

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 8487 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/ A-1 to A-5, under Section 482 Cr.P.C., seeking to quash the proceedings initiated against them in Crime No.427 of 2017 of Medchel Police Station, which was registered for the offences punishable under Sections 120-B, 468, 471 and 506 read with Section 34 of I.P.C. and Section 3 (1) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The 2nd respondent/*de facto* complainant filed a private complaint before the XV-Metropolitan Magistrate, Cyberabad, at Medchel against the petitioners/ A-1 to A-5 and the 3rd respondent herein (A-6) alleging that he belongs to Schedule Caste Community; that his father late P.Nagaiah was having ancestral agricultural land in Survey No.713/P admeasuring Ac.0.11gts, situated at Kistapur Village, Medchal Mandal and District and during his life time, he enjoyed the possession of the said land; that his father died long back leaving behind him and his brother Yadaiah, who inherited the aforesaid property and that since then they are in possession and enjoyment of the said land.

The 2nd respondent/*de facto* complainant further states that one late Jogannagary Veerareddy is the absolute owner and possessor of land admeasuring Ac.1.35 gts., in Sy.No.716, situated at

Kistapur Village, Medchal Mandal and District, which is adjacent neighbouring land of the 2nd respondent/*de facto* complainant. The said Jogannagari Veerareddy is the father of petitioner Nos.1 to 4/A-1 to A-4, husband of the 5th petitioner/A-5 and friend of accused No.6 and that they approached the family of the 2nd respondent/*de facto* complainant and demanded them to sell the said property for a meager price, but the family of the 2nd respondent/ *de facto* complainant refused to sell the said property. It is further stated that due to deficient and uncertain rainfall, the 2nd respondent/*de facto* complainant and his family did not cultivate the said land for some time and as there was heavy rainfall in July, 2016, the 2nd respondent/*de facto* complainant and his brother went to the land for cultivation and at that point of the time, the 5th petitioner/A-5, her sons and 3rd respondent herein came there and threatened them saying that the said land was purchased by the husband of the 5th petitioner/A-5 by name late Veera Reddy long back, but they did not show any document to establish the same and thereafter, on 20.03.2017, the petitioners/A-1 to A-5 handed over a Xerox copy of the Sale Deed bearing Document No.8686 of 1990 dated 24.09.1990 registered at Sub Registrar Office of Medchel, which shows that the 2nd respondent/*de facto* complainant executed the registered sale deed in favour of the father of the petitioners/A-1 to A-4, in fact, the 2nd respondent/*de facto* complainant never executed the said sale deed. Immediately thereafter, the 2nd respondent/*de facto* complainant went to the Sub Registrar's Office, Medchel and

obtained pahanies and on perusal of the same, the 2nd respondent/*de facto* complainant realized that the petitioners/A-1 to A-4, 3rd respondent herein and the said J.Veerareddy, fraudulently forged the thumb impression of the 2nd respondent/*de facto* complainant and created the forged Registered Sale Deed. Out of the total land of Ac.0.11 gts., based on the forged document, the name of the father of the 2nd respondent/*de facto* complainant was abruptly deleted for the extent of Ac.0.10 gts., in Sy.No.713/Part in revenue records and further without serving any notice to the 2nd respondent/*de facto* complainant, the revenue officials mutated the remaining Ac.0-01 gts., in favour of the brother of the 2nd respondent/*de facto* complainant. It is also stated that the father of the petitioners/A-1 to A-4 by name J.Veera Reddy, died leaving behind him the petitioners/A-1 to A-5 as his legal heirs. With an intention to cheat the 2nd respondent/*de facto* complainant, all the petitioners/A-1 to A-5 along with A-6 had meticulously managed the revenue officials and dishonestly mutated their names for the extent of Ac.0.10 gts., in Sy.No.713/part, which belongs to the family of the 2nd respondent/*de facto* complainant and basing on that forged document, they are trying to interfere and dispossess the family of the 2nd respondent/*de facto* complainant from the said land and have been threatening the 2nd respondent/*de facto* complainant with dire consequences. It is also stated that on 30.07.2016, the 2nd respondent/*de facto* complainant approached the police and requested them to take necessary action against the accused, but the

