THE HONOURABLE DR. JUSTICE D. NAGARJUN

CRIMINAL PETITION No.4772 OF 2017

ORDER:

The petitioner, who is A1 in Crime No.307 of 2017 on the file of Sanjeeva Reddy Nagar Police Station, filed this petition seeking quashment of charge sheet against him. The charge sheet in this case was filed after conducting investigation by the police on a complaint filed by the de-facto complainants/respondent Nos.2 and 3, who are husband and wife, before the learned Magistrate under Section 200 Cr.P.C.,

2. The facts in brief are that the de-facto complainants are doing business in real estate and with an intention to build a house, they have agreed to purchase the property from the petitioner/A1. Originally, the property, which was offered to sell by the petitioner, was built by the A.P. Housing Board with municipal No.7-1-621/247, 2 RT/125-B, MOG, situated at Sanjeevareddy Nagar, Hyderabad admeasuring 251.65 square yards and was allotted to one Prameela Reddy and possession was delivered to her and she was supposed to pay the installments. The said Prameela Reddy subsequently committed default and has entered into an agreement of sale on 05.12.1970

in favour of A2 agreeing to transfer the said property. After execution of agreement of sale by the said Prameela Reddy in favour of A2, the rest of the installments have been paid by A2 and completed all the installments until 14.11.1980. The Housing Board has executed registered sale deed on 07.10.1980 in favour of the said Prameela Reddy vide document No.11128 of 1980. Subsequently, the said Prameela Reddy was expected to transfer the said property in favour of A2, and as she has not kept up her promise, A2 has filed a suit in O.S.No.648 of 1985 for specific performance of agreement of sale executed by the said Prameela Reddy in her favour and the said suit was decreed on 06.08.1993 against which an appeal was filed in CCCA.No.6 of 1994 and the same was also dismissed on 23.12.2002 and finally the matter was taken before the Supreme Court in Civil Appeal Nos.8866 to 8868 of 2003 and the same was also ended in favour of A2 on 09.02.2010. When A2 filed E.P.No.20 of 2003, the petitioner/A1 paid the money to A2 upon which A2 executed deed of assignment dated 20.04.2010 in favour of the petitioner/A1. Basing on the said deed of assignment, the petitioner/A2 filed E.A.No.8 of 2010 in E.P.No.20 of 2003 before the concerned Court, wherein the deed of assignment executed by A2 in favour of the petitioner/A1 was recognized by the Court and ultimately the petitioner/A1 was substituted as the decree holder in place of A2 by order dated 21.08.2012 in E.A.No.11 of 2010 and the Court concerned has executed the sale deed in favour of the petitioner/A1.

3. On considering the title flown in favour of the petitioner/A1, the de-facto complainants have agreed to purchase the same and on payment of valuable consideration, as agreed, the de-facto complainants have purchased the said property vide registered document No.5843 of 2015 and were put in possession of the said property.

4. When the de-facto complainants were dismantling the said property in order to raise new construction, A3 came there with injunction orders passed in I.A.No.118 of 2016 in O.S.No.912 of 2016 on the file of V Junior Civil Judge, City Civil Court, Hyderabad, which was filed by A2 and A3 against the petitioner/A1 and contended that A2 and A3 are in possession of the said property and that the deed of assignment executed by A2 in favour of the petitioner/A1 is not valid.

5. It is further stated that A2 as well as second de-facto complainant have filed C.R.P.Nos.5801 and 2570 of 2015 respectively and the same were dismissed by this Court on 01.06.2016. Aggrieved by the said order, A2 filed a suit in O.s.No.553 of 2016 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad seeking declaration of title over the said property by canceling the sale deeds in favour of the petitioner/A1 and the de-facto complainants. After realizing that A2 and A3 will not succeed in the said case, through A4 they got filed a suit in O.S.No.587 of 2016 on the file of X Additional Chief Judge, City Civil Court, Hyderabad seeking partition of the said property and the same is pending.

6. The de-facto complainants also stated that the petitioner/A1 after selling the property to them got created litigation through other accused and that A2 having received the money from the petitioner/A1, given consent for purchase by the de-facto complainant and later claming the property to be in her possession by making false statement has committed offence.

