

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6359 OF 2018

ORDER:

The petitioner, by name D.Suryanarayana Raju, is the accused in Crime No.350 of 2018 of Jawahar Nagar Police Station of Rachakonda Commissionerate, from the report of the 2nd respondent/*de facto* complainant-M.Chandra Shekar Reddy. Police registered the same on 10.04.2018 on the date of the report of him for the offence punishable under Section 420 of Indian Penal Code (for short, 'IPC').

2. The sum and substance of the accusation in the report of the *de facto* complainant, dated 10.04.2018, which is corrected by striking 10 made 30.03.2018 reads that the complaint is against M/s.Nandanavana Estates Private Ltd., represented by its Managing Director D.Suryanarayana Raju for criminal breach of trust, cheating by selling non-existing plot and threatening with dire consequences and with that subject, the contents of the report reads that *de facto* complainant purchased open Plot No.4 Part in Survey Nos.255, 257, 258 and 260 of 200 square yards at Golf Enclave, Kowkoo Village, Alwal Municipality, Malkajgiri Mandal, Ranga Reddy District, from said D.Suryanarayana Raju under registered Sale Deed No.2693 of 2011, dated 17.10.2001. He further averred that with an intention to construct a house in the said plot, on 02.02.2018, he requested said D.Suryanarayana Raju to give him layout copies sanctioned by HUDA to enable him to apply for building permission to Greater Hyderabad Municipal Corporation (for short, 'GHMC'), Alwal Circle, but D.Suryanarayana Raju is not furnishing the layout copy and stating he had not sold at all any plot to the *de facto* complainant and as if there is no such plot covered by the Sale Deed executed by him in 2001 supra and if he comes again for said purpose, has to face dire consequences.

It is further averred in spite of his threat, he approached him six or seven times to furnish the layout copy and other documents pertaining to title of the land, but he is turning a deaf ear. He thereby says constrained to give the complaint against him for the cheating, misappropriation of property, threatening with dire consequences, causing criminal breach of trust, by selling the non-existent property to him in order to cheat him for wrongful gain with knowledge. Hence, to take action.

3. The sum and substance of the very FIR, dated 10.04.2018, is said D.Suryanarayana Raju of M/s.Nandanavana Estates Private Ltd. sold a non-existent property in 2001 October, 17th, which is the core of the allegation of the offence of cheating or breach of trust or criminal intimidation. At the other breath, he himself says even allegedly threatened with dire consequences if comes again, he went six or seven times and demanded for HUDA layout approved plan to obtain GHMC building permission, but accused turned a deaf ear. This sentence itself is sufficient to say that there is no any criminal intimidation at all as for the said word of accused even taken as true, he did not fell panic or fear not only that he again and again went and accused did not even later uttered any such word. For that rightly, no offence registered under Section 506 IPC. So also, for no any entrustment to attract any offence of criminal breach of trust or any misappropriation to attract any offence of criminal misappropriation. Now coming to the offence of cheating whether made out, if so, whether there is inordinate delay of 17 days or more in reporting the occurrence and such a crime even if all the ingredients attract sustainable to sub-serve the ends of justice.

4. Heard both sides at length.

5. From the vacate petition of the interim order filed by the 2nd respondent, he filed registered Sale Deed executed by the accused in his favour, dated 17.10.2001. The Sale Deed recitals shows accused executed in favour of the *de facto* complainant said Sale Deed by referring as vendor vendee by saying the land originally belonged to M.Chandra Shekar Reddy and purchased Ac. 9.36 guntas in Survey Nos.255 & 256 of Kowkooor Village, Ranga Reddy District, from one Venkata Swamy, under Sale Deed No.372 of 1958 and another Ac. 23.04 guntas in Survey Nos.257, 258 and 260 of the same village from Rajalingam under Sale Deed No.43 of 1952. The further recitals speak M.Chandra Shekar Reddy died intestate leaving behind his wife Venkatamma and sons Janardhana Reddy, Ram Reddy, Laxma Reddy and Sanjeeva Reddy as legal heirs and possessors and absolute owners of the said land, who in turn sold to the accused's entity M/s.Nandanavana Estates Private Ltd. *vide* registered Sale Deed Nos.225 of 1996, dated 18.10.1996, 226 of 1996, dated 25.10.1996, 227 of 1996, dated 17.10.1996, and 229 of 1996, dated 17.10.1996, at S.R.O. Vallabh Nagar. The Sale Deed further recitals speak as per the norms of HUDA, made a layout in Survey Nos.255, 256, 257, 258 & 260 and named it as Golf Enclave, Kowkooor Village. The vendor offered to sell Plot No.4 Part of the said survey numbers measuring 200 square yards = 167.20 square meters of Kowkooor Village for Rs.60,000/- and consideration received and acknowledged and thereby covenants with the vendee of vendor absolute owner with title and will sign all papers, documents to get perfect title to vendee so as to enjoy the property absolutely without any disturbance or hindrance and to make good in relation to any future litigation concerning title or possession only. Also made the covenant of paid all taxes with no dues and delivered possession vacant and peaceful. It is further mentioned that

