

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7447 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.344 of 2018 of Malkajgiri Police Station, Rachakonda Commissionerate, registered for the offences punishable under Sections 420 and 406 IPC.

The petitioner is the sole accused and the 2nd respondent is the *de facto* complainant.

The 2nd respondent lodged written report with the police on 29.05.2018 alleging that she purchased Flat No.101 on 1st floor of Sri Sai Nest admeasuring 1235 sq. feet with built up area at premises No.42-783/48 and 42-738/49 on Plot No.49 with an undivided share of 53.81 sq. yards or 44.98 sq. meters out of total extent of land 400 sq. yards. The 2nd respondent purchased the flat for total consideration of Rs.23,50,000/-, but the said property was registered for an amount of Rs.12,67,000/- as it is the market value of the property under registered document No.376 of 2012 on 07.02.2012, which is in semi finished state. The possession of the flat was handedover on 15.08.2013. Later, within a year roof and walls leaking water as the material used for construction is defective and substandard. Thus, the builder cheated the 2nd respondent and dishonestly misappropriated the amount to a tune of Rs.5 lakhs and requested to take necessary action. On the strength of the written report the above crime was registered and issued FIR.

The present petition is filed by the accused on the ground that the dispute is purely civil in nature and allegedly use of the substandard material for construction would not constitute the above offences.

This Court ordered notice before admission and proof of service is filed before the Court vide USR No.52312 of 2018. None appeared for the 2nd respondent.

During hearing, learned counsel for the petitioner contended that the allegations made in the written report lodged with the police is basis to set the criminal into motion by registering the crime and issuing FIR do not constitute any offence and requested to quash the proceedings.

Learned Public Prosecutor did not raise any specific contention that the complaint was lodged after lapse of five years.

As seen from the allegations made in the complaint, the construction was completed and the possession of the property was delivered on 15.08.2013 in a semi finished state. Whereas the complaint was lodged on 29.05.2018 that is almost after lapse of five years from the date of delivery of the possession in semi finished state. The only allegation is that the petitioner used substandard material in construction of the flat, which do not attract the offence punishable under Section 420 IPC since Section 420 deals with punishment for cheating and dishonest inducement of the person to part with any property of a valuable security etc. Therefore, to constitute offence punishable under Section 420 IPC that the person who deceived the complainant must have an intention to cheat and dishonestly induce the person at the very beginning itself. In **V.Y. Jose and another v. State of Gujarat and another**¹, 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:

i) deception of a person either by making a false or misleading representation or by other action or omission;

¹ (2009) 3 Supreme Court Cases 78

(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.

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."

But in the present facts of the case, none of the ingredients were satisfied. Therefore, the allegations made in the complaint do not constitute the offence punishable under Section 420 IPC.

Similarly, the other offences committed by the petitioner under Section 406 IPC deals with punishment for criminal breach of trust. Section 405 IPC deals with criminal breach of trust. According to Section 405 IPC whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or dispossesses of that property in violation of any direction of law prescribed the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust'.

To constitute the offence of criminal breach of trust, there must be an entrustment of property or dominion over property. Here the 2nd respondent purchased undivided share of property, but the construction was carried on by the petitioner in the terms of the construction agreement and 'use of such material alleged substandard after five years' creates any amount of suspicion and such use of substandard material in construction do not

constitute offence punishable under Section 406 IPC as defined under Section 405 IPC.

As the allegations made in the written report lodged with the police do not disclose the commission of offence punishable under Sections 420 and 406 IPC continuation of proceedings against the petitioner would amount to abuse of process of the Court since this Court is empowered to implement the orders passed under the Code and exercise such power to prevent abuse of process of the Court and to secure the ends of justice.

Keeping in view of the scope of Section 482 Cr.P.C. and the Apex Court in **State of Haryana v Bhajanlal**² made 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.

(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.

(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.

(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.

² 1992 Supp(1) SCC 335

(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 view of the guideline No.3, the allegations made in the complaint do not disclose the commission of offence, this Court can exercise power under Section 482 Cr.P.C. and quash the proceedings in the present case. Therefore, I find that it is a fit case to quash the proceedings in the above crime.

Accordingly, the criminal petition is allowed quashing the proceedings in Crime No.344 of 2018 of Malkajgiri Police Station, Rachakonda Commissionerate.

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

07.08.2018
kvrn

M.SATYANARAYANA MURTHY,J

