

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8520 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-1 & A-2 in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, for the offences punishable under Sections 468, 471 & 420 IPC.

The second respondent lodged a written report with the police alleging that his grandmother late Pentakota Ramayamma acquired land in the extent of Ac.1.15 at Kapparada, Kancharlapalem, Visakhapatnam situated in old survey No.17/2 (New Survey No.33/3) through the Document No.1582/1952 registered at the Sub-Registrar Office, Visakhapatnam on 24-10-1952 and it was in her possession. Subsequently, his grandmother sold part of the said land to different parties and the land remained only 200 Sq.Yards. After the demise of his grandmother and grandfather, his father Ramu Naidu and his paternal uncle Appala Naidu succeeded ancestral property i.e. 200 Sq.Yards of land. In the said land, his father constructed a thatched house and let out the same to one Koruvada Suryanarayana and his family. Thereafter, the said tenant Suryanarayana and his legal heirs by name K.Nageswara Rao (Elder son), K. Trinadha Rao @ Trinadh (younger son), Ramanamma (Daughter) started claiming right over the property on the pretext that it is assigned land. On witnessing the same, they have filed a suit OS No.1033/2003 before IV Additional Senior

Civil Judge Visakhapatnam. During trial, the respondents filed forged pattas purported to have been issued by the then Tahasildar as per Board Standing Order 21 as if they were having land in Survey Nos.33/4B, 33/4C and 33/4D, thereby, claimed title, right over the said property, as if they are lawful owners of the property.

The second respondent filed an application under Right to Information Act for furnishing information based on settlement adangal. The information furnished by the Tahsildar disclosed that no pattas were issued and that those pattas were fake. Thus, the petitioners committed offences punishable under Sections 468, 471 & 420 IPC and requested the police to take necessary action against this petitioner.

On the basis of the complaint, the police registered the above crime and issued F.I.R for the offences punishable under Sections 468, 471 & 420 IPC. On the strength of the F.I.R, the first respondent took up investigation and examined as many as 11 witnesses and recorded their statements and filed charge sheet after coming to *prima facie* conclusion that the petitioners committed offences punishable under Sections 468, 471 & 420 IPC.

The petitioners who are arrayed as A-1 & A-2 in the above crime filed this criminal petition to quash the proceedings in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, on the ground that the second respondent having lost his claim in R.C.C.No.89 of 1987 resorted to frivolous litigation by filing O.S.No.1033 of 2003 against the petitioners before the Rent Controller, Visakhapatnam and failed in his

attempt to evict these petitioners under the provisions of the Rent Control Act and Civil Court.

The suit O.S.No.1033 of 2003 filed by father of the second respondent/defacto complainant and two others on the file of the IV Additional Senior Civil Judge, Visakhapatnam was also dismissed. Thereafter, an appeal was preferred against the decree and judgment by the father of the second respondent/defacto complainant and two others in A.S.No.97 of 2008, the same was also dismissed the Principal District Judge at Visakhapatnam on 17.02.2010, confirming the judgment of the Trial Court, no second appeal was preferred and the order of the Trial Court have become final. On 19.02.2012 the father of the second respondent/defacto complainant and family members filed P.L.C.No.1538 of 2012 to reconcile the matter. But, the matter was closed on 02.01.2013. Having failed in all his attempts, father of the second respondent/defacto complainant filed suit O.S.No.139 of 2013 on the file of VI Senior Civil Judge at Visakhapatnam, for cancellation of judgment and decree dated 24.01.2008 in O.S.No.1033 of 2003 and the said suit O.S.No.139 of 2013 is pending for adjudication and in the said suit, the second respondent herein is claiming Sy.No.33/3. Pending the said suit, the second respondent/defacto complainant lodged a complaint before the Station House Officer, Kancharlapalem Police Station, Visakhapatnam on the allegation that the petitioners herein are claiming land under forged patta, based on the said complaint the police registered F.I.R.No.50 of 2013 for the offences punishable under Sections 420 & 468 IPC and filed charge sheet vide C.C.No.272 of 2015 on the file of III

Metropolitan Magistrate, Visakhapatnam. Thus, the second respondent filed complaint as an abuse of process of the Court and none of the allegations made in the complaint would constitute offences punishable under Sections 420 & 468 IPC.

