

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION Nos. 1532 and 3347 of 2018

COMMON ORDER :

Criminal Petition No.1532 of 2018 is filed under Section 482 Cr.P.C., seeking to quash the investigation in Crime No.48 of 2018 on the file of Moinabad Police Station, Cyberabad, registered against the petitioners/accused Nos.2 and 3 and another, for the offences punishable under Sections 120-B, 406, 419, 420, 468 and 471 of I.P.C.

Criminal Petition No.3347 of 2018 is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.689 of 2018 on the file of the XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar, registered against the petitioners/A-1 and A-2 and another for the offences punishable under Sections 447, 427, 506 and 188 read with Section 34 of I.P.C.

Since the issues involved in both the petitions are inter-connected, they are being disposed of by this common order.

The facts in brief are as under:

The averments in the report in Crime No.48 of 2018 of Moinabad Police station and the charge sheet in C.C.No.689 of 2018 on the file of the XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar, would show that the son of the third respondent by name late Mohd. Javed Ahmed Siddiqui (hereinafter referred to as "the deceased") had acquired total land to an extent of Ac.15.33 Gts., in Sy.Nos. 288/1, 289,

299, 300 and 301, situated at Chilkur Village, Moinabad Mandal, Ranga Reddy District, through four separate sale deeds vide document Nos. 6705/1998, dated 02.09.1998, 11202/1993 dated 17.12.1993, 3873/1994, dated 06.05.1994 and 9552/1993 dated 25.10.1993 and since then he claimed to be in possession and enjoyment of the same. Later, the deceased-Javed Ahmed Siddique made a lay-out in the name of "Golden Meadows" and sold away several plots. It is said that about 95% of plots in the lay-out were in his exclusive possession and enjoyment till his death and after his demise the third respondent continued in possession of the same. The original owner i.e., the son of the 3rd respondent died on 28.01.2016, leaving behind the third respondent (mother), his wife Mrs.Rizwana Begum and his minor son Mohd. Fahed Ahmed Siddiqui as his Class-I legal heirs. During his life time, the deceased married to the accused No.1 and due to strong differences, they took divorce on 28.06.2013 before the office of the Government Kazi, Golconda, Hyderabad. After death of the deceased, accused No.1 visited the house of the third respondent for sympathy and during that period she committed theft of the original documents of the above property, jewellery, cash along with bank locker keys and also kidnapped the minor son of the deceased. A case was registered against accused No.1 vide Crime No.76 of 2016 of Chaderghat Police Station, Hyderabad and the same is pending. The police, however, took the custody of the minor son but the original documents were in the custody of accused No.1. Taking advantage of custody of the said documents, accused No.1, criminally conspired with the

petitioners/accused Nos.2 and 3, handed over the registered sale deeds to them and also created an agreement of sale. On the basis of the said documents, the petitioners filed a collusive suit vide O.S.No.45 of 2016 before the XII Additional District Judge, Vikarabad, and got it referred to Lok Adalath and a settlement was arrived at. Under the guise of compromise decree, the petitioners tried to trespass into the property and a complaint was also registered before the Moinabad Police Station, vide Crime No.91 of 2017 and the same is pending. Basing on the collusive decree, the petitioners filed E.P.No.4 of 2017 before the XII Additional District and Sessions Judge, Vikarabad, Ranga Reddy District, and obtained possession warrant. However, the third respondent filed a Claim-Petition vide E.A.No.3 of 2017. In spite of pending the said Claim-Petition, the said Court issued warrant of delivery of possession. Aggrieved by the same, the third respondent and other legal heirs of the deceased filed C.R.P.No.2429 of 2017 before this Court. By an order, dated 09.06.2017, this Court while disposing of the said revision, observed that *"the executing Court ought not to have directed re-issuance of the delivery warrant while ordering notice in the stay petition in the Claim-Petition filed by the petitioners as the same would result in rendering the Claim-Petition itself infructuous. That part of the order is accordingly set aside. The executing Court shall proceed with the hearing of the Claim-Petition and dispose of the same in accordance with law expeditiously."* While so, on 27.10.2017 around more than 50 un-social elements along with the petitioners came to the land, trespassed over the land and threatened the watchman of the third respondent with

dire consequences. The third respondent lodged a complaint before the Moinabad Police Station, for criminal trespass and the same came to be registered as Crime No.467 of 2017. In the said crime, the police filed charge sheet, which was taken on file as C.C.No.689 of 2018 on the file of the XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar.

