

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ Criminal Petition No.1621 of 2021

% Date: 02.07.2021

Between

**# Dr. A. Chandrasekhar
and others**

... Petitioners/ Accused Nos.1 to 3

AND

**\$ The State of Telangana,
through SHO, Panjagutta PS,
Rep. by Public Prosecutor,
High Court of Telangana, at Hyderabad
and others**

..Respondents

**! Counsel for the Petitioners : Sri Vinod Kumar Deshpande,
learned Senior Counsel for Sri C.Hari Preeth.**

^ Counsel for the Respondent No.1: Public Prosecutor

**^ Counsel for Respondent No.2: Sri Dil Jit Singh Ahluwalia,
learned counsel for Sri H.Srinivasa Rao**

**^ Counsel for Respondent No.3: Sri Dil Jit Singh Ahluwalia,
learned counsel for Sri N.Krishna Sumanth**

>HEAD NOTE:

? Cases referred

- 1) 2014 (7) SCC 215
- 2) (2009) 9 SCC 682
- 3) (2005) 10 SCC 336
- 4) 2021 SCC Online SC 315
- 5) (2019) 6 SCC 107

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**CRIMINAL PETITION No.1621 of 2021****ORDER:**

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C), is filed by the petitioners/A-1 to A-3, seeking to quash the proceedings in Crime No.65 of 2021 on the file of Panjagutta Police Station, Hyderabad, registered for the offences punishable under Sections 405, 406, 420, 506 r/w 34 of IPC. The respondent Nos.2 and 3/de-facto complainants filed a private complaint under Section 200 of Cr.P.C., before the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, making certain allegations against the petitioners/A-1 to A-3. The learned Magistrate, having examined the complaint, referred the said complaint to the Station House Officer, Panjagutta Police Station, under Section 156(3) of Cr.P.C., for filing report, holding that the material available before the Court shows the requirement of thorough probe and investigation into the allegation, as levelled in the complaint. Learned Magistrate further held that during the course of enquiry, the police must bear in mind the direction of Hon'ble Supreme Court of India in *Lalitha Kumari Vs. Government of U.P.*, in W.P.(Criminal) No.61/2008, dated 12.11.2013 and directed to call the matter on 16.02.2021 for report. On such referral, the Station House Officer, Panjagutta Police Station, registered a case in Crime No.65 of 2021 against the petitioners/A-1 to A-3 for the offences punishable under Sections 405, 406, 420, 506 r/w 34 of IPC. Aggrieved by the registration of the said First Information Report, this Criminal Petition is filed to quash the same.

2. Heard Sri Vinod Kumar Deshpande, learned senior counsel appearing for Sri C.Hari Preeth, learned counsel for the petitioners/A-1 to A-3, learned Public Prosecutor appearing for the respondent No.1-State, Sri Dil Jit Singh Ahluwalia, learned counsel appearing for Sri H.Srinivasa Rao, learned counsel for respondent No.2 and also Sri N.Krishna Sumanth, learned counsel for respondent No.3. Perused the record.

3. The learned senior counsel for the petitioners/A-1 to A-3 would submit that the allegations in the subject private complaint, even if taken at their face value and accepted in their entirety, do not *prima facie* constitute the alleged offences. The dispute between the parties to litigation is purely civil in nature. The complaint lodged by the de-facto complainants before the learned Magistrate is false and frivolous. The de-facto complainants have already filed a suit for specific performance of the alleged contract before the competent civil Court. No criminal acts are attributable to the petitioners/A-1 to A-3, as alleged. Further, this Court, by order, dated 26.03.2021, was pleased to stay all further proceedings in the subject crime till 16.04.2021. This Court, vide order dated 16.04.2021, was pleased to extend the said interim order till 23.04.2021. Further, this Court was pleased to grant anticipatory bail to petitioner Nos.1 and 3/A-1 and A-3 in the subject crime. The subject complaint was filed by the de-facto complainants after filing a comprehensive civil suit before a competent civil Court arising out of same transaction and same set of facts, that too after lapse of several months, only with a *mala fide* intention to extract more money from A-1 and the same is nothing, but abuse of process of law. In the said civil suit filed by the de-facto complainants, they could not get any interim order in their favour.

