

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3872 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/accused seeks to quash the proceedings against them in C.C.No.140/2010 on the file of Special Judicial First Class Magistrate for Prohibition and Excise, Guntur.

2) The charge sheet allegations in brief are that LW.6 and two others executed a General Power of Attorney (GPA) in favour of LW.3 in respect of Ac.0-54½ cts in D.No.919 of Budampadu village of Guntur Rural Mandal vide document No.14163/2007 dated 23.11.2007 of Sub-Registrar, Guntur, authorizing LW.3 to sell the said land along with some other lands. The accused, who is the grandson of LW.3 due to her old age, has been managing the said land on her behalf. All the records pertaining to land were taken away by the accused from LW.6 and two others at the time of execution of GPA document. While-so, the accused contacted LW.2 and offered to sell the land in D.No.919/3 and LW.2 in turn informed the same to LW.1, who wanted to purchase some land around Guntur Town for his purpose. Hence on 13.12.2007, LWs.1 and 2 went to the house of accused at Laxmipuram, Guntur and negotiated with him and accused agreed to sell Ac.0-54 ½ cts of the land in D.No.919/3 of Budampadu village to LW.1 for Rs.20,00,000/-. The accused at that time showed some papers stating that LW.3, who is his grandmother, has got GPA to sell the said land. Believing the same,

LW.1 paid advance of Rs.2,00,000/- to accused in the presence of LW.2. Again on 11.01.2008, LW.1 paid Rs.5,00,000/- in the presence of LW.2 to accused towards part of the sale consideration. Thus LW.1 in all paid a sum of Rs.7,00,000/- out of the agreed amount of Rs.20,00,000/- with an oral promise to pay the balance amount at the time of registration.

a) Later, LWs.1 and 2 visited Vijayawada and made enquiries about the land from the original owner of the land i.e, LW.6 and he informed that he did not execute any GPA in favour of accused. On further enquiries LWs.1 and 2 came to know that the total extent of the land in D.No.919 was Ac.6-22 cts which was divided into three sub-divisions due to formation of by-pass road on 29.09.1975 wherein Ac.0-94 cts was allotted in the first division and Ac.2-90 cts in the third division and remaining land was used for laying by-pass road and thus there was no land of Ac.0-54 ½ cts in D.No.919/3 and the accused knowing the said fact well, cheated LWs.1 and 2 by offering to sell the non-existent land. On knowing the deceitful acts of the accused, LW.1 informed accused that he does not want to purchase the land and demanded to return his money. Hence the accused executed a receipt dated 22.03.2008 admitting his receiving an advance of Rs.7,00,000/- from LW.1 and agreed to return the advance amount within two(2) months. However, the accused did not return the amount inspite of repeated demands and when questioned, the accused threatened LWs.1 and 2 with dire consequences. On the complaint given by LW.1, the police of Pattabhipuram PS registered a case in Crime No.65/2008 and after investigation laid charge

sheet against the accused for the offence under Section 420 IPC, which was taken cognizance by the learned Special Judicial First Class Magistrate for Prohibition and Excise, Guntur and registered as C.C.No.140/2010.

Hence the instant petition to quash the said C.C.

3) Heard arguments of Sri Koneti Raja Reddy, learned counsel for petitioner; Sri Suresh Kumar Potturi, learned counsel for 1st respondent and learned Addl. Public Prosecutor for the State (A.P).

4) Severely fulminating the charge sheet allegations, learned counsel for petitioner would argue in vehemence that the fulcrum of prosecution case is that the accused offered to sell a non-existent land for Rs.20,00,000/- to LWs.1 and 2 and received an advance of Rs.7,00,000/- and thus cheated the purchasers. However, the entire charge sheet is conspicuously silent as to how the IO arrived at the conclusion that the land of Ac.0-54 ½ cts in D.No.919/3 was not in existence on ground. LW.6 and two others who are the original owners of Ac.0-54½ cts and some other lands have executed GPA dated 23.11.2007 in favour of LW.3, who is the grandmother of the accused to deal with the GPA mentioned properties. Since LW.3 is aged lady, the accused on the request of LWs.1 and 2 offered to sell Ac.0-54½ cts of land in D.No.919/3 for Rs.20,00,000/-. After sometime, for the reasons best known to LWs.1 and 2, they did not want to purchase the land and insisted accused to return their amount and with the aid of police, they