Criminal Petition No.3347 of 2018 came to be filed seeking quashing of the proceedings in the above C.C. It is also stated that the petitioners tried to obtain possession of the property through Court though the Claim-Petition is still pending. The illegal act of trespass by un-social elements at the instigation of the accused persons is creating law and order problem and the third respondent and the other legal heirs of the deceased are facing threat to their life. It is further stated that accused No.1 impersonating herself as a sole surviving legal heir of the deceased, had entered into an agreement of sale with the petitioners, who are very much having knowledge of the fact that the deceased was the absolute owner of the property and accused No.1 being a divorced wife of the deceased do not have any right over the property. Therefore, the Class-I heirs of the deceased filed the complaint for criminal conspiracy in obtaining the collusive decree by misrepresenting the factual aspects before the Court, criminal breach of trust and impersonating as the sole surviving legal heir to the deceased by forging false and fabricated agreement of sale, receipts and also trying to interfere with the possession of the third respondent and that the petitioners have assisted and conspired with accused No.1 while fabricating the false agreement of sale and receipts.

Reiterating the averments made in the charge sheet, the third respondent filed counter opposing the petitions. Apart from that it is stated in the counter that the contention of the petitioners that the sum and substance of the contents of F.I.R.No.48 of 2018 and the charge sheet in C.C.No.689 of 2018 are one and the same is not correct. In fact, both the complaints are totally different. The complaint in C.C.No.698 of 2018 is filed in respect of an act of criminal trespass by the petitioners where as the complaint in Crime No.48 of 2018 was filed for cheating and creating false and fabricated documents such as agreement of sale and cash receipts. It is also stated that the investigation done by the police in the complaint in C.C.No.689 of 2018 clearly established the illegal act of trespass made by the petitioners. Since the matter requires evidence and trial to decide the offences committed by the petitioners, the proceedings cannot be quashed. Only to drag on the matters and to prolong the litigation, the petitioners filed the quash petitions.

Heard Sri Vedula Srinivas, learned Senior Counsel appearing for the petitioners and Sri Damodar Mundra, learned Counsel appearing for respondent No.3 in both the cases and the learned Public Prosecutor appearing for the State.

Learned Counsel for the petitioners would submit that the deceased executed an agreement of sale in favour of the petitioners much prior to his death and also received the entire sale consideration except an amount of Rs.5.00 lakhs (Rupees five lakhs only). After his demise, when the wife of the deceased demanded further amount,

the petitioners were constrained to file O.S.No.45 of 2016 for specific performance of sale agreement. Pending suit, the petitioners and the wife of the deceased arrived at a compromise and a compromise decree was passed on 13.08.2016. Subsequently, the Court executed a registered sale deed vide document No.12672 of 2017. The petitioners filed E.P.No.4 of 2017 seeking delivery of possession of property, which was ordered and the bailiff proceeded to execute the decree. At that stage, the third respondent along with two others filed E.A.No.3 of 2017 claiming right over the property and also filed E.A.No.4 of 2017 seeking stay of all further proceedings. They also filed C.R.P.No.2429 of 2017 before this Court alleging that without passing orders in the stay petition, the trial Court passed order for issuance of delivery warrant. The said C.R.P. was disposed of on 09.06.2017. Thereafter, the wife of the deceased has voluntarily handed over the possession of the property to the petitioners dated 16.10.2017 and since then they are in possession and enjoyment of the same. The third respondent filed W.P.No.17494 of 2017 before this Court to set aside the Lok Adalath Award passed in O.S.No.45 of 2016. The said Writ Petition was disposed of on 16.04.2018. Against the said order, the third respondent filed SLP (C) No.21972 of 2018 before the Apex Court, which was disposed of on 24.08.2018 observing that the third respondent has already chosen a remedy under Order XXI Rule 97 of C.P.C. and all the questions can be gone into by the lower Court including questions relating to title. He further submits that Claim-Petition is filed in O.S.No.45 of 2016 raising the same pleas on 28.04.2017 whereas the