The de-facto complainants, with an ill motive and by suppressing the material facts, are trying to invoke the jurisdiction of criminal Court in a case, wherein the dispute is purely civil in nature. Though the de-facto complainants alleged in the subject private complaint that they have earlier lodged a report with Panjagutta Police Station, neither a copy of the said complaint is enclosed with the subject private complaint nor the action taken by the police in that regard was mentioned in the subject private complaint. Thus, the very approach of the de-facto complainants in initiating the criminal proceedings against the petitioners/A-1 to A-3 is attended with *mala fides*. Already petitioner No.2/A-2 was arrested by the police and sent to judicial remand and subsequently, he was released on bail. Now, the police authorities are making serious efforts to arrest petitioner Nos.1 and 3/A-1 and A-3 at the instance of the de-facto complainants. When the petitioners/A-1 to A-3 moved this Court seeking anticipatory bail, this Court, while granting interim protection from arrest, suggested the parties to settle the matter amicably. Honouring the said suggestion, the petitioners/A-1 to A-3 made reasonable proposal to the de-facto complainants through their counsel. But the de-facto complainants, on one side acting as if they are intending to amicably settle the matter, on the other side pressing to vacate the interim order and dismiss the subject criminal petition, in order to harass the petitioners/A-1 to A-3 with an oblique motive. There is no iota of truth in the allegations in the subject private complaint. Further, the allegation that an amount of Rs.3.5 crores was paid in cash to the petitioner/A-3 by the de-facto complainants is absolutely false. Such a huge amount, in cash, cannot be paid to any person. The said alleged payment is hit by Section 269ST of the

Income Tax Act, 1961, which mandates that no person/individual shall receive an amount of Rs.2 lakhs or more from another person/individual in a day. Moreover, the receipt, dated 09.04.2019, alleged to be issued by the petitioner/A-3 has nothing to do with the subject property, since neither he is the owner nor the possessor of the same. The police ought to have made preliminary enquiry before registering the subject crime against the petitioners/A-1 to A-3. The proceedings initiated against the petitioners/A-1 to A-3 are motivated proceedings, which are aimed to harass them and would amount to abuse of judicial process. In a quash petition, the Courts have to only look at the uncontroverted allegations in the complaint whether *prima facie* discloses offences or not. No essential ingredients are made out constituting the offences alleged against the petitioners/A-1 to A-3 and ultimately prayed to allow the Criminal Petition as prayed for. In support of his contentions, the learned senior counsel had placed strong reliance on the following decisions.

1. Rishipal Singh Vs. State of UP and another¹

2. M.N.Ojha and others Vs. Alok Kumar Srivastav and another²

3. Uma Shankar Gopalika Vs. State of Bihar and another³

4. M/s.Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra⁴

4. On the other hand, learned counsel for the respondent Nos.2 and 3/de-facto complainants vehemently contended that the allegations in the subject private complaint, if taken at their face value and accepted in their entirety, do *prima facie* constitute the alleged offences. Petitioner No.1/A-1 entered into agreement of sale,

