

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9056 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners herein/A-1 to A-3 in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy, registered for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC.

The second respondent/Kumari B. Kavya filed a private complaint before the XXV Metropolitan Magistrate at Kukatpally, for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC, alleging that, she is the absolute owner and peaceful possessor of land in Sy.No.41 (part), admeasuring Ac.1-00 gts situated at Kothaguda Village, Serilingampally Mandal and Municipality, Ranga Reddy District, purchased from M/s. Imperial Constrafin Private Limited, rep. by its Director M. Surendra Reddy vide Doument Bearing No. 506 of 2003 Dated 18.01.2003 at S.R.O Ranga Reddy District for sale consideration of Rs.25 lakhs and the consideration was paid by way of cheque bearing No.0666678 drawn on HDFC Bank, Banjara Hills, Hyderabad dated 18.01.2003 and the vendor of the complainant received the same. Accused Nos. 1 & 2 in collusion with A-3 created fake 'Will' in favour of A-2 after the death of late Harbhajan Singh to grab the land belonging to the complainant and that Accused Nos.1 to 3 have no right in and over the land in Sy.No.41/part, Kothaguda Village, A-1 without any right is trying to trespass into the complainant's property.

The vendor of the complainant i.e. M/s Imperial Constrafin Private Limited purchased the said property by registered document No.2190/1997 dated 31.04.1997 registered at S.R.O, Ranga Reddy District from M/s. Padmini Leasing & Investments Limited who are the title holders. The vendor of the complainant had handed over all original link documents pertaining to the said land and delivered the vacant physical possession of the property to the complainant. The complainant was holding and enjoying the same absolutely without any interruption and she has been paying all the taxes regularly. Further, the complainant along with her family members also purchased lands in Sy.Nos.39 (part), 40 & 41 (part) admeasuring total Ac.4-01 gts from their lawful owners and possessors through registered sale deeds.

After purchase of the said land from M/s Imperial Constrafin Private Limited, the name of the complainant got mutated in the revenue records vide Patta No.48, wherein the Deputy Collector issued enjoyment certificate issued in favour of the complainant vide P.B.No.183804, T.D.No.234470 and the Mandal Revenue Officer also issued Pattedar Passbook vide T.D.No.234470 and mutated the name of the complainant in the revenue records. The complainant further stated that, she got entered her name in the Revenue Records and in Pahani, and as per the Adangal/pahani copy, the complainant is the absolute owner of the property since the date of purchase and in order to prove her mutation of her name in Adangal/pahani copy, produced C.C. of adangals for Fasli from 1420 to 1427. It is submitted in the complaint that, the name of the complainant has been reflected in the statement of

encumbrance certificate and in order to prove her possession and enjoyment over the property has been filed the statement of encumbrance for the property from 01.01.1983 to 16.10.2017. It is further stated that, the complainant and her family members being the absolute owners, peaceful possessors and pattedars of the lands in Sy.Nos.39(P), 40(P) & 41(P) situated at Kothaguda Village, Serilingampally Mandal admeasuring Ac.4-01 gts, including the land of the complainant, the complainant and her family developed the same as Kalyanamandapam by obtaining permission from Cyberabad Development Authority vide proceedings No.721/BP/FCDA/2004 dated 16.07.2004 by paying Rs.5,45,534/- towards development charges and constructed the said Kalyanamandapam within four years period. Further, the complainant and her family members have obtained 'No Objection Certificate' from Airport Authority of India for construction of High Rise Building vide Proceeding No.AAI/20012/308/2005 dated 26.05.2005 and the Special Officer and competent authority of Urban Land Ceiling issued clearance vide File No.H2/3064/NOC/2007 dated 20.11.2017 and also obtained permission from the Director of Fire and Emergency Services vide File No.581/E4/2007 dated 14.02.2008. Further, it is also submitted that the complainant and her family members have also obtained permission for construction of Multi Storied Building permission vide Lr.No.5844/P4/CDA/2007 and also obtained permission for change of land use from residential use zone to commercial use zone vide permit Letter

No.12534/NP1/Plg/H/2007 dated 27.02.2009 by paying dated 4,510/-.

