

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.13499, 13500, 13501 & 13502
of 2018

COMMON ORDER:

1. One K.Srinivas Reddy and I.Shashikanth who are accused Nos.1 & 2 in C.C.Nos.448, 391, 374 & 445 of 2017 respectively on the file of IX Metropolitan Magistrate, Kukatpally, maintained the four (4) quash petitions impugning the said cognizance order respectively of the cases in seeking to quash the CC proceedings. The 2nd respondent in all the four quash petitions are respectively by names Sunkara Mahendra Kumar in CC.No.448 of 2017 and his wife Smt. J.Hitha Sree in CC.Nos.391 & 374 of 2017 respectively and Smt. Jasthi Annapurna in CC.No.445 of 2017 respectively of Hyderabad.

1(a). CC.No.448 of 2017 is outcome of crime No.116 of 2015 dated 19.02.2015 of the defacto complainant supra registered by Miyapur Police Station for the offences punishable under Sections 448, 427 & 506 IPC from the averments in the report are that on 19.02.2015 around 11 AM Rukmini Reddy, Purushotham, Srinivas, Naizimuddin came to his property at Gokul plots 1464 & 67 and threatened the watchmen and thrown all of his belongings on the road, damaged the electric meter and compound wall, asked to vacate the premises which belongs to him and his mother in law J.Prasunamba W/o J.Chandra Sekhar Rao and

he has all the related documents and gave earlier one complaint in same P.S. in 2012 vide FIR No. 531/2012 and at that time she pleaded him and asked to settle the matter at Lok Adalat, hence to take action.

1(b). CC.No.391 of 2017 is outcome of crime No.588 of 2015 dated 06.09.2015 of the defacto complainant-Smt. J.Hitha Sree registered by Miyapur Police Station for the offences punishable under Sections 447 & 427 IPC from the averments in the report are that on 03-09-2015 around 3'0 clock Rukmini Reddy, Sulochana Reddy, Srinivas Reddy and Seshikanth trespassed into her property at Gokul Plot Nos.1464 and 1467, in which 1467 is her husband's property and 1464 is her mother's property and destroyed the current meters and threatened the watchman and along with the complaint, she enclosed Xerox copies of her property, Bills made to Hafeezpet Housing Building Welfare Association and Gokul Plot Owners Welfare Association and also compromise copy in the Lok Adalat in CC.No.347 of 2013 and the agreement of sale to Ch. Anil Kumar and receipts of Rs.11 lakhs amount which were given by Ch. Anil Kumar to Rukmini Reddy and Sulachana Reddy, hence to take action.

1(c). CC.No.374 of 2017 is outcome of crime No.719 of 2016 dated 03.11.2016 of the defacto complainant-Smt. J.Hitha Sree registered by Miyapur Police Station for the offences punishable under Sections 448, 427, 380, 324 & 143 IPC from the averments in the report are that on 03-04-1998

from one Ramesh Yadav she have purchased a plot in Sy.No.78 Plot No.1467 with an extent of 275 yards and on the same day her mother J.Prasunamba has also purchased plot No.1464 with an extent of 300 yards from said Ramesh Yadav. They after purchasing the plots taken membership in the Hafeezpet Property Building Welfare Association and thereafter installed a current meter and let out said plots to others. Later one Rukmini Devi, Sulochana Reddy who are residing in Plot No. 1465 changed the layout and created new plot Nos.184 and 185 and sent out their tenants on 16-12-2011 and dismantled their rooms on 11-11-2012 and occupied the same. In this regard when they made complaint in Miyapur PS, crime No.531/2012 was registered. Thereafter Rukminidevi came to them and said that such plots are your (complainant and her mother) plots and they would like to compromise the matter by executing a sale deed in respect of newly created plot Nos.184 and 185 in favour of her brother in law Ch. Anil Kumar. Thereafter on 19-09-2013 they have compromised the case in the court. Thereafter they got constructed room, fixed current meters and engaged a watchman and let out the same to others. Thereafter on 11-02-2015 Rukmini Devi without notice to them sold the plot No.184 (250 square yards) illegally in favour of one K.Srinivas Reddy and I.Shashikanth, but the original documents pertaining to those plots are with them, but Rukmini Devi has taken certified copies and sold the said plot illegally.