¹ 2014 (7) SCC 215

² (2009) 9 SCC 682

³ (2005) 10 SCC 336

⁴ 2021 SCC Online SC 315

dated 09.04.2019, with the *de-facto* complainants to sell his 40% share over the property mentioned in the complaint, for a total sale consideration of Rs.7 crores. Out of the said amount, petitioner No.1/A-1 received a sum of Rs.5 crores through different transactions. Petitioner Nos.2 and 3/A-2 and A-3 assured due performance of obligations by the petitioner No.1/A-1. Thereafter, the petitioner No.1/A-1 failed to fulfill his obligation of delivering possession of the said property, execution of sale deed, obtaining occupancy certificate etc., and moreover, the accused persons are demanding the *de-facto* complainants to pay Rs.2 crores without fulfilling their obligations as agreed by them and threatening to sell the property to others. The said criminal acts of the petitioners/A-1 to A-3 constitute offences punishable under Sections 405, 406, 420, 506 r/w 34 of IPC. Though there is an agreement of sale, dated 09.04.2019, agreeing to sell the subject property to the *de-facto* complainants, there is no whisper about the same either in the affidavit or in the material papers filed on behalf of the petitioners/A-1 to A-3. Thus, the petitioners/A-1 to A-3 are guilty of suppression of material facts. Mere pendency of civil suit is not a bar to initiate criminal proceedings, so long as the ingredients of offences are made out. The petitioners/A-1 to A-3 have obtained interim order, dated 26.03.2021, by playing fraud on the Court by orally arguing that the dispute is civil in nature. Further, there is no bar to pay huge cash under the Income Tax Act, 1961, to any person. The only requirement is that the payer has to demonstrate the source from where he has got such amount. When a prayer for quashing the FIR is made by the alleged accused, the Court, while exercising power under Section 482 of Cr.P.C., should only consider whether the allegations in the FIR discloses commission

of a cognizable offence or not. The FIR is not an encyclopedia which must disclose all the facts and details of the offences alleged. When investigation is in progress, the Court should not go into the merits of the allegations and the Court should permit the investigating agency to investigate into the allegations. After investigation, if the investigating officer finds that there is no substance in the allegations made by the complainant, the investigating officer may file an appropriate report/summary before the Court concerned. In certain cases, the very same set of facts may give rise to remedies in civil as well as in criminal proceedings, even if a civil remedy is availed by a party, it does not preclude it from setting into motion the proceedings in criminal law. The learned counsel further submits that the petitioners/A-1 to A-3 have denied the execution of subject agreement of sale, dated 09.04.2019, and receipt of sale consideration, which establishes that they have criminal intent to deceive the respondent Nos.2 and 3 from the date of entering into subject agreement of sale. Further, suppression of truth is equivalent to expression of falsehood. With a calculated concealment of a crucial document, i.e., agreement of sale, dated 09.04.2019 before this Court, the petitioners/A-1 to A-3 tried to gain wrongful advantage with a fraudulent intention, which is impermissible in law. There are no merits in this criminal petition and ultimately prayed to dismiss the Criminal Petition. In support of his contentions, the learned counsel had relied on the following decisions.

1. Mohd. Allauddin Khan Vs. State of Bihar and others⁵

2. M/s.Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra (4 supra)

⁵ (2019) 6 SCC 107

5. In view of the above rival contentions, the point that arises for determination in this Criminal Petition is as follows:-

“Whether the proceedings in Crime No.65 of 2021 of Panjagutta Police Station, Hyderabad, registered against the petitioners/A-1 to A-3 for the offences punishable under Sections 405, 406, 420, 506 r/w 34 of IPC, are liable to be quashed?”

POINT:-

6. The averments made in the complaint filed by the respondent Nos.2 and 3/de-facto complainants under Section 200 of Cr.P.C., before the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, reveal that the petitioner No.1/A-1 is the absolute owner and possessor of the house property bearing Municipal No.8-2-293/82/L/13/A/B, on Plot No.13/A/B, admeasuring 430 square yards along with adjoining land admeasuring 344 square yards, totally admeasuring 774 square yards, in Survey Nos.403/1 and 102/1, situated at Venkateswara Cooperative House Building Society, MLA Colony, Road No.12, Banjara Hills, Hyderabad. Petitioner No.1/A-1 entered into a Development Agreement-cum-Irrevocable General Power of Attorney (with Possession), dated 13.07.2017, bearing document No.4318/2017, with M/s.Raichandani Construction for developing the said property into Residential/ Commercial complex. Under the said Development Agreement, petitioner No.1/A-1 was allotted 40% of the constructed units together with 40% parking area provided in the Stilt Floor along with 40% right and share in the land, which was agreed to be purchased by the respondent Nos.2 and 3/de-facto complainants for a consideration of Rs.7 crores. Out of the said consideration of Rs.7 crores, the respondent Nos.2 and 3/de-facto complainants have paid an amount of Rs.5 crores, i.e., Rs.3.5 crores

