

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2325 of 2014

ORDER:

This Criminal Revision Case is directed under Section 397 r/w 401 Cr.P.C., at the instance of *de-facto* complainant against the order dated 26.08.2014 in CrI.M.P.No.1422 of 2013 in C.C.No.1538 of 2009 passed by IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, allowing the petition and discharging the respondents from criminal case registered for the offences under Sections 406 and 420 IPC and Sections 7, 24, 28 and 29 of A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 (for short "the Act").

2) To avoid pleonasm, the facts are not reproduced however, they will be discussed to the extent required at the relevant stage of this order.

3) Heard arguments of Sri K.Chidambaram, learned counsel for petitioner, Sri E.Ajay Reddy, learned counsel for respondents 1 to 3 and learned Additional Public Prosecutor (TS) for respondent No.4.

4a) Severely fulminating the impugned order, learned counsel for petitioner would argue that the charge sheet allegations and defence setup in discharge application by the accused would, by their nature, require a full-fledged trial to exhume the truth. However, the trial Court in slipshod manner accepted the contention of the accused and

discharged them on an erroneous appreciation of facts and material available on record.

b) The substance of his argument is that whether by virtue of the conveyance deed executed by the respondents in favour of JST Reality Limited (formerly DHLF Assets Reconstruction Corporation Limited) for establishment of Software Technology Park called as 'Jayabheri Silicon Towers', the drive way of 24 feet on either side which was promised to be allotted to 162 flat owners of Jayabheri Silicon County comprising Alpha, Beta, Gamma residential complexes situated to the further South of Jayabheri Silicon Towers was reduced from 24 feet to 16 feet width is a disputed fact in this case which can be determined only after full-fledged trial. However, the trial Court without considering this aspect in a proper perspective erroneously held that since the extent of the drive way to be allotted to the purchasers of flats was not mentioned in their sale deeds, the complainant cannot agitate its reduction from 24 feet to 16 feet. Learned counsel argued that the original HUDA technical approved plan vide proceedings No.G/229/LP/2718/98 dated 03.12.1999 would clearly depict the 24 feet drive way on either side of the residential complexes and therefore merely because in their respective sale deeds the width of the drive way is not specifically mentioned, it cannot be held that they have no case at all.

c) Learned counsel argued that while conveying 7322 sq. yds of site and subsequent development of Jayabheri Silicon Towers, the width of

drive way on either side was clandestinely reduced from 24 feet to 16 feet without putting the said fact to the knowledge of buyers of the flats. In their respective sale deeds, it was only mentioned that the site of 7322 sq.yds. which is lying to the South of the main road and to the North of Jayabheri Silicon County, is being set apart for development of Jayabheri Silicon Towers. However, in the respective sale deeds of flat buyers it was not specifically mentioned that the drive way of 24 feet width which was shown in HUDA approved plan was going to be reduced from 24 feet to 16 feet width in view of alleged revised proceedings No.6555/MP2/H/2001, dated 08.01.2002 said to be issued by HUDA wherein the said authority directed the accused to leave set backs to the extent of 14 meters on account of which, the drive way was reduced from 24 feet to 16 feet. Learned counsel would vehemently argue in the sale deeds of flat buyers the revised proceedings No.6555/MP2/H/2001 dated 08.01.2002 of HUDA is not at all mentioned, which amounts to sheer cheating. The buyers were only put to knowledge that 7322 sq. yds. of site was set apart for development of Jayabheri Silicon Towers of which 24 feet drive way on either side was part and parcel. The buyers were under the impression that in spite of such development, their drive way on either side would not be affected. He thus submitted the trial Court's view is not correct.

d) Then, with regard to another allegation that the total extent of 18521 sq. yds. relating to Jayabheri Silicon County was reduced to 16568 sq. yds., learned counsel argued the reduced area of 1953 sq. yds.