With a view to develop the above said lands into Multi Storied Commercial Buildings/Malls, the complainant entered into Registered Development Agreement with M/s. Skill Promoters bearing Document No.5470/2009 dated 11.05.2009 registered at JSRO-1, Ranga Reddy District. Since then, the developer by combining the adjacent lands developed the entire area into Mall & Multiplex, commercial, hotel & residential buildings with Blocks 'A' to 'F'. The builder have obtained permission from GHMC vide Lr.No.76054/06/11/2012 dated 19.02.2013 by paying charges to GHMC. The complainant along with developers have continuously developed and raised huge constructions as per the sanctioned plans by investing huge amount by raising loans from Nationalized banks.

It is submitted by the complainant that, since the date of purchase i.e. 18.01.2003, the complainant was in peaceful possession and enjoyment of the property and her name was mutated in the revenue records. The complainant has purchased the above said property from lawful vendors after verifying title, right, interest and possession of the said property by paying Rs.25 lakhs towards sale consideration and the said property was registered in her name. Further, Supreet Singh/A-1 & Prabhshabad Singh/A-2 with pre-concert with A-3 hatched a plan with ulterior motive and malafide intention to extract huge amounts by adopting illegal methods. A-1 to A-3 posed themselves as legal heirs of late Harbhajan Singh who is the vendor of M/s.

Harini Constructions Company by registered Document No.9103/1991. Late Harbhajan Singh during his lifetime sold away his property to M/s. Harini Construction Company and executed registered sale deed in their favour, thereby, late Harbhajan Singh has no right, title or interest in the said property since 1991. Further, the complainant submits that A-1 & A-2 are trying to interfere with the peaceful possession and enjoyment of the complainant by bringing fake 'Will Deed' allegedly contending that, during the life time of late Harbhajan Singh had executed the alleged 'Will Deed' dated 14.06.2003 in favour of A-2. In fact, late Harbhajan Singh had sold away the property in the year 1991 itself and he had delivered vacant physical possession to his purchaser. In such circumstances, the question of executing 'Will Deed' in favour of A-2 pertaining to the complainant land admeasuring Ac.1-00 gts does not arise and that, they created documents with an intent to grab the complainant's land.

A-1 & A-2, in collusion with A-3 got created Gift Deeds and allegedly divided the said land into Plot Nos.1,2,3 & 4 in Sy.No.41 situated at Kothaguda Village, Serilingampally Mandal, Ranga Reddy District and in fact, A-1 to A-3 have no right and title over the said land. After lapse of several years, A-1 to A-3 got created fake gift deeds for the land of the complainant and the said alleged 'Will' deed was not probated and communicated.

Apart from that, the legatee under the 'Will' A-2 was new at the time of sale transaction and by taking advantage of the fake documents, the accused filed O.S.No.1087/2017 and sought temporary injunction order in I.A.No.1037 of 2017 on the file of XV

Additional District Judge, Ranga Reddy Court. The Court below, upon considering the documents of both sides, dismissed I.A.No.1037 of 2017. In the said interlocutory application, no relief was granted in favour of A-1. Further, A-1 to A-3 were never been in possession and enjoyment of the said land at any point of time and they are not legally entitled to claim any right or title in the property. But, in the guise of the fake documents, they are trying to interfere with the enjoyment of the land and dispossess the complainant from the property. Hence, the second respondent filed private complaint and which in-turn, was referred to the Station House Officer, Gachibowli Police Station, Cyberabad, by exercising power under Section 156(3) Cr.P.C. to investigate and file final report.

On receipt of reference made by the Magistrate under Section 156(3) Cr.P.C, the Station House Officer, Gachibowli Police Station registered a case in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy, registered for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC and issued F.I.R.

At this stage, the petitioners/A-1 to A-3 approached this Court to quash the proceedings in Crime No.513 of 2018 by exercising power under Section 482 Cr.P.C, on various grounds.