obtained a receipt from him by threat and coercion. Learned counsel would argue that in his 161 Cr.P.C statement LW.6 never said that the land of Ac.0-54 ½ cts was not in existence on ground. On the other hand, LW6 emphatically stated that himself and two others executed GPA in favour of LW.3 in respect of Ac.0-54 ½ cts of land and some other lands. Therefore, it is highly preposterous to contend that accused cheated LWs.1 and 2 by offering to sell a non-existent land. The IO filed charge sheet against the accused simply believing on the oral statements of unconnected third parties ignoring the flow of title spoken by LW.6 on him in respect of various properties including the disputed land. The issue whether LWs.1 and 2 deserve return of the advance amount or whether accused can forfeit the same is based on a contractual agreement which has to be decided by a Civil Court and not by the police in criminal proceedings. Therefore, continuation of the criminal proceedings would amount to abuse of process of the Court and thus be quashed.

5) Per contra, learned counsel for 1st respondent and learned Addl. Public Prosecutor while supporting the charge sheet argued that the accused knowing fully well about non-existence of the land of Ac.0-54 ½ cts on ground, offered to sell the same to LWs.1 and 2 and received an advance of Rs.7,00,000/- and thus cheated them and on knowing his fraudulent deed, when LWs.1 and 2 questioned him, admitting his guilt he executed a receipt dated 22.03.2008 agreeing to return the advance amount, which clearly manifests his crafty intention. The non-existence

of the disputed land on ground was amply stated by LWs.4 and 5, which manifests the fraudulent intention of the accused and hence the petition is liable to be dismissed.

6) The point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT**: The charge of cheating under Section 420 IPC is sustainable when a person cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed and which is capable of being converted into valuable security. In the instant case, the case of prosecution is that the accused induced LWs.1 and 2 to purchase Ac.0-54 ½ cts of land in D.No.919/3 which he knew to be non-existent on ground and obtained from them an advance of Rs.7,00,000/- and refused to return back the said amount and thus cheated LWs.1 and 2. Per contra, the contention of accused is that the disputed land is very much existing, which is evident from the statement of LW.6 and for the reasons best known to LWs.1 and 2, they retracted from the agreement and wanted their advance amount back and the dispute is purely a civil one. It should be noted that to sustain the charge under Section 420 IPC, the deceitful intention to cheat must be in existence from the inception. In the instant case, if the disputed land were not in existence by the date of agreement and the accused knew it pretty well and still offered to sell the same to LWs.1 and 2 and received

advance, the charge would be maintainable. In this context, a perusal of the statement of LW.6 which is made available with the material papers reads that he narrated how himself and Rekha Venkata Lakshmi Pushpa Kumari and Manasa Lakshmi, succeeded different properties including the disputed land of Ac.0-54 ½ cts from their parents. In his statement he also stated that they executed GPA in favour of LW.3. It is true that in his statement he did not state that the disputed land was not in existence on ground. However, in this regard the statement of LWs.4 and 5 is also important. LW.4, who is said to be a Mandal Surveyor in the MRO office, Guntur, stated that S.No.919 consisting of Ac.6-25 cts in Budampadu village was divided into three sub-divisions on 29.09.1975 for laying by-pass road. First sub-division was allotted Ac.0-94 cts, second sub-division was used for by-pass road and the third sub-division was allotted Ac.2-09 cts. Then LW.5, who is the Secretary of APSRTC Employees Workers Section Housing Building Society, deposed about the sub-division of S.No.919. He further stated that his society purchased Ac.1-71 cts in by-pass road area. He clearly stated that Ac.0-54 ½ cts of disputed land is not in existence in S.No.919. Therefore, the statements of LWs.4 and 5 raise a doubt about the existence of the disputed site on ground. It is to be noted that as per the statement of LW.6, his father purchased the disputed site of Ac.0-54½ cts in S.No.919 on 10.07.1931. Due to this long gap also, the existence of the land in its original form is a debatable one.

8) So on a conspectus of the entire material on record, this Court is of the view that the issues whether the disputed land is existing on ground or not and whether the accused knowing that the land was not in existence entered into an agreement with LWs.1 and 2 to cheat them, can be better appreciated only after a full-fledged trial. As the matter stands, there is a *prima facie* material for the accusation against the accused and therefore, it is not a fit case to quash the proceedings on the premise that it is purely a civil dispute.

9) Accordingly, this Criminal Petition is dismissed with a direction to the Trial Court to proceed with trial and decide the case on merits without being influenced by the observations made in this order.

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

Date: 29.08.2018
scs

U. DURGA PRASAD RAO, J