present complaint is filed on 12.01.2018 seeking prosecution of the petitioners and the wife of the deceased with identical allegations. It is also stated that the offence under Section 406 IPC is not maintainable against the petitioners since the ingredients of said section require breach of trust as defined under Section 405 IPC. There is no entrustment of any property or dominion over the property by the complainant in favour of the accused hence the FIR is liable to be quashed insofar as Section 406 IPC is concerned. Similarly Section 420 IPC is also liable to be quashed for the reason that the ingredients of the said Section are totally absent and are not even pleaded in the complaint. There is no allegation in the complaint that the accused have dishonestly induced the complainant with reference to the schedule property. It is also stated that there are no pleadings that the accused have induced the complainant with deceptive intention basing on forged documents, hence, the ingredients of Section 468 IPC are not constituted. It is also stated that in the year 2012 itself the petitioners entered into an agreement of sale with the deceased and they filed a suit for specific performance of agreement in the year 2016 and the same was decreed before the Lok Adalath. This Court as well as the Apex Court observed that the third respondent had already filed a Claim-Petition and the trial Court will have to decide all the issues including title of the schedule property. Since the allegations are similar in the Claim-Petition as well as the present complaint, prosecuting the petitioners under Section 471 IPC is an abuse of process of law.

Insofar as the allegations in the charge sheet in C.C.No.689 of 2018, the learned Senior Counsel submits that the offence alleged against the petitioners is that they have trespassed into the schedule property and took illegal possession of the same on 27.10.2017 despite the stay orders of this Court in C.R.P.No.13894 of 2017. It is further submitted that on the same allegations, the complainant filed C.C.No.1814 of 2018 before this Court, which was dismissed on 13.02.2019 on the ground that the petitioner therein has approached the Court without clarity with regard to the allegation of the possession of the property being taken by the respondent therein. At one stage, the petitioner therein claimed that the respondents have taken possession on 27.10.2017 by threatening the watchman and on the other hand she filed W.P.No.36787 of 2017 asserting that the S.H.O., Moinabad Police Station has taken possession of the schedule property from them. In view of the contradictory versions pleaded by the complainant in the affidavits filed in different proceedings, this Court held that there is no clarity in her version. In the light of the above, the complaint and the charge sheet stating that the petitioners herein have forcibly taken possession of the schedule property on 27.10.2017 cannot stand to logic and the charge sheet is liable to be quashed. Since there are no allegations that the petitioners have caused destruction of any property intentionally, the ingredients under Section 427 IPC are not made out. It is also stated that as the petitioners have filed a suit, obtained a decree through the competent Court, filed E.P. in which orders were passed by the trial Court and thereafter the judgment debtor has

handed over possession to them, the offence under section 447 IPC i.e., Criminal trespass is not maintainable against the petitioners. The allegations in the complaint and the charge sheet do not support the commission of offence under Section 506 IPC Criminal Intimidation and Section 188 IPC disobedience to the order duly promulgated by public servant, the charge sheet is not maintainable. In support of his contention, he relied on the judgment of this Court in *Koruvada Nageswara Rao and another v. State of A.P.*¹

Sri Damodar Mundra, learned Counsel appearing for the third respondent/complainant would submit that the documents are forged, fabricated and created by the petitioners for the purpose of getting favourable order from the Court in collusion with accused No.3, as such the accused are liable for punishment. It is also stated that the said forged and fabricated agreement of sale and cash receipts are in the custody of the accused as they have taken back from the Court after getting favourable order from the Court. It is also stated that continuation of investigation in Crime No.48 of 2018 cannot be said to be abuse of process of law on the guise of civil litigation pending between the parties. In support of his contention, he relied upon the following judgments.

1. *K.G.Premshanker v. Inspector of Police and others*²
2. *Iqbal Singh Marwah and another*³
3. *P.Swaroop Rani v. M.Hari Narayana*⁴

¹ (2018) 2 ALD (CrI.) 643

² (2002) 8 SCC 87

³ (2005) 4 SCC 370

⁴ (2008) 5 SCC 765

In Criminal Petition No.3347 of 2018, he submits that the police filed charge sheet in the above case after due investigation and after examining LWs.1 to 14. Once it is established that the accused have trespassed into the property, the date of trespass and other issues will be decided during the criminal prosecution. It is further stated that the act of trespass and punishment thereon will be decided only by the criminal proceedings but not in the civil proceedings.

In the light of the submissions of the learned Counsel for the respective parties, the following case laws are necessary to be referred:-

In Harshendra Kumar D. vs Rebatilata Koley and others⁵ Hon'ble the Apex Court has held as under:

"In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked

⁵ (2011) 3 SCC 351

to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company."

