HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.24801 of 2017

ORDER:

The petitioner is A.4 among four accused in C.C.No.891 of 2017 pending on the file of the V Addl.Judl.Magistrate of First Class, Nellore which is outcome of private complaint of the 2nd respondent registered for the offences punishable u/s.418,420 and 423 r/w 120-B IPC, referred by the learned Magistrate to police for investigation under Section 156(3) CrPC, from which the crime was registered and after investigation by police filed the charge sheet that was taken cognizance for the offences supra against the A.1 to A.4 including the petitioner/A.4, by citing the defacto-complainant and six more witnesses including Joint Sub Registrar-1, and Joint Sub Registrar, Nellore by the investigation conducted by the L.W.8-Sub Inspector of Police,Balaji Nagar, Nellore.

2. The sum and substance of the accusation in the private complaint referred to police for investigation in registration of the crime and from the police final report from conclusion of investigation is that the complainant-N.Raghurami Reddy of Pottepalem village, Nellore Rural Mandal, is living by cultivation by purchasing land in the surrounding areas and therefrom was doing real estate business and in the course of time, he shifted his residence to Narassingaraopet, Gudur. One G.Anukumar, another real estate person became a friend to the defacto-complainant and said that there is a profitable deal that one RCC roofed house to an extent of 20 ½ ankanams belongs to A.1-Talacheeru Aruna and his wife A.2-Talacheeru Prameelamma and A.3-T.Raghuvendra Rao who is son of A.1 and A.2 is for sale and informed that the A.3 is proposing to sell the same at a meager price of 1.5crores out of original price of 2Crores worth for business purpose and A.3 also informed to the complainant to come and see the house offered to sell by A.1 and A.2 and he will introduce his parents(A.1 and A.2)

and also his business friends (A.4 and A.5) of Tirupati. While so, on 02.12.2012 the complainant along with his friends-G.Arun Kumar and G.Sreenivasa Rao (not arrayed as accused) went to see the house offered by A.3 and at that time all the accused were present. A.3 shown photostat copy of sale deed No.18114 of 2006 standing in the name of A.1 and A.2 (copy of it as Doc.1 filed with complaint) and also Encumbrance Certificate relating to the property (copy of it as Doc.2 filed with complaint) and A.3 stated that A.1 and A.2 purchased the house and made developments and as the A.3 in need of money for his business, he is offering the same to sell for a confessional price and A.4 and A.5 also stated that they are doing real estate business along with the A.3 and they are in need of money and A.4-the petitioner and A.5-Sekhar Keerthi also assured that they will also help in disposing of the house to third parties on commission of five lakhs in that transaction to A.3 to A.5. Thus in that way the complainant was lured by them to make believe and taking into consideration of the demand and price in the surrounding area of the houses, the complainant thought it a fetching transaction cause mediated by his friends Arunkumar and G.Sreenivasa Rao for only 75lakhs however A.3 refused to sell for such low price and with the intervention of A.4 and A.5 the sale consideration fixed was at one crore. The A.3 to A.5 forced the complainant to get ready with sale consideration in 10 days, else to sell to third parties. The complainant thought it as a beneficial transaction and in believing the words of accused persons of the original documents kept with third parties and on payment of advance by the complainant to A.3, they can bring the original documents and hand over to him at the time of registration. Further on 13.12.2012 the complainant and his friends Arun Kumar and Srinivass Rao went to the house of A.3, by that time, A.4-the petitioner and A.5 also there and A.3 and A.5 collected the descriptive particulars of the complainant and informed that they are going to prepare sale agreement and after an hour after the A.3 and A.5 brought sale agreement prepared by them, the complainant handed over the advance amount of 75lakhs to A.3 and A.5 who counted and asked to pay the remaining sale consideration by 11.12.2013 to execute the sale deed. The A.1 and A.2 signed the agreement on 13.12.2012, attested by A.3 and the complainant's friends Arun Kumar and Sreenivasa Rao(the photostat copy of which is Doc.3 of the complaint). After several phone calls for getting ready with balance consideration of 25 lakhs, A.3 stated busy with business transactions and as and when he becomes free, he could arrange execution of sale deed and complainant even went to Tirupati and requested the A.4 and A.5 in this regard informing attitude of A.3 who assured to arrange regular sale deed cause executed by A.1 and A.2. In November, 2013 the A.3 informed over phone the complainant that he is in need of 25lakhs for his real estate business to arrange payment of balance sale consideration and get the sale deed executed by A.1 and A.2. Accordingly the complainant arranged the balance consideration on 09.12.2013 for which the A.3 stated A.1 to A.3 were at Naavurupalli, and A.4 and A.5 are preparing sale deed and by saying so having kept in waiting till 8.00 P.M. they came and received 20lakhs and endorsed on 18.12.2014 and asked the complainant to arrange the balance 5 lakhs to get sale deed and the complainant and his friends including through G.Narayana Reddy and Chennuru Krishna Reddy requested A3 to A.5 for registration but they turned deaf year and failed to execute registered sale deed and A.4 and A.5 also failed to keep their promise. The complainant, thus filed O.S.No.153 of 2014 dt.29.04.2014 for specific performance against the A.1 and A.2 pending on the file of the V Addl.District Judge, Nellore (Doc.4 of the complainant) the State Bank of India, Podalakur Branch, issued paper publication in Eanadu Daily dt.21.11.2014 (Doc.5 of the plaint) saying the