is in all probability included in Jayabheri Silicon Towers and this aspect also can be decided only after full-fledged trial. However, the trial Court negated the said allegation on a flimsy ground that IO has not taken steps to get the land surveyed through Government Department but he accepted the private survey report submitted by the complainant. Learned counsel vehemently argued that the admissibility and veracity of the evidence should have been relegated to trial instead of forming opinion in an enquiry under Section 239 Cr.P.C.

e) Nextly, learned counsel argued that the sale deeds of flat buyers would reveal that Sewage Treatment Plant was setup for common good of residents of Alpha, Beta, Gamma of Jayabheri Silicon County, but surprisingly the accused has sold the property to DHLF without the knowledge and consent of owners and thereby, depriving the water to green area of the residential complex.

f) He finally argued all the above facts would establish criminal breach of trust and cheating as envisaged under the Act and therefore the trial Court ought to have framed suitable charges and should have given an opportunity to the prosecution to establish its case. He thus prayed to allow the CrI.R.C.

5) Per contra, learned counsel for respondents 1 to 3 while supporting the order of the trial Court, would submit that the factum of Jayabheri Silicon Towers was proposed in an extent of 7322 sq. yds. was well delineated in the sale deeds of the complainant and other

buyers. He would submit, pursuant to revised plan approved by HUDA an extent of 14 meters was earmarked as set backs and thereby the width of the drive way was necessarily reduced from 24 feet to 16 feet. Since all the buyers have purchased the flats knowing that 7322 sq. yds. of the site to their North was set apart for Jayabheri Silicon Towers, they shall be deemed to know that the drive way which was part of aforesaid extent is bound to be reduced depending upon the revised plan. All the 162 purchasers have been living peacefully all these years and they never raised any issue as now raised by the complainant which is an after thought due to his dispute with the majority flat owners association. The trial Court having carefully considered the charge sheet allegations and the points of defence raised through the material placed by the prosecution itself, thoroughly satisfied that there was no sufficient ground to frame the charges and thus discharged the accused. He would submit the petitioner having failed in his attempt in the concerned civil proceedings now tried to turn a new leaf by lodging criminal proceedings without any iota of truth or contents in the complaint. Even assuming remotely that the allegations have any semblance of truth, the complainant may proceed before a civil court for recovery of alleged loss of the extent of the land and other amenities which he already tried and failed but he cannot convert the civil proceedings into a criminal case with impunity. He thus prayed to dismiss the CrI.R.C.

- 6) The point for determination is:

“Whether there are merits in this Crl.R.C to allow?”

- 7) **POINT:** The law on how to deal with discharge application under Section 239 Cr.P.C. is no more *res integra*.

- 8) In the decision reported in ***K. Ramakrishna and others vs. State of Bihar and others***¹ cited by the learned counsel for respondents, the Apex Court observed thus:

“Para-4. The Trial Court under Section 239 and the High Court under Section 482 of the Cr.P.C. is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State NCT of Delhi and Ors. MANU/SC/0155/1999:1999 Crl.LJ 1833, the High Court or the Magistrate are also not supposed to adopt a strict hyper-technical approach to sieve the complaint through a calendar of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.”

- 9) In ***Kuriachan Chacko vs. State of Kerala***² it was held no detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage. The exercise of weighing

¹ (2000) 8 SCC 547

² 2007 Crl.L.J. 4458 (Kerala)

materials in golden scales is certainly not to be undertaken at this stage and has to be postponed to trial.

10) In *Om Prakash and others vs. The State*³ it was observed that the real test for determining whether charge should be considered groundless is that where materials are such that even if unrebutted make out no case whatsoever.

11) With the above precedential jurimetrics on hand, it has now to be seen, whether the materials placed along with charge sheet if uncontroverted at this stage, framing of charges could be expedient or such exercise is sheer nugatory.

12) As rightly observed by the trial Court, the complaint and ofcourse charge sheet projected four main accusations.