The main ground urged in the petition is that, the allegations made in the complainant at the most would attract cause of action for civil suit, but at no stretch of imagination, it would constitute the above referred offences and that the suit filed by the petitioner No.1 is pending and the Advocate Commissioner is yet to be

appointed by the Trial Court and that the allegation in the complaint inasmuch as, the offence with regard to the 'Will' has to be established in a suit filed by petitioner No.1 himself, but not in the criminal complaint. Further, it is urged that the police are not vested with any power to investigate into the genuineness of the 'Will' during investigation and thereby, the police will not get any jurisdiction to investigate into the offences.

It is also contended that the complaint was lodged only to wreck vengeance against the petitioners as an arm-twisting method to come to the terms of the second respondent to settle the civil dispute, pending before the Civil Court in O.S.No.1087 of 2017 pending on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District and O.S.No.551 of 2018 pending before the same Court, filed against the second respondent for declaration of title with other consequential reliefs.

When the civil suit is pending, effective and efficacious remedy can be obtained in a civil suit based on the documents to decide such issues under the provisions of Criminal Procedure Code cannot be decided and thereby, on filing of private complaint and referring the same to the police by the Magistrate by exercising power under Section 156(3) Cr.P.C is a grave illegality and requested to quash the proceedings against the petitioners in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy, registered for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC.

The second respondent filed counter affidavit, denying material allegations, while reiterating the allegations made in the complaint, raising the following specific contentions:

It is submitted that, we have also issued a complaint before the Commissioner and Inspector General of Stamps and Registration, Government of Telangana on 10th May 2018 against Prabhashabad Singh Sadana and Supreet Singh for undervaluing the documents and also for creating forged and fabricated documents. The said complaint is pending investigation.

It is also contended that, the petitioners/A-1 to A-3 raised massive constructions in the land and by taking advantage of the constructions, the petitioners resorted to various litigations in both civil and criminal courts. Further, it is contended that the first petitioner also filed W.P.No.15058 of 2018 against the second respondent to declare the action of the respondents 2 & 3- Commissioner and Deputy Commissioner, GHMC, Hyderabad, respectively in not taking any action on the petitioner's complaint for illegally making construction in an extent of Ac.1-00 gts in Sy.No.41 though there is permission granted by the 1st respondent in relation for change of use of land and the building permission granted by the 2nd respondent in relation to construction of commercial complex and that they are creating litigation at every state of the proceedings. it is further contended that the allegations made in the complaint by exercising power under Section 156(3) Cr.P.C constitutes an offences *prima facie*, and this Court at this stage cannot interfere with the proceedings pending for investigation by the police by exercising power under Section 482 Cr.P.C that the allegations made in the complaint are not purely civil in nature even if such allegations gave rise to both civil and criminal cases, it is for the second respondent to approach the

competent court either civil or criminal or both and that act of creating documents by the petitioners is nothing but a criminal conspiracy to defeat the rights of the second respondent and they are liable to be prosecuted for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC.

During hearing, Sri P. Shiv Kumar, learned counsel for the petitioners contended that, when a civil litigation is pending, more particularly, a suit for declaration of title in O.S.No.1087 of 2017, the second respondent ought not to have resorted to criminal litigation, since the genuineness of the documents shall be decided by a competent civil court. Apart from that, the police cannot investigate about the genuineness of the documents, while exercising their power under Section 156 Cr.P.C and decide whether a particular document is forged and fabricated, more particularly when civil suit is pending.

Learned counsel for the petitioners also contended that, when the allegations made in the complaint do not disclose commission of any offence and when some documents are in question in a pending civil litigation, resorting to criminal litigation by the second respondent is an abuse of process of this Court and placed reliance on the judgment of the Supreme Court in **Paramjeet Batra v. State of Uttarakhand and others¹** and **Mohd. Khalid Khan v. State of Uttar Pradesh²** and requested to quash the proceedings in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy.

