

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8004 OF 2018

ORDER:

This criminal petition is filed to quash the proceedings in Crime No.97 of 2018 of Kavali Rural Police Station, SPSR Nellore District, registered for the offence punishable under Section 420 IPC.

The 2nd respondent –Kakumani Hari Babu, the *de facto* complainant lodged report with the police alleging that he purchased an extent of 45 akanams out of Ac.2.74 cents in Survey No.920/B2 of Kavali Mandal on 15.07.2014 for Rs.7 lakhs by spending Rs.50,000/- towards registration expenses and obtained sale deed bearing No.2201 of 2014. When the 2nd respondent clearing land during the month of February, 2018, one Amara Subba Rao came to the plot alleging that he purchased the property in the year 1977 under registered document and that the petitioner had no title to the property and therefore, requested to take necessary action against the person, who cheated him. On the strength of the written report submitted by the 2nd respondent, the police registered Crime No.97 of 2018 and issued FIR.

The present petition is filed on the ground that the petitioner is bonafide purchaser for valuable consideration under registered sale deed bearing document No.2133 of 2014 from Kalidas Anand for valuable consideration of Rs.5,51,000/-, in turn he sold he property to the *de facto* complainant being the owner of the property. It is also contended that Kalidas Anand filed O.S.No.48 of 2018 against Aarikatla Venkateswarlu, Kakumani Haribabu, Amara Subba Rao and Balagani Srinivasa Rao (petitioner herein) for grant of perpetual injunction restraining the defendants and their men, legal heirs, assignees from interfering with the peaceful possession and enjoyment of the plaint schedule property. In view of the pendency of the civil suit, registration of the crime against the

petitioner is illegal and that the investigating agency cannot proceed against the petitioner for the offence punishable under Section 420 IPC and requested to quash the proceedings.

During hearing, learned counsel for the petitioner vehemently contended that in view of the pendency of the civil disputes, the petitioner cannot be prosecuted for any of the offences and mostly relied on the notarized affidavit issued by the Kalidasu Anand stating that he is the owner of the property and bonafide purchaser and when the dispute is civil in nature, registration of crime against the petitioner is nothing but abuse of process of law and requested to quash the proceedings.

Learned Additional Public Prosecutor opposed the petition.

As seen from the material on record more particularly, the written report lodged with the police by the 2nd respondent, the petitioner sold the property for Rs.7 lakhs under registered sale deed dated 15.07.2014. But when he intends to develop the property Amava Subba Rao came to the plot and claiming that he is the owner of the property having purchased in the year 1977 under registered document. Thus, the petitioner allegedly sold the property without title to the property. However, the petitioner is claiming that he is the bonafide purchaser for valuable consideration having purchased the same from Kalidas Anand under registered sale deed and placed reliance of affidavit of Kalidas Anand, on oath stated before the advocate notary that he purchased the property for Rs.5,51,000/- under registered sale deed dated 09.07.2014 bearing No.2133 of 2014 and delivered possession of the property. This affidavit was notarized on 26.05.2018. But the said Kalidas Anand filed O.S.No.48 of 2018 against four defendants and the petitioner is the 4th defendant in the said suit. The allegations in the plaint disclose that the petitioner, who is the 4th defendant in the said suit is not entitled to interfere with the peaceful possession and

enjoyment of the property and sought perpetual injunction restraining the defendants therein including the Amara Subba Rao, the *de facto* complainant and the petitioner from interfering with the possession and enjoyment of the property and the suit was filed in the year 2018. Therefore, the dispute is between the vendor of the petitioner and the 2nd respondent, Amara Subba Rao, petitioner and Aarikatla Venkateswarlu. The basis for claiming relief is the notarized affidavit, which has no legal validity to confer title in immoveable property for the reasons best known to the petitioner and he did not place on record the registered sale deed by which he purchased the property. The allegations made in the complaint disclose that the petitioner allegedly sold the property without title to the property for Rs.7 lakhs under registered sale deed. Therefore, sale of the property without title would constitute offence punishable under Section 420 IPC since the petitioner by cheated and dishonestly induced delivery of property by the 2nd respondent parting with money of Rs.7 lakhs without any title to the petitioner as per the allegations made in the complaint. Though, learned counsel for the petitioner contended that the allegations are false, the petitioner is bonafide purchaser of the property under registered sale deed, it is purely a question of fact to be decided during trial. The burden is on the petitioner to prove that he is bonafide purchaser and the allegations made in the complaint accepting on its face value would constitute offence punishable under Section 420 IPC, this Court cannot exercise power under Section 482 Cr.P.C.

In view of the law declared by the Apex Court in **State of Haryana v Bhajanlal**¹ laid down 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.

¹ 1992 Supp(1) SCC 335

(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.

(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.

Apart from that the investigation in this case is not yet commenced and this Court normally would not venture to exercise inherent power under Section 482 Cr.P.C. to quash the proceedings at the threshold when the facts are incomplete and hazy more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material, in view of the law declared by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo²** and in **Kurukshetra**

² (2005) 13 SCC 540

University v. State of Haryana³, the Apex Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C. and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C. it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. it ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

By applying the above principles, the proceedings in Crime No.97 of 2018 of Kavali Rural Police Station, cannot be quashed at the threshold. Therefore, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

31.07.2018
kvrm

³ AIR 1977 SC 2229