

HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.11396 of 2018

ORDER:

The petitioners are A.1 and A.2 in C.C.No.40 of 2016 on the file of the Addl.Judl.Magistrate of First Class, at Jangaon, taken cognizance for the offences punishable u/sec.420 and 406 read with 34 IPC, from Cr.No.316 of 2013 registered by the Police, Cherial, Warangal district on the report of the 1st respondent-defacto-complainant.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor for the 2nd respondent-State and also the learned counsel for the 1st respondent-defacto-complainant and perused the material on record.

3. The contentions in the quash petition impugning said cognizance order are that the defacto-complainant not placed any material to show that there is no land in existence and the petitioners deceived him to sustain the allegations. In fact the defacto-complainant after entering into agreement for sale with the 1st petitioner-A.1 failed to fulfill his obligation and did not come forward to obtain registered sale deed by payment of balance consideration and it is from non-payment, A.1 cancelled said agreement for sale and the defacto-complainant filed civil suit for specific performance based on the contract for sale which is pending and the same clearly shows the dispute is purely civil in nature even entire allegations taken as if true. It is also the contention that the defacto-complainant filed against the A.1 suit for specific performance pending on the file of the V Addl.District Judge, Warangal Jangaon in O.S.No.2 of 2014 and also filed another suit O.S.No.3 of 2014 against the son of the petitioners with similar relief in respect of another agreement and the same is also pending. The 2nd petitioner no other than husband of the 1st petitioner no way concerned with the transaction between the A.1 and the defacto-complainant and despite it wrongly arrayed intentionally by abusing process of law having

failed to perform his part of the contract under the two contracts for sale one for Ac. 14-39guntas entered by the A.1 and the other for Ac. 8-37guntas entered by the A.1 and another giving colour of criminal flavour to the civil lis predominantly cannot be perpetrated to continue in an illegal manner to harass as per the settled expressions of the Apex Court of particularly paras-21,23 and 28 in V.Y.Josh Vs. State of Gujarat¹ also placed reliance on the 3 Judge Bench expression in Inder Mohan Goswamy Vs. State of Uttaranchal² where it is observed when dispute purely a civil in nature and when no offence of cheating or breach of trust or forgery made out even taken consideration of the allegations the criminal proceedings no way can be allowed to continue for the same tantamounts to abuse of process.

4. The learned counsel for the petitioners/accused reiterated the same in the course of hearing. Whereas, notice sent to the 1st respondent returned as unclaimed is sufficient service. The 2nd respondent-State represented by the learned Public prosecutor submits that for this Court while sitting in appeal, there is nothing to interfere but if at all for no charges framed to participate in the proceedings and sought for discharge if no merits, and sought for dismissal of the Criminal Petition.

5. The sum and substance of the accusation in the First Information Report in registration of the crime for the alleged occurrence is that on 05.11.2013 (20 days before) at the outskirts of Tapagpally village, the defacto-complainant-Vikas Shah, resident of Sainikpuri, Secunderabad, entered into agreement of sale on 24.07.2013 with K.Madhavi (A.1) w/o D.Chowdary(A.2) of Saroornagar, for land of 14-39 acres situated in Tapaspally village, Cherial Mandal having paid Rs.8,62,000/- by cheque bearing No.515677 dt.24.07.2013 drawn on Axis Bank, Begumpet branch and the modalities of the transaction were carried out by D.Chwodary-A.2. On ground assessment made by him he came to know that land was lesser than

¹ 2009 3 SCC 78

² (2007) 12 SCC 1

what was entered in the agreement which is outcome of factual misrepresentation. He arranged for land survey through officials, who fixed on 24.10.2013 and it was communicated to Madhavi(A.1) on 10.10.2013 about proposed survey through A.2 however the defacto-complainant received notice from Madhavi-A.1 on 15.10.2013 stating she is canceling the sale agreement due to unprecedented rains the survey fixed on 12.04.2013 could not be conducted and revised date fixed for 04.11.2013 however D.Chowdary-A.2 called the Deputy Inspector of Survey over phone and warned against conducting survey, thereby survey was not conducted. The defacto-complainant received on 05.11.2013 another notice from Madhavi-A.1 stating she is also forfeiting advance amount paid as part of sale consideration on 24.07.2013 supra. It is averred that it shows the accused having not possessed the total extent of Ac.14.39guntas willfully misrepresented facts and deceived in making to believe to enter into the crime with a malafide intention and cheated and committed breach of trust. Hence to take action.