It is also contended that the allegations made in the charge sheet that the land was acquired as Konru Cheruvu in an extent of Ac.1-50 cents, which is the subject matter of O.S.No.17/2 (new Sy.No.33/3) of Kapparada, Kancherlapalem Village, Visakhapatnam, is false on the face of record and further contended that the land covered by Sy.No.33/3 was sub-divided as 33/3A, 3B, 3C in pursuance of the orders in File BA.No.10/1403 dated 31.12.1993 of the S.O.ULC. This allegation in the charge sheet is clear that the second respondent/defacto complainant's land is in Sy.No.33/3, but not in 33/4. Hence, the second respondent/defacto complainant is not entitled to claim any right over the property and therefore, the petitioners cannot be proceeded, as it amounts to harassment and to wreck vengeance for failure to recover the property by resorting to civil litigation, Rent Control proceedings before the Rent Controller and during pendency of the present suit O.S.No.139 of 2013 on the file of VI Senior Civil Judge, Visakhapatnam and prayed to quash the proceedings, as the litigation is purely civil in nature.

During hearing, learned counsel for the petitioners Sri Muddu Vijai, reiterated the contentions raised in the grounds and he demonstrated that the proceedings in C.C.No.272 of 2015 are the subject matter of the civil suit, appeal and rent control case and they were disposed of and decided against the second

respondent and in favour of these petitioners. Dissatisfied with the judgments, third round of litigation was started by the father of the second respondent/complainant in O.S.No.139 of 2013 on the file of VI Senior Civil Judge at Visakhapatnam, for cancellation of judgment and decree dated 24.01.2008 in O.S.No.1033 of 2003. Against the judgment and decree in O.S.No.1033 of 2003, A.S.No.97 of 2008 was filed and the same was dismissed by the Principal District Judge at Visakhapatnam on 17.02.2010. Therefore, filing of civil proceedings in different forums and resorting to this criminal litigation by giving colour of criminal litigation to a civil dispute is nothing but abuse of process of the Court and thereby, to quash the proceedings, learned counsel for the petitioners placed reliance on the judgments of the Apex Court in **Suresh v. Mahadevappa Shivappa Danannava¹, All Cargo Movers (India) Private Limited and others v. Dhanesh Badarmal Jain and another², Paramjeet Batra v. State of Uttarakhand and others³ and Rashmi Jain v. State of Uttar Pradesh and another⁴.**

Based on the principles laid down in the above judgments, learned counsel for the petitioners requested this Court to quash the proceedings, as filing of report with the police by giving colour of criminality to civil litigation is nothing but abuse of process of Court and prayed to quash the proceedings in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam,

¹ (2005) 3 SCC 670

² (2007) 14 Supreme Court Cases 776

³ (2013) 11 Supreme Court Cases 673

⁴ (2014) 13 Supreme Court Cases 553

registered for the offences punishable under Sections 468, 471 & 420 IPC.

Learned counsel for the second respondent/complainant refuted the contentions raised by the learned counsel for the petitioners and submitted that, when both civil and criminal remedies are available, the party can approach either criminal court or civil court or both and the prosecution before the criminal court is not barred. Apart from that, when a civil litigation is disposed of by the Courts and in the pending litigation before the IV Additional Senior Civil Judge, Visakhapatnam, the criminal liability of the petitioner cannot be decided and therefore, the proceedings cannot be quashed. In support of this contentions, learned counsel for the second respondent/complainant placed reliance on the judgment of the Apex Court in **Pratibha Rani v. Suraj Kumar**⁵.

Yet, another contention raised by the learned counsel for the petitioners is that, delay in lodging complaint is not a ground to quash the proceedings and placed on reliance on the judgments of the Supreme Court in **Harnam Singh v. Everest Construction Co. & ors**⁶, **Narne Murthy v. Ravula**⁷ and **Municipal Corporation v Sri Niyamatullah**⁸. Therefore, based on the principle of limitation, the proceedings cannot be quashed while exercising power under Section 482 Cr.P.C, since the limitation is a mixed question of fact and law which can be decided only after completion of trial before a competent Court. Therefore, at this

⁵ (1985) 2 SCC 370

⁶ (2004) 6 SCC 754

⁷ (2005) 6 SCC 614

⁸ (1969) 2 SCC 551

stage, considering an application under Section 482 Cr.P.C on the ground that the claim is barred by limitation, this Court cannot quash the proceedings.

