THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2640 OF 2016

ORDER:

This criminal petition is filed by the petitioners/accused Nos.1 to 4 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.82 of 2015 on the file of the XI Additional Chief Metropolitan Magistrate at Secunderabad, registered for the offence punishable under Sections 420 read with 120-B, 468 and 471 of Indian Penal Code (for short "I.P.C.").

The respondent No.2 is the complainant, who filed a private complaint before the XI Additional Chief Metropolitan Magistrate, Secunderabad for the offences punishable under Sections 120-B, 196, 199, 420, 423, 464 and 468 of I.P.C. alleging that they ran printing press in the name and style of "Sri Ramana Process Private Limited". In the month of November 2012, accused No.1 expressed his intention to divide the firm and the property purchased by the defacto complainant and the partners of the firm jointly in the year 2007. Accused No.1 wanted to take the press towards his share, give other property to the defacto complainant and other partners of the firm. The property was in skeleton shape. Accused No.1 executed Memorandum of understanding in his own handwriting and the original Memorandum of understanding was kept with him and provided Photostat copy to the defacto complainant. Defacto complainant waited for two or three months, but accused No.1 did not keep up his promise to divide the property and instead he made accused No.2/his wife as additional director of firm and accused No.1 resigned as Director. Respondent

No.2/defacto complainant already resigned on the promise of accused No.1 but accused No.1 did not give the property to the defacto complainant. Having no other alternative, respondent No.2/defacto complainant left to America for his livelihood. As accused No.1 failed to give property to the respondent No.2/defacto complainant as per Memorandum of understanding, he got issued legal notice through his counsel to accused No.1, but accused No.1 got issued a contentious reply alleging that the property situated at Hyderbasthi was given to the share of respondent No.2 as mentioned in Memorandum of understanding while retaining other property by accused No.1.

Accused No.2 filed suit O.S.No.243 of 2014 on the file of III Additional Senior Civil Judge's Court, Secunderabad against respondent No.2 and obtained interim injunction order in I.A.No.551 of 2014. During pendency of the suit, accused No.1 executed lease deed in favour of his son/accused No.3. The exparte injunction order obtained was vacated.

Accused No.3 executed GPA in the name of his mother accused No.2. Accused No.2 also filed suit against the respondent No.2 by fabricating the documents and Form No.23-AC. Accused not allowed the defacto complainant to enjoy the property by creating false litigation with fabricated documents. Thus, the petitioners with dishonest intention to cheat respondent No.2 created documents and deprived the respondent No.2 from enjoying the property and also filed caveat before the I Additional Chief Judge so as to deprive him from obtaining any interim order without notice to the petitioners. Thus, accused Nos.1 to 4 being the members of the family fabricated documents and cheated the respondent No.2 and induced him to part with the property and deprived respondent No.2 from enjoying his right in the property allegedly given to him in terms of reply notice and committed offence punishable under Sections referred above.

The XI Additional Chief Metropolitan Magistrate, Secunderabad recorded sworn statement of complainant – P.Ramchander and another witness P.Nanda Kishore and on the basis of material produced along with the compliant, which are marked as Exs.P.1 to P.11 in the sworn statement of P.W.1, Magistrate took cognizance of the offence punishable under Sections 420 read with 120-B, 468 and 471 of I.P.C. and issued summons.

On appearance, charges against the petitioners were framed by the XI Additional Chief Metropolitan Magistrate at Secunderabad for the offence punishable under Sections 420 read with 120-B, 468 and 471 of I.P.C. read over and explained to them and the petitioners pleaded not guilty and claimed to be tried.

At that stage, the petitioners approached this Court under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.82 of 2015 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad, on various grounds.