1. *The accused without the knowledge and consent of complainant and other flat buyers sold the land earmarked as drive way shown in HUDA approved plan to DHLF and thereby drive way area was drastically reduced from 24 feet to 16 feet on either side.*

2. *While the total land set apart for Jayabheri Silicon County was 18521 sq. yds on which residential complex was developed by the accused, during subsequent sale held in favour of DHLF, an extent of 1953 sq. yds. was usurped by the accused without knowledge and consent of the flat buyers.*

3. *While the Sewage Treatment Plant was setup for the common maintenance of Jayabheri Silicon County Building Complex, the same was subsequently sold in favour of Jayabheri*

³ 1983 CrL.L.J. 1157 (Calcutta)

Silicon Towers thereby depriving the recycled water to the green area of residential complex.

4. *The accused have misused the corpus fund and failed to deliver the same in favour of flat owners' association.*

13) The trial Court on perusal of material and defence contention in the discharge petition, seemingly found no tangible ground to support allegations and ultimately discharged the accused. Before this Court, of the above, accusation No.4 is not much canvassed and hence our discussion is confined to remaining three only.

14) So far as 1st accusation is concerned, the version of accused as can be found in the discharge petition is that the accused have conceived a mixed development project in 6 acres or 29040 sq.yds as:

- 1) *Jayabheri Silicon Towers (IT Park) on the land measuring 7322 sq. yds. abutting the main road on South.*
- 2) *Jayabheri Silicon County (Residential Apartments) on the land measuring 18521 sq. yds. which is on the middle part of the land.*
- 3) *Club Jayabheri (Club House) on the land measuring 3197 sq. yds. in the rear part of the total land.*

a) While so, initially permission was obtained vide proceedings No.G/229/LP/2718/98, dated 03.12.1999 from HUDA and Serlingamapally Municipality for construction of apartment complex comprising of four blocks on the middle part of the total land and recreation building on the rear side. The said permit was revised by proceedings No.6555/MP2/H/2001, dated 08.01.2002 by HUDA, as per which, in the front part of the land instead of apartments, the developer

was permitted to construct Software/IT Park in 7322 sq. yds. Hence, in the middle part of the land of 18521 sq.yds, the developer constructed Jayabheri Silicon County comprising Alpha, Beta, Gamma blocks and on the rear part in an extent of 3197 sq.yds, they constructed club house. Now, the crucial fact submitted by the accused is that as per the revised permit, the HUDA authorities required the developer to leave set back of about 14 meters on front part of the building. So, out of the said 14 meters, the developer has earmarked 16 feet on either side for entry and exit to the residential apartment complex and club house and in the remaining extent, he raised 2 feet dividing wall with planter and drive way for IT Park. According to the accused, all the buyers have purchased the flats only subsequent to the above revised permit issued by HUDA which fact was also mentioned in their respective sale deeds and therefore, they new pretty well that 24 feet drive way as mentioned in the initial plan approved by HUDA was no more in existence in view of revised plan. They enjoyed their flats peacefully without any agitation for several years and it was only the complainant, who gave report to police subsequently with oblique motive.

b) While so, the contention of the complainant is otherwise. The accused by showing the residential plan approved by HUDA vide proceedings No.G/229/LP/2718/98 dated 03.12.1999 wherein the drive ways were shown with a width of 24 feet on either side, induced the complainant and others to purchase the flats in the residential complex. Believing the words of the accused that they would get spacious drive

ways of 24 feet width, complainant, LWs.2 and 3 and others entered into agreements of sale in 2002-2003 onwards basing on the aforesaid initial plan. However, without informing about the alleged revised permit, accused have constructed Jayabheri Silicon Towers for setting up IT Park in 7322 sq. yds. Though the accused being the owners have right to develop the said site of 7322 sq. yds lying in front of residential complex, however, they have no right to deviate from the original permit insofar as providing the drive ways with a width of 24 feet on either side is concerned. If reduction in the width of drive ways was exigent due to the direction of HUDA, that fact should have been appraised well in advance to the prospective purchasers of the flats which was not done. The accused thus cheated.

