HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 6214 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/ A-5 to A-12 under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against them in C.C.No.1050 of 2016 on the file of the XX-Metropolitan Magistrate, Cyberabad at Malkajgiri.

The facts in issue are that the 3rd respondent/*de facto* complainant filed a private complaint before the XX-Metropolitan Magistrate, Cyberabad at Malkajgiri, which was referred to the police under Section 156 (3) of Cr.P.C. Basing on the said reference, the Police, Kushaiguda, registered a case in Crime No.790 of 2015. After completion of investigation, a charge sheet came to be filed against A-1 to A-12 for the offences punishable under Sections 198, 468, 471, 474, 420 and 120-B of I.P.C. The allegations in the charge sheet are that A-2 to A-12 without any authority have occupied the property of the 3rd respondent/*de facto* complainant and they have made an agreement of sale-cum-General Power of Attorney to A-1 vide document No.5090 of 2002 in the office of Sub-Registrar, Malkajgiri Mandal, Ranga Reddy District. It is also alleged that in collusion with each other, the accused persons have manipulated the proceedings passed by the Mandal Revenue Officer, Keesara Mandal in File No.B/785/2001, dated 10.04.2002 by adding last four lines in 1st para of the order on page No.2 of the said proceedings, for their convenience and created new proceedings with forged signatures of the Mandal Revenue Officer, Keesara Mandal and also used fake stamps and seals on the name of the Mandal Revenue Officer, Keesara Mandal, Ranga Reddy District. Further A-1 had filed the above forged revenue proceedings before the Munsif Magistrate, Medchal, Ranga Reddy District in O.S.No.65 of 2003, filed by the 3rd respondent/ *de facto* complainant and got dismissed the said suit. The accused have also filed the fabricated compromise proceedings obtained from the High Court in W.P.No.9262 of 2002, by playing fraud on the High Court by filing forged affidavits and receipts of the 3rd respondent/*de facto* complainant and got dismissal of the suit in O.S.No.65 of 2003. A-1 conspired with A-2 to A-12, created false proceedings and a registered agreement of sale-cum-General Power of Attorney (with possession), vide document No.5090 of 2002, dated 27.09.2002 in respect of the land of the 3rd respondent/*de facto* complainant to an extent of Ac.4.02 gts., in Sy.No.630 and have highhandedly occupied the same and are continuing in illegal possession.

Heard the learned Counsel for the petitioners/A-5 to A-12, learned Additional Public Prosecutor for respondent Nos.1 and 2, learned Counsel for the 3rd respondent/*de facto* complainant and perused the record.