The allegations made in the private complaint clearly shows that the dispute is civil in nature between the brothers i.e. defacto complainant and the petitioner No.1, but the Magistrate failed to look into the registered sale deed dated 06.01.2014, which was signed by petitioner No.1/accused No.1 and petitioner No.3/accused No.3, thereby question of forgery of signature on the document would not arise, but the Court committed error in taking cognizance of offence against the petitioners for the offence of forgery punishable under Section 468 of I.P.C. The forged document is not used as genuine, thereby the allegations do not constitute any offence punishable under Section 471 of I.P.C. It is also further contended that the Court framed charge for the offence punishable under Section 420 of I.P.C. even in the absence of any allegation to constitute offence punishable under Section 420 of I.P.C. The sworn statements of two witnesses recorded by the Magistrate also did not disclose commission of any offence punishable under Sections 420 read with 120-B, 468 and 471 of I.P.C. Therefore, framing of charges against the petitioners is grave illegality. Framing of charges against accused Nos.2 to 4 when they are neither parties to the oral understanding nor to the written understanding between respondent No.2 and petitioner No.1/accused No.1 is a serious irregularity committed by the Court below as they never involved in the disputes between the respondent No.2 and petitioner No.1/accused No.1.

It is also contended that private complaint was filed only to harass the petitioners and to succumb the petitioner No.1 to settle the disputes and register a deed in favour of respondent No.2 and that it is nothing but abuse of process of Court and finally prayed to quash the proceedings against the petitioners.

During hearing, Sri T.Surya Satish, learned counsel for the petitioners reiterated the contentions urged in the petition and contended that the allegations made in the private complaint even if accepted on its face value do not constitute any offence much less offence punishable under Section 420 read with 120-B, 468 and 471 of I.P.C. It is also contended that the petitioner Nos.2 to 4 have nothing to do with the disputes between the brothers i.e. petitioner No.1 and respondent No.2 and the dispute with regard to partition of properties and business is purely civil in nature, in such case filing of private complaint with malafide intention is to succumb the petitioner No.1 to settle the disputes with respondent No.2. When the allegations in the compliant are purely civil in nature, this Court can exercise power under Section 482 of Cr.P.C. to quash the proceedings against the petitioners. Since issue of summons and framing of charges will have its own impact on the rights of the petitioners, learned counsel for the petitioners requested to quash the proceedings against the petitioners.

Sri Manu, learned counsel for the respondent No.2 contended that the proceedings cannot be quashed since the material on record clearly pointing out the complicity of the petitioners for various offences and that it is not a civil dispute since the petitioner No.3 created a lease deed to deprive the respondent No.2 from enjoying rights in the property and also contended that the fabrication of document by accused No.3 in favour of accused No.2 and filing of those documents before the Court is suffice to conclude that the petitioners are in collusion with one another created such documents to deprive respondent No.2 from enjoying rights in the property and placed reliance on the judgments Apex Court rendered in "***Shivanarayan Kabra v. The State of Madras***[1]" "***Devender Kumar Singla v. Baldev Krishan Singla***[2]" "***Lee Kun Hee v. State of U.P.***[3]" "***Sushil Suri v.***

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[1] AIR 1967 SC 986
[2] AIR 2004 SC 3084
[3] AIR 2012 SC 1007

C.B.I.*[4]** "P.S.Meherhomji v. K.T.Vijay Kumar*[5]**" "***Vijayander Kumar v. State of Rajasthan*[6]**" "***State of Haryana v. Ch.Bhajan Lal*[7]**"

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

> ***Whether the allegations made in the private complaint are purely civil in nature and constitutes any offence punishable under Sections 420 read with 120-B, 468 and 471 of I.P.C., if not, whether the proceedings in C.C.No.82 of 2015 on the file of the XI Additional Chief Metropolitan Magistrate at Secunderabad against the petitioners are liable to be quashed?***

***P O I N T*:**

Before adverting to the controversy between the parties, it is apposite to examine the scope of Section 482 of Cr.P.C.