¹ (2013) 11 Supreme Court Cases 673

² (2015) 15 Supreme Court Cases 679

Per contra, Sri P. Sri Ram, learned counsel for the second respondent would draw attention of this Court to the written statement filed by the second respondent, more particularly, paragraphs, 2, 13, 15 & 17 to contend that these petitioners created documents. It is also contended that the grounds for quashing the proceedings, more particularly, ground no.6 in paragraphs 6 & 7 of the petition, is the only contention raised in the entire grounds and on the basis of such contention, this Court cannot quash the proceedings by exercising power under Section 482 Cr.P.C.

Learned counsel for the second respondent, in support of his contentions, placed reliance on the judgments of Supreme Court in **Kamaladevi Agarwal v. State of West Bengal**³, **R. Kalyani v. Janak C. Mehta and others**⁴ and also judgment of this Court in **G.B.C. Raj Gopal v. Government of Andhra Pradesh**⁵ and requested to dismiss the criminal petition.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether pendency of O.S.No.1087 of 2017 on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District and O.S.No.551 of 2018 on the file of same Court debars the second respondent from filing a private complaint and disentitles the police to investigate into the offences.**
- 2. Whether the allegations made in the complaint referred to the police, which is registered as a case in Crime**

³ (2002) 1 Supreme Court Cases 555

⁴ (2009) 1 Supreme Court Cases 516

⁵ W.P.No.34137 of 2013 dated 24.04.2014

No.513 of 2018 constitutes any of the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC. If not, whether the proceedings against these petitioners are liable to be quashed?

P O I N T N O . 1

It is an undisputed fact that, O.S.No.1087 of 2017 and O.S.No.551 of 2018 are pending on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District. O.S.No.1087 of 2017 is filed by Supreet Singh/petitioner herein/A-1 against Narayandas Kishandas, Minhajuddin, Riyaz Ahmed, Mohd. Aslam and Sharat. But, Kum.B. Kavya/second respondent herein/defacto complainant is not a party to the suit which is filed for grant of perpetual injunction, restraining the defendants and their henchmen from interfering with the plaintiff's peaceful possession and enjoyment in respect of the schedule property A,B,C & D. The property described in A & B schedule is in Sy.No.41 situated at Kothaguda village, Serilingampally Mandal, Ranga Reddy District, which the second respondent is claiming as owner. Therefore, pendency of O.S.No.1087 of 2017 against third parties is in consequential and the rights of the second respondent cannot be decided in a such suit.

Whereas, the first petitioner/A-1 also filed O.S.No.551 of 2018 against Kum.B. Bhavya, M/s. Imperial Constr Fin Pvt. Ltd, M/s. Padmini Leasing and Investments Limited, M/s. Harini Constructions Company, M/s. Skill Promoters, M/s. Asian Securities and Estates Ltd and Mr. Narayandas Kishandas for declaration of title with consequential reliefs. Based on the will and

other documents allegedly created by these petitioners, more particularly, 'Will' dated 14.06.2003 bequeathing extent of Ac.1-00 gts along with other properties in favour of his grandson Mr. Prabhshabad Singh Sadana, who is also the younger brother of the plaintiff, alleging that, during the lifetime of Sri Harbhajan Singh, he paid land cess of Rs.5,840/- vide receipt No.139726 dated 12.12.1989 issued by the Gram Panchayat and thereafter, he continued in possession and enjoyment of the property and after his death, Mr. Prabhshabad Singh Sadana being a legatee under the 'Will' became the owner of the property and sought for various reliefs, declaring the title to the schedule property granting decree in his favour with consequential reliefs.

The list of documents marked in O.S.No.551 of 2018 are Gift Deeds dated 24.04.2017, 21.04.2017, 24.04.2017, 21.04.2017, and Sale Deed dated 06.11.1989. A copy of the written statement filed by the fifth defendant in O.S.No.551 of 2018 is placed on record.

