HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7319 of 2018

ORDER :

The petitioner is A.3 among 5 accused of C.C.No.114 of 2018 on the file of the XXVI Metropolitan Magistrate, Cyberabad outcome of Cr.No.7 of 2017 of Maheswaram Police Station, Rachakonda District, dt. 07.01.2017 registered and taken cognizance for the offences punishable under Sections 420, 406 and 506 read with 34 IPC. The said First Information Report is outcome of a private complaint of the complainant C.Ramakrishnaveni of Jubilee Hills, Hyderabad.

2. The sum and substance of the case in the private complaint, dt.02.12.2016 covered by the First Information Report and from the police final report in nutshell is that 1)Kandi Siddulu-A.1 and his wife Kandi Padma-A.2 being owners and possessors of land in Sy.Nos.229 and 230 of Ac.1.30gts., situated at Pendyala village of Maheshwaram Mandal expressed to sell the land through one Chandrababu, on that the complainant and her husband-Ajaykumar approached them and the negotiations were fixed and paid advance of Rs.21,00,000/- out of total consideration Rs.35,00,000/- covered by the agreement of sale dated 15.07.2013 which contains stipulations including for return of the amount paid supra which was received by said two owners(A.1 and A.2) and acknowledged which includes initial payment on 25.06.2013 of Rs.51,000/-. Later without informing to the complainant, both the accused 1 and 2 sold the property to the petitioner/A.3-Boshaiah herein dishonestly.

3. As per the sale agreement executed by A.1 and A.2 in favour of the complainant supra, dt.15.07.2013, the complainant ready to pay the remaining amount of Rs.14 lakhs before 2014 January and demanded the

A.1 and A.2 to execute sale deed by receiving balance consideration and to hand over possession, however they failed to comply by dragging on the matter. It was while so with malafide intention, the accused executed said sale deed in favour of A.3 later dt.27.06.2016. It is also averred that the complainant when questioned about the said act of accused 1 and 2, they agreed to return the advance amount paid by the complainant after receiving amount from the petitioner/A.3-Boshaiah and to that effect, agreement was entered into on 15.05.2016 drafted by A.5 henchman of A.1 and A.2 for payment of 22lakhs which includes one lakh addition as damages to the advance amount, but without informing and without complying the same, A.1 and A.2 subsequently executed the sale deed, dt.27.06.2016 to A.3 supra attested by A.4 and A.5 viz: Dasari Narasimha and Bandi Sekhar, registered by the District Registrar, L.B.Nagar. The complainant when raised the dispute through elders for return of the amount, the accused 1 and 2 refused and thereby cheated the complainant. It is therefrom the crime is registered for the offences supra by the police and investigated and filed the final report that was taken cognizance for the offences supra by the learned Magistrate in allotting C.C.No.114 of 2018. The investigation reveals from the police final report with reference to the above facts.

4. The conditions in the quash petition of A.3 impugning said police final report and cognizance order is that the allegations are untrue and no case is made out against him and he is bonafide purchaser for value without knowledge of the prior agreement and cancellation letter, dt.15.07.2013 and 15.05.2016 between the complainant and the A.1 and A.2 and he is not liable for any offence and the police final report and taking cognizance against him are baseless and he paid total consideration of Rs.30,87,500/-, i.e. Rs.2,00,000/- vide cheque No.

481288, dt.15.05.2016, Rs.4,50,000/-, vide cheque No.481290, dt.28.05.2016, Rs.12,37,500/- vide cheque No.481296, dt.27.06.2016, Rs.2,00,000/- vide cheque No.050414, dt.27.06.2016, Rs.2,00,000/- vide cheque No.050414, dt.16.06.2016 drawn on Canara Bank, Karimnagar and Rs.10,00,000/- by way of cash, and the sale deed was executed consequently on 27.06.2016 covered by registered document No.15718 of 2016, dt.27.06.2016 by the A.1 and A.2 in favour of the petitioner/A.3. Moreover, there is cancellation of the original sale agreement, dt.15.07.2013 and 15.05.2016 by the complainant as referred in the complaint and once there is a cancellation of agreement, there is nothing to find fault with the petitioner/A.3 much less for the alleged offence of cheating. The petitioner/A.3 earlier moved quash petition Crl.P.No.2964 of 2017 to quash the FIR that was dismissed giving liberty to him for implementation.

5. Learned counsel for the petitioner/A.3 reiterated the same. Whereas, the complainant sought for dismissal of the quash petition.