police did not take any action stating that the matter is of civil in nature. On 19.04.2017, the 2nd respondent/*de facto* complainant approached Truth Labs Forensic service to verify his thumb impression on the said sale deed, but the said Lab officials gave a report stating that the thumb impression of vendor No.6 in the alleged sale deed is not identical and both are different from the original thumb impression of the 2nd respondent/*de facto* complainant. As such, it is evident that the alleged sale deed is a forged one. After receiving the Lab report, the 2nd respondent/*de facto* complainant again approached the Police, Medchel and requested to take necessary action against the accused, but the police did not take any action against them as they are very influential persons and have political background. As such, the 2nd respondent/*de facto* complainant filed a private complaint before the XV-Metropolitan Magistrate, Cyberabad, who in turn referred the same to the Police for investigation and report. Basing on the said reference, the Police, Medchel, registered a case in Crime No.427 of 2017 against the accused for the offences punishable under Sections 120-B, 468, 471 and 506 read with Section 34 of I.P.C. and Section 3 (1) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The 2nd respondent/*de facto* complainant filed counter stating that the property was mutually and orally partitioned between joint owners and accordingly his father's name (Late P.Nagaiah) was

mutated in the revenue records pertaining to Ac.0-11 gts. in Sy.No.713; that the pahanies of the year 1986-1987 and 1989-1990 clearly reveal that his father's name was mutated as pattadar and possessor of land admeasuring Ac.0-11 gts., in the said Sy.No.713 and the remaining land mutated in the name of other joint owners; that after the death of his father i.e., P.Nagaiah the said property of Ac.0-11 gts. in the said Sy.No.713 was devolved upon him and his brothers as legal heirs of P.Nagaiah. It is also stated that the petitioners/A-1 to A-5 and the said late Veera Reddy falsely mentioned the name of the 2nd respondent/*de facto* complainant as vendor No.6 and forged his thumb impression on the document in order to grab the land illegally. It is further stated that only after following due process of law, the learned Senior Civil Judge had passed the *ex parte* decree in O.S.No.158 of 2017, but the petitioners/A-1 to A-5 have filed an application to set aside the *ex parte* decree on false and fictitious grounds and the same is pending.

It is also stated in the counter that the 2nd respondent/*de facto* complainant is an illiterate and belongs to scheduled caste community and taking undue advantage of the same, the petitioners/A-1 to A-5 conspired together with the said late Veera Reddy with common intention and forged the said sale deed to cause wrongful loss to the 2nd respondent/*de facto* complainant and also trying to grab his land by dispossessing him from his land. The pahani patrikas of the year 1992-1993, 1999-2000, 2000-2003 reflect

the name of his brother P.Yadaiah as pattadar and possessor of land admeasuring Ac.0-01 gts.; that the petitioners herein had influenced the revenue officials and based on the forged document, they got their names mutated in the revenue records to the extent of Ac.0-10gts in Sy.No.713 and based on the said entries they are trying to interfere and dispossess him from the said land; that the 2nd respondent/*de facto* complainant is in possession of the said land even till date. That the Director, Finger Print Bureau, CID had submitted a report, dated:21-03-2018 to the XV-Metropolitan Magistrate, Cyberabad, Medchal after comparing the specimen of his left thumb impression and the thumb impression of vendor No.6 affixed in the said sale deed, conclusively determined that the thumb impressions are not identical as such this report clearly established that his thumb impression was forged and the petitioners/A-1 to A-5 herein are dishonestly and fraudulently claiming the property based on the said forged document. It is further stated that the chain of circumstances and conduct of the petitioners herein *prima facie* satisfy the ingredients of the offences under Sections 120-B, 467, 468 and 471 of I.P.C. and Section 3 (1) (f) & (g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, read with Sections 34 and 35 of IPC. Thus, he prayed that the quash petition is liable to be dismissed.

Heard learned Counsel for the petitioners/A-1 to A-5, learned Additional Public Prosecutor appearing for the 1st respondent-State and learned Counsel for the 2nd respondent/complainant.

