

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7463 of 2018

ORDER:

The petitioner is the sole accused of crime No.550 of 2018 dated 22.06.2018 registered by Madhapur (Guttala) Police Station, Cyberabad, registered for the offences punishable under Sections 420 & 506 IPC, which is outcome of the private complaint of the 2nd respondent dated 05.06.2018 referred by the learned Magistrate to the police for investigation under Section 156(3) Cr.P.C. from which police having received on 22.06.2018 registered the crime supra, which is pending for investigation.

2. The contentions in the quash petition are that the allegations made in the private complaint supra are false and frivolous with intend to black mail the petitioner by the 2nd respondent and there is no prima facie case against the petitioner/accused and the said crime outcome of private complaint is abuse of process and liable to be quashed to secure the ends of justice. The complaint states that accused made a memorandum of understanding dated 05.01.2016 with Sirisha Constructions to cheat the complainant and one Deepthi (sister) to a tune of more than Rs.1 crore, said allegation is false so also the allegation of the petitioner wants to knock away the property for just Rs.21 lakhs for committing criminal breach of trust. The allegation further that the petitioner/accused realized that he would never

succeed in his illegal claims came to the complainant to threaten with dire consequences by abuse in filthy is also false and frivolous allegation. The allegation of the petitioner/accused shouted on the complainant to see her end and never allowed to enjoy the property is also not correct for false and frivolous. It is averred that O.S.No.942 of 2017 filed by the petitioner/accused is pending by the time a private complaint filed and the same is suppressed. It is also averred that the complainant and her sister supra owners of 600 square yards in S.No.27 at Guttalabegumpet village, Serlingampally Mandal, Ranga Reddy District, offered to sell the same to the petitioner and executed agreement of sale dated 28.08.2013 for a consideration of Rs.1.20 crores and petitioner paid Rs.10 lakhs advance to them and handed over original sale deed dated 19.04.1991, which is source of title in their name to the petitioner/accused and later even petitioner made several requests to execute registered document, they postponed time and again even petitioner is ready with balance sale consideration of Rs.1.10 crores. It is for the repeated requests to execute registered sale deed as supra, the complainant and her sister requested the petitioner/accused to enter into a development agreement-GPA which was dated 06.01.2014 entered from the negotiation and the proposal made by them and when he approached concerned authorities for approval of the plan for construction therein, they informed the petitioner that there

is lot of litigation and unless entire litigation settled the authorities will not approve any plan. At that time it came to the notice of the petitioner that there are some civil litigations pending immediately he approached the defacto complainant and her husband and father who informed of O.S.No.232 of 2013 pending on the file of District Judge, LB Nagar, for permanent injunction in relation to the property and it is also came to light of some other suit O.S.No.210 of 2013 pending on the file of II Additional District Judge, LB Nagar, for partition and separate possession of the property. They did not inform about the aforesaid facts and suppressed to cheat the petitioner malafide. Subsequently the petitioner came to know of another suit O.S.No.1541 of 2014 also pending and where he was impleaded as 1st defendant, however he was not served with notice, but set exparte. Having come to know of it he filed application to set aside the exparte order and filed written statement that were allowed and he is contesting. It is also averred that the complainant and her sister entered agreement referred supra and later entered development agreement-GPA referred supra registered No.457 of 2014 and subsequently it is on their request the petitioner entered into agreement of sale dated 23.04.2016 to purchase where it is referred about the earlier development agreement supra and all the disputes in relation to the property referred supra and petitioner paid Rs.7 lakhs further through RTGS to the account of the complainant thereby paid total Rs.17 lakhs.

O.S.No.232 of 2013 filed by the complainant and her sister as plaintiffs, Sirisha constructions was not party to the suit. One KV Durga Prasad was D.4. On 14.07.2017 the defendants in O.S.No.232 of 2013, one KV Durga Prasad and defacto complainant entered into deed of settlement No.8095 of 2017 in which it is stated first part including Sirisha construction and transfers and conveys all their rights in the schedule property to the defacto complainant as 2nd part. Thereafter they entered into development agreement with Sirisha construction and obtained approved plan and started work of construction. The development agreement entered with the petitioner by the complainants is a registered agreement and same not cancelled. When said agreement in force they have no right to enter into agreement and allowing of Sirisha construction to make construction in the land illegally and suppressing the facts they allowed Sirisha construction to make construction by cheating and playing fraud. The petitioner thereby filed O.S.No.942 of 2017 which suit is also pending. It is further averred that the above facts clearly establish the nature and conduct of the defacto complainant and the issues are purely civil in nature pending in civil Courts. It is also averred that Sirisha construction with defacto complainant and her husband and father and IPS officer approached the petitioner/accused saying that they entered into the development agreement-GPA and requested to enter into agreement with Sirisha construction

