

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.2858 and 3291 of 2017

COMMON ORDER:

These two Criminal Petitions are filed under Section 482 Cr.P.C., by the petitioners/A.5 and A.6 to quash the proceedings in C.C.No.50 of 2017 on the file of XXIII Metropolitan Magistrate, Rajendranagar, for the offences punishable under Sections 420, 406 and 120-B IPC.

2. Petitioners are A.5 and A.6 in the aforesaid Calendar Case. Respondent No.2-Girish Malpani lodged a report with the Station House Officer, Raidurgam police station, Cyberabad, who in turn registered the same as a case in Crime No.60 of 2016 for the offences punishable under Sections 406, 420 and 120-B IPC and issued F.I.R. against the petitioners herein along with other accused. During investigation, the police recorded the statements of witnesses namely Sharadha Maheshwari, Shaik Sajjad Ahmed etc. After collecting necessary evidence and documents, the police filed a charge sheet before XXIII Metropolitan Magistrate, Rajendranagar, and cognizance was taken for the offences punishable under Sections 420, 406 and 120-B IPC in C.C.No.50 of 2017.

3. The allegations made in the charge sheet would go to show that in the month of April/May, 2010, 2nd respondent approached the Managing Director and the Director of M/s.Ambience Resorts & Motels Private Limited M.P.Agarwal and P.K.Agarwal with a proposal concerning takeover/acquisition of the said company. The 2nd respondent entered into a term sheet on 17.05.2010 with

the said M.P.Agarwal and P.K.Agarwal, and subsequently, entered into a Share Purchase Agreement with them along with one Ashok Ummat on 25.06.2010. During the course of respondent No.2's discussion with M.P.Agarwal and P.K.Agarwal, he was informed that the company owned 4008 square yards of land in survey Nos.4 and 6 of Hussain Shah Walidargah Village, Serlingampally Municipality, Ranga Reddy District, and that in relation to another extent of land admeasuring 1950 square yards in the same area, which forms part of the company's property and is a part of the area of the Walden Club managed by the company, an application for regularization was also made under G.O.Ms.No.166.

As per the Share Purchase Agreement M.P.Agarwal and P.K.Agarwal are required to entrust to 2nd respondent with the management of the company and accordingly, the 2nd respondent was inducted as Director of the company and was also put in possession and complete management of said the company. Subsequently, the 2nd respondent-complainant commenced some renovation and alteration work to develop 'Walden Club', the said M.P.Agarwal, P.K.Agarwal having connived and conspired with representatives of Whisper Valley Association, sought to obstruct the construction work commenced by the 2nd respondent on the ground that he was not entitled to commence the construction in the property as the said property belongs to association, over which M/s.Ambience Resorts and Motels Private Limited had no right. In fact, the society took law into their hands and did not permit the own life members also to access the club.

On account of objections raised by the representatives of the Whisper Valley Owners' Association, the 2nd respondent was

constrained to file Arbitration O.P.No.590 of 2011 before VII Additional District and Sessions Judge, Ranga Reddy District, as representative of the company to protect its rights and sought an injunction under Section 9 of the Arbitration and Conciliation Act, 1996, to restrain the representatives of the association from causing unnecessary obstruction to the work that the 2nd respondent commenced. The association filed its counter in the said O.P., denying the right of the 2nd respondent herein and contended that the company had no right to construct in the said land as the land belongs to Whisper Valley Owners' Association. The trial Court, upon hearing the argument of both the counsel, dismissed the said O.P. as the property belongs to Whisper Valley Owners' Association and the building constructed in the site exclusively belongs to the Association.

It is specifically alleged that knowing fully well that there is an on going litigation with the 2nd respondent, M.P.Agarwal and P.K.Agarwal, despite its stand before the Civil Court in Arbitration O.P. that association owned the land, in which the 2nd respondent proposed to commence certain construction work, the representatives of Whisper Valley Owners' Association connived and conspired with M.P.Agarwal and P.K.Agarwal in an entirely illegal and fraudulent manner and caused to register an Agreement of Sale-cum-General Power of Attorney with respect to land admeasuring 4008 square yards of the company's property in its favour and others on 04.11.2015 vide agreement No.4642 of 2015. Thus, the said Agreement of Sale-cum-General Power of Attorney is a fraudulent act indulged by the association along with M.P.Agarwal and P.K.Agarwal though the association in its counter

affidavit filed in Arbitration O.P. had stated that the transaction of sale in relation to 4008 square yards in favour of the company was illegal and void and that the said property constituted part of the common areas and facilities and did not belong to the company. Once the association has taken such stand before the trial Court, the question of entering into the Agreement of Sale-cum-General Power Attorney does not arise and the transaction is contrary to the stand taken by the association along with other accused in the said Arbitration O.P., thereby, the act of association and the petitioners herein along with other accused is a clear case of conspiracy and cheating perpetrated by the Association, M.P.Agarwal and P.K.Agarwal. The association also committed the offence of perjury by misleading the Court by suppressing the real facts and also sought to cheat the 2nd respondent.