Both the suits, O.S.No.1087 of 2017 & O.S.No.551 of 2018 are pending before the same Court referred supra, where one suit is for declaration of title and consequential reliefs over the schedule property, wherein, the defacto complainant is the first defendant in O.S.No.551 of 2018. If, really, the dispute is with regard to forgery and fabrication of documents, using forged documents as genuine, those questions can be decided in a pending comprehensive suit. But, resorting to criminal proceedings on the basis of alleged forged documents is nothing but an abuse of process of the Court, since two parallel proceedings against one

another, both in civil and criminal courts cannot be prosecuted for the reason that, the finding if any given either in civil or criminal court will have its own impact on the other matter pending before the Court, if one of the matter is decided earlier to the other and the questions involved in this calendar case can also be decided in the civil suit.

Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in **Paramjeet Batra v. State of Uttarakhand and others** (referred supra), in paragraph 12, it was held that, 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 **Mohd. Khalid Khan v. State of Uttar Pradesh** (referred supra), the Supreme Court held that, when civil suit is pending where the ownership of the property has to be decided in the pending suit and the subject matter of the suit, in such

circumstances, pending civil litigation, criminal proceedings cannot be primarily prosecuted.

If, these principles are applied to the present facts of the case, when civil suit is pending before the competent court for comprehensive reliefs and the dispute is with regard to alleged fabrication and forgery of the documents, in a civil suit as well as in the complaint, to avoid conflicting judgments, I am of the view that the proceedings in criminal case have to be quashed while giving liberty to these petitioners to renew their request by filing a fresh complaint after disposal of the civil suit, since the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC are punishable with imprisonment upto 7 years and the limitation will not come in the way of the prosecution to file a compliant afresh on the basis of findings recorded by the civil court.

If, for any reason, this type of practice is encouraged in every civil suit, there will be parallel criminal proceedings, more particularly, in suits for title and even for recovery of money on the basis of promissory notes and cheques. Unless the Courts, atleast in the higher courts curb such practices, the parties may go on abusing process of the Court to wreck vengeance against one another, thereby giving colour of criminality to civil litigation, pending on the file of different Courts. To prevent such abuse, Criminal Procedure Code conferred power on the High Court to exercise power under Section 482 Cr.P.C to quash the proceedings to meet the ends of justice, while rendering *ex debito* justice.

Section 482 of Cr.P.C saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

In “***R.P. Kapur v. State of Punjab***”⁶, the Apex Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but

⁶ AIR 1960 SC 866

there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar”***⁷

In **State of Haryana v. Bhajan Lal**⁸ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying down the following

⁷ AIR 1990 SC 494

⁸ 1992 Supp. (1) SCC 335

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.

(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.

The guidelines laid down by the Apex Court made it clear that, when the allegations made in the F.I.R or charge sheet, on its face value would not constitute an offence, the Court can exercise its inherent jurisdiction and quash the proceedings. Similarly, when the complaint was lodged as an abuse of process of the court, the Court can exercise its inherent jurisdiction and quash the proceedings.

Even in “**Gian Singh V. State of Punjab**”⁹, a three-Judge Bench of the Apex Court held that “in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorized, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”

If this principle is applied to the facts of the present case, it is clear that certainly civil litigation is given cloak of criminal offence and such practice cannot be encouraged by the Court.

⁹ (2012) 10 SCC 303

Learned counsel for the second respondent while contending that, when the allegation made in the complaint discloses commission of an offence, as well as civil wrong and criminal offence, the Court cannot exercise its power under Section 482 Cr.P.C and quash the proceedings. Learned counsel placed reliance on the judgment in **Kamaladevi Agarwal v. State of West Bengal** (referred supra), wherein, the Apex Court was of the view that criminal proceedings should not be quashed merely because of pendency of civil proceedings between the same parties, even if it be pending in a higher Court, nature and scope of and standard of proof required in civil and criminal proceedings are distinct and the inherent power under Section 482 Cr.P.C should be exercised sparingly.

Similar view was expressed in another judgment of the Supreme Court in **R. Kalyani v. Janak C. Mehta and others** (referred supra), wherein, the Apex Court highlighted the power of the High Court under Section 482 Cr.P.C while holding that there must be a confined to the object and purport for which it has been created and in paragraph No.14, the Apex Court held as follows:

“The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire 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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage.