and KV Durga Prasad by allowing them to make constructions and proposed to allot 3200 square feet comprising of 2 plots to petitioner and they also stated about already handed over the land to the builder-Sirisha construction and they also stated unless same is accepted, the petitioner has to wait 5 or 6 years and he has also to face dire consequences and obtained his signatures on some papers. The petitioner is receiving phone calls from husband of Deepthi and father of complainant to keep the petitioner in jail and also receiving phone calls from police at the influence of IPS officer, their relative. Due to which, the petitioner has suffered lot of mental agony and tension therefrom. The filing of the private complaint and registration of the FIR with the facts in civil nature is nothing but abuse of process and same is liable to be quashed.

3. The agreement dated 28.10.2013 first in point of time entered between Deepthi and her sister Swathi referring as vendors with C.Naganandeeshwar, who is the petitioner/accused for the 600 square yards site in S.No.27 at Guttalabegumpet village, which they purchased from Mallesh and other under registered GPA 2028/1990 dated 21.11.1990 and sale deed registered No.3241/1991 dated 19.04.1991 for Rs.1.20 crores and paid advance of Rs.10 lakhs and balance payable at the time of registration. The subsequent development agreement-GPA registered No.457 of 2014 dated 06.01.2014 between Deepthi and Swathi as first part and

petitioner/accused as 2nd part as owners and developer/builder respectively for the 600 square yards site supra referring to the source of title mentioned that the developer (accused) shall construct residential complex of stilt + 5 upper floors and residential complex on the schedule land at the sole and exclusive cost and expenses of him and in the total built up area and parking areas and undivided shares land shall be shared between landlord and developer at 30:70 etc., other terms. It also speaks that the construction shall be completed within 15 months from the date of obtaining permission from GHMC and grace period is 3 more months. It is subsequent to the said registered development agreement without referring to the earlier sale agreement supra between them another agreement of sale dated 23.04.2016 unregistered between Deepthi and Swathi as vendors and accused as vendee refers to the registered document GPA-development agreement dated 06.01.2014 and 30% and 70% respectively to the shares of the owners and developer with grace period to complete within 15 months the construction with GHMC permission. Condition No.A3 mentioned apart from A.1 & A.2 supra of 1st vendor Deepthi at America and 2nd vendor at Mahabubabad and the vendee (accused) understood that there is some dispute with the property under development and it would require some more time to clear disputes and take up the development activities and nullify the earlier 2 agreements entered into by the vendors

and vendee regarding the plot. The condition No.A5 speaks of mutual discussions, the vendee herein agreed to purchase the land under development as it is and whereas it is in the condition for the total consideration of Rs.1 crore and original sale agreement total Rs.1.20 crores and whereas now it is confined to Rs.1 crore and it refers to Rs.10 lakhs + Rs.7 lakhs refers to RTGS paid to adjust as advance and remaining 93 lakhs on or before 15.07.2016 with grace period of 15 days failing which the agreement becomes void.

4. Though grace period was till 15.07.2016, the legal notice given by the accused to Deepthi and Swathi only on 26.06.2017 about one year after expiry of the grace period for specific performance, saying they (defacto complainant and her sister) are the owners covered by the registered sale deed 24.04.1991 and applied for urban land clearance and competent authorities issued Memo stating land falls in retainable area by rejecting the application. The defacto complainant and her sister represented of they have no experience and qualification in taking up construction of multistoried building and prevailed upon him to take the property for development and pursuant to the above, the development agreement-GPA entered and registered on 06.01.2014 for 30% to them and 70% share to him in the constructed area. Thereafter he came to know of the litigation and survey conducted by the AD, surveyor and given report mentioning entitled only to 180 square yards of