The 2nd respondent further contended that the intention to cheat and cause harm to him dishonestly is prevalent right from the beginning and the intention of cheating the 2nd respondent is evident from the fact that the association entered into an Agreement of Sale-cum-General Power of Attorney. Thus, the act of the petitioners and other accused inducing the 2nd respondent to part with huge amount believing their dishonest representation, would constitute an offence punishable under Section 420 IPC. Thus, the petitioners along with other accused allegedly committed the offence punishable under Section 420 IPC.

The representatives of the association along with M.P.Agarwal and P.K.Agarwal schemed against the 2nd respondent to entrap and dupe him for Rs.2.50 crores and succeeded in

completely cheating the 2nd respondent. Thus, the petitioners committed the offences referred to above.

4. The main ground urged before this Court is that the petitioner-M.Anantha Reddy in CrI.P.No.3291 of 2017 purchased land admeasuring 250 square yards from the General Power of Attorney holder-M.Ravi Reddy and similarly, the petitioner-Ravi Bokka Reddy in CrI.P.No.2858 of 2017 also purchased 250 square yards of site in dispute, under an Agreement of Sale-cum-General Power of Attorney from M/s. Ambience Resorts and Motels Private Limited, and being purchasers through a Power of Attorney holder, the petitioners cannot be made liable for any offence.

5. Learned counsel for the petitioners also contended that the dispute is purely civil in nature and giving colour of criminal offence to a civil dispute, is a ground to quash the proceedings against the petitioners in the aforesaid Calendar Case. Apart from that, it is contended that the petitioners are *bona fide* purchasers of the property for a valuable consideration from the Power of Attorney holder, and that the dispute between the representatives of the association, M.P.Agarwal and P.K.Agarwal is in relation to the property was settled by the Civil Court, and in such a case the question of commission of offence by these petitioners does not arise. It is further contended that purchase of property from Power of Attorney Holder would not constitute an offence.

6. The grounds raised in both the petitions are that the petitioner/A.5 in CrI.P.No.2858 of 2017 purchased 250 square yards of land under an Agreement of Sale-cum-General Power of Attorney and petitioner/A.6 in CrI.P.No.3291 of 2017 purchased

the same under a registered sale agreement and thereby, these petitioners cannot made liable for any of the criminal offence and prayed to quash the proceedings in C.C.No.50 of 2017 pending on the file of XXIII Metropolitan Magistrate, Rajendranagar.

7. During hearing, learned senior counsel Sri **S.Ravi** appearing for the petitioners/A.5 and A.6, mainly contended that purchase of property by the petitioner/A.5 and purchase of the same by A.6 under a registered sale deed, which is the subject matter in dispute, would not constitute an offence much less the offences punishable under Sections 120-B, 406 and 420 IPC. Even to constitute an offence punishable under Section 420 IPC, the 2nd respondent has to plead and prove that the petitioners had an intention to cheat him from the inception. Apart from that, entrustment of property and appropriation for his own etc., are the *sine qua non*, to constitute the offences alleged, but, without there being any material, the report was registered, investigated into and charge sheet was filed against these petitioners. Giving colour of criminal offence to a civil dispute cannot be encouraged and it amounts to abuse of process of Court and prayed to quash the proceedings in C.C.No.50 of 2017 against these petitioners. He also placed reliance on the following judgments namely, **State of Kerala v. P.Sugathan and another**¹; **Mohammed Ibrahim and others v. State of Bihar and another**²; **M.Srinivasulu Reddy and others v. The Station House Officer and others**³; **Thermax Limited and others v. K.M.Johny and others**⁴; **International Advanced Research Centre for Powder Metallurgy and New**

¹ (2000) 8 Supreme Court Cases 203

² (2009) 8 Supreme Court Cases 751

³ 2016 (1) ALD (CrL.) 1014 (AP)

⁴ (2011) 13 Supreme Court Cases 412

Materials (ARCI) and others v. Nimra Cerglass Technics Private Ltd and another⁵.

8. Refuting the contentions of learned Senior counsel for the petitioners, learned Senior Counsel Sri S. Niranjan Reddy, appearing on behalf of Sri N.Naveen Kumar, learned counsel for the 2nd respondent, contended that sale of property by executing an Agreement of Sale-cum-General Power of Attorney in favour of A.5 by the association and in turn execution of Registered Sale deed by A.5 in favour of A.6, would constitute the offence as they committed perjury and unless there is connivance between the parties to the transaction, the question of executing such document conveying an extent of 250 square yards by the Association in favour of A.5, who in turn transferring in favour of A.6, does not arise, The offence of conspiracy can be inferred from the circumstances of the case as it is difficult for anybody to prove such criminal conspiracy by direct evidence.