7. The de-facto complainants further stated that all the accused have conspired together and hatched a plan to trouble

them and to extract and extort money from them illegally and that all the accused have not only threatened the de-facto complainants when they questioned about their illegal acts, cheating, misdeeds and mischief, but also criminally intimidated them continuously and caused grave hardship, inconvenience and financial loss and thereby committed offences alleged against them.

8. The learned Magistrate forwarded the said complaint to the police under Section 156(3) Cr.P.C. on which the police have registered a case in Crime No.307 of 2017 for the offence under Sections 195, 384, 406, 420, 506 read with 120B and 34 IPC and took up investigation.

9. Aggrieved by the said FIR, the petitioner/A1 has filed this petition on the following grounds:

The allegations levelled against the petitioner are incorrect, the petitioner has executed sale deed of the subject property in favour of the de-facto complainants and as such they are in possession of the same, there is no dispute with regard to the title of the property and that A2 to A4 have created the litigation and the petitioner/A1 has no role in it. The petitioner is a victim of the illegal acts of A2 to A4. By virtue of the sale deed dated 31.01.2013 executed by the Court vide document No.243 of 2013, the petitioner/A1 has became the absolute owner and possessor of the subject property. Once the petitioner has sold the property to the de-facto complainants and the de-facto complainants have became absolute owners and possessors, the petitioner has no claim or right over the property and that the suits filed by A2 to A4 against the de-facto complainants are as a result of conspiracy and collusion among themselves, the complaint is filed to arm twist the petitioner/A1 to get back the amount and therefore, prayed the Court to quash the FIR.

10. Heard both sides and perused the record.

11. Now, the point for determination is whether the proceedings in Crime No.307 of 2017 against the petitioner can be quashed?

12. The facts which are not in dispute are that the petitioner/A1, who was the owner of the property bearing No.7-1-621/247, 2RT/125-B, has sold the same in favour of the de-facto complainants by way of registered sale deed after receiving agreed sale consideration. There is also no dispute that originally the said property belongs to one Prameela Reddy and

she has sold the same in favour of A2 through Court auction in E.A.No.11 of 2010. A2, in turn, assigned the said decree in favour of the petitioner/A1. From A1 the de-facto complainants have purchased the said property and they were in possession of the same.

13. The dispute arose when the de-facto complainants were dismantling the property with an intention to construct new building. A2 and A3 have filed O.s.No.912 of 2016 on the file of V Junior Civil Judge, City Civil Court, Hyderabad and also filed I.A.No.118 of 2016 against A1 stating that the said property is in possession of A2 and A3 and the assignment deed executed by A2 is not valid. It is also brought to the notice of this Court that A2 and second de-facto complainant have filed C.R.P.Nos.5801 and 2570 of 2015 respectively challengig the assessment order executed by A2 and the same were dismissed.

14. It is contended by the de-facto complainants that A2 having executed the deed of assignment in favour of the petitioner/A1, having given sworn statement before the executing Court and having received money from the petitioner/A1 has been again claiming the property even though possession has already been

delivered in favour of the de-facto complainants. It is also alleged by the de-facto complainants that A3 is the main person behind creation of litigation after sale transaction in favour of the de-facto complainants is completed. A3 with an intention to extract money through A4 got filed a suit raising the plea after 46 years of her marriage that she has got a share in the property thereby the accused have committed offence of perjury, cheating etc.

15. It is also the grievance of the de-facto complainants that the accused have been filing case after case illegally without having any right. When the de-facto complainants requested the accused, A3 threatened them with dire consequences stating that they would snatch away the property from them. On account of the acts of cheating of the accused, the de-facto complainants are facing lot of hardship, trouble, inconvenience and financial loss and thereby they are punishable for the offences alleged against them.

16. On scanning through the entire complaint, it is clear that the de-facto complainants are having no grievance against the petitioner/A1. The main grievance of the de-facto complainants is against A2, who has executed the deed of assignment in favour

of the petitioner/A1 by taking money and subsequently started alleging that she has been in possession of the property and also challenged the deed of assignment by joining hands with A3 and A4. The de-facto complainants have become the owners of the property on account of sale deed executed by the petitioner/A1. Even as on the date of filing of the complaint, no Court has declared that the petitioner/A1 is not the owner of the property sold by him in favour of the de-facto complainants.