Section 482 of Cr.P.C. dealing with the saving of inherent powers of High Court, has to be exercised only within the framework of the said section which also clearly demarcates the sphere within which the said discretion contemplated under this section can be exercised. Nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this

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[4] AIR 2011 SC 1713
[5] 2015 (5) SCJ 441
[6] 2014 (6) SCJ 396
[7] AIR 1992 SC 604

Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

In "***R.P. Kapur v. State of Punjab***[8]", the Apex Court laid down the following principles:

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it

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[8] AIR 1960 SC 866

appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar***[9]***"***

In "***State of Haryana v. Bhajan Lal***" (referred supra) the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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[9] AIR 1990 SC 494

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Turning to the facts of the present case, the main dispute is with regard to joint family property between the petitioners and respondent No.2 – defeacto complainant. The petitioner No.1 and respondent No.2 – defacto complainant are closely related by blood and they are members of joint family. There was compromise among the members of the joint family regarding partition of the property and for allotment of various properties to the share of the petitioner No.1 and the respondent No.2 – defacto complainant and others and suits are pending before the Court for various reliefs. In O.S.No.243 of 2014 which is pending for adjudication on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, the petitioners allegedly claimed that the suit schedule property is the property purchased by the petitioner No.1 under registered sale deed and he is enjoying the same in his own right as exclusive owner and thereafter alienated the same. But as seen from the allegations made in the complaint, the petitioner No.1 and respondent No.2 being the partners of business entered into Memorandum of Understanding (for short "MOU") for partition of the property, instead of obeying the terms and conditions of Memorandum of Understanding, the petitioner No.1 allegedly created certain documents and not allowing the respondent No.2 to enjoy the property by forging his signatures on the documents.

The trial Court framed various charges in C.C.No.82 of 2015 against the petitioners for the offences punishable under Sections 420 read with 120-B, 468 and 471 of I.P.C. and it is in the midway of the trial before the Court, at this stage, the present petition is filed mainly contending that the dispute is purely civil in nature and the allegations made in the complaint do not constitute any of the offences referred supra.

According to the contentions of the respondent No.2 – defacto complainant that there was an oral agreement between the petitioner No.1 and the respondent No.2 and the same was admitted before the arbitrators/witnesses and that as per the oral understanding the petitioner No.1 has to execute registered release deed in favour of respondent No.2. On the other hand, the allegation of inducement, cheating and forgery by any of the parties, dose not arise as in pursuance of the MOU dated 25.11.2012 the defacto complainant resigned to the firm as a partner, but there was no oral understanding between the parties according to the petitioners/accused.

One of the offences allegedly committed by the petitioners is punishable under Section 420 of I.P.C. As per the allegations made in the complaint, the petitioner No.1 being the Managing Director of Sree Ramana Process Private Limited and the petitioner No.2 being the wife and the petitioner No.3 being the son conspired together and cheated the complainant, brother of petitioner No.1 by promising the complainant that petitioner No.1 would execute deed for undivided 50% share in the house bearing No.5-2-359, 360 and 361 situated at Hyderbasti in favour of the complainant and induced the complainant to execute MOU dated 25.11.2012 and obtained resignation from the complainant as a director of Sree Ramana Process Private Limited while allowing his wife/petitioner No.2 to become director. But the allegations made in the complaint do not disclose that the petitioner No.1 or any other petitioners had dishonest intention at the very beginning to cheat the defacto complainant and induced him to part with any property or valuable security to constitute offence punishable under Section 420 of I.P.C. The defacto complainant admitted about the pendency of O.S.No.243 of 2014 and filing I.A.No.551 of 2014 for grant of temporary injunction on the file of the III Senior Civil Judge, City Civil Court, Secunderabad. The suit was filed for various reliefs, but none of the allegations in the complaint discloses that the petitioner No.1 or any other petitioner had any dishonest intention to induce the defacto complainant to part with any property or valuable security, amount etc. to constitute offence punishable under Section 420 of I.P.C. at the very beginning. If really compromise was made with fraudulent or dishonest intention at the commencement of transaction, which is punishable under Section 420 of I.P.C. But the complaint is bereft of any such allegation that the petitioners had dishonest intention at the very beginning to cheat the defacto complainant to part with any property.

Section 420 of I.P.C. deals with punishment for the offence of 'cheating'.

