

THE HONOURABLE SRI JUSTICE K. LAKSHMAN**CRIMINAL PETITION No.7146 of 2020****ORDER:**

This Criminal Petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings in C.C.No.845 of 2020 pending on the file of the XXII Metropolitan Magistrate, Cyberabad. at Medchal.

2. The petitioners herein are accused Nos.1 and 3 to 5 in the said C.C. The offences alleged against them are under Sections 420 and 406 read with 34 of IPC.

3. The allegations against the petitioners herein in the said C.C. are as follows:-

4. Respondent No.1 herein along with his wife and the petitioners herein jointly purchased land admeasuring 2-14.776 guntas situated at Dullapally Village, Quthbullapur Mandal, Medchal-Malkajgiri District, under registered sale deeds bearing document Nos.201/2020, dated 12.01.2020, (2) 305/2020, dated 19.01.2020 and (3) 309/2020 dated 19.01.2020. At the time of purchase, it was specifically agreed among the partners that the said property was purchased jointly and no one can sell individually towards their respective shares to third parties without knowledge and consent of other partners and the property will be kept jointly only. It is also further agreed among the parties that in case of

immediate necessity of amount, he/she shall give first option to other partners. According to respondent No.1 herein, he and his wife have undivided 1/6th share in all the three schedule properties. They have also made an application to the Gram Panchayat, Dullapally, seeking permission for construction of boundary wall and the same was sanctioned in the year 2006 itself.

5. Thereafter, litigation arose by a third party by name S.V.Shanker Reddy and he filed a suit for perpetual injunction, *vide* O.S.No.4 of 2008 before the Junior Civil Judge, Ranga Reddy District at Medchal and the judgment in the said case was carried in Second Appeal before this High Court. Respondent No.1 herein, his wife and all the accused have also filed a suit, *vide* O.S.No.182 of 2016 before the Junior Civil Judge, Ranga Reddy District at Medchal and the said suit is also pending. Later, respondent No.1 herein and his wife filed another suit, *vide* O.S.No.316 of 2018 against the petitioners herein and all other accused before the District and Sessions Court, Cyberabad at Malkajgiri, seeking partition and separate possession of the suit schedule property. In I.A.No.1152 of 2018 filed in the said suit, the said Court has granted an interim order dated 03.10.2018 restraining the petitioners herein from alienating the suit schedule property therein and the said order is subsisting. Petitioner No.1 herein/accused No.1 and other accused have filed Second Appeals, *vide* S.A.Nos.996 and 997 of 2016 against one S.V.Shanker Reddy before this Court and this Court granted an order of *status quo* on 16.12.2016 and the said order is

subsisting. During the subsistence of the above said orders of not to alienate and to maintain *status quo* with regard to the subject property, the petitioners herein have deliberately violated the said orders and executed four sale deeds bearing document Nos.3295/2019, 3296/2019 and 3297/2019, dated 23.02.2019, and 3976/2019 dated 28.02.2019. Thus, the petitioners herein alienated the above schedule property, which is an undivided share, by way of execution of aforesaid sale deeds in favour of third parties, in violation of the orders of *status quo* and committed cheating and criminal breach of trust

6. Respondent No.1 herein has lodged a complaint with Pet-Basheerabad Police Station, Cyberabad, on 19.11.2019, which was registered as a case in Crime No.873/2019 for the offence under Section 420 read with 34 IPC against the petitioners herein. After completion of investigation, the Police have filed a final report on 03.02.2020 referring it as 'civil in nature'.

7. Feeling aggrieved by the same, respondent No.1 herein filed a petition under Section 204 of Cr.P.C. vide C.C.No.845 of 2020 before the XXII Metropolitan Magistrate, Cyberabad at Medchal and the Court below has taken cognizance of the same and issued summons to the petitioners herein for the offences under Sections 406 and 420 read with 34 of IPC.

8. Heard Sri M.Govind Reddy, learned counsel for the petitioners, and Sri Bankatlal Mandhani, learned counsel for respondent No.1 herein.

9. Sri M.Govind Reddy, learned counsel for the petitioners herein, would submit that the contents of the protest petition lacks the ingredients of the offences alleged against the petitioners herein. Though there is no inducement at the initial stage and no cheating by the petitioners herein, the learned Magistrate has taken cognizance of the above said offences against the petitioners herein, which is illegal and contrary to the provisions of Transfer of Property Act and the property rights guaranteed under the Constitution of India. Learned Magistrate failed to follow the guidelines/prepositions laid down by the Hon'ble Apex Court in *M/s Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.*,¹ and as such, it is an abuse of process of law. Learned counsel would further submit that the learned Magistrate has failed to see that the facts and evidence must be based on certain supportive material and not on bald or speculative allegation. The learned Magistrate failed to see the underlying principle "*quando lex aliquid alicui concedit*" which means when law give anything it gives tacitly anything incidental to it. In other words, it may also be said when law bestows anything upon anyone, it is deemed to bestow also that without which the thing itself cannot be of no effect. The learned Magistrate has also failed to note that everyone is regulator, manager, master and disposer of his own affairs and his property- "*Rerum suarum quilibet est moderator elabiter*".

¹ AIR 1998 SC 128

10. With the above submissions, learned counsel for the petitioners herein sought to quash the proceedings in C.C.No.845 of 2020.

