

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.12061 and 12856 of 2017

COMMON ORDER:

The petitioners are A.3-N.Pamesh and A.4 B.Prakash in CrI.P.No.12856 of 2017 and A.6-B.Padmavathy in CrI.P.No.12061 of 2017 respectively in C.C.No.617 of 2012 on the file of the XIV Addl.Chief Metropolitan Magistrate, Nampally taken cognizance for the offences punishable u/ sec.404, 420, 448, 506 and 120-B IPC in all against six accused. The same is outcome of private complaint dt.24.08.2010 of the 2nd respondent Stendra Narayan Rai, that was referred to police for investigation by the learned Magistrate u/ sec.156(3) Cr.P.C. from which the police Panjagutta having received and registered on 03.09.2010 as Cr.No.704 of 2010 for the offences supra and after investigation filed chargesheet for the offences supra saying there is prima facie case made out against the accused persons and it is therefrom the learned Magistrate taken cognizance on 15.06.2012. It is impugning the same, the present quash petitions are filed by them.

2. The 2nd respondent-defacto-complainant in both the matters. Notices sent one returned with endorsement as addressee left and the other as refused is sufficient service, therefrom taken as heard and heard the learned Public Prosecutor representing 1st respondent-State and the learned counsel for the petitoenrs-A.3, A.4 and A.6 respectively in the two petitions saying that the entire material is predominantly civil in nature. The complainant cannot be allowed to add criminal flavour to the contract for sale transaction that too having filed suit for declaration and possession with consequential declaration of sale deed Doc.No.40 of 2010 dt.08.01.2010 as void and not binding on the complainant-plaintiff and the same was dismissed on 01.06.2015 by the learned III Addl.Chief Judge, City Civil Court, Hyderabad particularly among several issues not answered and issue No.11-as to whether the sale deed dt.08.01.2010 brought into existence with fraud and to declare as null and void, in saying as per

Ex.A.5 the property is transferred to D.1 and under Ex.A.5 sale deed dt.06.07.2006 M/s. Prestige Avenues Limited represented by its Managing Director M.Venkateswara Rao, on behalf of the plaintiff/complainant as agreement holder and the D.1 in turn transferred to the Defendants 2 to D.4, under Ex.A.4 and the D.2 to D.4 transferred the same in favour of D.4-A.5 in the present crime under Ex.A.4 sale deed Supplementary Memorandum of Undertaking dt.02.06.2006 and D.2 to D.4 supra transferred the same in favour of D.2 to D.5 and all the documents Exs.A.5, A.2-registered agreement of sale-cum-GPA,dt.03.10.2007 and A.1-registered sale deed dt.08.01.2010 respectively of registered documents and unless the same is cancelled in any court of law those are binding being valid documents in the eye of law and as such continuation of criminal proceedings against any of the accused is abuse of process of law and liable to be quashed.

3. The learned Public Prosecutor submits in opposing the same that remedy of the petitioners if at all is left open to seek for discharge if charges not framed for the case is pending since 2012 and after 6 years there are no grounds to quash the proceedings from the quash petition filed after 5 years waiting of the Calander Case is taken on file for the offences supra and sought for dismissal.

4. Heard and perused the material on record.

5.The Sum and substance in the private complainant of the defacto-complainant registered as First Information Report and from the charge sheet after investigation by the police with reference to the statement of the defacto-complainant and one Ravindranath-L.W.2 filed by the L.W.3-Investigating Officer that the complainant is the owner of the property of the 3000sq.yards H.No.6-3-664 of Somajiguda, Hyderabad purchased along with one Basanth Kumari Devi and Jyotendra Narayan Rai through registered sale deed dt.08.10.1965 vide Doc.No.2372 and the other to relinquish as executed sale deed in favour of the complainant and therefrom the complainant became the owner over the property