Cheating is defined under Section 415 of I.P.C and it is as follows:

> **"415. Cheating:-** Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients to constitute the offence of cheating are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In ***V.Y.Jose v. State of Gujarat***[10] the Apex Court laid down following ingredients to constitute cheating.

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> (i) deception of a person either by making a false or misleading representation or by other action or omission;
>
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
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> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
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> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

[10] (2009) 3 SCC 78

An offence of cheating may consist of two classes of cases:

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

In "***Hridya Rajan Pd. Verma and Ors. v. State of Bihar and another***[11]" the Apex Court discussed about the basic ingredients of offence of 'cheating'. In the facts of the above judgment, a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced the complainant to enter into negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***" (referred supra) wherein the Apex Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code of Criminal Procedure could be

[11] AIR 2000 SC 2341

exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to the decisions in "***Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill***[12]", "***Rajesh Bajaj v. State NCT of Delhi***[13]" and "***State of Kerala v. O.C. Kuttan***[14]" wherein the principles laid down in Bhajan Lal (supra) are reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in Bhajan Lal (supra) and whether the allegations made in the FIR or the complaint if accepted in entirety did make out a case against the accused-Appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable Under Section 420 of the Indian Penal Code. Scanning the definition of 'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:

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[12] AIR 1996 SC 309
[13] (1999) 3 SCC 259
[14] AIR 1999 SC 1044

> "16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

After laying down the principle the Bench referred to the complaint and opined that reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No.2 therein had alleged against the appellants therein was that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No.2 part with property was not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent No. 2 was not made out even accepting all the averments in the complaint on their face value and, accordingly, ruled that in such a situation continuing the criminal proceeding against the accused would be an abuse of process of the Court.

In the absence of intentional deception on the part of the petitioners/accused at the beginning of negotiations, they cannot be prosecuted for the offence punishable under Section 420 of I.P.C. since filing of complaint without *prima facie* material that the petitioners had dishonest intention at the beginning of the transaction is abuse of process of Court. Hence, I find that the material on record do not constitute any offence punishable under section 420 of I.P.C. *prima facie*.

Learned counsel for the defacto complainant contended that the complaint need not contain the allegation that the accused made a false pretence in express words and the cheated the complainant. In support of his contentions, he relied on "***Shivanarayan Kabra v. The State of Madras***" (referred supra), wherein the Apex Court held that commission of offence punishable under Section 420 of I.P.C. may be inferred from all the circumstances including the conduct of the accused in obtaining the property. But this principle cannot be applied to the present facts of the case as the complaint is silent as to the dishonest intention of the petitioners to induce the defacto complainant to part with property on the date of execution of alleged document.

Learned counsel for the defacto complainant also relied on "***Devender Kumar Singla v. Baldev Krishan Singla***" (referred supra), the Apex Court adverted to the definition of offence punishable under Section 420 of I.P.C., wherein postdated cheque was issued to the complainant by the accused and the same was dishonoured by bank, wherein the Apex Court discussed about the ingredients to constitute offence punishable under Section 420 of I.P.C., which is as follows:

> "The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which no transfer occurs. Deception is the quintessence of the offence. The essential ingredients to attract Section 420 are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and the (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating under Section 420. (See: Bashirbhai Mohamedbhai v. State of Bombay 1960CriLJ1383).

If this principle is applied to the present facts of the case, at best, the Court can draw the inference from the circumstances including the conduct of the parties, but the prime requirement to constitute offence for the offence punishable under Section 420 of I.P.C. is that the petitioners must have dishonest intention to induce the defacto complainant to part with property at the initial stage. If there is any allegation in the complaint, the question of adducing evidence and drawing inference would arise, but in the absence of allegation, proceeding against the petitioners for the offence punishable under Section 420 of I.P.C. is abuse of process of Court.

The other offences allegedly committed by the petitioners are punishable under Sections 468 and 471 of I.P.C.

In paragraph No.6 of the complaint, defacto complainant made a specific allegation that "the accused intentionally fabricated false evidence for the purposes of using it in judicial proceedings. The accused have also used as true and genuine lease deed Dt.06.01.2014 and other documents knowing that they are false and fabricated, only with a view to cause wrongful loss to the complainant."