Making a representation with a dishonest intention to part with 2.50 crores by the 2nd respondent to enter into a transaction itself would suffice to conclude that the accused including these petitioners have cheated the 2nd respondent with dishonest intention to part with huge amount, which is punishable under Section 420 IPC and prayed to dismiss the petitions. He further contended that permission to prosecute the proceedings sought by Power of Attorney holder cannot be granted, while placing reliance on bunch of judgments reported in **T.C. Mathai and another v. District & Sessions Judges, Tiruvananthapuram⁶; Jimmy Jahangir Madan v. Bolly Cariyappa Hinbley (Dead through**

⁵ (2016) 1 Supreme Court Cases 348

⁶ (1999) 3 SCC 614

LRs)⁷; **Jayanth Daniel Thorat v. State of Punjab and another, High Court of Punjab and Haryana**⁸, learned counsel for the 2nd respondent further contended that the petition under Section 482 Cr.P.C. to quash the proceedings through power of attorney holder is not maintainable. Similarly, while placing reliance on a decision reported in **Sirima Narasimha Rao v. State of A.P.**⁹ contended that the fact that some members of conspiracy, though not from the starting but joined later, does not make them not liable to conviction. If some accused join at later stage, it cannot be said that they are not members of conspiracy. They are members thereof, provided their act is calculated to promote the object of conspiracy, and hence, proceedings cannot be quashed. He also placed reliance on the judgments of **K.R.Puroshatham v. State of Kerala**¹⁰, **Ajay Agarwal v. Union of India and others**¹¹, **Suresh Chandra Bahri v. State of Bihar**¹², **Ramnarayan Poply v. CBI**¹³, **Sushil Suri v. CBI**¹⁴, with regard to criminal conspiracy. He further contended that the relevant factor is that all means adopted must be illegal acts done must be and purported to be in furtherance of object of conspiracy which is the prime consideration, and to support this contention, he has drawn the attention of this Court to a judgment reported in **Yashpal Mittal v. State of Punjab**¹⁵, wherein it is held that whether the accused was aware that such deeds were executed for getting unlawful gains, which may cause injury to another person, as defined under

⁷ (2004) 12 SCC 509

⁸ CRM No.M-1059 of 2010

⁹ 2009 SCC Online AP 903

¹⁰ (2005) 12 SCC 631

¹¹ (1993) 3 SCC 609

¹² 1995 Supp (1) SCC 80

¹³ (2003) 3 SCC 641

¹⁴ (2011) 5 SCC 708

¹⁵ (1977) 4 SCC 540

Section 44 IPC, is a matter which can be established only on adducing evidence, and therefore, such proceedings cannot be quashed at the threshold exercising the power under Section 482 Cr.P.C. In support of this contention, he has also drawn the attention of this Court to the judgment of the Apex Court in **State of Madhya Pradesh v. Surendera Kori**¹⁶. On the strength of the above judgments, learned Senior Counsel Sri S.Niranjan Reddy prayed for dismissal of both the petitions.

9. Considering rival submissions and perusing the material available on record, the points that arise for consideration are as follows:

- 1) *Whether the petitioner/A.5, who entered into an Agreement of Sale-cum-General Power Attorney with the association and in turn execution of registered sale deed by A.5 in favour of A.6, who allegedly purchased land to an extent of 250 square yards from General Power of Attorney holder would constitute the offences punishable under Sections 120-B, 406 and 402 IPC ?*
- 2) *If so, whether they are liable to be proceeded in C.C.No.50 of 2017 pending on the file of XXIII Metropolitan Magistrate, Rajendranagar ?*

10. **POINTS**

The rival contentions raised by both parties are extracted in the earlier paras including the allegations made against the petitioners/A.5 and A.6 in C.C.No.50 of 2017 pending on the file of XXIII Metropolitan Magistrate, Rajendranagar, for the offences punishable under Sections 120-B, 406 and 420 IPC. In view of rival contentions, it is appropriate to advert to the scope of Section 482 Cr.P.C., to exercise inherent jurisdiction to quash the proceedings.

¹⁶ (2012) 10 SCC 155

11. According to the petitioners, they are not liable to be proceeded for any offence, since they are only *bona fide* purchasers under an Agreement of Sale-cum-General Power of Attorney. A.6 is the purchaser from A.5-power of attorney holder under an Agreement of Sale. The main thrust of counsel for the 2nd respondent is that merely because these petitioners entered into transaction subsequently much later to the civil dispute, it is not a ground to quash the proceedings. In any view of the matter, the allegations made in the complaint are not in dispute. But, the duty of the Court is to find out whether those allegations, even if accepted on its face value as true and correct, would it constitute any of the offences alleged against the petitioners or not.

12. The first offence allegedly committed by the petitioners along with others is punishable under Section 406 IPC. The main contention of learned counsel for the petitioners before this Court is that when there was no trust between the parties, there is no relationship of trustee and beneficiary, and in the absence of any entrustment, the 2nd respondent cannot proceed against these petitioners and it would not constitute an offence punishable under Section 406 IPC. Section 406 IPC deals with punishment for criminal breach of trust. The criminal breach of trust is defined under Section 405 IPC. To constitute the offence of criminal breach of trust, it must be proved that the beneficial interest in the property, in respect of which the offence is alleged to have been committed, was vested in some person other than the accused, and that the accused held that property on behalf of that person. A relationship is created between the transferor and transferee,

whereunder the transferor remains the owner of the property and the transferee has legal custody of the property for the benefit of the transferor himself or transferee has only the custody of the property for the benefit of the transferor himself or someone else. At best, the transferee obtains in property entrusted to him only special interest limited to claim for his charges in respect of its safe retention, and under no circumstances does he acquire a right to dispose of that property in contravention of the condition of the entrustment as held in **Jaswantraai Manilal Akhaney v. State of Bombay**¹⁷. The word 'entrustment' is not defined, but, it is used in Section 405 IPC. The word 'entrusted' in the section is very important. Unless there is an entrustment, there can be no offence under the section as held in **Ramaswami Nadar v. State of Madras**¹⁸.

