

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11550 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/ A2, seeking to quash the proceedings in C.C.No.91 of 2018 on the file of the I Additional Junior Civil Judge, Guntur (previously C.C.No.414 of 2017 on the file of the VI Additional Junior Civil Judge, Guntur), which is an outcome of Crime No.190 of 2016 of Old Guntur Police Station, registered for the offences punishable under Sections 420, 406 and 506 IPC.

2. Notice sent to the de facto complainant/ 2nd respondent in the present quash petition served as per the track record for the item shown 'delivered' on 09.11.2018. There is no representation in person or through advocate and hence taken as heard the 2nd respondent/ de facto complainant and heard the learned counsel for the petitioner and the learned counsel for the 1st respondent/ State.

3. The petitioner herein by name, Shaik Fazarullah is A2 among two accused, of whom, A1 is Pratapa Suresh Kumar. The police final report cited as many as 8 witnesses including LWs.7 and 8, the investigating officers, who registered the crime and investigated into.

4. The accusation from the report and the statement of LW.1 shown in the charge sheet as corroborated by LWs.2 to 6 is that A2/ petitioner was introduced by A1 out of his acquaintance with

the de facto complainant, who was searching for purchase of land and A2 is doing real estate business with self style name of 'G.F.Developers' in Brodipet, Guntur and A2 represented that he got land of Ac.4.44 cents at D.No.725 to alienate and the bargain, after negotiations with the accused, settled for Rs.5 crores. A2 states that he got title over the property having purchased from Kodi Santha Kumari and Thota Lakshmi Kumari and going to obtain sale deed soon in the name of the complainant from them. It is averred that with these deceitful words, accused lured the complainant, from which he paid Rs.2,00,000/- through cheque bearing No.820749 drawn by Canara Bank, Narakoduru Branch that was encashed and remaining amount of Rs.13 lakhs out of Rs.15 lakhs advance paid by cash, received by A2 on 31.05.2014 in the presence of A1 from the de facto complainant at his house and he has to pay remaining balance of consideration within five months from the date of agreement supra and A1 and one K.Srinivasa Rao were the attestors to the agreement and later, despite complainant ready to perform his part of contract and demanding to execute sale deed by receiving balance sale consideration, it was postponing and the cause when enquired, recently came to know that A2 did not obtain sale deed for the property from those two women, the predecessors in title and A2 subsequently, vacated his office from Brodipet and fled away and A1 also did not

respond and knowing fully well A2 has no title, both accused deceived by colluded together, the complainant and had wrongful gain in causing wrongful loss to him. Hence, to take action.

5. From the very private complaint that was registered as crime, the statement of the de facto complainant, it is clearly mentioned of sale deed to be obtained in the name of the de facto complainant from A2 from the original owners, Kodi Santha Kumari and Thota Lakshmi Kumari. The sale agreement running in three pages at page No.1 referred about Rs.15 lakhs supra as advance paid and sale deed to be obtained by payment of balance consideration Rs.1,45,00,000/- within 15 days there from and thereafter can obtain sale deed and allot towards plots to the prospective purchasers and the balance to be paid within 5 months to obtain General Power of Attorney or for flat respective sale deeds, respective purchase and liable to pay interest. It also refers about Rs.1,45,00,000/- payable and documents to be received including cancellation of some of the documents and also with reference to the compromise in passing clear title to execute proper agreement.

6. The very complaint and the investigation material speaks the property stands in the name of Kodi Santha Kumari and Thota Lakshmi Kumari. Sale agreement also first page mentions the fact there was an undertaking by A2 to the complainant to

cause register sale deed directly there is no any element of cheating much less with deception inducing in entering into the contract for sale, which is a prerequisite when that is lacking, the question of attracting offence under Section 420 IPC does not arise. There is no any entrustment as contemplated to attract the offence under Section 406 IPC and there is no any basis to say attracting of Section 506 IPC of criminal intimidation in particular to the petitioner/ A2.

7. Having regard to the above, from the dispute is predominantly civil in nature and A2 is only an agreement holder from Kodi Santha Kumari and Thota Lakshmi Kumari clearly mentioned in the agreement and also stated by the complainant and there is no cheating therefrom, from the inception, the proceedings will not survive to be continued, even the cognizance order of the learned Magistrate.

8. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/ A2 herein in relation to C.C.No.91 of 2018 on the file of the I Additional Junior Civil Judge, Guntur (previously C.C.No.414 of 2017 on the file of the VI Additional Junior Civil Judge, Guntur) are quashed.

9. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.11.2018
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