9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

Thus, the two judgments relied on by the learned counsel for the respondents in **Kamaladevi Agarwal v. State of West Bengal** (referred supra), as well as the other judgment rendered by the learned single Judge of this Court in **G.B.C. Raj Gopal v. Government of Andhra Pradesh** (referred supra), concludes that even in a civil dispute with an element of criminality, such as in the case of personal injury or trespass, police officers are entitled only to take action against the criminal element of the civil dispute,

and not interfere with the civil dispute itself. For instance, if the personal injury in a civil dispute attracts the ingredients of Section 354 IPC, and "trespass" in a civil dispute attracts the provisions of Sections 447 and 448 IPC, then the information or the complaint received must be registered under Section 154(1) Cr. P.C., as they are cognizable offences, and an investigation should only be caused thereafter. Section 41(1)(a) &(b) CrPC enable a police officer to arrest, without an order from a Magistrate and without warrant, any person who has either committed or is alleged or is suspected to have committed a cognizable offence. This power is not to be exercised for the mere asking. Section 41 Cr. P.C. requires a police officer, before arresting any person, to be satisfied that such an arrest is necessary in terms of clauses (a) to (e) of Section 41(1)(b)(ii) Cr. P.C. It also requires him to record, while making such arrest, his reasons therefor in writing. Even in civil disputes with an element of criminality, while the police officer can exercise his powers under Section 41 and 41A CrPC during the course of investigation, he cannot adjudicate or resolve property/civil disputes.

If, these principles are applied to the present facts of the case, the law declared by the Apex Court in effect that, when a particular incident disclosed both commission of offence in a civil wrong, it is for the parties to proceed either in civil court or criminal court or in both, since the fundamental difference between civil and criminal proceeding is that, in a civil court, the court can grant specific relief or allow remedies, but in criminal case, if the court finds the accused guilty, the court imposes

sentence on him in accordance with law. But, such question does not arise in civil proceedings. Therefore, the proceedings in criminal court leads to penal consequences, but in civil cases, the Court will grant only civil remedy to the parties who approached the court. But, in the present case, the main grievance of the petitioners before this Court is that, when a civil suit is pending where the genuineness of the documents can be decided, resorting the criminal proceedings is an abuse of process of the Court. But, in view of the conflicting judgments of the coordinate benches, it is difficult to follow either of the judgments. However, taking into consideration the facts and circumstances of the case, I am of the considered view that, it is appropriate to give liberty to the second respondent/defacto complainant to file a complaint afresh on disposal of the civil suit, since there is no limitation for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC, as they are punishable with imprisonment for 7 years. Accordingly, the point is answered.

P O I N T No.2

In view of the detailed discussion in Point No.1, it is not appropriate to record any finding on Point No.2, since this Court while deciding the mater on Point No.1, gave liberty to the second respondent/defacto complainant to file a complaint afresh on the disposal of O.S.No.1087 of 2017 & O.S.No.551 of 2018 pending on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District, as such, no finding is recorded. Accordingly, this point is answered.

In view of my finding on Point No.1, this criminal petition is allowed by quashing the proceedings against the petitioners herein/A-1 to A-3 in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy, registered for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC, while giving liberty to the second respondent/defacto complainant to file a complaint afresh on the disposal of O.S.No.1087 of 2017 & O.S.No.551 of 2018 pending on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District. However, the XV Additional District Judge at Kukatpally, Ranga Reddy District, is directed to decide both the suits, in accordance with law, uninfluenced by the observations if any, made in this order.

In the result, the criminal petition is allowed by quashing the proceedings against the petitioners herein/A-1 to A-3 in Crime No.513 of 2018 on the file of Gachibowli Police Station, Cyberabad, Ranga Reddy, registered for the offences punishable under Sections 419, 420, 427, 448, 467, 468, 120b, 506 r/w 34 IPC, while giving liberty to the second respondent/defacto complainant to file a complaint afresh on the disposal of O.S.No.1087 of 2017 & O.S.No.551 of 2018 pending on the file of XV Additional District Judge at Kukatpally, Ranga Reddy District.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 26.09.2018

SP