Learned Counsel for the petitioners/A-5 to A-12 would submit that initially the private complaint has been filed by the 3rd respondent/*de facto* complainant against A-1 to A-3 and one G.Subba Rao, Mandal Revenue Officer. Without giving any notice and without following the procedure contemplated, the learned Magistrate referred the matter to the police; that the police, without verifying the contents of the complaint as the entire complaint is of civil in nature, registered a case in Crime No.790 of 2015; that the Police after conducting investigation, without examining the genuineness of the complaint, implicated the petitioners herein as A-5 to A-12 and surprisingly the so called Mandal Revenue Officer, against whom the 3rd respondent/*de facto* complainant made allegations was deleted from the array of accused and he was shown as witness in the case, for the reasons best known. The action of the 3rd respondent, by arraying the petitioners as A-5 to A-12 and deleting the proper party is nothing but an illegal act. It is also submitted that even according to the 3rd respondent/*de facto* complainant, he filed W.P.No.9262 of 2002 and the same has been withdrawn. According to him, without his knowledge, the said Writ Petition has been withdrawn and that if the same is correct, so far he has not taken any steps either for filing review or re-opening or appeal against the said orders. It is further submitted that had there been any forgery as alleged, the police nor the 3rd respondent/*de facto* complainant have taken steps to refer the matter to Forensic Expert, but contrary to that the Mandal Revenue Officer, Keesara, lodged a complaint before the S.H.O., Kushaiguda, against the 3rd respondent/*de facto* complainant with regard to his action of creating fake orders in the name of the M.R.O., with an intention to grab the property belonging to the petitioners/A-5 to A-12 and by creating such fake document, he filed W.P.No.9202 of 2002 before the High Court. Basing on the said complaint, a case in Crime No.214 of 2002 for the offences punishable under Sections 468 and 420 of I.P.C. was registered against the 3rd respondent/*de facto* complainant. It is very much clear from the affidavit filed by the 3rd respondent/ *de facto* complainant before the High Court, wherein he categorically stated that he has no claim against the petitioners with respect to the land admeasuring Ac.8.04 gts., in Sy.No.630 of Kapra Village. The 3rd respondent/*de facto* complainant had suppressed about the registration of Crime No.214 of 2002 against him and also about the dismissal of the suit. Though the said facts were brought to notice to the 2nd respondent in the reply given by A-1 in respect of notice issued to him under Section 41-A of Cr.P.C., but the 2nd respondent maliciously or in collusion with the 3rd respondent/*de facto* complainant, without verifying the records, instead of closing the complaint, filed charge sheet arraying the petitioners herein as A-5 to A-12. The entire case is false and liable to be quashed and the 3rd respondent/ *de facto* complainant had initiated the proceedings against the petitioners/A-5 to A-12 herein only with a view to escape from the criminal prosecution pending against him and to grab the land belongs to the petitioners/A-5 to A-12 purchased by A-1. It is also submitted that the petitioners/A-5 to A-12 are legal owners of the subject property and that the 3rd respondent/*de facto* complainant has no right, title or claim over the said property; that only to grab the land, he is making false claims right since 2001 by creating fake document and that after he failed in all his attempts, he filed the present complaint.

It is also submitted that aggrieved by the order, dated 04.07.2001, passed by the Mandal Revenue Officer, Keesara, the 3rd respondent/*de facto* complainant filed an appeal under Section 90 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, wherein Dokuri Ravinder Reddy, V.Murali Krishna and Tahsildar, Keesara were shown as respondents. It is also submitted that being legal heirs of Dokuri Ram Reddy, Narsimha Reddy and Malla Reddy, the petitioners/A-5 to A-12 have executed a document in favour of A-1 and they have not committed any offence much less the offences alleged against them in the complaint. It is further submitted that as per the contents of the charge sheet there is no whisper of any allegation against the petitioners/A-5 to A-12 and for no fault of them they have to appear before the Court on each and every occasion and because of the false complaint, they are put to lot of financial loss and mental agony. It is also submitted that the 3rd respondent/ *de facto* complainant filed a succession suit before the XXIV-Metropolitan Magistrate, Malkajgiri, showing the petitioners/A-5 to A-12 herein as respondents and the same is pending. With a view to harass the petitioners, the 3rd respondent/*de facto* complainant lodged a complaint after 15 years and the petitioners have been falsely implicated.

Learned Counsel for the 3rd respondent/*de facto* complainant by filing counter would submit that originally the private complaint is set into motion against the petitioners' ancestors for fabrication of forged proceedings for wrongful gains of A-1 to A-3 in conspiracy with A-4 to cause wrongful loss to the 3rd respondent/*de facto* complainant and on referral, the 2nd respondent registered the case, investigated into allegations and during the investigation, it is found that the petitioners/A-5 to A-12 have also signed on the transfer deeds in favour of A-1, as such charge sheet was laid against them as they are co-conspirators in the crime. The investigation done by the police cannot be illegal or unjust and shall not be found fault with. It is also submitted that A-1 played whole gamut in which the Mandal Revenue Officer and his office subordinates played a role without adjudicating the crucial issue of succession through a speaking order and four different orders were floated on different dates with different signatures and the Mandal Revenue Officer in order to secure the stay vacate order, got issued report for the purpose of F.I.R. and thereafter got closed the investigation within two days of F.I.R. It is further submitted that the writ petition is found to have been withdrawn with the help of self incriminating affidavit instead of withdrawal memo. In view of interference of accused No.1, the 3rd respondent/*de facto* complainant filed a suit for injunction simplicitor, which was dismissed without consideration of presumptive possession by going into title. In order to divert the 3rd respondent/*de facto* complainant from doors of justice, A-1 lodged a private complaint on some allegations and drove him to wander to criminal courts, appellate courts and revisional courts. After dismissal of appeal, the 3rd respondent/*de facto* complainant came to know the modus operandi of A-1 and the involvement of A-2 to A-4, as such he filed the private complaint. During investigation, it is found that the petitioners/A-5 to A-12 are co-executors along with A-2 to A-4 as such they are equally responsible on par with A-2 to A-4. It is also stated that the appeal under Tenancy Act filed by the 3rd respondent/*de facto* complainant was dismissed without calling records from primary authority holding that the 3rd respondent/*de facto* complainant has knowledge of withdrawal and it has become hit by limitation and against which, the 3rd respondent/ *de facto* complainant had filed a revision before this Court and the same is pending.