Thereafter she and her brother in law Ch. Anil Kumar approached the District Registrar and made application requesting him to cancel the sale documents. The District Registrar issued a Memo No.1949/A/R/2015 dated 27-3-2015 to Rukmini Reddy and Sulochana Reddy, granting 10 days time for their appearance before him, but they failed to attend. Thereafter because of disputes in respect of the said plots, her brother in law died on 04-09-2015 due to heart attack. On 04-09-2015 Rukmini Devi beat their tenants who were there in the property and damaged current meters. In this regard herself and her elder sister J.Annapurna made complaints before the Miyapur Police Station, which were registered as FIR No.588/2015 and 589/2015 and said cases are pending. Thereafter on 13-03-2016 Srinivas Reddy illegally entered into our plot No.1464 and dug a bore well. Thereafter on 01-11-2016 in the morning at 5'o clock Srinivas Reddy along with 15 others illegally entered their property and with the help of JCB and Tractor dismantled their rooms and stolen away the current meters No. AP22AK9204, AP24AP9384. When she went to said plot, there 15 people surrounded her and abused in filthy language and behaved indecently and threatened her and also asked her to come to one Rajashekar for talks and Srinivas Reddy written a letter and forcibly taken her signature on said letter, hence to take action.

1(d). CC.No.445 of 2017 is outcome of crime No.589 of 2015 dated 06.09.2015 of the defacto complainant-Smt. J. Annapurna registered by Miyapur Police Station for the offences punishable under Sections 420 & 406 IPC from the averments in the report are that Smt. Rukmini Reddy W/o late Y.Narender Reddy, resident of Plot No. 1465, Gokul Plots, Venkataramana Colony, Hafeezpet village, Hyderabad and Mrs. Sulochana Reddy W/o K.Krishna Reddy, residing at 1-7-1001/2, Ramnagar, Hyderabad had made sale agreement on 28-03-2013 for which Xerox copies of receipts are enclosed and total sale consideration is already paid and the Vendors agreed to execute the registered sale deed and postponed the same on one pretext of the other. She came to know that the above property was once again sold to Mr. Neni Shashikanth S/o I.Sripathi Rao and Komandla Srinivas Reddy S/o K.Indrasena Reddy on 11-2-2015 and the above sale transaction was a collusive transaction with an intention to cause loss to them. Hence they have committed the offence of cheating and criminal breach of trust and crime must be registered against said persons. For last 4 months her husband had undergone mental tension and died on 22-7-2015 due to heart stroke, hence to take action.

2. The police after investigation filed charge sheet in all against 4 accused of whom the quash petitioners are A1 & A.2 by further adding to the FIR offences supra Sections 420 & 120-B IPC, by citing in all 11 witnesses including the 3

I.O.s who issued FIR and investigated the case and filed charge sheet, the complainant, his wife, his sister in law who are the respective defacto complainants supra are witnesses vice versa in all the cases besides one Sambaiah contractor, one Smt. Chitti and one Nageshwar Rao, Singareni employee of Chamaan Basthi, Kothagudem and so called punch witnesses to the scene observation and rough sketch are selfsame in all the 4 cases.

3. The learned Magistrate therefrom taken cognizance in allotting the respective CC numbers and the accused Nos.1 & 2/petitioners after appearance sought for quashing of the proceedings by filing the petitions with the following respective contentions:

4. The contentions in the quash petitions almost in similar line are that the petitioners purchased the property bearing No.185 in block No.III southern part of land in S.No.78 that is S.No.78-B as per internal division admeasuring 250 square yards, having plinth area of 100 square feet, ACC at Hafeezpet (Sherlingampally Mandal) by registered document No.1824 of 2015 dated 11.02.2015 executed by A.3-Rukmini Reddy within boundaries North-plot No.186, South-plot No.189, West-plot No.184 and East-30 feet wide road and Rukmini Reddy handed over physical possession of the property to the petitioners pursuant to the sale deed supra on the date of its execution and petitioners are in continuous physical possession and enjoyment and