Learned Counsel for the petitioners/A-1 to A-5 would submit that the name of the 2nd respondent was never recorded as pattadar and possessor of land admeasuring Ac.0-11 gts. in Sy.No.713 of Kistapur Village, Medchel Mandal. Even according to the 2nd respondent, the said land is his fathers' ancestral property and the total extent of Survey No.713 of Kistapur Village, Medchal Mandal is Ac.1-26 gts., which is the joint family property of Pallerugayala Mallaiah, Tudumu Pentaiah, Tudumu Yellaiah, Chinnsaigari Pedda Mallaiah, Papannagari Pochaiah and Pallerugayala Pentaiah, in which Pallerugayala Pentaiah has got undivided share of Ac.0-11 gts., and that there was no partition among the said joint owners. He further submits that all the above said joint pattadars of Survey No.713 admeasuring Ac.1-29 gts., sold the land admeasuring Ac.1.20 gts., under a registered Sale Deed Document No.8686 of 1990 dated 24-09-1990 to one Jogannagari (alias Yeruva) Veera Reddy for valuable consideration and delivered possession and on the basis of said sale deed, the name of Veera Reddy was mutated in all the revenue records as pattadar and possessor and that he was in possession and enjoyment of the same during his life time and after his death on 30.09.1994, the names of petitioners/A-1 to A-5 being the legal heirs of late Veera Reddy were mutated in all the revenue

records and the petitioners/A-1 to A-5 were also issued pattadar passbooks and title deeds long back. The 2nd respondent/*de facto* complainant and his brother filed a suit O.S. No.158 of 2017 on the file of the learned Senior Civil Judge Court at Medchel for cancellation of Registered Sale Deed Document No.8686 of 1990 dated 24.09.1990 to the extent of Ac.0-10 gts., and for partition of the land of Ac.1-26 gts., in Survey No.713 of Kistapur Village, Medchal Mandal and District into six equal shares and to allot one such share to them and also for correction of revenue records from the year 1992 by deleting the names of the petitioners/A-1 to A-5 in respect of Ac.0-10 gts., and to enter their names as pattadars and possessors. In the said suit, summons were not served on the petitioners/A-1 to A-5 and that an *ex parte* decree was passed on 12.09.2018. On coming to know about the same, the petitioners/A-1 to A-5 filed an application in the said suit to set aside the *ex parte* decree along with their written statement and the same is pending. Petitioner Nos.2 to 4/A-2 to A-4 are residents of USA and the 5th petitioner/A-5 is 69 years old and is not worldly-wise. On the basis of the complaint given by the 2nd respondent/*de facto* complainant, the Police, Medchel and the Assistant Commissioner of Police, Petbasheerabad are repeatedly calling the 1st petitioner/A-1 to attend before them without point or purpose though the 1st petitioner/A-1 has already submitted a written explanation. It is also submitted that the 2nd respondent/*de facto* complainant filed the above criminal complaint with a *mala fide* intention of harassing the petitioners/A-1 to A-5 by

abusing the process of law. The allegations of the 2nd respondent/*de facto* complainant in the complaint do not make out a case against the petitioners/A-1 to A-5 as none of the ingredients of the aforesaid Sections are attracted. A perusal of copy of the Registered Sale Deed No.8686 of 1990 dated 24.09.1990 and even the pleadings of the 2nd respondent/*de facto* complainant in O.S.No.158 of 2017 clearly established that the land admeasuring Ac.1-26 gts., in Survey No.713 of Kistapur Village, Medchal Mandal was joint property of the vendors and that out of the said land, an extent of Ac.1-20 gts., was sold for valuable consideration jointly by all of them to the father of petitioner Nos.1 to 4/A-1 to A-4 and possession was also delivered. The name of the father of the petitioner Nos.1 to 4/A-1 to A-4 was mutated in all the revenue records and after his death on 30.09.1994, the names of the petitioner Nos.1 to 4/A-1 to A-4 were mutated in all the revenue records being the legal heirs of vendee under said Registered Sale Deed. *Prima-facie*, the allegations in the complaint are of civil in nature and do not make out any case against the petitioners/A-1 to A-5. It is not the case of the 2nd respondent/*de facto* complainant that the other five vendors of Registered Sale Deed Document No.8686 of 1990 dated 24.09.1990 have no right to sell the land. Further, the claim for partition in O.S.No.158 of 2017 stated above clearly shows that the other five vendors have a right in the land sold to late Veera Reddy. When late Veera Reddy was put in possession of land admeasuring Ac.1-20 gts in Sy.No.713 of Kistapur Village, Medchal Mandal under Registered Sale Deed executed by