6. The mere fact that the agreement was cancelled by notice or later by another notice advance amount already forfeited does not constitute an offence of cheating for not a case of he made ready with balance consideration and issued any notice to it including with any say of they refused to register and their intention since inception is to cheat. However the crime was registered as if there is criminal breach of trust and cheating though there is nothing to say any entrustment. Undisputedly from the First Information Report averments, A.2 husband of A.1 is no way even attestor to the said agreement entered by A.1 Madhavi but what all stated in single line is the modalities of the transaction were carried out by Chowdary-A.2. It is not even stated that there is any deception on his part to cheat and whereas entrustment to him of any dominion of any property to make liable for such an offences from the report. The police ultimately investigated by

examination of the witnesses including so called mediator to the observation of scene of offence L.Ws. 4 and 5 besides defacto-complainant and L.Ws. 2 and 3-other witnesses who say the investigation done therefrom establishes L.Ws.2 and 3 are only witnesses to the agreement for sale dt.24.07.2013 and what the defacto-complainant in his report stated only reiterated in his statement during investigation and therefrom the entire matter is civil in nature thereby referred as civil dispute in nature. It is against said final report, protest petition filed on 20.10.2018 which says the final report dt.22.10.2014 submitted to the Court on 11.02.2017 for which the defacto-complainant has no knowledge and they did not consider the documents filed by the petitioners and the investigation is spurious. The docket order from which cognizance taken by the learned Magistrate is the subject matter of present impugment dt.10.02.2016 in CrI.M.P.No.147 of 2015 which shows *"The complainant present and his counsel present. Complainant filed affidavit. Heard the counsel for the complainant. The case is taken cognizance of the offence punishable u/ sec.420 and 406 read with 34 IPC against the accused. Issue summons to the counsel through court and R.P. on payment of process returnable by 21.03.2016"*.

7. The complainant is not even a public servant to examine on oath and the filing of affidavit is not an examination on oath in recording of sworn statement. The recording of sworn statement of the complainant/pretest petitioner from the protest by proceeded, if not referred by police, for further investigation, as per the private complainant procedure, the learned Magistrate did not adopt the same and went wrong in placing reliance on affidavit and without even referring to what is the First Information Report from the original report to police and what is the final report that indicates from police investigation in referring as civil in nature and exactly what is the protest against it to consider and what is the evidence in protest to it. The learned Magistrate totally ignored the scope

of law and proceeded as if it is a new private complaint and even went wrong in adopting procedure simply without recording sworn statement, placed reliance on the affidavit of the complainant and taken cognizance without even mentioning how there is any cognizable case and against whom and for what offence in mechanically mentioning the facts taken cognizance of the offences u/ sec. 420, 406 read with 34 IPC against the accused which is perfunctory exercise of the judicial power, no way commendable. As referred supra the very FIR no way makes out a case either u/ sec. 420 or under Section 406 IPC even against the A.1 much less against the A.2 and the police when referred the case as civil in nature it is not even mentioned how the statements of L.Ws. 1 to 3 including the defacto-complainant as L.W.1 during investigation available with reference to the so called sale agreement makes out any case from the investigation and how and where the police issued in their referring of the dispute civil in nature that is supposed to be mentioned in the protest not even mentioned and thereby the cognizance order of the learned Magistrate no way sustainable and it is not even a case therefrom to pass any fresh cognizance or for no offence u/ sec.420 and 406 IPC made out against any of the accused from the very final report protest petition averments and the so called affidavit. In fact, on perusal of the record shows already civil dispute for specific performance though subsequent to the registration of the crime but before the final report dt.22.10.2014 filed as O.S.No.2 of 2014 ceased of the matter from the sale agreement transaction referred supra if at all sale agreement was cancelled by notice if at all amount also forfeited by notice to give reply to impugn and not to resort to criminal prosecution for not even a case of A.1 has no title over the property. What all mentioned is suspects of the incidents mentioned is not as if available on ground that too, no survey conducted undisputedly and there is no basis for the

sustainability which no way constitutes of any offence even therefrom for cheating much less for criminal breach of trust.

8. Having regard to the above, the Criminal Petition is allowed by quashing the proceedings against the petitioners in C.C.No.40 of 2016 on the file of the Addl.Judl.Magistrate of First Class, at Jangaon. The A.1 and A.2 are acquitted and their bail bonds shall stand cancelled. Miscellaneous petitions, if any, pending shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:28.11.2018
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