13. To constitute an offence under Section 406 IPC and the offence of criminal conspiracy, the prime requirement is entrustment of property and appropriation for his own or for any other purpose against the directions issued by trustee. Therefore, the basic requirements to bring home the accusation under Section 406 IPC are entrustment and whether the accused acted with dishonest intention or misappropriated it, converted it to his own use to detriment of the person, who entrusted it, as held in **Sadhupati Nageswara Rao v. State of Andhra Pradesh**¹⁹.

Therefore, unless the complaint discloses all these requirements to constitute the offence, the petitioners cannot be proceeded. In fact, it is not the case of the 2nd respondent that he

¹⁷ AIR 1956 SC 575

¹⁸ AIR 1958 SC 56

¹⁹ AIR 2012 SC 3242

entrusted any property to the petitioners/A.5 and A.6 to constitute an offence. In the absence of any allegation regarding relationship of trustee and beneficiary, commission of offence by the petitioners for breach of trust does not arise.

14. A similar question came up in **Indian Oil Corporation v. NEPC India Ltd. And others**²⁰, wherein the Apex Court discussed that what amounts to an offence of breach of trust and it was further observed as under:

- a) a person should have been entrusted with property; or entrusted with dominion over property;
- b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;
- c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharge, or of any legal contract which the person has made, touching the discharge of such trust. The following the examples (which include illustrations under Section 405 where there is 'entrustment':
 - (i) An 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.
 - (ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.
 - (iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.
 - (iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.
 - (v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
 - (vi) A servant or agent with reference to the property of the master or principal.
 - (vii) A pledge with reference to the goods pledged by the owner/borrower.
 - (viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust

²⁰ (2006) 6 SCC 736

(Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor)."

(emphasis supplied)

15. In **Chellor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin**²¹, the Apex Court held as follows:

"to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."

(emphasis supplied)

16. In the case on hand, in the complaint there was absolutely no allegation against these petitioners regarding entrustment or misappropriation or conversion of the property for their own benefit to constitute an offence punishable under Section 406 IPC. Therefore, in the absence of any such allegation, the petitioners cannot be proceeded for the offence punishable under Section 406 IPC. Even the statements recorded by the Investigating Officer during the course of investigation would not disclose the ingredient of entrustment to constitute offence under Section 406 IPC. In the

²¹ AIR 1953 SC 478

absence of any allegation in the charge sheet and the statements recorded by the Investigating Officer under Section 161 Cr.P.C., the petitioners cannot be driven to undergo trauma of trial in a criminal prosecution. Therefore, in the absence of sufficient material, the petitioners are entitled to seek quashment of the proceedings.

17. The other offence allegedly committed by the petitioners is punishable under Section 420 IPC. Section 420 IPC deals with punishment of cheating and dishonestly inducing delivery of property. To constitute an offence of cheating and dishonestly inducing delivery of property, the prosecution has to firstly prove that there is dishonest intention from the very beginning, which is a *sine qua non* to hold that the accused is guilty of the commission of said offence as held by the Apex Court in **Joseph Salvaraj Vs. State of Gujarat**²². Even if the allegations made in the complaint are accepted to be true and correct, the petitioners cannot be said to have committed the offence of cheating. Since the petitioners were not at all in picture at the time when the complaint alleged to have spent money in improving the bottling plant, neither any guilty intention can be attributed to them nor can there possibly be any intention on their part to deceive complainant as held by the Apex Court in **Mitra v. State of Madhya Pradesh**²³. The offence of cheating is established when the accused thereby induced that person to deliver any property or to do or to omit to do something which he would otherwise not have done or omitted as held by the Apex Court in **Mahadeo v. State of Bengal**²⁴. Thus, the main

²² AIR 2011 SC 2258

²³ AIR 2003 SC 1069

²⁴ AIR 1954 SC 724

ingredients to constitute an offence punishable under Section 420 IPC are that there must be cheating coupled with dishonest intention to part with any property.

18. In **V.Y.Jose and another v. State of Gujarat and another**²⁵, the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 IPC at paragraph 14 which read thus:

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- i) deception of a person either by making a false or misleading representation or by other action or omission;
- ii) fraudulently or dishonestly inducing any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.”

19. Mere using the words ‘deceit’ and ‘in conspiracy’ against these petitioners as A.5 purchased part of property i.e., 250 square yards, under an agreement of sale-cum-General Power of Attorney and A.6 who allegedly purchased the same under a registered sale deed from A.5 being power of attorney holder-cum-agreement holder, would not constitute an offence, unless, they made any false representation inducing the 2nd respondent to part with any property.

²⁵ (2009) 3 Supreme Court Cases 78

20. In **Nagawwa v. Veeranna Shivalingappa Kojalgi**²⁶, the Apex Court held that the appellant therein has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation and hence, it would not attract offence punishable under Section 420 IPC. In **ALPIC Finance Ltd v. P.Sadasivan and another**²⁷ while dealing with an offence punishable under Section 420 IPC, the Apex Court reiterated the ingredients to constitute an offence punishable under Section 420 IPC at paragraph 10, which read as follows:

“The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is

²⁶ (1976) 3 SCC 736

²⁷ (2001) 3 Supreme Court Cases 513

deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”

In view of the above, to deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of fraud or deceit.