joint owners of said property, the complaint filed by the 2nd respondent/*de facto* complainant is not maintainable in law, as late Veera Reddy came into possession of land as purchaser of the said land. Further, the names of petitioners/ A-1 to A-5 were mutated in all the revenue records as legal heirs of late Veera Reddy. In any case, continuation of above criminal case against the petitioners/ A-1 to A-4 is nothing but abuse of process of law.

Learned Counsel for the 2nd respondent/*de facto* complainant reiterating the contents made in the counter, would submit that the petitioners/A-1 to A-5 have filed the present Criminal Petition to quash the F.I.R. primarily on three grounds i.e., (1) that there is a delay of 27 years as the sale deed was forged in the year 1990, (2) that the dispute is of a civil nature and the criminal proceedings are not maintainable and (3) that the father of the petitioners died, as such they are not liable. The above grounds are wholly unsustainable and do not stand to the scrutiny of law. As per Section 5 (3) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the Mandal Revenue Officer has to issue a notice to all the interested persons before changing the revenue record. In the present case, the Mandal Revenue Officer has not issued any notice to the 2nd respondent/*de facto* complainant before changing the revenue record and as such it is clearly manifest that the 2nd respondent/*de facto* complainant had no knowledge about the change of revenue record till 2017. Thus, the contention of the

petitioners/A-1 to A-5 that since 27 years they have land records and that there is a delay in filing the complaint is wholly unsustainable and do not stand to the scrutiny of law as the limitation period starts from the date of knowledge and the 2nd respondent/*de facto* complainant acquired knowledge of the forgery only in the year 2017. He further submits that existence of civil remedy is not a bar to continue criminal proceedings as per the judgments of the Apex Court in *Mahesh Chaudary v. State of Rajasthan*¹ and *Parbatbhai Aahir V. State of Gujarath*². He also submits that the petitioners/A-1 to A-5 have conspired together with the common intention to grab the property of the 2nd respondent/*de facto* complainant, but the contention of the petitioners/A-1 to A-5 that they are not liable to be prosecuted as the forged document was executed in the name of their father. As per the judgments of the Apex Court in *R.Venkatakrisnan v. Central Bureau of Investigation*³ and *State of Tamil Nadu v. R.Vasanthi Stanley and another*⁴, the conspiracy may develop in successive stages and as the names of the petitioners/A-1 to A-4 were mutated in the revenue records, they are liable for the said conspiracy. He further submits that the 2nd respondent/*de facto* complainant belongs to Scheduled Caste and as per Section 3 (1) (g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, any person wrongfully interfering with the

¹ (2009) 4 SCC 439

² (2017) 9 SCC 641

³ (2009) 11 SCC 737

⁴ (2016) 1 SCC 376

enjoyment of his rights over any land, premises or water is an offence. In the present case, the petitioners/A-1 to A-5 have fabricated the sale deed and the revenue records and wrongfully claiming and trying to dispossess the 2nd respondent/*de facto* complainant from his property as such the ingredients of the above Section are also *prima facie* satisfied.

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

In *Devendra and Others vs. State of Uttar Pradesh and another*⁵ 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:

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

⁵ (2009) 7 SCC 495

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*⁶ 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 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

⁶ (2005) 1 SCC 122

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*⁷ 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 by the Appellant were *prima facie* made out from the complainant's FIR, charge sheet, documents etc. or not.

⁷ (2011) 7 SCC 59

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 another*⁸ 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

⁸ (2009) 8 SCC 751

cloak of a 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*⁹

wherein Hon'ble the Apex Court has held as under:

“The said principle has been reiterated in *All Carago 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

⁹ (2009) 3 SCC 78

allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functioning of the trial courts."