by way of cash, Rs.70 lakhs by way of account transfer *vide* UTR Reference No.HDFCR 520190409731904 of HDFC Bank, dated 09.04.2019, and Rs.80 lakhs by way of account transfer *vide* UTR No.YESBR2019040962124725 of YES Bank, dated 09.04.2019. The petitioner Nos.2 and 3/A-2 and A-3 offered themselves as guarantors to the said transaction and assured due performance of contract by petitioner No.1/A-1. The petitioners/A-1 to A-3 also signed an Agreement of Sale, dated 09.04.2019. The balance sale consideration of Rs.2 crores is payable within one month after completion of construction, obtaining Occupancy Certificate, execution of sale deed and delivery of possession. The petitioner No.1/A-1, even after completion of construction, has not executed sale deed or obtained Occupancy Certificate or delivered possession, as promised. Further, the petitioners/A-1 to A-3 started threatening the respondent Nos.2 and 3/de-facto complainants to pay the balance of Rs.2 crores and stated that in case the amount is not paid, the property would be sold to other persons. Several attempts were made by the respondent Nos.2 and 3/de-facto complainants requesting the petitioners/A-1 to A-3 to fulfill their obligations and complete the transaction of sale, but went in vain. The petitioners/A-1 to A-3, having duped and cheated the respondent Nos.2 and 3/de-facto complainants, are now trying to sell the said share of 40% in the entire building to third parties. The petitioners/A-1 to A-3 are influential and having political muscle and financial resources and are threatening the respondent Nos.2 and 3/de-facto complainants in order to coerce them and submit to their illegal demands. The petitioners/A-1 to A-3 never had any intention to complete the transaction and only for the purpose of taking money from the respondent Nos.2 and 3/de-facto complainants, they have

induced the respondent Nos.2 and 3/de-facto complainants to part with money under false promise and cheated the respondent Nos.2 and 3/de-facto complainants. The petitioners/A-1 to A-3 had fraudulent and dishonest intention at the time of entering into the Agreement for Sale, dated 09.04.2019. Thus, the petitioners/A-1 to A-3 have committed an act of cheating with a deliberate intention to cause wrongful gain for themselves and wrongful loss to the respondent Nos.2 and 3/de-facto complainants. The respondent Nos.2 and 3/de-facto complainants have already filed a suit in O.S.No.107 of 2020 on the file of X Additional Chief Judge, City Civil Court at Hyderabad, seeking various reliefs. The petitioners/A-1 to A-3 are threatening the respondent Nos.2 and 3/de-facto complainants with dire consequences, if they demand for repayment of money. The acts committed by the petitioners/A-1 to A-3 clearly fall within the ambit of criminal conspiracy, fraud, criminal breach of trust, criminal breach of contract, cheating and criminal intimidation, which clearly attracts the provisions of Sections 405, 406, 420, 506 r/w 34 of IPC. Though the respondent Nos.2 and 3/de-facto complainants have earlier lodged a report with Panjagutta Police Station on 20.03.2020, no action has been taken by the police till now on the said complaint. Therefore, the respondent Nos.2 and 3/de-facto complainants have lodged a private complaint under Section 200 of Cr.P.C., before the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, which was referred to the police concerned under Section 156(3) of Cr.P.C., for investigation and for report.

7. In view of the circumstances of the case, it is apt and appropriate to refer the decisions relied upon by both the learned counsel. In **Rishipal Singh's** case (1 supra) relied upon by the

learned senior counsel for the petitioners/A-1 to A-3, the Hon'ble Apex Court held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations, as made in the complaint, *prima facie* establish the case; the High Court should not convert itself into a trial Court and dwell into disputed questions of fact; Object of Section 482 Cr.P.C, is to prevent abuse of process of Court and to secure ends of justice; High Courts need to be circumspect and exercise power under Section 482 of Cr.P.C., in exceptional circumstances depending upon facts of each case; If the allegations leading to criminal prosecution *prima facie* do not disclose or constitute offence, then power under Section 482 of Cr.P.C. can be exercised, but however disputed questions of fact cannot be decided like trial Court; Frustrated litigant need not be permitted to vent vindictiveness through abuse of process of law and such proceedings are required to be stopped at early stages.