21. In **Thermax Limited and others v. K.M.Johny and others**²⁸, the Apex Court laid down certain principles to constitute the offences punishable under Sections 406 and 420 read with 34 IPC, which are extracted hereunder for better appreciation:

“34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

42. We have already noted that the offence alleged in the criminal complaint filed by Respondent No. 1 is under Sections 405 and 420 IPC where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Appellant No. 1-Company can be prosecuted under the alleged complaint.

49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those

²⁸ (2011) 13 Supreme Court Cases 412

infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the Appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No. 1 herein is quashed.”

As discussed above, in the absence of any deceit and dishonest inducement of any person to part with any property or valuable security, the petitioners herein cannot be driven to undergo trauma of trial in a criminal prosecution since, undergoing trial in criminal case will have serious consequence of life and liberty.

22. Turning to the facts of the present case, the 2nd respondent lodged a report with the police on 05.02.2016 against these petitioners and others. The allegations made against these petitioners are that the representatives of Whisper Valley Association along with M.P.Agarwal and P.K.Agarwal schemed against the 2nd respondent to entrap and dupe him of Rs.2.50 crores and indulged in criminal breach of trust. But, no specific allegation is made against these petitioners, who are purchasers of part of the property. Even as per the statements of Sharadh Maheshwari and Shaik Sajjad Ahmed, no allegation is made against these petitioners to constitute an offence punishable under Section 406 IPC.

23. The allegations made in the petition are that the representatives of Whisper Valley Owners' Association filed a false sworn affidavit before the Court. Sri Ravi Bokka Reddy, represented by his power of attorney holder Sri K.Satish,

M/s.Ambience Resorts and Motels Private Ltd., represented by M.P.Agarwal and P.K.Agarwal, issued notice for cancellation of the above fraudulent and criminal activity, but the said Ravi Bokka Reddy did not respond and thereby attempted in involvement of conspiracy. It was also further averred that A.5 and A.6 failed to respond to the notice, warrants were issued against them. But, contrary to the terms of layout, an extent of 250 square yards was purchased by A.5 and A.6 under registered sale deed. The above property of 250 square yards is a part of common area of the layout and once the common area is earmarked in the layout, they automatically form part of layout and thus, the sale deeds are illegal and avoid. Whisper Valley Owners' Association basing on the layout plan submitted before the Court in Arbitration O.P.No.549 of 2011, which was dismissed by the trial Court, have categorically made an admission that it is settled legal position that space provided for amenities should not be sold, but they alienated the property. Finally, it is contended that A.1 and A.2, representing M/s. Ambience Company Limited induced the complainant to purchase 100% shares of the company falsely claiming the company to be owner of the above specified properties which actually are open areas belonged to M/s. Whisper Valley Owners' Association and made the complainant to part with huge amount in favour of A.1 and A.2. Later A.1 and A.2 connived with A.3 and claimed the properties to be open areas belonging to Whisper Valley Owners' Association and deposed before the trial Court in O.P.No.549 of 2011 that the above said properties are public properties and not saleable. But, later they had deliberately alienated the same properties by conspiring with A.4 to A.6 with an

intention to cause wrongful loss to the complainant and for their wrongful gain. Thus, all the accused committed the said offences. Even if these averments are taken into consideration and accepted on its face value, A.1 and A.2 while making a representation that these properties belong to them, entered into agreement with the 2nd respondent and made him to part with huge amount of Rs.2.50 crores though allegedly it exclusively belongs to A.3. Therefore, the role played by the petitioners herein along with A.4 who is purchaser of property under registered sale deeds, which is open space for public purpose as per the layout of Whisper Valley Owners' Association. Purchase of property by third parties would not constitute an offence punishable under Section 420 IPC as held by the Apex Court in **Mohammed Ibrahim's case** referred supra and at paragraph 20 it was held as follows:

“When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But, in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused and therefore, held that the purchaser of a property on a representation made by his vendor cannot be made liable for punishment for the offence punishable under Section 420 IPC. Since the act of executing the sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

24. If this principle is applied to the present facts of the case, it is clear that there was no deception of person either by making a false or misleading representation or by dishonest concealment or

by any other act or omission; fraudulent or dishonest inducement of that person either to deliver any property or to consent to the retention thereof by any person or to intentionally induce the 2nd respondent by these petitioners so deceived to do or omit to do anything and such omission caused any damage or harm to the 2nd respondent.

25. Thus, the acts allegedly done by the petitioners, would not constitute the offence punishable under Section 420 IPC in view of law declared by the Apex Court in **Mohammed Ibrahim's case** referred supra.

26. Learned Senior Counsel appearing for the petitioners also drew the attention of this Court to judgment of the Apex Court in **International Advanced Research Centre for Powder Metallurgy's case (supra)**, wherein the Apex Court discussed about distinction between cheating and breach of contract and held that it would depend upon intention of accused at the time of alleged inducement. If it is established that intention of accused was dishonest at the very time when he made promise and entered into transaction with complainant to part with his property or money, then liability is criminal and accused is guilty of offence of cheating. However, if all that is established, the representation made by accused was subsequently not kept, criminal liability cannot be foisted on accused and only right which complainant acquires is remedy for breach of contract in civil Court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction and continuation of criminal

proceedings against the person, who is not *prima facie* guilty of the offence punishable under Section 420 IPC is not just and proper and in the interest of justice, the Apex Court quashed the proceedings against the accused therein.