In Anita Malhotra vs. Apparel Export Promotion Council and another⁶, Hon'ble the Apex Court has held as under:

"As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of the accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under section 482 of the Code.

In Devendra and Others vs. State of Uttar Pradesh and another⁷ Hon'ble the Apex Court has held as under:

"We may, however, notice that the said decision has been considered recently by this Court in Mahesh Choudhary v. State of Rajasthan & Anr. [2009 (4) SCC 66] wherein it was noticed:

"Recently in R. Kalyani v. Janak C. Mehta and Ors. (2008 (14) SCALE 85), this Court laid down the law in the following terms:

⁶ (2012) 1 SCC 520

⁷ (2009) 7 SCC 495

There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.

In *Zandu Pharmaceutical Works Limited and others vs. Mohd. Sharaful Haque and another*⁸ wherein Hon'ble the Apex Court has held as under:

"Exercise of power under section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code. (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the

⁸ (2005) 1 SCC 122

right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

In *Joseph Salvaraja vs. State of Gujarat and others*⁹ Hon'ble the Apex Court has held as under:

"Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even *prima facie* from the Complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed

⁹ (2011) 7 SCC 59

by the Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not.

In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.

The Appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the Appellant by the Complainant-Respondent No. 4, and is still subjudice. In the said suit, the Appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by Trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the Appellant and Respondent No. 4 - the Complainant. There was no cause of action to even lodge an FIR against the Appellant as neither the Complainant had to receive the money nor he was in any way instrumental to telecast "GOD TV" in the central areas of Ahmedabad. He appears to be totally a stranger to the same. Appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

In Mohammed Ibrahim and others vs. State of Bihar and another¹⁰

Hon'ble the Apex Court has held as under:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a

¹⁰ (2009) 8 SCC 751

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 pressurise parties to settle civil disputes.

In *V. Y. Jose and another vs. State of Gujarat and another*¹¹ wherein Hon'ble the Apex Court has held as under:

"The said principle has been reiterated in *All Carogo Movers (I) Pvt. Ltd. vs. Dhanesh Badarmal Jain and another* [2007 (12) SCALE 391], stating :

"For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. 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 correspondences 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."

A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of

¹¹ (2009) 3 SCC 78

Section 483 of the Code of Criminal Procedure to supervise the functioning of the trial courts."

Reliance has been placed by the learned Counsel for the petitioners in *Mahar Jahan and others v. State of Delhi and others*¹², wherein the Honourable Supreme Court, while dealing with a proceeding under Section 145 of the Code of Criminal Procedure, observed as under:

"This Court noticed that a civil dispute was given the colour of a criminal case. As therein a proceeding under Section 145 of the Code of Criminal Procedure was pending, when a civil suit was also pending before a competent Court of law, it was opined:

It is not disputed by the learned Counsel for the parties that this very property which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil Court. The question as to possession over the property or entitlement to possession would be determined by the civil Court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil Court. Whichever way proceedings under Section 145 Cr.P.C. may terminate, the order of the criminal Court would always be subject to decision by the civil Court. Inasmuch as the parties are already before the civil Court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.

It was furthermore observed:

We have simply noted the contentions raised by the parties. The civil Court, in our opinion, would be the most

¹² (2004) 13 SCC 421

appropriate forum to take care of such grievances and pass such interim order as would reasonably protect the interests of both the parties. The civil Court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil Court exercising the power conferred on it by Sections 94 and 151 of the Code of Civil Procedure.”

Learned Counsel appearing for the 3rd respondent/complainant has relied upon the following case laws:

In the case of *K.G.Premshanker v. Inspector of Police and others* {(Crl.A.No.935 of 2002 dated 12.09.2002), MANU/SC/0771/2002}, the Honourable Supreme Court in Paragraph Nos.32, 33 and 34 observed as under:

“32.In the present case, the decision rendered by the Constitution Bench in *M.S.Sheriff and another v. State of Madras and others*, MANU/SC/0055/1954 {1954} 1 SCR 1144, would be binding, wherein it has been specifically held that no hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal Courts is not a relevant consideration. The law envisages “such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for limited purpose such as sentence or damages.”