It is further submitted that the earlier Writ Petition is also sought to be re-opened by way of an application to re-open the case on the ground of fraud played.

In ***The Commissioner of Police and others v. Devender Anand and others***[1] the Apex Court held as under:

> "4.1 Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint has been filed, which is nothing but an abuse of the process of law."

In ***Binod Kumar and others v. State of Bihar and another***[2] the Apex Court in para Nos.17 to 19 held as under:

> "17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:- (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.
>
> 18. In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the

---

[1] AIR 2019 SC 3807
[2] (2014) 10 SCC 663

dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed."

In ***Hridaya Ranjan Prasad Verma v. State of Bihar***[3] the Apex Court held as under:

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the

[3] (2000) 4 SCC 168

intention of the accused at the time of inducement which may be judged by his subsequent conduct but for his subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

In ***G.Sagar Suri v. State of U.P.***[4] the Apex Court held as under:

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter, superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to

[4] (2000) 2 SCC

prevent abuse of the process of any court or otherwise to secure the ends of justice."

It is well settled that while exercising its jurisdiction under Section 482 of the Code, the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of Court. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

In the instant case, the 3rd respondent/*de facto* complainant contended that during investigation it is found that the petitioners/A-5 to A-12 are co-executors along with

A-2 to A-4 as such they are equally responsible on par with A-2 to A-4. A perusal of the material on record would show that the Mandal Revenue Officer, Keesara, lodged a complaint against the 3rd respondent/*de facto* complainant with regard to his action of creating fake orders in the name of the M.R.O., with an intention to grab the property belonging to the petitioners/A-5 to A-12, basing on which a case in Crime No.214 of 2002 for the offences punishable under Sections 468 and 420 of I.P.C. was registered against him. The 3rd respondent/*de facto* complainant also filed O.S.No.65 of 2003, which was also dismissed. The 3rd respondent/*de facto* complainant had suppressed about the registration of Crime No.214 of 2002 as well as the dismissal of the suit. Therefore, the record clearly shows that petitioners/A-5 to A-12 are legal owners of the subject property and the 3rd respondent/*de facto* complainant had filed the present complaint against the petitioners/A-5 to A-12 only with a view to escape from the criminal prosecution pending against him and to grab their land.

Applying the principles of the aforesaid case laws into the facts of the present case, this Court is of the considered opinion that an attempt has been made by the 3rd respondent/*de facto* complainant to cloak a civil dispute with a colour of criminal nature. This appears to be an exceptional circumstance to the general rule that the power of this Court shall be exercised only in exceptional circumstances.

For the foregoing discussion, this Court is of the considered view that it is a fit case to quash the proceedings against the petitioners/A-5 to A-12 in C.C.No.1050 of 2016 on the file of the XX-Metropolitan Magistrate, Cyberabad at Malkajgiri..

Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioners/A-5 to A-12 in C.C.No.1050 of 2016 on the file of the XX-Metropolitan Magistrate, Cyberabad at Malkajgiri are hereby quashed.

Miscellaneous applications, if any, pending shall stand dismissed.

JUSTICE G. SRI DEVI

03.03.2020
gkv/Gsn