the land in plot No.1 in S.No.27 and he approached them and requested to deliver him the land under development. They requested the petitioner/accused to purchase 600 square yards for total consideration of Rs.1 crore and entered the sale agreement on 23.04.2016 supra and they received Rs.7 lakhs through RTGS as advance and Rs.1 crore at the rate of Rs.16,000/- per square yard. Now the area is 180 square yards and out of Rs.1 crore, the value is Rs.29 lakhs in requesting them to permit him to develop said land or to accept Rs.29 lakhs and execute sale deed in his favour. He further says in the notice Para 7 onwards ready and willing to perform his contract and called upon them to deliver possession or to receive balance sale consideration of Rs.22 lakhs and get the sale deed executed. No doubt in his notice he was sailing regarding earlier sale agreement of 2013 advance of Rs.10 lakhs referred paid out of Rs.1.20 crore. They issued their reply dated 10.07.2017 with the averments some of which contend in the private complaint referred supra though not in detail. It is the same now averred as cheated and deception and criminal intimidation in filing private complaint and the defacto complainant Swathi for and on behalf of her sister also in the course of hearing produced the memorandum of agreement dated 05.01.2016 entered with Sirisha construction and KV Durga Prasad as first part with accused as second part for construction therein. One of the conditions says first part shall be entitled to construct the

proposed building pursuant to the sanctioned plan referred dated 15.07.2015 and second part Deepthi and Swathi do not have any objection, Deepthi and Swathi are not the signatories to it. He referred in entering on their behalf as GPA-development holder registered on 06.01.2014 and not referred the subsequent sale agreement and referred supra of April 2016. It is further mentioned by his representing Deepthi and Swathi of they did not have any claim over 2396 square yards and covered by sanctioned plan and compound wall and it also referred Sirisha construction responsible to sell 3200 square feet comprising 2 plots in the proposed building to build over the property at Rs.5,000/- per square feet including costs of amenities and pay sale proceeds to the second part. Leave about the earlier civil litigation pending if any. Once the allegation is regarding the memorandum of agreement entered with Sirisha construction by the petitioner/accused dated 05.01.2016 and the genuineness or otherwise of the subsequent agreement between the petitioner and the defacto complainant and her sister of April 2016 is also in issue from which the earlier GPA-development agreement registered of 2014 mentioned cancelled. These are issues when requires investigation, this Court cannot quash the proceedings merely because earlier disputes are pending.

5. In this regard the petitioner in the quash petition placed reliance on **Mohd. Khalid Khan Vs. State of UP**¹

¹ 2015 Cri.L.J. 4494

where it is observed that suit and first appeal are pending on the subject matter of the present litigation and the issue regarding ownership of land in question yet to be finalized therein. Looking at the aforesaid facts, we are of the view that at this stage no case has been made against the quash petitioner for initiating against, thereby set aside the impugned order. So far as appellant/accused by quashing the proceedings against them and also the charge sheet against them in pursuance of the FIR registered by Wazirganj Police Station, Lucknow by allowing the appeal. There because the dispute is long pending covered by the civil suit and appeal required to be finalized, which is the subject matter not chosen to continue the proceedings. Here the very sale agreement of 2013 registered development agreement of 2014, subsequent sale agreement of April 2016 between the defacto complainant and her sister on one side and the petitioner/accused on other side in issue, leave about his entering into construction/development agreement with Sirisha construction in January 2016, which are the subject matter of the so called cheating. Once that is required to be investigated it cannot be quashed merely because earlier civil suits regarding disputed property if any by saying those are purely of civil nature.

6. The expression of the Apex Court in **Thelapalli Raghavaiah Vs. Station House Officer²**, it is observed that

² 2007 (2) Crimes 397 (SC)

complainant makes out a civil dispute relating to measurement of the civil contract work on National Highway appointed as sub-contractor for excavation and transportation of gravel for embankment of by pass road formation. Allegation that the company started mixing fly ash with the gravel and deduction of various amounts from complainants bill, the case registered on the basis of allegation of company hatched the criminal conspiracy and cheated and misappropriated the complainant, when High Court quashed of disclosing no criminal offence but all disputes civil in nature held nothing to interfere by the Apex Court. The facts are entirely different to the case on hand even therefrom.

7. Having regard to the above, there is nothing to quash the proceedings, but for all the defences left open. Needless to say police pending investigation follow Section 41-A Cr.P.C. and the guidelines of the Apex Court in **Arnesh Kumar v. State of Bihar**³.

8. Accordingly and in the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 14.11.2018
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³ (2014 (2) ALT (Crl.) 457 SC)