Further, it is contended that the powers of this Court under Section 482 Cr.P.C are unlimited and at any stage, this Court can exercise its power to quash the proceedings and the court cannot exercise such power when the allegations made in the complaint on its face value if accepted would constitute an offence punishable under the provisions of Indian Penal Code or under any other Penal Law. The truth or otherwise in the allegations made in the charge sheet cannot be looked into at this stage. In support of his contentions, learned counsel for the petitioners has drawn the attention of this Court to the judgments of the Apex Court in **J.P. Sharma v. Vinod Kumar Jain & others⁹**, **State of Karnataka v. M. Devendrappa¹⁰**, **Dhana Laxmi v. R. Prasanna Kumari¹¹**, **State of Maharashtra v. Ishwar Piraji Kalpatiri¹²**.

Finally, learned counsel for the second respondent Sri T.M.K. Chaitanya contended that the property claimed in R.C.C.No.89 of 1987 and O.S.No.1033 of 2003 on the file of different Courts referred supra and the subject matter in the present complaint is one and the same. The contention raised by the learned counsel for the second respondent that the petitioners are claiming right in the property in Sy.No.33/4 is incorrect and requested the Court to dismiss the petition, since the disputed question of facts have to be decided at the end of the trial, but not at this stage.

⁹ (1986) 3 SCC 67

¹⁰ 2002 (3) SCC 89

¹¹ 1990 Cr LJ 320

¹² (1996) 1 SCC 542

Considering rival contentions, perusing the material available on record, the point that arises for consideration is”

“Whether the allegations made in the charge-sheet against these petitioners in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, accepting on its face value would constitute offences punishable under Sections 468, 471 & 420 IPC. If not, whether filing of charge-sheet on the strength of the complaint and material collected during investigation amounts to abuse of process of the Court, in view of various civil proceedings, disposed of by the above courts and pending suit O.S.No.139 of 2013 on the file of VI Senior Civil Judge at Visakhapatnam. If so, the proceedings in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, be quashed.?”

P O I N T:

It is an undisputed fact that the petitioners are in possession and enjoyment of the property in dispute, father of the second respondent admittedly filed O.S.No.1033 of 2003 on the file of IV Additional Senior Civil Judge, Visakhapatnam, declaring that the father of the second respondent and others are the owners of the plaint schedule property and for recovery of suit schedule property, claiming that the petitioners are in unlawful possession and enjoyment of the property without any title. But, the suit was dismissed by decree and judgment dated 24.01.2008. A.S.No.97 of 2008 preferred by the unsuccessful plaintiffs, also ended in dismissal vide decree and judgment dated 17.02.2010 passed by the Principal District Judge at Visakhapatnam. Thus, the second respondent, who is claiming right through the plaintiffs in O.S.No.1033 of 2003 lost the claim over the suit schedule property in O.S.No.1033 of 2003. The petitioners claimed right over the land in Sy.No.33/3, but, the Court while answering issue nos. 2 &

3, i.e. at the end of discussion, concluded that the father of the second respondent and two others failed to prove that they have right in the plaint schedule property and they are entitled for the possession of the plaint schedule property, and the plaintiffs are not entitled for any declaration of title and consequential relief of the plaint schedule property and also for damages from the defendants in respect of the plaint schedule property and thereby, not entitled for recovery of possession.

Even in A.S.No.97 of 2008, the decree and judgment of the Trial Court was not disturbed. On the other hand, it was affirmed by the Principal District Judge. Having lost their claim both in the Original Court and Appellate Court, no second appeal was preferred. Father of the second respondent and another filed rent control proceedings prior to filing of civil suit before the Rent Controller i.e R.C.No.89 of 1987 on the file of Principal District Munsif & Rent Controller, Visakhapatnam, which ended in dismissal vide order dated 29.11.1995, holding that the petitioners therein failed to establish the relationship of landlord and tenant and also observed that, even assuming that the landlord and tenant relationship between the parties is proved, then also the petitioners are not entitled for eviction, since the wilful default as pleaded and proved. While deciding Point No.1, the Rent Controller held that, the petitioners therein i.e Pentakota Appala Naidu, Pentakota Ramunaidu, Smt. Appalanarasamma, Pentakota Ramana Rao, Pentakota Srinivasa Rao (claiming to be landlords) failed to prove their subsisting jural relationship of landlord and

tenant between the parties to the rent control case and the order passed by the Rent Controller attained finality.