Learned Counsel appearing for the 2nd respondent/
de facto complainant has relied upon the following case laws:

In the case of *Mahesh Chaudary v. State of Rajasthan* (1 *supra*) the Honourable Supreme Court in Para Nos.12 and 14 observed as under:

"12. It is also well settled that save and except very exceptional circumstances, the court would not look into any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or Complaint Petition fulfill the ingredients of the offences alleged against the accused.

14. xxxxxx It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature."

In *Parbatbhai Aahir V. State of Gujarath* (2 *supra*) it was observed by the Honourable Supreme Court at Paragraph No.18 as under:

“The present case, as the allegations in the FIR would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. The case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. If the allegations in the FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal interest in prosecuting serious crime. In these circumstances, the High Court was eminently justified in declining to quash the FIR which had been registered under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code.”

In the case of *R.Venkatakrishnan v. Central Bureau of Investigation* (3 *supra*) the Honourable Supreme Court in Para Nos.75, 76 and 81 observed as under:

“75. It was further noted in that case that to establish an offence of criminal conspiracy '[i]t is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.'

76. Dr. Hari Singh Gour in his Commentary on Penal Law of India, (Vol.2, 11th Edn. p. 1138) elaborates:

"In order to constitute a single general conspiracy there must be a common design. The evil scheme may be promoted by

a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient."

81. A conspiracy may further be a general one and a separate one. A smaller conspiracy may be a part of a larger conspiracy. It may develop in successive stages. [Nirmal Singh Kahlon v. State of Punjab and Others, 2008 (14) SCALE 639] New techniques may be invented and new means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant."

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 the learned Counsel for the 2nd respondent/*de facto* complainant. In the light of the above contentions raised by the learned Counsel appearing for both 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 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 the absence of specific provisions in the Statute.

In *R.P. Kapoor v. State of Punjab*¹⁰ 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.

In this regard, the land mark judgment is the *State of Haryana v. Bhajan Lal*¹¹ 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

¹⁰ AIR 1960 SC 866

¹¹ (1992) SCC (CrL.) 426

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.
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 instant case, a perusal of the material on record would show that the joint pattadars of the subject property namely Pallerugayala Mallaiah, Tudumu Pentaiah, Tudumu Yellaiah, Chinnasaigari Pedda Mallaiah, Papannagari Pochaiah and Pallerugayala Pentaiah, have sold away the said property in favour of one Jogannagari @ Yeruva Veera Reddy, for valuable consideration, executed Registered Sale Deed bearing document No.8686 of 1990, dated 24.09.1990 and also delivered possession. Basing on the said sale deed, the name of Veera Reddy was mutated in all the revenue records and after his death the names of the petitioners/A-1 to A-5 were mutated in the revenue records and pattadar pass books and title deeds have been issued in their favour as they being the legal heirs of said Veera Reddy. The record further discloses that the 2nd respondent/*de facto* complainant, along with his brother, filed O.S.No.158 of 2017, seeking cancellation of Registered Sale Deed No.8686 of 1990 and the same is pending.

In *Indian Oil Corporation v. NEPC India Limited and others*¹² the Apex Court reviewed the precedents on the exercise of

¹² (2006) 6 SCC 736

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 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 *mala fides*/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 *Prof. R.K.Vijayasathya and another v. Sudha Seetham and another*¹³ 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/A-1 to A-5 and learned counsel for the 2nd respondent/*de facto* complainant, 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 2nd respondent/*de facto* complainant are without any substance and the material produced before this Court, directly indicates the *mala fides* in prosecution of criminal proceedings against the petitioners/A-1 to A-5, so also, by abuse of process of the Court, as an arm-twisting method to bring the petitioners/A-1 to A-5 to the terms of the 2nd

¹³ (2019) 3 Scale 563

respondent/*de facto* complainant and to cloak a civil dispute with criminal nature, he 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/A-1 to A-5 in Crime No.427 of 2017 of Medchal Police Station, for the offences punishable under Sections 120-B, 468, 471 and 506 read with 34 of I.P.C. and Section 3 (1) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/A-1 to A-5 in Crime No.427 of 2017 of Medchal Police Station, for the offences punishable under Sections 120-B, 468, 471 and 506 read with 34 of I.P.C. and Section 3 (1) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

10.03.2020
Gsn