M/s.Nandanavana Estates Private Ltd. shall develop the scheduled property in the layout as per HUDA norms. All internal roads in the layout will be blacktop road. Each plot will be provided with water connection from Central Borewell Water Tank, Central Sewerage System, for all plots and electricity point to each plot. There is further covenant of this is not an assigned land as per Act 9 of 1977 and market value also mentioned and the schedule described as Plot No.4 Part of the said survey numbers supra of the extent supra with boundaries North – Neighbour's land, South – Plot No.4 Part, East – Neighbour's land & West – 30 feet wide road. This 200 square yards sold is part of Plot No.4, which is to the northern half for the remaining part of Plot No.4 is described as southern boundary and North and East neighbour's land, West is road. There is nothing assured to already developed the layout as per HUDA norms, but for shall develop is the assurance. There is nothing showing a non-development in future leads to any offence of cheating, much less any deception from any covenant. In fact, the Sale Deed was executed by M/s.Nandanavana Estates Private Ltd. The assurance to develop HUDA made norms layout was given only by M/s.Nandanavana Estates Private Ltd. and D.Suryanarayana Raju is only referred as Managing Director of it. M/s.Nandanavana Estates Private Ltd. is the accused even from the complaint and not D.Suryanarayana Raju. The police in the crime should have been registered by mentioning only M/s.Nandanavana Estates Private Ltd. as accused and not D.Suryanarayana Raju directly, but for if at all with vicarious liability as co-accused to represent that entity and there is nothing from the above showing any vicarious liability. Even from the settled expression of the Apex Court in **Sunil Bharati Mittal v. CBI**¹. Leave it as it is. The vacate petition also

¹ (2015) 4 SCC 609

mentioned a plan. That plan refers to the survey numbers. It is stated given by the accused to the *de facto* complainant with Sale Deed itself in 2001.

6. Further more, a perusal of the quash petition averments show the complainant already filed O.S.No.299 of 2018, a suit for bare injunction on 27.04.2018 within 17 days after the report registered as crime supra against M/s.Nandanavana Estates Private Ltd. represented by Managing Director D.Suryanarayana Raju supra for the Sale Deed described schedule as plaint schedule by saying having purchased under the Sale Deed since then in peaceful possession and enjoyment with absolute right, title and interest and to restrain the defendant vendor from interference with possession, title and enjoyment. The very suit itself cuts the case of the report of sold as if non-existent property. The very recitals in the plaint cuts the case of as if there is no property in existence. As the plaint refers to in continuous possession and enjoyment since date of purchase and vendor without right trying to interfere. Once such is the case, where is the question of cheating is a hundred dollars question even for giving the report or for police to register the crime. Further more, a delay of 17 days in reporting the occurrence after the Sale Deed in registration of the crime per say won't lies to sub-serve the ends of justice, but for to quash including from the expression of the Apex Court in **Pankaj Kumar v. State of Maharashtra²**, **Sirajul v. State of U.P.³**.

7. Having regard to the above, the Criminal Petition is allowed quashing the crime proceedings for the dispute is even otherwise predominantly civil in nature covered by civil suit referred supra, for nothing with police to investigate any offence.

² 2008 Criminal Law Journal 3944

³ (2015) 9 SCC 201

Miscellaneous petitions pending, if any, in the criminal petition shall stand closed.

DR.B.SIVA SANKARA RAO, J

Date: 11th February, 2019

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