It is an admitted fact that the litigation before the civil court and the rent controller, Pentakota Ramunaidu, Smt. Pentakota Appalanarasamma and Pentakota Srinivasa Rao filed O.S.No.1033 of 2003 against the petitioners herein, and the petitioners herein filed peculiar relief for cancellation of decree and judgment in O.S.No.1033 of 2003 which was affirmed in A.S.No.97 of 2008 on the ground that decree was obtained by playing fraud and it is pending for adjudication before the IV Additional Senior Civil Judge at Visakhapatnam. Thus, the second respondent and other after resorting to litigation in different Courts, lodged a report with the police during pendency of another suit i.e. O.S.No.139 of 2013 on the file of VI Senior Civil Judge at Visakhapatnam.

The petitioners produced Photostat copies of the pattas granted in their favour and in favour of others. The Mandal Revenue Officer, Visakhapatnam granted patta in their favour under Board Standing Order 21, assigning house site patta for an extent of 60 sq.yds in Sy.No.33-4D in Plot No.4D within the following boundaries:

North : 4/C
East : 4/A
South: Road
West : 30/3

But, the pattas granted in favour of others were not placed on record.

However, the identity of the property on ground, with reference to the title of the second respondent and the petitioners

herein was the subject matter of the suit. The appeal and rent control cases were disposed of by the Rent Controller and Court referred supra. Therefore, when the civil court already concluded that the petitioners are the owners accepting the documents produced by these petitioners, at this stage, this Court cannot proceed against these petitioners in the criminal court, as it is nothing but abuse of process of the court.

The basis for the complaint is that, the petitioners produced copies of house site pattas in their favour by the Mandal Revenue Officer, Visakhapatnam. But, they were found fake based on the alleged information, he received under Right to Information Act, same information he received under R.T.I is placed on record. The Public Information Officer/Tahsildar, Visakhapatnam furnished information stating that the house site pattas indicating HSP Nos.1117, 1118, 1119 of 1398 said to have been issued in favour of Sri Korvada Suryanarayana, Korvada Nageswara Rao and Korvada Trinadha Rao respectively and L.Dis.No.775/2006/A/Dt 19.09.2006 are not traced in this office record.

The plan annexed to the information furnished under R.T.I Act disclosed division of Sy.No.33 into various parts. But, the subdivision took place on 31.12.1983. This document is not useful for deciding the present petition. However, the information furnished under R.T.I. Act, at best, shows that the pattas granted in favour of Sri Korvada Suryanarayana, Korvada Nageswara Rao and Korvada Trinadha Rao respectively in L.Dis.No.775/2006/A/Dt 19.09.2006 are not traced in the office record. Therefore, the endorsement of the Public Information Officer & Tahsildar, Visakhapatnam (Urban)

dated 07.01.2013 is not sufficient to conclude *prima facie* that the petitioners produced those fake or fabricated pattas to claim right before the Court in a pending suit and Rent Control proceedings.

It is the case of the second respondent that the pattas were created for the purpose of claiming right over the property. But, absolutely there is no basis for such claim except the information furnished under R.T.I Act by the Tahsildar, informing that they were not traced in the office of Tahsildar in L.Dis.No.775/2006/A/Dt 19.09.2006. The pattas were allegedly obtained by these petitioners on 20.06.1980, but not on 19.09.2006. In any view of the matter, when the claim of the second respondent and others was decided in a civil suit and appeal by a competent court and also by the rent controller, having limited jurisdiction, allegation before the court would not constitute an offence on its face value, even if the allegations made in the charge sheet, on the face value are accepted.

The Civil Court also did not record any specific finding that these documents are fake. Further, the information received by these petitioners is also silent that the pattas were fake. In such an event, proceedings against these petitioners/A-1 & A-2 in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, for the offences punishable under Sections 468, 471 & 420 IPC is nothing but harassment, having lost both civil and rent control proceedings before the competent courts and those judgments have become final. Therefore, filing complaint and proceeding against these petitioners on the basis of endorsement issued by the Tahsildar is nothing but abuse of process of the

court or harassment with a view to wreck vengeance against these petitioners.

Learned counsel for the petitioners contended that the allegations made in the complaint would not constitute an offence punishable under Section 420 IPC and placed reliance on judgment of the Apex Court in **Suresh v. Mahadevappa Shivappa Danannava** (referred supra), wherein, it was observed in paragraph 11 of the judgment as follows:

“As already noticed, the complaint was filed on 17.05.1999 after a lapse of 11= years and, therefore, the very private complaint filed by the respondent No.1 is not at all maintainable at this distance of time. It is the specific case of accused No.1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 of Cr.PC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring the accused No.1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself.”