c) The trial Court held that in the sale deeds of the complainant and LWs.2 and 3, there was no specific mention about the width of the drive ways provided to the flat owners of Jayabheri Silicon County. On the other hand, the accused have, in the sale deed executed in favour of DHLF specifically covenanted by creating exclusive right of ingress and egress to the flat owners of Jayabheri Silicon County and thus the accused have taken every care that the subsequent purchaser i.e, DHLF shall not prohibit or interdict the right of flat owners from using the drive way to proceed to their residential blocks. In this regard, the trial Court countenanced the argument of the accused that the total extent of 18,521 sq.yds allocated for Jayabheri Silicon County remained intact and in each sale deed the respective extents of flat owners in the total

extent of 18,521 sq.yds is specifically mentioned (for instance, in the sale deed of complainant, his extent of 144 sq.yds out of 18,521 sq.yds is mentioned). The Trial Court thus opined that there was no criminal breach of trust or cheating involved in respect of above allegation.

15) On a careful scrutiny of the material, I am unable to subscribe the above view of the Trial Court. In the initial HUDA Technical Approved Plan No.4504/MP2/HUDA/98 dated 01.10.1999 and Municipal Approval No.G229/LP/2718/98 dated 03.12.1999, the width of drive ways was shown as 24 feet. It is the specific allegation of the complainant that projecting the above initial permits, the accused entered into sale agreements with the complainant and others and this fact is not disputed. It is true that the accused being owners have right to develop 7322 sq.yds of the site situated to the North of residential flats as they like. So far so good. The crucial question at this juncture is, since the flat buyers entered into agreements on the basis of the initial permit showing 24 feet width of drive way on either side, whether the accused have sufficiently educated them well in advance about the reduction of the width of drive ways on either side on account of subsequent revised permit and the mandatory condition of leaving 14 meters of space on the side of the commercial complex imposed by HUDA. In this context, in the registered sale deed dated 27.09.2003 executed by the accused in favour of the complainant and his wife, the HUDA technical approval letter No. 4504/MP2/HUDA/98 dated 27.08.1998 and Municipal Approval Plan No.G/229/LP/2718/98 dated

03.12.1999 are mentioned, which *inter alia* contain the provision for drive way with 24 feet width on either side. Thereafter in Clause (x), it is mentioned thus:

“(x) WHEREAS the Vendors have set apart an extent of 7322 sq.yds or 6121.19 sq.mts of land on the Southern side abutting the main road for development of JAYABHERI SILICON TOWERS and another 3197 sq.yards of land on the northern side of the property is being developed for Club House. Whereas the Vendors authorised the Promoter to develop the remaining extent of 18521 sq.yards or 15483.60 sq.mts into residential building complexes.”

The above clause only shows that vendors have set apart an extent of 7322 sq.yds for development of Jayabheri Silicon Towers and in 3197 sq.yds club house was developed and in the remaining extent of 18,521 sq.yds, residential building complexes are being developed. However, in the sale deed, no specific mention is made about the revised permit Proceedings No. 6555/MP2/H/2001, dated 08.01.2002 issued by HUDA. So also no specific mention was made in the sale deed that by virtue of aforesaid proceedings and direction of HUDA, 14 meters of vacant space is left, in which the drive way with a width of 16 feet on either side is provided for residential complex. No doubt, in the sale deed of the complainant and others, no specific extent for the drive way is mentioned. However, the claim of the complainant is that the agreements were entered into by the accused and flat buyers basing on the initial plan dated 03.12.1999 wherein width of drive way was mentioned as 24 feet. Thus the conspicuous omission of the above facts is termed by the complainant as nothing but cheating on the part of accused. Ofcourse the accused claimed that those facts were known to

the buyers and they have not agitated about it till now. Hence the question is whether non-mentioning of these crucial facts is a part of cheating or because the purchasers were well aware of the same. In my considered view, as it is a question of fact, the same cannot be weighed with golden scales in an enquiry under Section 239 Cr.P.C to give a finding either way. Therefore, having regard to the *prima facie* material on record, the Trial Court ought to have framed suitable charges.

