

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11083 of 2018

ORDER:

The petitioners are accused Nos.2 & 5 of crime No.289 of 2018 of Rajahmundry Urban I Town (L&O) Police Station, registered for the offences punishable under Sections 417, 420, 406 & 506 part-II r/w 34 IPC, on 25.08.2018, which was outcome of the private complaint of the 2nd respondent-defacto complainant M.Chandra Rao. The time and date of occurrence alleged in the FIR was 09.01.2015, the private complaint averments in registration of the crime supra pending against 8 accused shows that complainant is doing business in coconut at Rajamahendravaram Stadium Road. He used to visit Markandeyaswamy Temple daily at Rajamahendravaram where A.1 was working as a clerk in the temple. A1 thereby developed acquaintance with complainant which led to their friendship and represented the complainant therefrom that there was vacant site of 132 square yards which belongs to 6 sisters and their mother all known to him lying at Ullithota Street and make the complainant to believe that if same was purchased complainant would get good profits. The complainant informed the A.1 of no such huge amount to invest. A.1 represented that he can give original sale deed relating to the property and promised that he will get the amount by mortgaging the same to one Golla Siva Kumar and he can arrange sale of the house site within one

month to another person to get a profit of Rs.50 lakhs and Lws.1 & 2 were also there and A.1 took the complainant to Golla Siva Kumar and obtained Rs.25 lakhs as loan by executing GPA in respect of the property owned by the complainant in Besta Veedhi, Rajamahendravaram, and complainant spent Rs.3 lakhs for its registration and A.1 took Rs.50,000/- commission out of loan provided to Golla Siva Kumar. A.1 later informed that there is another site of 132 square yards belongs to N.Chinnammayi who also intends to sell at Rs.80,000/- per square yards and A.1 in connivance with other accused 2 to 8 negotiated with complainant for same rate by informing even to the say of no sufficient amount to purchase, that led the agreement be executed so as to look after another purchaser and can sell and pay sale proceeds in luring the complainant by A.1 so an agreement of sale in writing dated 09.01.2015 through one M.Nageswara Rao document writer cause prepared at Chanda Sathram Street, near house of executant in the presence of LWs.1 to 4 where complainant paid Rs.20,24,800/- to A.1. It was wrongly mentioned however the agreement as if only Rs.20,24,800/- paid. It is also represented that A.3 to A.6 and other LRs come and execute agreement who are in the way in train journey by make the complainant to believe and later all the daughters of the A.3 not signed the agreement and they dodged the matter on one pretext or the other that some of the owners of the property are residing at Hyderabad

and some at Vijayawada and some shown as a roose in gaining time by accused. The complainant recently came to know from the accused 1 to 8 that the property value as Rs.1,30,000/- per square yard and they sold it for Rs.80,000/- per square yard and trying to give go bye to the agreement. A.2 and A.8 are sons in law of A.3 who played a key role in deceiving the complainant, A.1 took advantage of the innocence of the complainant introduced him to A.2 and A.8 of with common intention to cheat the complainant and committed criminal breach of trust in luring in entering the transaction for sale by make believe the complainant. Apart from A.3 to A.7, there are 2 or more rightful owners according to the agreement accused Nos.1, 2 & 8 even got knowledge of the same and complainant could not gauge ill-intention of accused 1 to 8 in payment of the part of sale consideration of Rs.50,000/- on 22.09.2015 to A.7 and Rs.50,000/- on 21.12.2015 to A.7 covered by receipts, hence to take action as despite demands of complainant for execution of sale deed, accused are threatening with dire consequences and postponing and dodging and police Rajamahendravaram I Town Police Station when reported by complainant did not choose to take action which made to file the private complaint.

2. Respondent No.2 even served failed to attend. Heard learned counsel for the petitioners and learned Public Prosecutor and perused the material on record.

3. Even from the said private complaint in registration of the crime it is only apparently a breach of contract if at all to enforce for specific performance and it is not even his case that what was the price for which the agreements entered were escalated by luring and deceiving with false pretence to have wrongful gain in causing wrongful loss that too stated in private complaint Para 5 of complainant is ready to obtain agreements but accused postponing by saying the land costs Rs.1,30,000/- per square yard and not Rs.80,000/- per square yard for which one of the agreements originally entered.

4. Having regard to the above, the dispute is civil in nature and the private complaint averments squarely proves the same for nothing to say either criminal breach of contract with intentional deception from the inception to attract the offence of cheating and there is no any entrustment to say attracting of criminal breach of trust and there is no any criminal intimidation in creating panic and fear in the mind of the victim to attract offence under Section 506 IPC. The expression of the Apex Court in **Dalip Kaur Vs. Jagnar Singh**¹ speaks the same by referring to the settled expressions in this regard of the criminal breach of trust no way could be made out in a dispute relating to any breach of trust without criminal intention and no cheating could be made out therefrom even failed to come forward to execute

¹ 2009 (3) ALT (Crl.) 468

sale deed from the agreement entered for dispute pre-dominantly civil in nature unless shown intentional deception from the inception.

5. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the petitioners/A.2 & A.5 in crime No.289 of 2018 of Rajahmundry Urban I Town (L&O) Police Station, accused are acquitted and the bail bonds of the accused if any shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Date: 05.12.2018
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Dr. B. SIVA SANKARA RAO, J