Though the facts are identical, the findings are different. Therefore, the present facts would not constitute an offence, in view of the law declared by the Apex Court in the judgment stated supra.

In **All Cargo Movers (India) Private Limited and others v. Dhanesh Badarmal Jain and another** (referred supra), the Apex Court in paragraph 16 held as follows:

“17. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No.1 in the suit. No allegation whatsoever

was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.”

In **G. Sagar Suri and another v. State of U.P. and others**¹³, the Apex Court in paragraph 8 of the judgment held that jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction, High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.

An identical question came up before the Apex Court in **Anil Mahajan v. Bhor Industries**¹⁴, wherein, in paragraphs 6,7 & 8 of the said judgment, the Apex Court held as under:

“Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of

¹³ (2000) 2 Supreme Court Cases 636

¹⁴ 2005 (10) SCC 228

cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

7. The order of the learned Additional Sessions Judge has been set aside by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defense of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

In Paramjeet Batra v. State of Uttarakhand and others

(referred supra), the Supreme Court held as follows:

“While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

Similarly, in **Rashmi Jain v. State of Uttar Pradesh and another** (referred supra), the Apex Court elaborately considered the scope of Section 482 of Cr.P.C and held as follows:

“In our opinion, the aforesaid averment has been made only to foist criminal liability on the Appellant by converting a purely civil dispute into criminal act, alleged to have been committed by the Appellant. The allegations are absurd and outlandish on the face of it; firstly, the Appellant is a lady, a widow, who was not accompanied by anybody else at the time of the alleged occurrence; secondly, she, though being a resident of Delhi, misbehaved with number of high and mighty parties, with whom she had earlier transacted business, at Moradabad. In our opinion, these are allegations which on the face of it, can not be taken seriously by any reasonable person. The High Court, in our opinion, has committed jurisdictional error in dismissing the criminal petition filed by the Appellant on the ground that it involves disputed questions of fact, which can only be gone into by the trial Court.”

If the law declared in long line of perspective pronouncements of the Apex Court are applied to the present facts of the case, it is evident that the second respondent having lost both the civil case and rent control case and in view of the proceedings, though these fake documents produced by the petitioner are referred and relied on, the proceedings are silent with regard to cheating and inducing the second respondent with a fraudulent or dishonest intention to part with any property. On the other hand, it is the case of the second respondent or other parties in the earlier civil proceedings and rent control proceedings that this property was let-out to the petitioners father and the petitioners remained as tenants in the possession of the property. When they were allegedly inducted into the possession as tenants, the act of the petitioners in setting-up title of the property by producing the pattas granted in their favour issued by the Mandal Revenue Officer, do not constitute offence punishable under the

provisions of Indian Penal Code. If, a finding is recorded that these pattas are fake or not genuine, then there is substance to proceed against these petitioners in the Criminal Court for production of fake documents in the court of law, which is an offence against the court of justice.

On overall consideration of entire material on record, it is manifest that the proceedings are initiated to wreck vengeance due to the outcome of the result in civil and rent control proceedings and to harass these petitioners by abuse of process of the Court.

Learned counsel for the second respondent/complainant contended that, though there were civil proceedings between the parties, the respondent may either opt for civil remedy or for criminal prosecution and criminal prosecution is not a bar, merely on the ground that a civil remedy is available, since two actions are quite different and placed reliance on the judgment of this Court in **Pratibha Rani v. Suraj Kumar** (referred supra).

Even if these principles are applied to the present facts of the case, the parties may approach any of the Courts either under civil or criminal for redressal of their claims before competent courts and to prosecute the decrees, if they really committed the offence punishable under any of the provisions of the act. But, in the present case, it is clear from the material produced that the second respondent lodged report with the police and the police filed charge-sheet after investigation only with a view to bring the petitioners to his terms, who finally lost their cases both in the civil case and rent control, as an arm-twisting method by abusing process of the court and to wreck vengeance against these

petitioners. Though the judgment in **Pratibha Rani v. Suraj Kumar** (referred supra) case does not support the contention of the learned counsel for the petitioners, but, when it is abuse of the process of the Court to wreck vengeance against these petitioners, this Court has to strive to do justice for the parties.

In **J.P. Sharma v. Vinod Kumar Jain & others** (referred supra), the Apex Court held that, the question at this stage, is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed.