A.1 and A.2 mortgaged said property, A.3 stood as guarantor of the transaction and bank is going to hand over the property under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(for short, 'SARFAESI Act'). On enquiry the complainant came to know that A.4 had obtained registered Power of Attorney-cum-sale agreement and A.1 and A.2 through registered document No.2634 of 2013, dt.20.06.2013((enclosed as copy of Doc.6 of pliant) of Sub Registrar Officer, Stonehousepet, Nellore, and said document was attested by the A.3 and A.5. Thereby all the accused conspired in cheating the complainant as per the allegations. The learned counsel for the petitioner-a.4 reiterated the above in the course of hearing the quash petition arguments.

3. In the private complaint, there was a supporting affidavit and Doc.10 speaks representations of the complainant to police officials. In the complaint, it is mentioned at para-17 page 9 of representations given to the police but copies not filed by either side including the defacto-complainant-2nd respondent before this Court even not mentioned dates of complaints and how many representations and nothing shown any whisper about the A.4-petitioner. The petitioner-A.4 therefrom seeks quash of the proceedings saying there is no basis to sustain any accusation to refer his name as accused or police to register crime or to file charge sheet or for the Magistrate to take cognizance for no offence of cheating under any of the Sections 418,420 and 423 much less conspiracy in this regard, made out. The complainant states that the police rightly registered the crime from the private complainant and after investigation filed chargesheet and the Magistrate rightly taken cognizance and if at all any remedy is only to file application for discharge but nothing to quash the proceedings.

4. Heard both sides and perused the material on record.

5. Undisputedly, the plaint in O.S.No.153 of 2014 filed by the complainant against the A.1 and A.2 initially and added A.4 as D.3 in I.A.No.513 of 2014,dt.01.08.2016 pursuant to GPA. What all mentioned in the plaint by incorporation of para-3(a) in adding the A.4 as D.3 to the suit subsequently is that after legal notice to A.1 and A.2 for specific performance pursuant to the agreement of sale, dt.13.12.2012, A.1 and A.2 executed sham and nominal document of GPA-cum-sale agreement in favour of A.3 dt.20.06.2013 without consideration to defeat the rights of plaintiff and thereby all the defendants are liable to execute sale deed in favour of the plaintiff and defendants are making hectic efforts to alienate the property to third parties.

6. There is nothing more against the A.4 in the plaint including from the amendment by array of the petitioner-A.4 as D.3 in the suit, however, what the private complaint referred supra alleges by introduced A.4's role in para-7 of the private complaint as if A.4 and A.5 stated doing real estate business along with A.3 and in need of money and they also assured to the complainant that they will dispose of the house to others to get more profit. Even in the complaint further stated that it is a viable transaction from the prevailing prices and though it was stated worth 2 crores and offered to sell for 1.5 crores and for one crore agreed to sell to the complainant with intervention of his friends Arun Kumar and Sreenivasa Rao. Once that is the case other than a little whisper about A.4 and A.5 stated that they also can say that the property subsequently can be alienated to others for more profit, there is nothing in the transaction regarding assurance of title and cause execution of sale deed by them much less to cheat even from what further stated in para-8 of complaint is sale price fixed for one crore also at intervention of A.4 and A.5 besides the complainants friends Arun Kumar and Sreenivasa Rao who were when not

added as accused, the question of adding A.4 and A.5 does not arise. What all further stated at para 12 of the complaint is from the attitude of A.1 to A.3 of the property of A.1 and A.2 not cause executed the sale deed by A.3 by taking balance consideration inspite of the demand of the complainant, the complainant went to Tirupati and complained to A.4 and A.5. Even therefrom there is nothing to say that A.4 and A.5 are in privy with others cause cheated the complainant. It is not even the case that they are at least attestors to the original sale agreement dt.13.12.2012. The so called registered GPA-cum-sale agreement executed by the A.1 and A.2 in favour of A.4 attested by A.3 and A.5 as Doc.No.2634 dt.20.06.2013 no way make A.4 or A.5 liable for any offence. It is only having came to know subsequent to the filing of the suit, the said GPA-cum-sale agreement, the complainant, it appears, filed application to implead A.4 as D.3 in the suit and filed the private complaint by roping the A.4 with no basis. Thereby the accusation against the A.4-the petitioner is basically unsustainable for same no way makes out any offence of cheating. It is also his defence in the written statement in that suit filed in April, 2017 that he is a bona fide purchaser for value in good faith obtained possessory sale agreement-cum-GPA for consideration.

7. Having regard to the above, the Criminal Petition is allowed by quashing the proceedings in C.C.No.891 of 2017 pending on the file of the V Addl.Judl.Magistrate of First Class, Nellore against the petitioner/A.4 based on the expression of the Apex Court in Md.Ibrahim Vs. State of Bihar[1] as the principle laid down therein supports to the conclusion also from the other expressions in Arun Bhandari Vs. State of Utter Pradesh[2] from the dispute is predominantly civil in nature and pending in the civil court suit for specific performance.

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[1] 2009 8 SCC

[2] 2013(2) SCC 801

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:23.11.2018
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