

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No. 1046 OF 2020

O R D E R:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking to quash the proceedings against the petitioners in C.C.No.170 of 2011 on the file of the VII Metropolitan Magistrate, Cyberabad at Hayathnagar. The petitioners herein are the accused Nos.1, 2, 5 & 6, respectively, in the Calendar Case and the offences alleged against them are under Sections 420, 468, 471, 120-B, 447, 427 and 506 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor, for respondent State and perused the record.

3. A criminal complaint was filed by the 1st respondent/defacto complainant alleging that the 1st petitioner had taken money for sale of land, however, she failed to register the said land, for which reason, a civil suit was filed. The genesis of the complaint is that pursuant to the agreement of sale in between A1 and defacto complainant, another agreement of sale was fabricated showing sale in favour of Accused No.4 by A1. On the basis of the other agreement of sale, another civil suit was filed by A4. The defacto

complainant alleged that the agreement of sale in between A1 and A4 was only to deceive or defraud him for which reason, complaint was lodged. Having conducted investigation, the Police filed Final Report stating that the disputes are 'civil in nature'.

4. Aggrieved by the Final Report referring the cases as 'civil in nature', the defacto complainant filed a protest application before the VII Metropolitan Magistrate, Cyberabad. The learned Magistrate having examined witnesses, took cognizance of the case against these petitioners and 2 others, passed the docket order dt.17.03.2011, which reads as follows;

“Complainant present. Heard. Taken cognizance of offence under Section 420, 468, 471, 420-B, 447, 427 and 506 IPC. Issue S.S.to A1 to A6. Call on 04.05.2011. Furnish C.C. of Ex.P1 to P12.”

5. This Court by order dt.10.01.2020 quashed the proceedings against Accused No.4. The said orders were not questioned before the Honourable Supreme Court and the SLP was dismissed. In the said circumstances, the learned counsel for the petitioners argued that when the main beneficiary even according to the defacto complainant was Accused No.4 in whose favour an agreement of sale was executed by A1, were quashed, the question of proceeding against these petitioners does not arise.

6. As seen from the cognizance order, there is total non-application of mind by the learned Magistrate while taking cognizance against these petitioners and two others. It is for the Magistrate to come to a *prima facie* conclusion on the basis of evidence recorded, to infer that the offences are *prima facie* made out against the accused, who were issued summons after taking cognizance. It is not necessary to narrate the entire details of the allegations and discuss as to why the summons are being issued. However, it is for the learned Magistrate to state briefly as to why summons are being issued and his satisfaction on the basis of the evidence. Since the docket order taking cognizance lacks any reasoning, the said order taking cognizance is hereby set aside. It is left open to the Magistrate to take cognizance by giving reasons. It is left open to the defacto complainant to pursue his remedies.

7. Accordingly, the Criminal Petition is disposed off.

As a sequel thereto, miscellaneous applications pending, if any, in this criminal petition, shall stand closed.

Dt.:10.11.2022
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K.SURENDER, J

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