8. In **M.N.Ojha's** case (2 supra) relied upon by the learned senior counsel for the petitioners/A-1 to A-3, the Hon'ble Apex Court held as follows:

"The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, cannot go into the truth or otherwise of the allegations and appreciate the evidence, if any, available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage, when the investigation/enquiry is pending. Interference by the High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint."

9. In **Uma Shankar Gopalika's** case (3 supra) relied upon by the learned senior counsel for the petitioners/A-1 to A-3, the Hon'ble Apex Court held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating, where there was any deception played at the very inception and that if the intention to cheat has developed later on, the same cannot amount to cheating and that remedy in the latter case lies before the civil Court by filing a properly constituted suit.

10. There cannot be any dispute with regard to the ratio laid down by the Hon'ble Apex Court in the aforementioned decisions. But it is equally true that the police has the statutory right and duty under the relevant provisions to investigate into a cognizable offence and the Courts would not thwart any investigation into the cognizable offences. When a complaint disclosing cognizable offences is made by an aggrieved party, either to the police concerned or before a Judicial Magistrate for referring the same to the police concerned for investigation, such criminal proceedings ought not to be scuttled at the initial stage.

11. In **Mohd. Allauddin Khan's** case (5 supra) relied by the learned counsel for the respondent Nos.2 and 3/de-facto complainants, the High Court quashed the order passed by the Judicial Magistrate taking cognizance of complaint filed by the complainants for the offences under Sections 323 and 379 r/w 34 of IPC. The matter ultimately reached the Hon'ble Apex Court. The Hon'ble Apex Court held that High Court gave importance to the fact that there was a landlord-tenant dispute pending between the parties

in civil Court in relation to a shop and that the High Court failed to see that mere pendency of civil suit is not an answer to the question as to whether a case under Sections 323 and 379 r/w 34 of IPC is made out or not and that in order to see whether any *prima facie* case against accused for taking cognizance is made out or not, the Court is only required to see allegations made in the complaint and that in the absence of any finding recorded by High Court on this material question, impugned order is legally unsustainable and that the High Court had no jurisdiction to appreciate the evidence in the proceedings under Section 482 of Cr.P.C. and that the contradictions or/and inconsistencies in statements of witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Magistrate during trial and that the conclusions arrived at by High Court for quashing the complaint is not legally sustainable.

12. Both the learned counsel have placed reliance on **M/s.Neeharika Infrastructure Pvt. Ltd's** case (4 supra), wherein, the Hon'ble Apex Court laid down certain guidelines with regard to the powers of the High Court, while adjudicating a petition filed under Section 482 of Cr.P.C., and/or under Article 226 of the Constitution of India, for quashing proceedings/complaint/FIR, which are as follows:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;
- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

- xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.
- xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

13. In the instant case, the contention raised on behalf of the petitioners/A-1 to A-3 is that the respondent Nos.2 and 3/de-facto complainants averred that an amount of Rs.3.5 crores is paid by way of cash to the petitioner/ A-3 and such huge amount cannot be paid by way of cash in terms of Section 269ST of Income Tax Act, 1961. To this submission, learned counsel for the respondent Nos.2 and 3/de-facto complainants would submit that there is no bar to pay huge cash under the Income Tax Act, 1961, to any person and that the only requirement is that the payer has to demonstrate the source from where he got such amount. The subject dispute is not about the violation of Section 269ST of Income Tax Act, 1961. The subject dispute is whether there is requisite information relating to commission of cognizable offences under Sections 405, 406, 420, 506 r/w 34 of IPC for which, the subject First Information Report is registered. In the instant case, as per the subject complaint lodged by the respondent Nos.2 and 3/de-facto complainants, the petitioner No.1/A-1 is the absolute owner and possessor of the property agreed to be sold, i.e., 40% of the constructed area and 40% share in the undivided land. The petitioner Nos.2 and 3/A-2 and A-3 offered guarantee for completion of the subject sale transaction. The total sale consideration agreed was Rs.7 crores, out of which, an amount of