The execution of lease deed is not in dispute, but this is between accused Nos.1 and 3 and such lease deed dated 06.01.2014 is not denied by the parties to the document and it can never be said to be a forged document since the petitioners themselves admitted about the execution of lease deed dated 06.01.2014 bearing document No.34 of 2014 executed by accused No.1 in favor of accused No.3. If for any reason, the document is forged document, it is for the petitioner No.1, father of petitioner No.3 to raise such contention that the lease deed is fabricated and created for the purpose of suit.

There was no specific allegation in the complaint that the petitioners created any other document by forging the signatures of defacto complainant with a view to cause wrongful loss to the defacto complainant. In the absence of any details as to the forgery of signature of defcto complainant in the complaint, based on bald allegations, the Court cannot permit the defacto complainant to prosecute the petitioners for the offences punishable under Section 468 and 471 of I.P.C.

The other offence allegedly committed by the petitioners is punishable under Section 120-B of I.P.C. i.e. punishment for criminal conspiracy.

The most important ingredient of the offence 'criminal conspiracy' is the agreement between two or more persons to do an illegal act or an act not illegal by illegal means (See:**Kehar Singh and others v. State (Delhi Admin.)[15]"**. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established (See: ***Lennart Schussler and another v. Director of Enforcement and another***[16]).

The basic ingredients to constitute an offence punishable under Section 120-B I.P.C. is that there must be an agreement between the parties to do an act by illegal means or to do an act, which is not illegal by illegal means. In "***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***[17]", an identical issue came up for consideration before the Honourable Apex Court and the Honourable Apex Court clearly laid down distinction between Section 34, Section 109 and Section 120-B I.P.C. and held that Section 34 I.P.C. embodies the principle of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed

[15] AIR 1988 SC 1883
[16] AIR 1970 SC 549
[17] AIR 1971 SC 885

provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B I.P.C., criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 of I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.

As seen from the principle laid down by the Honourable Apex Court in the above judgment, there must be two or more persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B of I.P.C.

Though the offence punishable under Section 120-B of I.P.C. is independent offence, to prove such offence there must be an allegation that the accused conspired together to do an illegal act. But here, as discussed above, no such act in violation of law committed and the conspiracy alleged against the petitioners is not substantiated by producing *prima facie* material to proceed against the petitioners. In such case, permitting the defacto complainant to proceed against the petitioners based on the allegations made in the complaint amounts to abuse of process of the Court.

In view of the law declared by the Apex Court in various judgments (referred supra) the offence of criminal conspiracy can be proved by taking into consideration of conduct of the parties prior and subsequent to the incident. Here, the allegations made against accused No.1 is that he created sale deed by forging signatures of defacto complainant, but the said dispute is the subject matter of O.S.No.243 of 2014 pending on the file of III Senior Civil Judge, City Civil Court, Secunderabad.

The alleged MOU is not in dispute and all these documents are in challenge in Civil Court in O.S.NO.243 of 2014. Therefore, the disputed question regarding genuineness of the document shall be decided only in a Civil Court in a suit pending before it and when the suit is pending before the competent Court in O.S.No.243 of 2014, filing private complaint in 2015 making similar allegations is nothing but abuse of process of the Court and the complaint was filed with malafide intention. The lease deed was not executed a day before filing of the complaint, but it was executed on 06.01.2014 by accused No1 in favour of accused No.3 and also executed several documents. If really, the defacto complainant is aggrieved by execution of such document, he ought not to have maintained silence for more than a year and very filing of complaint subsequent to filing of the suit i.e. on 17.12.2014 is directly indicates malafides on the part of the defacto complaint to harass the petitioners to wreck vengeance against them and to settle the disputes with regard to properties.

In any view of the matter, the dispute is only with regard to partition of the property and the suit is pending before the competent Court for grant of perpetual injunction and the respondent No.2 contesting the suit by filing his counter independently and it is pending for adjudication. But the I.A.No.551 of 2014 in O.S.No.243 of 2014 was dismissed on contest, that itself is not a ground to quash the proceedings. If for any reason, the dispute is purely for partition of property of joint family, which is civil in nature and conversion of such civil dispute giving colour of criminal offence is abuse of process of Court.