11. On the other hand, Sri Bankatlal Mandhani, learned counsel for respondent No.1 herein, would submit that the said property is a joint property purchased by respondent No.1 herein, his wife and accused Nos.1 to 5. The documents are specifically mentioned in the protest petition and also in the plaint. In I.A.No.1152 of 2018 in O.S.No.316 of 2018, the District and Sessions Judge, Cyberabad at Malkajgiri has passed an order restraining the petitioners herein from alienating the suit schedule property. Learned counsel would further submit that *status quo* order dated 16.12.2016 was granted by this in Second Appeal Nos.996 and 997 of 2016. According to him, both the aforesaid orders are subsisting as on today. Despite the said orders, and despite the fact that the said property is a joint property, the petitioners herein in collusion with each other executed the above said four sale deeds in favour of third parties and thus, the petitioners herein have committed criminal breach of trust and cheating.

12. Referring to the provisions of Sections 405 and 415 of IPC, learned counsel for respondent No.1 herein would submit that that contents of the complaint as well as protest petition filed under Section 204 Cr.P.C., *vide* C.C.No.845 of 2020 constitute cognizable offences and the ingredients of the above said offences are existing. Thus, there are several triable issues and the

petitioners herein instead of facing trial, filed the present Criminal Petition seeking to quash the said proceedings. He would further submit that cognizance of the aforesaid offences against the petitioners herein was taken by the learned Magistrate on 11.02.2020 and the petitioners herein did not challenge the said order. With the said submissions, learned counsel for respondent No.1 herein sought to dismiss the present Criminal Petition.

13. Learned Public Prosecutor appearing for respondent No.2-State would submit that there are several triable issues in the matter and the petitioners herein without challenging the order passed by the learned Magistrate taking cognizance of the offences against them, filed the present Criminal Petition and therefore, he sought to dismiss the present Criminal Petition.

14. The above stated facts would reveal that there are disputes between respondent No.1 herein and his wife as one set and the petitioners herein as other set with regard to the above said property. The triable issues involved in this case are as follows:-

- (1) According to respondent No.1 herein, he, his wife and the petitioners herein have jointly purchased the said property and there was an understanding at the time of purchase of the said property that no one can sell individually towards their respective shares to third party without the knowledge and consent of the other parties and the property will be kept jointly only.

- (2) It was agreed among the partners that in case of immediate necessity of amount arises, he/she has to give first option to other partners.
- (3) Respondent No.1 herein and his wife have undivided 1/6th share in the above said property and they have obtained permission for construction of boundary wall in the year 2006 itself.
- (4) The suit vide O.S.No.4 of 2008 was filed by S.V.Shanker Reddy. Respondent No.1 herein, his wife and all the accused have filed a suit vide O.S.No.182 of 2016. Later, respondent No.1 herein and his wife filed another suit, vide O.S.No.316 of 2018 against all the accused seeking partition and separate possession and in I.A.No.1152 of 2018 in O.S.No.316 of 2018, the District and Sessions Judge, Cyberabad at Malkajgiri has passed an order directing the petitioners herein not to alienate the suit schedule property. According to respondent No.1 herein, the said order is subsisting. The order of *status quo* granted by this Court in S.A.Nos.996 and 997 of 2016 is also subsisting as on today.
- (5) Despite the subsistence of the aforesaid orders passed by the Courts and the agreement between the parties, the petitioners herein without the knowledge and consent of respondent No.1 herein and his wife, alienated the property to third parties by way of executing four sale deeds bearing document Nos.3295/2019, 3296/2019 and 3297/2019, dated 23.02.2019 and 3976/2019 dated 28.02.2019. Thus, the above said factual issues are

triable issues raised by respondent No.1 herein in the protest petition filed under Section 204 Cr.P.C.

(6) Admittedly, the petitioners herein did not challenge the order dated 11.02.2020 of the learned Magistrate taking cognizance of the above said offence against them.

15. Section 405 IPC deals with criminal breach of trust. As per the same, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly, misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

16. Section 415 IPC deals with cheating. As per the same, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”

17. In view of the above said provisions, as stated above, there is a specific allegation raised by respondent No.1 herein in the protest petition that he, his wife and the petitioners herein jointly purchased the above said property with an understanding that if any one of them intends to sell the same, they have to offer it to the other partners first and if the other partner refuses to purchase the said property, then they have to sell it to third party and the same is a triable issue.

18. There is also a specific allegation that during the subsistence of the above said orders, the petitioners herein have sold the above said property, which is a joint property, by way of execution of the above said four sale deeds in favour of third parties, which is also a triable issue.

19. Thus, there are several triable issues in this matter. The petitioners herein have to face trial and prove their innocence by participating in full-fledged trial in C.C.No.845 of 2020. Merely because the dispute is civil in nature, the proceedings in C.C.No.845 of 2020 cannot be quashed.

20. The Hon'ble Apex Court in a recent judgment reported in ***Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and Ors***² categorically held as under:

“Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to

² 2019 (14) SC 350

quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed there would be no justification for High Court to interfere. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.”

21. In view of the above authoritative pronouncement of law by the Hon’ble Apex Court, as referred supra, there are specific allegations against the petitioners herein in the protest petition filed by respondent No.1 herein. As stated above, there are several triable issues to be tried by the trial Court during trial. The contents of the protest petition *prima facie* constitute the offences alleged against the petitioners herein. Therefore, this Court is of the considered view that the petitioners herein have utterly failed to make out any case to quash the proceedings in C.C.No.845 of 2020 by this Court in exercise of its inherent power under Section 482 of Cr.P.C.

22. In view of the aforesaid discussion, this Criminal Petition fails and is accordingly dismissed.

23. Miscellaneous Petitions, if any pending, shall also stand dismissed.

K. LAKSHMAN, J

20th April, 2021

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