Rs.5.00 crores said to have been paid by the respondent Nos.2 and 3/de-facto complainants i.e., Rs.3.5 crores by way of cash, Rs.70 lakhs by way of account transfer *vide* UTR Reference No.HDFCR 520190409731904 of HDFC Bank, dated 09.04.2019, and Rs.80 lakhs by way of account transfer *vide* UTR No.YESBR2019040962124725 of YES Bank, dated 09.04.2019. There are allegations of making false promises and inducing the respondent Nos.2 and 3/de-facto complainants to part with huge money and non-compliance of alleged promise made by the petitioners/A-1 to A-3. There are also allegations of demanding remaining two crores of rupees under threat and informing the respondent Nos.2 and 3/ de-facto complainants that the property would be sold to others. There is specific mention in the subject complaint that the petitioners/A-1 to A-3 have denied execution of subject agreement of sale, dated 09.04.2019, as well as receipt of huge amount as indicated above. The petitioner/A.3 is a party to the agreement of sale dated 09.04.2019. Whether an amount of Rs.3.5 Crores was paid to him by way of cash or not, is a matter of investigation. There is a receipt to that effect. The alleged violation of Section 269ST of Income Tax Act, 1961, by the respondent Nos.2 and 3/de-facto complainants cannot be a ground to quash the impugned criminal proceedings. Moreover, the submissions made in defence by the learned counsel for respondent Nos.2 and 3 cannot be brushed aside.

14. The material placed on record discloses that the petitioners/A-1 to A-3 have denied the execution of agreement of sale, dated 09.04.2019, and receipt of Rs.5 crores pursuant to the said agreement. There are allegations in the complaint that the petitioners/A-1 to A-3 do not have the intention to alienate the

property, by deceiving means they made gain wrongfully and loss to the respondent Nos.2 and 3/de-facto complainants. The said alleged Rs.5 Crores was received under a false promise and by cheating. There was criminal intention of cheating from the inception of agreement in question. The learned counsel for the petitioners/A-1 to A-3 vehemently contended that a civil dispute in O.S.No.107 of 2020 for specific performance of agreement of sale, dated 09.04.2019, is pending between the parties to the litigation before the learned X Additional Chief Judge, City Civil Court, Hyderabad and that the subject private complaint is filed after filing of a comprehensive civil suit arising out of the same transaction, with same set of allegations, after a lapse of nine months, with a *mala fide* intention to extract more money from petitioner No.1/A-1. It is well settled law that pendency of civil proceeding is no bar for criminal prosecution. There may be some matters which are essentially civil in nature and it is only with regard to such matters that this Court discourages criminal prosecution, if it is found that the criminal complexion to a controversy has been lent deliberately with purpose, only to exert coercive pressure upon the party. In those matters, essential ingredients constituting penal offences would be found lacking by the Court. On the contrary, when the allegations made in the complaint *prima facie* constitute cognizable offences, this Court does not scuttle the criminal prosecution, simply on the ground of pendency of civil litigation emanating from the same set of facts. Civil cases are decided basing on preponderance of probabilities in favour of either party, while the conviction or acquittal of accused in a criminal case depends upon the proof beyond reasonable doubt. The nature and methodology of standard of proof involved in civil and criminal

proceedings are qualitatively different. Civil proceedings as well as the criminal proceedings are not always mutually exclusive in nature and can very well go together in appropriate cases. In view of the allegations made in the complaint, the pendency of civil dispute would not debar the respondent Nos.2 and 3/de-facto complainants to initiate criminal proceedings.