27. It is not the case of the 2nd respondent that at any stage these petitioners made any dishonest misrepresentation and made him to part with the property. Even in the last para of the charge sheet, it is stated that A.1 and A.2 induced the 2nd respondent to purchase 100% shares of the company claiming that the company is owner of the specific property which are open areas belonging to Whisper Valley Owners' Association. If these averments are taken on their face value, those allegations do not constitute an offence punishable under Section 420 IPC and the petitioners/A.5 and A.6 cannot be made responsible for such dishonest misrepresentation made by A.1 and A.2 to rope them with the offence punishable under Section 420 IPC *prima facie*. Therefore, the Court find absolutely no material against these petitioners to constitute offences punishable under Sections 406, 420 and 120-B IPC even if the allegations made in the charge sheet are accepted on its face value. Consequently, I find no material to constitute the offence allegedly committed by these petitioners and hence, the proceedings for the offence punishable under Section 420 IPC are liable to be quashed against these petitioners.

28. The other offence committed by the petitioners allegedly is punishable under Section 120-B IPC. Section 120-B IPC deals with punishment of criminal conspiracy. The word 'criminal

conspiracy' is defined under Section 120-A IPC, which reads as follows:

“ When two or more persons agree to do, or cause to be done,

- 1) an illegal act, or
 - 2) an act which is not illegal by illegal means,
- such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

29. To constitute the offence of criminal conspiracy, the essential ingredient is the agreement to commit an offence. Mere proof of such agreement is sufficient to establish a criminal conspiracy. The essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or circumstantial evidence or by both. Direct evidence to prove conspiracy is rarely available and therefore, the circumstances proved during and after occurrence are to be considered to decide complexity of the accused. Circumstances relied on for the purpose of drawing an inference should be prior in point of time when an actual commission of offence in furtherance of alleged offence.

30. In view of law discussed above to constitute an offence punishable under Section 120-B IPC unless the petitioners show that there was a prior agreement between the parties i.e., prior to obtaining sale deeds for an extent of 250 square yards which the 2nd respondent allegedly purchased, the petitioners cannot be proceeded.

31. Learned counsel for the petitioners while contending that in the absence of any *prima facie* material to constitute an offence punishable under Section 120-B IPC as defined under Section 120-A IPC, proceedings against the petitioners are liable to be quashed. In support of his contention, he would draw the attention of this Court in **State of Kerala v. P.Sugathan and another**²⁹, where the Apex Court held that to establish an offence on the basis of circumstantial evidence, the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. Circumstances should be prior in time than actual commission of offence. Conspiracy is a continuing offence and any act committed by any of the conspirators during subsistence of the conspiracy would attract the offence punishable under Section 120-B IPC. The judgment referred above is arising out of an appeal against conviction (after full-fledged trial).

32. In **M.Srinivasulu Reddy and others v. The Station House Officer and others**³⁰. The facts in the above judgment are almost identical to the facts of the present case. In paras 16, 17 and 20 of the said judgment, it was held as under:

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner of falsely claiming to be authorised or empowered by the owner, to execute the deed on owner’s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he

²⁹ (2000) 8 Supreme Court Cases 203

³⁰ 2016 (1) ALD (Cri.) 1014

may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted. Section 420 IPC.

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused."

33. Learned counsel for the 2nd respondent while raising several contentions with regard to conspiracy, would draw the attention of this Court to various judgments of the Apex Court referred to above. But, those decisions will be dealt with at a later point of time. Before advertng to law laid down by the Apex Court, to constitute an offence punishable under Section 120-B IPC, it is necessary to advert to the allegations made in the complaint against these petitioners to attract the offence punishable under Section 120-B IPC. It is the case of the 2nd respondent that he

entered into an agreement with A.1 and A.2 for purchase of 100% shares and parted with an amount of Rs.2.50 crores and when he started construction work, A.3 allegedly obstructed the 2nd respondent and executed an Agreement of Sale-cum-General Power of Attorney in respect of 4008 square yards of company's property in favour of others on 04.11.2015. Therefore, the said Agreement of Sale-cum-General Power of Attorney is fraudulent act of Whisper Valley Owners' Association along with M.P.Agarwal and P.K.Agarwal. The 2nd respondent allegedly entered into term sheet against A.1 and A.2. M.P.Agarwal and P.K.Agarwal though purchased 100% shares and though those two persons fraudulently represented that they are owners etc., but, in fact, Whisper Valley Owners' Association is the owner of the alleged site as per the layout plan. The allegations made in the charge sheet are suffice to conclude that the property allegedly purchased by these petitioners is reserved site for public purpose in the layout of Whisper Valley Owners' Association. But, the 2nd respondent is unconcerned with the ownership of the land if it belongs Whisper Valley Owners' Association and purchase of part of property by these petitioners from Whisper Valley Owners' Association would not constitute any offence punishable under Section 120-B IPC since there was no agreement to do an illegal act or a legal act by illegal means between them. If for any reason, these petitioners purchased such property, the person aggrieved is the Whisper Valley Owners' Association. Dismissal of O.P.No.590 of 2011 is another strong circumstance to conclude that the property originally belongs to Whsipr Valley Owners' Association. When the 2nd respondent allegedly purchased the property from M.P.Agarwal