16) The second accusation is that though total land set apart by the accused for Jayabheri Silicon County was 18,521 sq.yds, however, the actual existing area is only 16,568 sq.yds and thereby the flat owners have lost 1953 sq.yds as the accused have usurped the same. Whereas the accused would contend that the total extent of 18,521 sq.yds is intact. In the charge sheet, the I.O mentioned as if there was a deficiency of 1953 sq.yds which was sold to DHLF. In this regard the Trial Court found fault with I.O for being carried away by the private survey got conducted by the complainant and not getting entire land surveyed through the Government Department. In this regard also it must be said that the Trial Court entered into the arena of testing the veracity of the evidence and proof. The authenticity of the so-called private survey is a matter of appreciation after full-fledged trial and on that ground the allegation cannot be discarded at this stage. Running the risk of repetition, it must be mentioned that the discharge application has to be considered on the premise that if the materials placed by the prosecution are uncontroverted, whether any ground to frame charges are made out

or not. Hence the Trial Court ought not to have discarded the allegation which projects a *prima facie* material to frame suitable charge.

17) The third allegation is concerned, in the sale deed of the complainant under the heading “common maintenance charges of the building complex” it is mentioned in Clause (i) thus:

i) Sewage treatment plant and water softening plant with annual maintenance contract and all other necessary machinery/ equipment required for the common benefit of the Flat Owners of the “SILICON COUNTY”.

While-so a perusal of the conveyance deed dated 27.12.2005 executed by the accused in favour of JST Reality Limited (formerly known as DHLF Assets Reconstruction Corporation Limited) would show as if the accused among others sold the equipments, plant and machinery shown in the Fourth Schedule-I including the Sewage Treatment Plant to the DHLF. It is further covenanted that the sewage flow from the Jayabheri Silicon County and Club Jayabheri will always be diverted on to the Sewage Treatment Plant and the purchasers shall have the first right to use the entire volume of water available after treatment of the sewage from the Sewage Treatment Plant for their use and the surplus water if any to be disposed of suitably by the vendors. Thus when these two sale deeds are juxtaposed, the allegation of the complainant that they lost the right in the Sewage Treatment Plant and its water, *prima facie* appears to be true. Therefore, the veracity in the allegation can be decided only after a full-fledged trial, in my view.

18) So on a conspectus of the entire material on record, the Trial Court, it must be said, erred in discharging the accused.

19) Learned counsel for respondents argued that the Trial Court having considered that there was no *prima facie* material to frame charges, rightly discharged the accused. He would submit that continuation of proceedings would amount to abuse of process of the Court. He relied upon the following decisions:

- i) ***Hridaya Ranjan Prasad Verma and others v. State of Bihar and another***⁴
- ii) ***Suneet Gupta v. Anil Triloknath Sharma and others***⁵
- iii) ***Chandran Ratnaswami v. K.C.Palaniswamy and others***⁶

However, in view of the above discussion which would show that there is *prima facie* material to frame charges, the argument of learned counsel cannot be accepted. The cited decisions are of no avail to them.

20) In the result, this Criminal Revision Case is allowed setting aside the order dated 26.08.2014 in CrI.M.P.No.1422 of 2013 in C.C.No.1538 of 2009 passed by the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur and the Trial Court is directed to frame suitable charges against the accused and conduct trial without being influenced by the observations made in this order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.11.2018

Murthy/scs

⁴ (2000) 4 Supreme Court Cases 168

⁵ (2008) 11 Supreme Court Cases 670

⁶ (2013) 6 Supreme Court Cases 740