HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.13095 of 2018

ORDER:

The present Criminal Petition is filed by the petitioners/A-1 and A-2, under Section 482 of Cr.P.C., seeking to quash the proceedings in Crime No.264 of 2018 of Mahabubabad Town Police Station, Mahabubabad District, which was registered against the petitioners/A-1 and A-2 for the offences punishable under Sections 323, 415, 420 and 506 read with 34 of I.P.C.

The facts in issue are that the 2nd respondent/*de facto* complainant filed a private complaint against the petitioners/A-1 and A-2 before the Principal Judicial Magistrate of First Class, Mahabubabad, for the aforesaid offences, and the same was referred to the police under Section 156 (3) of Cr.P.C. for investigation and report. Basing on the said reference, the Police, Mahabubabad Town, Mahabubabad District, registered a case in Crime No.264 of 2018 and took up investigation.

The allegations in the private complaint are that the 2nd respondent/*de facto* complainant purchased a house plot admeasuring Ac.0.03 guntas (363 square yards) in

Sy.No.437/B2 having its H.No.6-5-30/A66/2 in the name of his wife Chinthapally Santhosam from the 1st petitioner/A-1 on 26.08.1997 for a valid consideration of Rs.21,200/-. After receiving the above sale consideration, the 1st petitioner/A-1 executed an agreement of sale in favour of the wife of the 2nd respondent/*de facto* complainant and the 2nd petitioner/A-2, who is the husband of the 1st petitioner/A-1 also signed on the said agreement of sale as witness and further both the petitioners/A-1 and A2 agreed to execute registered sale deed whenever they prepared for the registration. It is also stated that wife of the 2nd respondent/*de facto* complainant died due to heart stroke and in that depression, he could not ask the petitioners/A-1 and A-2 for execution of registered sale deed in his favour. While the matter stood thus, the 2nd respondent/*de facto* complainant came to know that suppressing the agreement of sale executed in favour of his wife, the petitioners/A-1 and A2, sold away the land to an extent of 80 square yards, which is part and parcel of the plot sold to his wife. Immediately, the 2nd respondent/*de facto* complainant approached both the petitioners/A-1 and A-2 and asked them about the said sale, but they necked him out from their house and also threatened that they will kill him if he again come to their house. Thereafter, the 2nd petitioner/A-2 issued a legal notice through his Counsel stating that the 2nd respondent/*de facto* complainant is pressurizing him for execution of registered sale deed and he is not under any obligation to execute the registered sale deed as he has not executed any agreement of sale.

Heard learned Counsel for the petitioners/A-1 and A-2, learned Additional Public Prosecutor for the 1st respondent-State; learned Counsel for the 2nd respondent/*de facto* complainant and perused the record.

Learned Counsel for the petitioners/A-1 and A-2 would submit that the entire allegations of the 2nd respondent/*de facto* complainant are false and baseless; that the date of death of the wife of the 2nd respondent/*de facto* complainant was not mentioned in the complaint; that though the wife of the 2nd respondent/*de facto* complainant died long back, he being a legal heir of his wife, has not preferred any legal process for execution of any registered sale deed and as he has criminally trespassed into the house of the petitioners/A-1 and A-2 and also the work place of the 2nd petitioner/A-2 with the help of M.R.P.S. and L.H.P.S. leaders and created nuisance, the 2nd petitioner/A-2 got issued a legal notice to the 2nd respondent/*de facto* complainant. It is also submitted that the case of the 2nd respondent/*de facto* complainant is of civil nature and till date he has not filed any suit for specific performance of agreement and that no document has been filed to show that the petitioners/A-1 and A-2 sold away 80 square yards of land to others.

Learned Additional Public Prosecutor appearing for the 1st respondent-State opposed the prayer for quashing of the F.I.R. and submits that the contents of the F.I.R. clearly disclose cognizable offence against the petitioners/accused and, therefore, the same cannot be quashed.

The 2nd respondent/*de facto* complainant filed counter-affidavit reiterating the contents made in the private complaint. Learned Counsel for the 2nd respondent/*de facto* complainant would submit that the proceedings are at the threshold and therefore, the petitioners/A-1 and A-2 cannot invoke the inherent powers. He also submits that the 2nd respondent/*de facto* complainant has made out a strong *prima facie* case against the petitioners/A-1 and A-2 and that there are various debatable issues involved which have to be dealt with in a detailed manner and a detailed trial has to be conducted to resolve the issues involved, as such the present Criminal Petition is liable to be dismissed. At the time of arguments, he produced Xerox copy of the registered sale deed bearing document No.4547 of 2009 executed by the 1st petitioner/A-1 in favour of one Bhukya Sharada.

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.
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> 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

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[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

[3] (2000) 4 SCC 168

depends upon the 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

[4] (2000) 2 SCC

> to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to 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 2nd respondent/*de facto* complainant contended that an agreement of sale was executed, in respect of the house plot in question, by the petitioners/A-1 and A-2 in the year 1997 in favour of his wife and thereafter his wife died. Though the agreement of sale was executed in the year 1997, the 2nd respondent/*de facto* complainant failed to take any steps for execution of registered sale deed for a continuous period of 21 years. The record further discloses that on 08.03.2018, the 2nd petitioner/A-2 made a representation before the Additional Superintendent of Police, Mahabubabad, stating that though he has no obligation to execute a registered sale deed in favour of the 2nd respondent/*de facto* complainant, the 2nd respondent/*de facto* complainant approached him at his work place along with MRPS and LHPS leaders and demanded him to execute a sale deed and also criminally trespassed into his house and threatened him to execute the registered sale deed and, therefore, requested to take action against the 2nd respondent/*de facto* complainant and others. The 2nd petitioner/A-2 also got issued a legal notice on 23.07.2018 to the 2nd respondent/*de facto* complainant requesting him not to indulge in illegal acts and if he has any grievance with regard to purchase of plot, he can seek legal remedy as per law. On receipt of the said legal notice, the 2nd respondent/*de facto* complainant filed a private complaint on 30.07.2018 against the petitioners/A-1 and A-2, which was referred to police, who in turn registered a case in Crime No.264 of 2018. That apart, the 2nd respondent/*de facto* complainant in his reply to the notice, dated 23.07.2018 issued by the 2nd petitioner/A-2, categorically stated that he will be compelled to take criminal and civil action against the 2nd petitioner/A-2. Therefore, the record clearly shows that though the agreement of sale is of the year 1997, the 2nd respondent/*de facto* complainant has come forward with the present private complaint after lapse of twenty years, only to put pressure on the petitioners/A-1 and A-2.

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 2nd 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-1 and A-2 in Crime No.264 of 2018 of Mahabubabad Town Police Station, Mahabubabad District.

Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioners/A-1 and A-2 in

Crime No.264 of 2018 of Mahabubabad Town Police Station, Mahabubabad District, are hereby quashed.

Miscellaneous applications, if any, pending shall stand dismissed.

JUSTICE G. SRI DEVI

20.02.2020
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