“33. Hence, the observation made by this Court in *V.M.Shah v. State of Maharashtra and another*, MANU/SC/0087/1996 (AIR 1996 SC 339) that the finding recorded by the criminal Court stands superseded by the finding recorded by the civil Court is not correct enunciation of law. Further, the general observations made in *M/s Karam*

Chand Ganga Prasad and another v. Union of India and others, MANU/SC/0058/1970: (1971 CriLJ 1072) are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S.Sheriff's case as well as Sections 40 to 43 of the Evidence Act.

"34. In the present case, after remand by the High Court, civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties".

In *P.Swaroop Rani v. M.Hari Narayana*, {(Civil Appeal No.1734 of 2008), MANU/SC/7280/2008}, it was observed by the Honourable Supreme Court at Paragraph No.16 as under:

"It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."

I have considered the respective submissions made by both the learned counsel appearing for the parties and I have also gone through the relevant case laws and also the case laws cited by both the parties. In the light of the above contentions raised by both the learned counsel appearing for the parties and in the light of the decisions in the aforesaid case laws, the following are the main points for consideration by this Court.

1. Whether in exercise of power under Section 482 Cr.P.C., this Court can enter into the controversy that any case is made out against the petitioners or not?

2. Whether the complaint filed by the *de facto* complainant has been moved due to personal vendetta and whether personal vendetta can be made an instrument to initiate the criminal proceedings?

3. Whether the third respondent had any locus-standi to lodge the first information report because the land belongs to the son of the third respondent or whether any fraud was committed on her?

4. Whether a criminal colour has been given to a dispute of civil nature, which is not permitted under the provisions of law?

The scope and exercise of powers under Section 482 Cr.P.C. has time and again come before the Apex Court. It is settled position of law that the power under Section 482 Cr.P.C. has to be exercised sparingly, carefully and with great caution. It is also settled position of law that if any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

In *R.P. Kapoor v. State of Punjab*¹³ the Hon'ble Apex Court has specifically held that if there is legal bar against the institution or continuance of the proceedings or there is no legal evidence to prove the charge, then the power under Section 482 Cr.P.C. can be exercised.

¹³ AIR 1960 SC 866

In this regard, the land mark judgment is the *State of Haryana v. Bhajan Lal*¹⁴ in which Hon'ble Apex Court has laid down the following guidelines.

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.
3. Where the uncontroverted 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.

¹⁴ (1992) SCC (Cr.) 426

4. Where, the allegations in the F.I.R. 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."

In the present case, the respondent No.3, who is the mother of the deceased Mohd. Javed Ahmed Siddiqui, filed some applications resisting delivery of possession of the property to the present petitioners ie., accused Nos.2 and 3 on the ground that the lok adalat award was obtained by fraud etc. and is not binding on her. It is on record and as has been fairly contended during arguments by counsel for both the sides, there is scramble for possession that resulted in the Executive Magistrate issuing orders under Section 145 of Cr.P.C. and in separate W.P.Nos. 36787 and 37116 of 2017, this Court held that the F.I.R.No.467 of 2017 is illegal. This Court observed in this regard

“Having regard to stand of Assistant Government Pleader that the mode and manner of registration of FIR particularly under Section 145 of Criminal Procedure Code by the Inspector of Police does not conform to the requirements of law, this Court need not examine either rival contentions and thereafter quashing of criminal proceedings”.

I have gone through the material on record meticulously. There is absolutely no dispute that when the civil proceedings are pending and both the parties are contesting those civil proceedings by teeth and nail, then only these criminal proceedings have been initiated by the complainant/third respondent against the petitioners and the wife of the deceased Mohd. Javed Ahmed Siddiqui, claiming that she is the divorcee of her son, who divorced her much prior to his death ie., in the year 2013. No doubt, as rightly argued by the learned counsel for the third respondent, supported by the arguments of the learned Public Prosecutor, if during the pendency of criminal proceedings and investigation, the accused raised a dispute of civil nature, then the High Court cannot quash the criminal proceedings, but in this case obviously after civil proceedings are initiated and are being persistently contested by the parties including the third respondent, the criminal law was set into motion on the self-same facts which have already raised in the civil proceedings. In that view of the matter, it is open to this Court to examine whether the case is fit to be quashed under Section 482 of Cr.P.C.

Now, I refer to the allegations made in both the complaints raised by the third respondent with reference to the dates and events. F.I.R.No.48 of 2018 is registered under Sections 120-B, 406, 419, 420, 468 and 471 of I.P.C. on the basis of the complaint filed by the third respondent under Section 200 of Cr.P.C. and forwarded by the Magistrate under Section 156 (3) of Cr.P.C.