and P.K.Agarwal, which does not belong to them, he may entitled to be proceeded against them, but not against these petitioners, who purchased the property under various documents. Even the statements of Girish Malpani-2nd respondent recorded under Section 161 Cr.P.C. during investigation would not disclose the alleged agreement between the petitioners and the owner of the property. Even if these allegations that are made in the charge sheet are accepted, the petitioners purchased property from its owner i.e, Whisper Valley Owners' Association. In view of findings recorded in O.P., and that apart the civil litigation in O.S.No.549 of 2011 filed by the Whisper Valley Owners' Association is pending, as per the last para of the statement of the 2nd respondent recorded under Section 161 Cr.P.C. by the Investigating Agency. At best, the allegations made in the charge sheet may enable the 2nd respondent to proceed against M.P.Agarwal, P.K.Agarwal, A.1 and A.2 but not against these petitioners, who are purchasers of the property from a different person i.e., Whisper Valley Owners' Association.

34. Learned counsel for the 2nd respondent contended that some members of conspiracy are not the members from the starting point, but joined the conspiracy only at a later date does not make them any less liable for conviction, and if some of the accused came only at a later stage, it cannot be said that they are not members of conspiracy, still they are members provided their act is calculated to promote the object of conspiracy and thus the petitioners came and conspired with the members of original conspiracy and obtained sale deeds. But, there was no specific allegation that these petitioners came and joined with other

members, who conspired and purchased the property. Therefore, the principle laid down in **Sirima Narasimha Rao's case** referred to above has no application to the present facts of the case. Though in the judgment, the Court discussed about the offence punishable under Section 120-B read with 34 IPC and Section 302 read with 34 IPC and held that the conspiracy is a matter of inference deduced from certain criminal acts of the accused done in pursuance of the apparent criminal purpose in common between them. The fact that some members of conspiracy are not members from the start but joined the conspiracy only later does not make them any less liable to conviction. In a conspiracy, persons are often required to do various acts at various stages, and if some of the accused come in only at a later stage, it cannot be said that they are not members of conspiracy. They are members thereof, provided their act is calculated to promote the object of the conspiracy. It can be inferred from the circumstances proved.

35. In **K.R.Puroshatham's case** (supra), the Apex Court relying on earlier judgment in **State v. Nalini**³¹, held that the unlawful agreement is a *sine qua non* for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion of the plan, would not *per se* constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

³¹ (1999) 5 SCC 253

36. In **Ajay Agarwal v. Union of India's case (supra)**, the Apex Court held that the question is whether prior sanction of the Central Government is necessary for the offence of conspiracy under proviso to Section 188 of the Code of Criminal Procedure to take cognizance of an offence punishable under Section 120-B IPC or to proceed with trial. The Apex Court laid down ingredients to constitute the offence of criminal conspiracy under Section 120-A IPC and held that it is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: 1) agreement 2) between two or more persons by whom the agreement is effected; and 3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in **King v. Jones**³² as an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means'. In para 24 of the same judgment, the Apex Court reiterated the same principle. In **Suresh Chandra Bahri' case (supra)** at para 96 reiterated the same principle i.e., the essential ingredients to constitute an offence of criminal conspiracy referred supra.

37. In **Ramnarayan Poply's case (supra)** at para 35 it was also discussed about the ingredients to establish to constitute an offence punishable under Section 120-B IPC. In **Yashpal Mittal's case (supra)** in para 9, the Apex Court held that offence of criminal conspiracy under Section 120-A IPC is a distinct offence

³² (1832) 4 B & Ad 345

introduced for the first time in 1913 in Chapter V-A of IPC. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of action with one object to achieve the real end of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

38. Similarly, in **State of Madhya Pradesh's case (supra)**, the Apex Court had occasion to deal with an identical situation in para 23 it was held that the question is whether the respondent was aware that such deeds were executed for getting unlawful gain, which may cause injury to another person as defined under Section 44 of the Penal Code is a matter which can be established only on adducing evidence. This principle has no application to the present facts of the case. Since the petitioners are purchasers of property from the Whisper Valley Owners' Association and have

nothing to do with the property in dispute as contended by A.3 and as per the findings of the Civil Court in O.P. Therefore, making these petitioners to undergo trauma of trial for criminal offence by making bald allegations against them as they conspired together with other accused is nothing but an abuse of process of law and to bring them to the terms of the 2nd respondent and such fact cannot be permitted and such proceedings are liable to be scuttled at the threshold itself.