15. The other contention of the petitioners/A-1 to A-3 is that though the respondent Nos.2 and 3/de-facto complainants alleged in the subject private complaint that they have earlier lodged a report with Panjagutta Police Station, neither a copy of the said complaint is enclosed nor the action taken by the police on the said complaint is mentioned in the subject private complaint. To that submission, the learned counsel for the respondent Nos.2 and 3/de-facto complainants would submit that since the police concerned did not take any action on the earlier complaint filed by the respondent Nos.2 and 3/de-facto complainants, the respondent Nos.2 and 3/de-facto complainants were constrained to file the subject private complaint under Section 200 of Cr.P.C., before the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad. When a report is lodged with the police alleging constitution of cognizable offences and when no action has been taken by the police concerned on the said complaint, the aggrieved person has a right to file a private complaint under Section 200 of Cr.P.C., before the Magistrate concerned. There is no necessity to file a copy of the complaint submitted to the police on earlier occasion. Without there being such copy, the Magistrate is justified in referring the subject complaint under Section 156 (3) Cr.P.C to the Station House Officer concerned for investigation and report.

16. The power of quashing a First Information Report should be exercised sparingly and with circumspection. While examining the averments in the First Information Report, the Court cannot embark upon an enquiry as to the reliability/genuineness or otherwise of the allegations made in the First Information Report. Generally, criminal proceedings are not to be scuttled with at the initial stage. The Courts ought not go into the genuineness/truth or otherwise of the allegations made in the First Information Report. It has to leave it to the investigating agency to investigate. Admittedly, the First Information Report is not an encyclopedia, which must disclose all the facts and details relating to the complaint. When the investigation is in progress, the Court has to refrain from examining the merits/truth or otherwise of the allegations made in the First Information Report. It is required to be left to the investigating agency to find out the same and on completion of same, allow it to file its report. Only in exceptional cases where non-interference would result in abuse of process of law and would jeopardize the interest of the alleged accused, the Court has to resort to quashing of the First Information Report. In the instant case, the facts are otherwise. The contentions raised on behalf of the petitioners/A-1 to A-3, viz., the allegations in the subject private complaint, even if taken at their face value and accepted in their entirety, do not prima facie constitute the alleged offences; the dispute between the parties to the litigation is civil in nature; no criminal acts are attributable to the petitioners/A-1 to A-3; the respondent Nos.2 and 3/de-facto complainants initiated criminal proceedings against the petitioners/A-1 to A-3 with *mala fide* intention with a view to harass them; no essential ingredients are made out to satisfy the offences alleged against the petitioners/A-1 to A-3, and all

other contentions raised are unsustainable and do not merit consideration. The extraordinary and inherent power of this Court under Section 482 of Cr.P.C., do not tilt in favour of the petitioners/A-1 to A-3 to pass an order as sought for.

17. In view of the information furnished in the complaint lodged by the respondent Nos.2 and 3/de-facto complainants under Section 200 Cr.P.C, it cannot be said that continuation of criminal proceedings against the petitioners/A-1 to A-3 would amount to abuse of process of law. On examination of the entire material placed before this Court, the allegations made against the petitioners/A-1 to A-3 do *prima facie* constitute offences punishable under Sections 405, 406, 420, 506 r/w 34 of IPC. The learned Magistrate has rightly held that the allegations in the subject private complaint require thorough probe and investigation. Investigation has to go on to find out the truth or otherwise in the allegations made against the petitioners/A-1 to A3. The relief sought by the petitioners/A-1 to A-3 in this Criminal Petition cannot be granted. There are no merits in this Criminal Petition and the same is liable to be dismissed.

18. In the result, the Criminal Petition is dismissed. The interim order granted earlier by this Court on 26.02.2021 and which is being extended from time to time, shall stand vacated.

Miscellaneous petitions, if any, pending in this Criminal Petition, stands closed.

Dr. SHAMEEM AKTHER, J

02nd July, 2021

Note: Mark LR copy.
(b/o)
Bvv/scs