A bare perusal of the F.I.R. and complaint show that the third respondent while referring to the pending civil litigation, alleged that the first accused is the divorced wife of her deceased son Mohd. Javed Ahmed Siddiqui and she has stolen away the divorce documents and stealthily suffered a collusive decree in favour of the present petitioners from the Lok Adalat and obtained the warrant of decree. This decree is now subject matter of adjudication before the Executing Court. To reach to a conclusion about the executability of the decree, the Executing Court will have to come to a finding whether the widow of Mohd. Javed Ahmed Siddiqui is the legal heir of her deceased husband and whether the complainant's right as legal heir of her deceased son are violated; if so, to what extent the respondent No.3 is entitled to the share of the deceased; it may also in all probabilities to come to a conclusion that at least to that extent of un-divided share of accused No.1, the sale is valid and accused Nos.2 and 3 may take that share. The Executing Court also will have to come to a finding that after the death of Javed Ahmed Siddique, who was/were in possession of the suit property. All these questions are obviously within the domain of the civil Court. At any rate, both the

proceedings are factually based on these facts which are sub-judiced before the civil Court and the alleged offence of trespass cannot be independent of the said civil dispute.

So far as the other offences are concerned, there is absolutely no material in the complaint/F.I.R., showing commission of any offence much less to say that the offences under Sections 120-B, 406, 419, 468 and 471 of I.P.C. As observed above, the Hon'ble Apex Court in several of judgments held that where the ingredients of certain offences are not made out in the F.I.R./complaint, such criminal proceedings are liable to be quashed under Section 482 of the Cr.P.C. While holding that, it was observed that, where the ingredients require to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of criminal complaint is an abuse of process of law.

In *Indian Oil Corporation v. NEPC India Limited and others*¹⁵ the Apex Court reviewed the precedents on the exercise of jurisdiction under Section 482 of Cr.P.C. and formulated guiding principles in the following terms.

“(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an

¹⁵ (2006) 6 SCC 736

assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

In Criminal Appeal No.834 of 2017 decided on 08.08.2019, the Hon'ble Apex Court has laid down as under, ie. "the complainant himself paid the mortgaged money and got the mortgage redeemed

and thereafter he got the sale deed executed in his name and filed the complaint alleging cheating by the sellers". The Hon'ble Supreme Court held that the criminal proceedings initiated by the complainant are nothing but an abuse of process of law for settling a civil dispute.

In *Prof. R.K.Vijayasathy and another v. Sudha Seetham and another*¹⁶ the Apex Court held that "where the averments in the complaint read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code, it amounts to abuse of process of law".

On over all consideration of entire material placed on record and the contentions urged before this Court by the learned counsel for the petitioners and learned counsel for the third respondent, the law declared by the Apex Court in the judgments referred supra, it is suffice to conclude that the contentions raised by the learned counsel for the third respondent are without any substance and the material produced before this Court, directly indicates the *mala fides* in prosecution of criminal proceedings against the petitioners, so also, by abuse of process of the Court, as an arm-twisting method to bring the petitioners to the terms of the third respondent and to cloak a civil dispute with criminal nature, has resorted to criminal litigation.

In view of my foregoing discussion, I find that it is a fit case to exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings against the petitioners in Crime No.48 of 2018 of P.S.

¹⁶ (2019) 3 Scale 563

Moinabad, Cyberabad, for the offences punishable under Sections 120-B, 406, 419, 420, 468 and 471 IPC and C.C.No.689 of 2018 on the file of the XXIII Metropolitan Magistrate, Cyberabad, for the offences punishable under Sections 447, 427, 506 and 188 read with Section 34 of I.P.C.

Accordingly, both the Criminal Petitions are allowed and the proceedings against the petitioners/accused Nos.2 and 3 in Crime No.48 of 2018 of Moinabad Police Station, Cyberabad, for the offences punishable under Sections 120-B, 406, 419, 420, 468 and 471 of I.P.C. and the proceedings in C.C.No.689 of 2018 on the file of the XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar, against the petitioners/ accused Nos.1 and 2 for the offences punishable under Sections 447, 427, 406 and 188 read with Section 34 of I.P.C. are hereby quashed. Miscellaneous petitions, if any, pending shall stand closed.

01.10.2019
gkv/Gsn

JUSTICE G. SRI DEVI