17. It is true that A4 has filed a suit claiming share in the property. However, the said suit is still pending. The de-facto complainants can certainly implead themselves in the said suit and project their case as they are innocent purchasers. Further, the petitioner/A1 has got a right in respect of the property through A2 on account of the deed of assignment. The challenge made by A2 and A3 questioning the deed of assignment has put to rest as the revisions filed by them were also dismissed. Therefore, the assignment given in favour of the petitioner/A1 by A2 has been finalized.

18. As rightly contended by the learned counsel for the de-facto complainants, certainly the de-facto complainants will have a

grievance against A2 for going back against her own statement given before the execution Court and also against the very execution of assignment deed in favour of the petitioner/A1 after taking money. Similarly, it appears that A4 is planted claiming share in the property sold in favour of the de-facto complainants in order to defeat the right of the de-facto complainants. There is strength in the contention of the de-facto complainants that A3 is the person, who has been creating litigation and filing number of suits and petitions in various forums in respect of the property that was sold by the petitioner/A1 in favour of the de-facto complainants.

19. The other aspect to be considered is that if at all A4 has got any share in the property, unless and until the orders passed in favour of the petitioner/A1 by the execution Court recognizing the deed of assignment is set aside, A4 cannot obviously seek for any share in the property. Therefore, the de-facto complainants have certainly have a grievance against A2 to A4 for their conduct and their attempts in seeking that the de-facto complainants shall not enjoy the fruits of purchasing of the property from A1.

20. However, so far as the petitioner/A1 is concerned, there are no overt acts against him, there is not even a grievance against him stating that the petitioner/A1 has also colluded with A2 to A4 in continuing the litigation in respect of the properties in various Courts and forums. Even otherwise, the deal with the petitioner/A1 by the de-facto complainants was to purchase the property. The petitioner has agreed to sell the property and has taken the sale consideration and as per the said agreement, sale deed was also executed in favour of the de-facto complainants and possession was also delivered to them. Therefore, so far as the role of the petitioner is concerned, he has fulfilled all the obligations to be discharged in favour of the de-facto complainants.

21. In case if really A2 to A4 have been creating any hurdles, then the de-facto complainants are expected to handle them with A2 to A4. As long as there is no material, it cannot be attributed to the petitioner/A1, as he is also hand in glow along with A2 to A4 in creating problems in respect of the property by filing suits in various Courts. Even otherwise, in order to constitute an offence under Section 420 IPC, the de-facto complainants are expected to show that the petitioner/A1 with an intention from

the inception to deceive the de-facto complainants have induced them to part with the money and transfer the property, the petitioner/A1 is not having any valid title.

22. As discussed above, the petitioner/A1 is having valid title on account of sale deed, which was executed by the Court concerned in E.P.No.20 of 2003. The said sale deed executed by the Court will stand good. As already observed, none of the Courts have declared that the petitioner/A1 has no title over the property. Therefore, when the petitioner/A1 has discharged all his obligations, the de-facto complainants cannot possibly alleged that the petitioner is also part of the game. Even otherwise, even if the petitioner is also part of the game along with A2 to A4, still the dispute between the parties would be a dispute of civil in nature. As long as the de-facto complainants are holding a valid registered sale deed and as long as the petitioner/A1 was having valid title, if the third parties raise any objection in respect of the property purchased by the de-facto complainants from the petitioner/A1, the de-facto complainants are expected to agitate the litigation in the respective Courts and prove their title. In fact, the petitioner/A1 can be a witness to the de-facto complainants in order to fight the litigation against A2 to A4. As

long as there is no element of criminality, the liability under Sections 195, 384, 406, 420, 506 read with 120B and 34 IPC cannot be fastened on the petitioner/A1.

23. Considering the circumstances and on going through the entire material on record, it cannot be said that there is a prima facie case against the petitioner to proceed with the offences alleged against him. Therefore, continuation of proceedings would amount to abuse of process of law.

24. In the result, the criminal petition is allowed and the proceedings so far as the petitioner/A1 in Crime No.307 of 2017 on the file of Sanjeeva Reddy Nagar Police Station is concerned are hereby quashed. The trial Court is directed to proceed with the trial against other accused uninfluenced by the observations and comments made by this Court in this order on merits of the case.

Miscellaneous petitions, if any, shall stand closed.

Dr. D. NAGARJUN, J

Date: 13.10.2022
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