with title as on 12.01.1971. In 2004 the A.1 and A.2 approached the complainant to develop the property by constructing commercial complex and therefrom Development Agreement-cum-GPA executed by the complainant in favour of A.1 and A.2 that was registered on 01.11.2004 vide Doc.No.2749 of 2004 which is Ex.A.3 in the suit supra and as per its conditions, the complainant and the A.1 and A.2 respectively entitled for 50-50% share in the entire built up area with undivided share of land and the A.1 and A.2 started construction in the property by obtaining necessary permissions and the MOU, dt.02.06.2006 was executed under Ex.A.4 between the complainant and the A.1 along with a third party by name Sumit Enterprises and clause-13 of MOU, it was agreed by the A.1 that the complainant will retain the entire 7300sq.feet of commercial complex in 4th floor and 3313 sq.ft. of commercial space in 3rd floor of A' block in the said property. On 01.07.2006, the A.2 as GPA Holder of complainant executed sale deeds in favour of A.1 vide Doc.No.2003/ 2006 and 2004/ 2006 to the extent of 990sq.yards and 912.47 sq.yards out of the total extent of the said property. It is averred that said registration sale deeds were executed behind the back of complainant with no right and those are contrary to the Ex.A.3-registered Development Agreement terms. On 09.06.2009 under Ex.A.6 without knowledge of the complainant, the A.1 and A.2 executed two registered documents which are the cancellation of sale deeds Nos.2003 and 2004/ 2006 and A.1 executed registered GPA-cum-sale agreement in favour of A.3 to A.5 for the commercial space of 28.66sq.ft of 4th floor which is also contrary to the MOU between the complainant and the A.1 and as per the supplementary MOU, the entire 4th floor space was fallen to the share of the complainant and the A.1, not having any authority, right or title, executed the said document in favour of A.3 to A.5, subsequently as agreement-cum-GPA holder executed registered sale deed in their favour with A.6 on 08.01.2010 Doc.No.40/ 2010 and the alleged trespass and

they are not entitled to execute documents either in their favour or in favour of A.6 and thereby to take action.

6. What is stated is during the investigation, L.Ws. 1 and 2(defacto-complainant and Ravindranath) examined and the L.W.1 reiterated the same. Ex.A.3-the irrevocable Development Agreement-cum-GPA dt.01.11.2004 was executed between the complainant and the A.1 and A.2 not in dispute. The subsequent registered documents are covered by the Ex.A.2 registered agreement of sale cum GPA, dt.03.10.2007 and Ex.A.5 registered sale deed dt.06.07.2006. Ex.A.6 dt.09.06.2009 canceling sale deed dt.06.07.2006 and even on 05.01.2010 the complainant issued legal notice to M/s. Prestige Avenues Limited, the D.1 in O.S.No.86 of 2010 and received the reply. Even from the very complaint averments as per Ex.A.3-the GPA-cum-Development Agreement, the complainant is entitled to 50%and the A.1 and A.2 are entitled to the other 50% share. So far as the petitioners-A.3, A.4 and A.6 respectively are concerned, they are the vendees from A.1 and A.2 respectively and there is no basis to say they are parties to any deception that too when not parties to the Development Agreement-cum-GPA made between the A.1 and A.2 on one hand for 50%and the complainant on the other remaining 50% Once such is the case, they cannot be liable for any offence of cheating or Criminal Breach of trust or alleged trespass or Criminal intimidation which are with no basis against them. Leave apart the dispute is predominantly civil in nature and already for cancellation of document O.S.No.86 of 2010 filed on 16.12.2010 which is more than six months prior to the filing of the private complaint by the defacto-complainant and as such it cannot be held as to add criminal flavour to the civil lis.

7. Having regard to the above, both the Criminal Petitions are allowed by quashing the proceedings in C.C.No.617 of 2012 on the file of the XIV Addl.Chief Metropolitan Magistrate, Nampally against the respective petitioners viz; A.3, A.4

and A.6 and they are acquitted. Their bail bonds shall stand cancelled.
Consequently, miscellaneous petitions, shall stand closed.

Date:15.12.2018

Dr. B. SIVA SANKARA RAO, J