petitioners did not commit any offence as alleged in the police report or in the charge sheets that were taken cognizance and they are the bonafide purchasers for value of the property from A.3-Rukmini Reddy and A.3 never disclosed with regard to pendency of any disputes regarding identity of the property or claim made by the defacto complainants respectively and they verified the documents and identified the location and purchased the property having paid huge consideration. It is while so on 19.02.2015 Ch. Anil Kumar of Vijayapuri, Tarnaka, Secunderabad along with his henchmen and unsocial elements and without any legal right tried to enter and dispossess the petitioners and on receiving information from the watchman they went into the property and questioned Anil Kumar, who failed to produce any evidence regarding right over the property and again on 22.02.2015 Anil Kumar with others tried to enter the property by dispossessing the petitioners and thereby they filed civil suit OS.No.98 of 2015 on the file of I Additional District Judge, Ranga Reddy District at LB Nagar on 22.03.2015 for perpetual injunction and obtained ad interim exparte injunction in IA.No.202 of 2015 till 10.03.2015 by order dated 24.02.2015 and meanwhile Ch. Anil Kumar died on 22.07.2015 and the suit was dismissed for default and they are filing petition for restoration. One Smt. Annapurna W/o said Anil Kumar, J. Hitha Sree, J. Shaila Sree respectively in claiming to be the legal heirs of J.Prasunamba (died on

03.05.2016) started claiming said Prasunamba was purchaser of plot No.1464 in S.No.78 of 300 square yards and filed suit OS.No.818 of 2016 on the file of Vacation Judge (Senior Civil Judge) at LB Nagar for injunction against the petitioners and Rukmini Reddy and one Sulochana Reddy with false allegations. Their claim is that the suit property of 300 square yards in plot No.1464 in S.No.78 of Hafeezpet purchased by one Ramesh Yadav from one K.Ramaswamy and 14 others based on agreement for sale dated 18.06.1989 and subsequently Prasunamba purchased from Ramesh Yadav under another agreement of sale dated 03.04.1998 and Mahendra Kumar filed OS.No.812 of 2016 in the selfsame Vacation Civil Judge Court at LB Nagar for permanent injunction against the petitioners, Rukmini Reddy & Sulochana Reddy with alleged interfering with his so called possession with a false claim with averments that the property therein of 275 square yards in plot No.1467 in S.No.78 of Hafeezpet by Ramesh Yadav from K.Ramaswamy and 14 others under agreement supra and he purchased from Ramesh Yadav under agreement dated 03.04.1998 and none of them acquired any title in respect of the property pursuant to the so called agreements. The petitioners are bonafide purchasers under registered sale deeds supra having paid valuable consideration and by influencing the police the false crimes are registered and the proceedings are liable to be quashed and the investigation is a table one and the dispute

is pre-dominantly civil in nature and continuation of the cognizance proceedings in the respective CC cases are nothing but abuse of process and liable to be quashed.

5. The defacto complainants respectively having served filed counter which is common for all the respective matters mainly filed in Crl.P.No.13501 of 2018 from the affidavit of Smt. J.Hitha Sree wife of Mahendra Kumar while denying the quash petition averments and reiterating the charge sheet averments in saying there are no grounds to quash the proceedings that were rightly taken cognizance by the learned Magistrate and the petitions seeking to quash the proceedings are liable to be dismissed. It is also averred the alibi pleaded of the 2nd petitioner in CC.No.448 of 2017 was at Malasia as on the date of offence has no bearing for an accused need not present physically in forming conspiracy before leaving India and any such aspect is matter for trial and not for quash and A.2 is financially supporting A.1 besides Rukimini Reddy & Sulochana Reddy to grab the properties by taking advantage of the A.1/1st petitioner supra belongs to ruling party who threatened several times the defacto complainants and the so called sale deeds under which the property is claiming by them are sham and nominal in order to make attempts to interfere with the property belongs to the defacto complainants and the so called purchase by the petitioners Sulochana Reddy who claims from M/s. Cyrus Investments Limited through its GPA P.S.Prasad and the so called