In "***Mohammed Ibrahim and Ors. v. State of Bihar and another***[18]" the Apex Court held as follows:

> "This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 and Indian Oil Corp. v. NEPC India Ltd. (2006) 6 SCC 736)"

In "***All Cargo Movers (India) Pvt. Ltd. v. Dhanesh Badarmal Jain and Another***[19]" the Apex Court held as follows:

> ".....Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondence exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior Courts while exercising this power should also strive to serve the ends of justice."

In "***Rajesh Bajaj v. State NCT of Delhi and Others***[20]", the Apex Court while dealing with a case where the High Court

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[18] (2009) 8 SCC 751
[19] AIR 2008 SC 247
[20] AIR 1999 SC 1216

had quashed an F.I.R., opined that the facts narrated in the complaint petition may reveal a commercial transaction or a money transaction, but that is hardly a reason for holding that the offence of cheating would elude from such a transaction. Proceeding further, the Bench observed thus:

> "The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the Respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the Respondent were not clear. He also mentioned that the Respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

If really, the defacto complainant is interested in division of property by metes and bounds, he can approach the Court and claim relief of partition against the petitioners and in such proceedings, all the disputes can be decided.

Learned counsel for the respondent No.2/defacto complainant further contended that the Court cannot exercise power under Section 482 of Cr.P.C. except in exceptional circumstances and when the criminal offence is made out though civil remedy is available, the Court cannot quash the proceedings by placing reliance on the judgment of Apex Court rendered in "***Lee Kun Hee v. State of U.P.***" (referred supra), wherein the Apex Court held as follows:

> "We have given our thoughtful consideration to the last contention advanced at the hands of the Learned Counsel for the Appellants. We are of the considered view, that in offences of the

> nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating, can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief, for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1.2.2001, cannot be claimed in the criminal proceedings, for that relief the remedy would be only through a civil suit. <u>It is therefore not possible for us to accept, that since a civil claim has been raised by the complainant-JCE Consultancy, based on the alleged breach of the agreement dated 1.12.2001, it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Indian Penal Code</u>. It would not be appropriate for us, to delve into the culpability of the Appellants at the present juncture, on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn, at the present juncture is, that even on the basis of the last submission canvassed on behalf of the Appellants, it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the Appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law, after allowing the rival parties to lead evidence to substantiate their respective positions."

Similar view was expressed by the Apex Court in "***Sushil Suri v. C.B.I.***" "***P.S.Meherhomji v. K.T.Vijay Kumar***" "***Vijayander Kumar v. State of Rajasthan***" "***State of Haryana v. Ch.Bhajan Lal***" (referred supra). There is no dispute regarding the law declared by the Apex Court in the judgments referred supra, at the same time in "***State of Haryana v. Bhajan Lal***" (referred supra) the Apex Court laid down guidelines to exercise power under Section 482 of Cr.P.C.

Even the principles laid down in "***State of Haryana v. Bhajan Lal***" (referred supra) by the Apex Court are applied to the present facts of the case, the private complaint is silent as to the dishonest intention on the part of the petitioners to induce the defacto complainant at the beginning to constitute the offence punishable under Section 420 of I.P.C. Similarly, no details were given in the complaint as to the alleged forgery and fabrication of documents and used those documents as genuine to constitute offence punishable under Section 468 and 471 of I.P.C. except referring the lease deed between accused Nos.1 and 3, execution of the same is not in dispute. As such the proceedings against the petitioners herein for the offences punishable under Sections 120-B, 420, 468 and 471 of I.P.C. are liable to be quashed.

In the result, the criminal petition is allowed. The proceedings against the petitioners/accused in C.C.No.82 of 2015 pending on the file of the XI Additional Chief Metropolitan Magistrate at Secunderabad are hereby quashed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

26.09.2018
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