6. Heard and perused the material on record. There are no factual disputes on the contract for sale non-possessory dt.15.07.2013 between the complainant and the A.1 and A.2 for Rs.35,00,000/- having received 21lakhs advance by them by stipulated to receive balance to register. There is also no dispute as to said sale contract was later cancelled between the complainant and the A.1 and A.2 on 15.05.2016. Admittedly A.3 was not a party either as executant or witness to the sale agreement or sale agreement cancellation letter between the complainant and the A.1 and A.2 supra. The consideration for the property by Dt.15.07.2013 fixed is 35lakhs, whereas, the sale transaction between the A.1 and A.2 with A.3 for self-same property was long subsequently shown for Rs.30,87,500/- which is something fishy and

unexplained but for saying the petitioner/A.3 has no knowledge about the earlier sale agreement transaction and a bonafide purchaser for value and the accusation against him is not sustainable.

7. In this regard even from para-7 of the quash petition averments, out of Rs.30,87,500/-, the first payment made by him by cheque was two lakhs on 15.05.2016. The sale agreement cancellation document between the A.1 and A.2 with complainant was on self-same day. By then the A.3 did not pay any amount other than 2 lakhs on that day or later obtained cheques from Canara Bank, Karimnagar Branch and handed over on that day or later only. Here, if he made some bonafide enquiries, he could have been known. Leave it as it is, the subsequent payment by another cheque was for Rs.4,50,000/- on 25.08.2016, another 2 lakhs on 16.06.2016 and ultimately Rs.12,37,500/- on 27.06.2016 and not mentioned as to how and when 10lakhs paid to make out Rs.30,87,500/-. The copy of the sale deed filed only reflects the above at page 2 para-2 typed material and nothing beyond even. So far it is difficult to know any complicity of the petitioner/A.3 to the so called crime against the complainant but for by A.1 and A.2 having taken advance and having cause cancelled the original sale agreement in agreeing to pay the advance. The cancellation of sale agreement between the complainant and the A.1 and A.2, dt.15.05.2016 shows for some reasons the complainant expressed inability to pay balance and the elders settled the advance amount of 21 lakhs to be refunded to the complainant with one lakh additionally total of 22 lakhs to be paid after the A.1 and A.2 sold the property to others and before its registration and without payment to the complainant, the property cannot be registered to third parties and it is the conditional cancellation document. Therefore it is difficult to say no offence of cheating is made

out so far as against the A.1 and A.2 therefrom for not paying the amount to the complainant having sold the property and received the amount from A.3, however that is not the end of the matter.

8. In fact there is a letter, dt.04.02.2017 executed by the petitioner/A.3 through elders to the complainant with his signature and one Ramulu-MPTC and A.4 D.Narasimhulu among others are witnesses to it. It speaks that the present crime is also registered against him pending and through the elders it is settles as follows:-

9. The land was valued at 39lakhs for sale and he paid Rs. 30lakhs and the balance 9 lakhs with one lakh additional to be paid to Siddulu-A.1 further a cheque for 2lakhs drawn in the name of Siddulu also to be encashed which is one of the cheques bearing No.0505414,dt.16.06.2016 stated in the sale deed as if paid to Siddulu by A.3 and he agreed to pay 12lakhs by 20.02.2017, so that the complainant can withdraw the case against the A.3 therefrom and it is the settlement, the passbook, title deed, original sale agreement and link documents which are with defacto-complainant to be returned to him on payment of amount.

10. The statement of the complainant during investigation shows that the petitoner-Boshaiah-A.3 knows the transactions from the beginning of his entering with A.1 and A.2 for purchase as on 15.05.2016 and the A.1 and A.2 to the demand of complainant stated that the said land was sold to the petitioner-Ch.Boshaiah-A.3 who having knew about prior sale agreement and cancellation to refund, got registered the land in his(A.3) favour from A.1 and A.2 attested by the A.4 and A.5.

11. Once such is the case, there is a statement of L.W.1-complainant in support of the FIR, to say the petitioner is also a party to the said offence of cheating alleged as had he been bonafide purchaser having knowledge of the cancellation of the agreement between the A.1

and A.2 with complainant it could subject to refund of advance to the complainant.

12. It clearly shows that he allegedly purchased the property without even taking pattadar passbook, title deed and link document to say he is not bonafide purchaser and there is a basis to the complainant to say he got primary knowledge of the transaction between the A.1 and A.2 with complainant for the pattadar passbook, title deed and original link documents of the property are with the complainant also known to him and further the sale deed obtained by the A.3 from A.1 and A.2 was for Rs.30,87,500/- whereas in the letter dt.04.02.2017 it speaks the sale price fixed of Rs.39,00,000/- and the A.3 paid to A.1 and A.2 only 30lakhs and the balance 9lakhs with one lakh additional to be paid also with cheque drawn in the name of A.2 for 2 lakhs dt.16.06.2016 bearing No.0505414 by 20.02.2017.

13. Having regard to the above, it is difficult to say there is no prima facie case against the petitioner to quash the Calander Case proceedings.

14. Accordingly and in the result, the Criminal Petition is dismissed without prejudice to the contest. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01.11.2018
b/o.vvr