Under Section 482 Cr.P.C, it should not be exercised to stifle legitimate prosecution. The High court should not assume the role of a trial court and embark upon an enquiry as to reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence. (vide **State of Karnataka v. M. Devendrappa** (referred supra))

Similarly, in **State of Maharashtra v. Ishwar Piraji Kalpatri** (referred supra), the Apex Court held that, if the complaint which is made is correct and an offence had been committed which will have to be established in a Court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of malafides. If the ingredients which establish the commission of the offence or misconduct exist, then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of malafides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that

the complainant is guilty of malafides, would be no ground for quashing the prosecution. In the instant cases, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Malafide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the Court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal**¹⁵ the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (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.

¹⁵ 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.

Hence, this Court has got a limited jurisdiction and this Court cannot quash the proceedings merely on the ground that the

second respondent has given colour of criminal litigation to civil litigation, having lost their cases before both civil and rent controller courts. There is no dispute with regard to the judgment declared in all the four judgments referred supra, but the law enunciated by the Apex Court in **State of Haryana v. Bhajan Lal** (referred supra), which still holds the filed when the criminal proceedings are initiated as an abuse of process of the Court to wreck vengeance or harass the petitioners, this Court can exercise its power under Section 482 Cr.P.C and cannot encourage the frivolous litigation, which is the outcome of the result in civil litigation and that too, when another suit is pending before the competent civil court and resorting to this litigation at this stage is nothing but abuse of process of the Court. Therefore, I find no substance in the contention raised by the learned counsel for the second respondent/complainant.

Yet, another contention urged before this Court by the learned counsel for the second respondent is that, the proceedings were initiated after long lapse of time i.e. almost after twenty five or thirty years from the date of filing R.C.C.No.89 of 1987 would indicate the dishonest intention of the petitioners and it is barred by limitation. But, the offences allegedly committed by the petitioners are punishable under Sections 468, 471 & 420 IPC. However, while considering an application under Section 482 Cr.P.C, the Court cannot quash the proceedings on the ground of limitation.

In **Harnam Singh v. Everest Construction Co. & ors** (referred supra), the Apex Court held that the bar against

cognizance after the lapse of the prescribed period of limitation is laid down under Section 468 Cr.P.C, which is within the parameters of that provision that the Court called upon to take cognizance of the offence should act. Most of the offences alleged against the respondents viz., Sections 420, 467, 471 & 474 IPC are punishable with imprisonment for a term exceeding three years. Therefore, the bar of limitation under Section 468 Cr.P.C is not attracted. In **Narne Murthy v. Ravula** (referred supra) **and Municipal Corporation v Sri Niyamatullah** (referred supra), the Supreme Court held that the question of limitation being a mixed question of law and fact, the plea must be pleaded and raised at the outset.

Therefore, at this stage, based on the ground that, taking cognizance of the offence is barred by limitation under Section 468 Cr.P.C cannot be a ground for quashment. However, filing of criminal prosecution against this petitioners after lapse of 30 years from the date of commencement of litigation between the petitioners and second respondent in R.C.C.No.89 of 1987 indicates the malafides of the second respondent in launching criminal prosecution against these petitioners. On this ground also, proceedings against these petitioners are liable to be quashed.

On overall consideration of entire material placed on record and the contentions urged before this Court by the learned counsel for the petitioners, learned counsel for the second respondent, the law declared by the Apex Court in the judgments referred supra, it is suffice to conclude that the contentions raised by the learned

counsel for the second respondent are without any substance and the material produced before this Court, directly indicating the malafides in prosecution of criminal proceedings against these petitioners, so also, by abuse of process of the Court, as an arm-twisting method to bring the petitioners to the terms of the second respondent and resorted to criminal litigation. Consequently, the contention raised by the learned counsel for the petitioners is upheld while disagreeing with the contention of the learned counsel for the second respondent.

In view of my foregoing discussion, I find that it is a fit case to exercise inherent jurisdiction under Section 482 Cr.P.C to quash proceedings against these petitioners/A-1 & A-2 in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam, for the offences punishable under Sections 468, 471 & 420 IPC.

In the result, the criminal petition is allowed, quashing the proceedings against these petitioners/A-1 & A-2 in C.C.No.272 of 2015 on the file of III Metropolitan Magistrate Court at Visakhapatnam.

However, the second respondent/complainant is not precluded from redressing his grievance before any competent Court, subject to permissibility under law.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 28.06.2018

SP