

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition Nos.3158 and 7521 of 2018

COMMON ORDER:

Both the Criminal Petitions are filed by respective petitioners who are A.1 and A.2 of Cr.No.72 of 2018 on the file of the SHO, Ibrahimpatnam Police Station, registered for the offences punishable u/ sec.420, 427, 506 and 123 IPC on the private complaint of the 2nd respondent for seeking to quash the crime proceedings.

2. The sum and substance of the accused in the private complaint dt.24.01.2018 of the complainant-M.Anantha Reddy against the two accused by names Itikala Varalakshmi W/ o Manohar Reddy, and Itikala Amarender Reddy s/ o Venkat Reddy(petitioner herein), is that two accused persons and one I.Surender Reddy jointly offered to sell their Ac.7-00 of land in Sy.No.61/ A & 61/ AA situated in Mukunoor village, Ibrahimpatnam Mandal for Rs.4,30,000/- per acre for total of Rs.30,10,000/- to the defacto-complainant and one R.Prakash-LW1 and they agreed to purchase and consequently entered agreement for sale dt.27.12.2005 and on the date of agreement complainant and L.W.1 together paid 6lakhs of advance and balance payable after showing the documents like title deed and pattadar passbook etc. The petitioners and Surender Reddy shall clear dues to the bank and produce no dues certificate and produce link documents before date of registration of the property covered by the agreement and in this regard despite several demands they were postponing. The complainant recently came to know from revenue authorities that the accused persons and Surender Reddy have no title over the said property and said land is not standing in their names. On their enquiry, the complainant and R.Prakash(LW1) came to know that one of the vendors of the agreement of sale,dt.27.12.2005 namely Surender Reddy died and when the complainant and L.W.1 Prakash went to the accused persons and the family members of Surender Reddy and asked for return of advance of 6 lakhs with interest paid under agreement dt.27.01.2005, they did not respond and

refused to return. The complainant and L.W.1 on 10.01.2018 approached the accused at Mukanur to return the advance amount of 6lakhs with interest covered by the agreement for they have no title over the property and cheated them with no right, the accused defamed and threatened with dire consequences and proclaimed that they will not return and if asks to see the end of them and from which when they approached police to give complaint against the accused, the police were already under their influence. It is further averred that the above facts constitute the offence against the accused to refer the complaint to police for investigation.

3. Heard the learned counsel for the respective petitioners and the learned Public Prosecutor for the 1st respondent-State and the learned counsel for 2nd respondent-defacto-complainant and perused the material on record.

4. The sale agreement was dt.27.12.2005 admittedly entered. It is not even mentioned when Surender Reddy died and when they went to the legal heirs of Surender Reddy for return of advance that too stated agreement executed by three persons including Surender Reddy in 2005 December, and what all paid is only 6 lakhs out of Rs.30,10,000/- the filing of the complaint about 12 years later on 24.01.2018 is hopelessly a speculative and vexatious litigation with lack of bona fides of the time barred civil unenforceable dispute of the non-possessory contract for sale to add a criminal flavour if possible. Further there was no any exchange of even notices if at all to enforce the agreement for sale having kept quiet from 2005 without asking for specific performance that too not even filing of suit for specific performance, the attribution of cheating and mischief and criminal intimidation are baseless. The complainant himself says he and L.W.1 in their contract for sale paid 6 lakhs they could have verified. It is not even a case of they have given any forged documents of source of title and to make believe to say any cheating from the inception to deceive. Furthermore as contemplated by the guidelines of the Apex Court in Apex Court in Priyanka

Srivatsava Vs. State of UP¹ **and** Ramdev Food Products Private Limited Vs.State of Gujarat² no affidavit filed, no police complaint given if at all by registered post, if the SHO refused to receive, to the Superintendent of Police as required in proof of prior giving of a complaint to police and there is nothing even from complaint averments of any written complaint chosen to give to the police but for saying when approached the police to give complaint, they did not entertain. It is not even mentioned which police they approached and on what date and with what report. The crime proceedings thereby per se unsustainable and are liable to be quashed for continuation is nothing but vexatious. In fact, this Court granted interim order and vacate petition filed on behalf of the 2nd respondent in I.A.No.5 of 2018 in I.A.No.3 of 2018 with counter affidavit of the complainant which no way contain any new fact but for repetition of private complaint averments and even on perusal of the agreement enclosed even shows the balance consideration payable after showing passbooks by the Vendee to the Vendors. There is no meaning in keeping quiet without even issuing notice to show passbook from the claim as ancestral property if at all true and the very entering into agreement of the so called claim of ancestral property without verification of revenue record itself doubts credibility of the version of the complainant.

5. Having regard to the above, both the Criminal Petitions are allowed by quashing the proceedings in Cr.No.72 of 2018 on the file of the SHO, Ibrahimpatnam Police Station against the petitioners. The petitioners/ A.1 and A.2 are acquitted and their bail bonds shall stand cancelled. Pending miscellaneous petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:10.12.2018
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¹ AIR 2015 SC P.1758

² 2015 6 SCC 439