purchase from Rukmini that already sold to Ch. Anil Kumar under contract for sale and the so called purchase will not give any right title or possession to claim by any of the petitioners and other accused and the defacto complainants respectively are in continuous possession with title. The video recording clearly establishes A1/1st petitioner trespassed into the property of the complainants with JCB and dismantled rooms and photographs also establish the same. CC.No.391 of 2017 renumbered as CC.No.718 of 2017 where PW.1 already examined and against the petitioners there are other criminal cases and the photos and CD establish the complainants contest and truth therein and the greedy eye of accused to grab the property by A1 & A.2 through A.3 & A.4 neighbours to the complainants if possible. It is also mentioned Anil Kumar never in possession tries to dispossess them and the complainants filed civil suits in OS.Nos.812 & 818 of 2016 respectively for permanent injunction, leave about said Anil Kumar filed OS.No.98 of 2015 and obtained ad interim exparte injunction that was till 10.03.2015 with no extension later and thereby sought for dismissal of the quash petitions.

6. The learned counsel for the petitioners reiterated their contentions in the quash petitions supra, whereas the counter for the defacto complainants reiterated their counter averments referred supra in support of the police final reports and the cognizance taken by the learned Magistrate.

7. Heard and perused the material on record for common disposal of all the matters.

8. The petitioners are claiming as purchasers, a purchaser of a property cannot be made liable for the offence of cheating as laid down by the Apex Court in **Md.Ibrahim Vs. State Of Bihar**¹ for not a case that the sales are collusive and fraudulent and there are no purchases but for at best said Rukmini Reddy cannot have such right, much less to convey to the petitioners/accused Nos.1 & 2. Once such is the case and when there is no offence of cheating to attract under Section 420 IPC against the petitioners, the taking of cognizance in all the 4 cases for said offence is unsustainable and liable to be quashed on that ground. There remains in CC.No.448 of 2017 offence of mischief and criminal intimidation and in CC.No.391 of 2017 so called trespass into the land and mischief under Sections 447 & 427 IPC and there remains in CC.No.445 of 2017 the so called criminal breach of trust under Section 406 IPC. It is not even the case of the defacto complainant of any entrustment to any of the accused persons among the petitioners for any criminal breach of trust to attract the offence under Section 406 IPC besides Section 420 IPC.

9. Coming to CC.No.374 of 2017 for the alleged offences punishable under Sections 448, 427, 380, 324 & 143 IPC there is no any wound certificate showing any injuries she

¹ Crl.A.No.1695 of 2009 dated 04.09.2009

sustained by any deadly or dangerous weapons to attract the offence under Section 324 IPC. Leave it as it is the so called electric meters allegedly stolen concerned, there is no recovery and there is no even description of what company made and how many and with what proof of those possessing for alleged house theft to attract the offence under Section 380 IPC with alleged house trespass. There remained the alleged trespass and mischief and there are civil disputes and civil suits inter se and even the so called complainants in claiming right is only based on sale agreements so also their vendor Ramesh Yadav and once the dispute is pre-dominantly civil in nature from the above and further a perusal of all the 4 cases by kept in juxtaposition and something behind with doubt of credibility of the versions of report of Mahendra Kumar for the alleged occurrence on 19.02.2015 at 11.00 hours given report at 14.00 hours, report of J. Hitha Sree one on 06.09.2015 for the alleged occurrence of 3 days before on 03.09.2015 with no explanation for the delay and waiting and another report of her on 03.11.2016 for alleged occurrence 2 days before on 01.11.2016 with no explanation for the delay, leave about another report of Annapurna selfsame day on 06.09.2015 for the alleged occurrence stated without date prior to 06.09.2015.

10. Having regard to the above and the disputes are pre-dominantly civil in nature and in relation to the property disputes giving colour apparently with criminal flavour, the

continuation of the proceedings will no way sub serve the ends of justice but tantamounts to abuse of process as ends of justice are more important than mere enforcement of law.

11. Accordingly and in the result, all the four quash petitions are allowed by quashing the proceedings against the petitioners/accused Nos.1 & 2 C.C.Nos.448, 391, 374 & 445 of 2017 respectively as ends of justice are more important than mere enforcement of law.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 04.04.2019
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