39. Learned counsel for the 2nd respondent contended that the complaint by power of attorney holder is not maintainable, to support his contention placed reliance on the judgment of the Apex Court reported in **T.C.Mathai's case and Jimmy Jahangir Madan's** wherein the Apex Court discussed about the prosecution of proceedings by power of attorney holder and accordingly, concluded that General Power of Attorney cannot be permitted to prosecute the proceedings. But, these two judgments are not relevant for deciding the present petition since the petitioner/A.5 is represented by its power of attorney holder and filed the present petition. But, A.6 filed the petition by himself personally, at best, the principle laid down in the above judgment may disable A.5 to maintain the petition since the power of attorney holder is not entitled to prosecute the proceedings as held in para 17 in **T.C.Mathai's case**. Even the principle laid down in the judgment is clear that an agent cannot become a 'pleader' for the party in criminal proceedings, and unless the party secures permission from the court to appoint him to act in such proceedings, the proceedings cannot be maintained. Similar view is expressed in **Jimmy Jahangir Madan's case** and held that the person is

entitled to continue prosecution can be represented by their power of attorney holder. However, if permission for such representation sought from the Court by those persons themselves the same will be granted. If such permission was sought by original complainant, but no such permission can be granted if the same is sought by General Power of Attorney. But, here, it appears that the petitioner/A.5 filed an application seeking permission to be represented by the power of attorney and ordered.

40. In **Jayanth Daniel Thorat v. State of Punjab and another**³³, the High Court of Punjab and Haryana discussed maintainability of a petition under Section 482 Cr.P.C, and it was held that even in case of proclaimed offenders, the petition under Section 482 Cr.P.C., can be filed through attorney. But, General Power of Attorney cannot be permitted to prosecute under Section 482 Cr.P.C. to quash the proceedings. But, the principle laid in judgment has no application to the present facts of the case since A.5 was staying outside the Country on his behalf a petition was filed represented by General Power of Attorney K.Satish. Hence, on the basis of this contention the claim of the petitioner in CrI.P.No.2858 of 2017 cannot be dismissed.

41. It is an admitted fact that the Civil suit filed by the Whisper Valley Owners' Association is pending before the competent Court and unless Civil dispute is decided by competent Court, it is difficult to decide the criminal liability of any one of the accused. Even if the contentions of the 2nd respondent are accepted, the 2nd respondent cannot proceed with against these petitioners being the

³³ CRM No.M-1059 of 2010

purchasers under an agreement of sale-cum-General Power of Attorney as held in **Mohammed Ibrahim's case (supra)** as they are not liable for prosecution. Lodging report and filing of charge sheet etc. would give rise to criminal prosecution and the Court can exercise its inherent jurisdiction in certain circumstances since the powers of this Court under Section 482 Cr.P.C. are inherent and such power can be exercised to give effect to the orders passed under the Code to prevent abuse of process of Court or to secure the ends of justice.

42. Keeping in view the scope of powers of the Court in **State of Haryana v. Bhajan Lal**³⁴, the Apex Court laid down certain guidelines, which reads as follows:

(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

³⁴ 1992 Supp. (1) SCC 335

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.

In view of guidelines referred to above, the proceedings against the petitioners cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance against the petitioners, who allegedly induced the 2nd respondent by dishonest misrepresentation to part with huge amount of Rs.2.50 crores. Moreover, a civil dispute is pending and remedy of the 2nd respondent in a civil Court is available even according to the allegations made in the complaint. Issue of summons after taking cognizance is a matter of serious concern. In “**Pepsi Foods Ltd. v. Judicial Magistrate**”³⁵ the Apex Court held as follows:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of

³⁵ (1998) 5 SCC 749

course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

43. In the case on hand, the facts are almost identical to the facts of judgment cited above. A civil suit pending with regard to sale of immovable property is purely civil in nature. Apart from that these petitioners being purchasers of part of the property, which the 2nd respondent allegedly purchased from A.1 and A.2 cannot be proceeded for trial for various offences referred to above as held by the Apex Court in **Mohammed Ibrahim’s case (supra)**. But, the 2nd respondent adopted arm-twist method to bring the petitioners to the terms of 2nd respondent which act directly amounts to abuse of process of the Court.

44. In **R.P. Kapur v. State of Punjab**³⁶, this 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;

³⁶ AIR 1960 SC 866

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

45. In **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others**³⁷, the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers 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.

46. In **State of Karnataka v. L. Muniswamy and Ors.**³⁸, the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is

³⁷ AIR 1990 SC 494

³⁸ AIR 1977 SC 1489

that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

In view of law declared by the Apex Court in various judgments referred to above, the petitioners being purchasers of part of property from Whisper Valley Owners' Association under a registered document and whereas the 2nd respondent allegedly purchased the property from M.P.Agarwal and P.K.Agarwal, A.1 and A.2 and claim of the Whisper valley owner association was upheld in Arbitration O.P.No.590 of 2011, who filed a civil suit O.S.No.549 of 2011 allegedly and pending for trial, the proceedings against these petitioners being purchasers cannot be continued and that apart the material produced before the Court along with charge sheet and allegations made in the complaint would not *prima facie* constitute the offences punishable under Sections 406, 420 or 120-B IPC. In such a case, the proceedings against these petitioners are liable to be quashed.

47. Accordingly, both the petitions are allowed quashing the proceedings in C.C.No.50 of 2017 pending on the file of XXIII Metropolitan Magistrate, Rajendranagar, against the petitioners herein /A.5 and A.6.

Miscellaneous petitions, if any, pending in these two petitions shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:24.01.2018
YVL

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION Nos.2858 and 3291 of 2017

Date:24.01.2018

YVL