THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 12117 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings against the petitioners-accused Nos. 2 to 6 in C.C.No. 1 of 2017 on the file of the Court of Special Judicial I Class Magistrate for Prohibition and Excise, Guntur (for short, 'the Court below), registered for the offences punishable under Sections 120-B, 468, 471 and 420 read with Section 34 of IPC and Sections 4 and 5 of A.P. Land Grabbing (Prevention Act).

2. The case of the petitioners is that respondent No. 2 earlier lodged a report with the police alleging that his wife Malleswari and her sister Rajya Lakshmi are the owners of land situated on Kundula Road, Krishna Nagar, Guntur. While so, when accused No. 1 herein tried to grab the said property, respondent No. 2 filed a private complaint before VII AMM Court, Guntur, which was forwarded to police who in turn registered it as a case in crime No. 22 of 2006. After completion of investigation, charge sheet was filed and the same was numbered as C.C.No. 79 of 2008. After full-fledged trial, accused No. 1 was found guilty and convicted vide calendar and judgment dated 22-04-2013. Aggrieved thereby, accused No. 1 preferred Criminal Appeal No. 190 of 2013 on the file of the Court of XII Additional District Judge – cum – Family Judge, Guntur, and the same was dismissed confirming the calendar and judgment of the trial Court, against which Criminal Revision Case No. 1285 of 2017 is preferred before this Court. In spite of conviction recorded by both the Courts below, respondent No. 2 now again prosecuting the proceedings for the same incident by filing the present compliant with the police.

3. The main allegations made in the compliant are that before pronouncement of judgment in C.C.No. 79 of 2008, accused No. 1 herein colluding with accused Nos. 2 to 5 executed certain documents in favour of the latter, to which accused Nos. 6 and 7 acted as identifying witnesses. On coming to know about the same, respondent No. 2 and his wife came down to Pattabhipuram Police Station, Guntur Urban District, and presented a report against accused Nos. 1 to 7 which was registered as a case in crime No. 312 of 2014 for the offences referred *supra* and issued F.I.R. During investigation, L.Ws.1 to 13 were examined and recorded their statements under Section 161 (3) of Cr.P.C. On the strength of the reports and other material collected, charge sheet is filed before the Court below.

4. At the hearing, learned counsel for the petitioners-accused Nos. 2 to 6 has contended that when accused No. 1 herein was already convicted, the petitioners-accused Nos. 2 to 6 cannot be prosecuted for the same incident and prayed to quash the proceedings while learned counsel for respondent No. 2 supported the case of prosecution in all respects.

5. Petitioner Nos. 1 to 4 purchased the subject property under various documents. In the earlier agreement, these petitioners were not parties and accused No. 1 herein alone was the party who was already found guilty and convicted. Execution of documents in favour of these petitioners took place in the year 2011 *i.e.* on 11-08-2011 and the earlier agreement is of the year 2006 while the calendar case is of the year 2008. Therefore, execution of the documents took place only during pendency of C.C.No. 79 of 2008. According to Section 300 (1) of Cr.P.C., a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to tried

again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof. This rule is hedge by some exceptions. However, Section 300 (1) of Cr.P.C. is clear that a person who has been tried once cannot be tried again where he is found guilty or not or convicted or acquitted. The petitioners in the present case were not tried in the earlier calendar case. Apart from that, execution of various documents in favour of petitioner Nos. 1 to 4 took place on 11-08-2011. Thereby, question of trying the petitioners in the earlier crime as accused does not arise. Hence, Section 300 (1) of Cr.P.C. has no application in this case and basing on the principle of double jeopardy, the criminal proceedings against the petitioners cannot be quashed.

6. Admittedly, petitioner No. 5-accused No. 6 is an identifying witness along with accused No. 7. However, an identifying witness cannot be prosecuted in view of the law declared by the Apex Court in ***Mohammed Ibrahim Vs. State of Bihar***[1]***.*** Therefore, the proceedings against petitioner No. 5-accused No. 6 are liable to be quashed.

7. Coming to the case of petitioner Nos. 1 to 4-accused Nos. 2 to 5, they are purchasers of property during pendency of C.C.79 of 2008. The offences allegedly committed by the petitioners are punishable under Sections 120-B, 468, 471 and 420 read with Section 34 of IPC. Section 120-B of IPC deals with punishment for criminal conspiracy. The word criminal conspiracy is defined under Section 120-A of IPC and according to it, when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy provided that no

[1] (2009) 8 SCC 751

agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Execution of a document by accused No. 1 in favour of petitioner Nos. 1 to 4 though he had no title to the property, which was the subject matter of C.C.No. 79 of 2008 where he was found guilty, is an illegal act. Accused No. 1, without having title to the subject property, ought not to have executed sale deeds. However, the case of the petitioners is that they are *bona fide* purchasers for valuable consideration without defect in the title of accused No. 1 which is a disputed question of fact to be decided by adducing evidence before the Court below and therefore on this ground, the proceedings against petitioner Nos. 1 to 4 cannot be quashed.

8. The other offences allegedly committed by petitioner Nos. 1 to 4 are punishable under Sections 468 and 471 of IPC. Section 468 of IPC deals with punishment for forgery for the purpose of cheating and Section 471 deals with punishment for using as genuine a forged document or electronic record. The word forgery is defined under Section 463 of IPC and according to it, whoever makes any false document or false electronic record or part of a document, or electronic record with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause by person to apart with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery. Here in this case, accused No. 1 executed certain documents for the purpose of cheating either the *de facto* complainant or petitioner Nos. 1 to 4 but petitioner Nos. 1 to 4 did not forge any document for the purpose of cheating. Therefore, petitioner Nos. 1 to 4-accused Nos. 2 to 5 are not liable to be prosecuted for the offences punishable under Sections 468 and 471 of IPC and accused No. 1 alone is liable to be

prosecuted for the offences punishable under Sections 468 and 471 of IPC but he was already convicted for the same offences in C.C.No. 79 of 2008. However, accused No. 1 is not a party to the present petition and therefore this Court need not decide the legality of prosecution of accused No. 1 in the present C.C.No. 1 of 2017 on the file of the Court below.

9. The other offence allegedly committed by petitioner Nos. 1 to 4 is punishable under Section 420 of IPC. Here in this case, petitioner Nos. 1 to 4 are only purchasers. Hence, question of attributing any dishonest intention to them does not arise as they did not induce the *de facto* complainant to part with any property *etc.*, to constitute the offence punishable under Section 420 of IPC. Therefore, petitioner Nos. 1 to 4 are not liable to be prosecuted for the offence punishable under Section 420 of IPC.

10. In view of my foregoing discussion, the proceedings in C.C.No. 1 of 2017 on the file of the Court below against petitioner No. 5-accused No. 6 are liable to be quashed and are accordingly quashed and the proceedings against petitioner Nos. 1 to 4-accused Nos. 2 to 5 for the offences punishable under Sections 468, 471, 420 are also liable to be quashed and are accordingly quashed while permitting the Court below to proceed with trial against petitioner Nos. 1 to 4-accused Nos. 2 to 5 for the offence punishable under Section 120-B of IPC.

11. The criminal petition is accordingly partly allowed. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 19-07-2018. ***M.SATYANARAYANA MURTHY, J.***

JSK