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Finally, the Apex Court held that the matter before it, is primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it

[8] (2015) 6 SCC 439
[9] (1998) 5 SCC 749

caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined.

In **"Priyanka Srivastava v. State of Uttar Pradesh[10]"**, the Apex Court reiterated that while considering the legality of the order passed under Section 156(3) of Cr.P.C, discussed the scope of various provisions of Cr.P.C and held as follows:

> "Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."

While exercising power under Section 156(3), the Court must record its satisfaction as to what weighed the Magistrate to pass such an order which reflects the application of mind to the facts of the case in its entirety so as to enable the Higher Court to form an opinion.

Therefore, to prevent such abuse of process of the Court, I find that it is a fit case to quash the proceedings against the petitioners herein/A-2 to A-4 to prevent such abuse of process of the Court.

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[10] (2015) 6 SCC 287

In the result, the criminal petition is allowed, quashing the proceedings in C.C.No.1364 of 2015, pending on the file of II AJCJ-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, against the petitioners/A-2 to A-4.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.01.2018

SP