

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION No.9706 OF 2014

ORDER:

This petition, has been filed by the Accused in in F.I.R. No.576 of 2012 on the file of Police Station Sanjeeva Reddy Nagar, registered for the offence under Section 420 and 506 of the Indian Penal Code, 1860 (*for short the I.P.C'*), with a prayer to quash the crime/FIR and the consequential proceedings.

2. The case of the petitioners is that the respondent No.2/complainant is that the petitioner/accused approached him and offered to develop his residential plot into apartments with best quality of materials and equipments. Believing the assurances and inducement, he entered into a developmental agreement, enlisting the specifications and allotment of five flats to him.

3. The petitioner/accused executed the construction in deviation of the specifications and certain aspects of works were left incomplete. In addition, the construction was also in deviation from the original plan, as such, the occupancy certificate from the GHMC had been obtained by paying component fees. Further, contended that when he questioned the aspect of non-compliance of the construction with the agreement specifications, the petitioner/accused neglected and threatened him with dire consequences, thus, committed offences.

4. Learned counsel for the petitioners would submit that the construction was completed as per the specifications in development agreement by using the standard material; That apart, after completion of the work, the allotted flats were handed over to the respondent No.2 and his vendors are in occupation of those flats.

5. Howsoever, the respondent No.2/complainant with the self-same contentions filed the Consumer complaint vide C.C.No.165 of 2013 before the State Consumer Disputes Redressal Commission, Hyderabad. The Commissioner after due enquiry, even by calling for technical reports dismissed the complaint's claim as there were no deviations and filing of complaint after long lapse of time.

6. It is further pleaded that the conclusions of the State Consumer Dispute Redressal Commission itself is manifesting that with advised motive the Respondent No. 2/complainant filed this complaint. Even otherwise if at all there is non-compliance of the contract, the remedy lies before the Civil Court. Be that as it may, as no averment in *prima-facie* establishing any ingredient of Section 420 of IPC, continuance of the criminal proceedings would be abuse of process of the Court therefore, the crime in F.I.R. is liable to be quashed.

7. Learned Assistant Public Prosecutor opposed the petition and pleaded that the allegations in complaint requires investigation to discern

whether the alleged acts of the petitioner falls within the scope of cheating, therefore used for continuance of the proceedings.

8. In spite of due notice, the respondent No.2/complainant choose to remain silent.

9. Perused the materials on record and the submission are given due consideration. Admittedly, the petitioner/accused and the respondent No.2/complainant entered into a development agreement with definite terms. The agreement was acted upon and after the construction, the contracted flats were also handed over and taken possession by the respondent No.2/complainant.

10. To say that a person had committed an act of cheating, it is necessary to show that a person had fraudulent intention to deceive at the time of making promise; It is also well settled that mere failure to keep up a promise cannot be presumed as an act of cheating. In the present case, even though the Respondent No. 2/Complainant claimed inducement at the inception of the agreement, except use of generic word, no fact or circumstance has been pointed in the complaint.

11. Further, a close reading of the complaint is marking at the substantiated construction, fittings and omission of certain works against the agreed terms, as grounds for cheating. Further, the alleged instance of intimidation is bold and vague without any particulars, even otherwise the

solitary allegation of criminal intimidation being non-cognizable, no investigation is permitted by the police officer, sans the order under Section 155(2) of the Cr.P.C. by the concerned Magistrate.

12. It is also pertinent to mention that the petitioner has placed a fact that, the respondent No.2/complainant had approached the State Consumer Disputes Redressal Commission (for short 'the Commission') vide C.C.No.165 of 2013, seeking a direction to the opposed party/ petitioner herein to complete the defective constructions in three items and to award compensation. In the order dated 23.11.2021, the Commission had recorded that the Executive Engineer of the State Government was requested to inspect the disputed building and report with regard to the alleged deviations. It was reported that the lift, railing, the staircase and the teak wood door frame are with different make from that of the agreement. In addition, though the architect report was called for to assess value, the same was not relied by the Commission on the ground that the building was constructed in the year 2009 and the occupants were living since January, 2009. Therefore, the contention of serious deficiencies in the constructions were not accepted and dismissed the complaint as time barred and that the complainant could not conclusively establish that the alleged deficiencies on the part of the opposite party/petitioner for awarding liquidated damages.

13. For the aforesaid factual position, particularly the alleged deficiencies projected by the complainant in the enquiry remained unsubstantiated in the enquiry by the Commissioner and no pleading is supporting the element of deception since inception and the fact of institution of complainant in 2013 i.e., about four years after taking possession of the flats, are ex-facie making out inherent impressibility in the complaint. Even otherwise, if the respondent No.2/complainant was aggrieved by the improper execution of the development agreement, his remedies are elsewhere.

14. In this position, this Court is of the considered opinion that continuance of criminal proceedings under the Crime/FIR, against the petitioner would amount to abuse the process of law, therefore, the crime and consequential proceedings are liable to be quashed.

15. In the result, the Criminal Petition is allowed and the crime proceedings in F.I.R.No.576 of 2012 is pending on the file of P.S. Sanjeeva Reddy Nagar are hereby quashed.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

N. TUKARAMJI, J

Date: 28.11.2022

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