

THE HON'BLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION NO. 3171 OF 2013

ORDER:

Heard Mr. V. Hari Haran learned counsel for the petitioners and Mr. Khaza Vizarath Alli learned Assistant Public Prosecutor for the 1st respondent/state and learned Government Pleader for the 2nd respondent/complainant.

2. This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') by the 1st and 3rd accused in Crime No. 274 of 2012 on the file of Police Station, Chikkadpally, registered for the offences punishable under Sections 420, 406 r/w. 34 of the Indian Penal Code, 1860 (for short 'IPC') with a prayer to quash the proceedings of the crime and the consequential proceedings.

3. The Special Grade Deputy Collector and Land Acquisition Officer, Metro Rail Project, GHMC/2nd respondent lodged police report on 27th August, 2012 stating that the premises No. 1-1-258/5 to 10/1, admeasuring 132.85 Sq.yds, situated in Bakaram, Musheerabad (for short 'the Subject Land') was requisitioned for road widening from

Narayanaguda Junction to Musheerabad Junction and accordingly land acquisition process was initiated wherein the petitioners/1st to 3rd accused produced registered sale deeds and received the compensation under three cheques. Subsequently, the complainant got knowledge that the sale deeds produced by the petitioners/1st to 3rd accused were cancelled by the Civil Court vide judgment dated 20.11.1996 in O.S. No. 118 of 1985, whereby, the petitioners/1st to 3rd accused produced those invalid documents by concealing the facts and received compensation, as such committed offences of cheating and criminal misappropriation. Where after, the SHO registered a case in Crime No. 274 of 2012 dated 27.08.2012 and taken up investigation.

4. The learned counsel for the petitioners would submit that the subject land was purchased in three sale deeds by the petitioners/1st to 3rd accused on 29.10.1991, 31.10.1991 and on 31.10.1991 respectively from one Mr. Hari Gopal, as his self-acquired property. However, by then the brother of their vendor filed suit vide O.S. No. 118 of 1985 was pending on the file I Additional Justice, City Civil Court, Hyderabad seeking declaration that the subject land is joint family property and also for

cancellation of sale deeds. Subsequently, on 20.11.1996 the suit was decreed and the sale deeds were cancelled.

5. However, the petitioners preferred an appeal before this court vide CCCA. No. 6 of 1997 wherein vide order dt: 27.02.1997 in miscellaneous petition no. 714 of 1997 the Hon'ble Division Bench, as an interim measure had suspended the judgment and decree on condition that the petitioner deposits the suit costs of Rs. 4,50,000/-. Aggrieved by the quantum of suit costs, the petitioners approached the Hon'ble Supreme Court in Special Leave Petition No. 13213 of 1997 wherein the Hon'ble Supreme Court was pleased to modify the suit cost to Rs. 3,00,000/-. Accordingly, the amounts were deposited and the order of suspension of judgment and decree has been continued.

6. In that position the land acquisition for road widening was notified and as the judgment and decree in O.S. No. 118 of 1985 was suspended, the petitioner's approached the Land Acquisition Officer basing on the registered sale deeds and received compensation amounts in cheque.

7. However, pending land acquisition proceedings to brother of the petitioners/plaintiff in O.S. No. 118 of 1985 preferred W.P. No. 18916 of 2012 with a prayer seeking direction to the Land Acquisition Authority not to demolish the structure and also not to disburse the compensation amounts to the petitioners herein pursuant to the draft award proceedings.

8. Nonetheless, as there is no direction restraining the petitioners, they have approached to Land Acquisition Authority and received the compensation amounts. Therefore, they never had any intention to deceive the Authority or to misappropriate the entrusted amounts.

9. Howsoever, after the complaint by the Special Deputy Collector/2nd respondent, the petitioners filed the present criminal petition seeking quashment of the crime proceedings wherein interim direction of stay of the investigation was ordered and the same is subsisting.

10. Further, in the parallel writ proceedings initiated by the brother of the petitioner vide Writ Petition 18916 of 2012, the records of this criminal petition were called for and on comprehensive appraisal of facts,

on 04.07.2017, an order was passed directing the petitioners to re-deposit the compensation amount received from the Land Acquisition Officer to the credit of CCCA No. 6 of 1997. The petitioners in compliance of the direction, re-deposited the amounts along with 8% of the interest vide cheque dated 28.11.2017 before the trial Court. For these reasons, the cause for initiation of criminal proceedings against the petitioners has been came to rest. Therefore, continuance of criminal proceedings against the petitioners would be onerous and punitive, hence prayed for quashment of the crime and the consequential proceedings.

11. Learned Assistant Public Prosecutor would submit that the averments of the police report are pointing that the petitioners by suppressing the material fact of the judgment of cancellation of the sale deeds in the suit participated in the acquisition proceedings and received compensation. Thus though the amounts were re-deposited in compliance of the Writ Petition orders, the act committed by the petitioners needs investigation to conclude the penal liabilities. Therefore, quashing the proceedings at the stage of investigation may cause injustice, as such prayed for dismissing the petition.

12. Perused the materials on record and the pleadings of the learned counsel are given due consideration. A perusal of the documents are substantiating the pleading of the petitioners that the judgment in decree suit O.S. No. 118 of 1985 was suspended by the Hon'ble Division Bench of this Court in Appeal Suit in O.S. No. 118 of 1985 on certain conditions. Further, the W.P. No. 18196 of 212 was disposed of with a direction to re-deposit the amounts received by the petitioners with 8% of interest. The compliance of the orders by the petitioners is not disputed by the prosecution.

13. Meaning thereby, suspension of the judgment and decree of the O.S. No. 118 of 1985 is in effect from the date of the order and the decree of cancellation of the petitioners sale deeds has been kept in abeyance. In this position, the continuation of the complainant in the report that the petitioner's participated in the land acquisition proceedings basing on the void documents hold no waters. Further, as the petitioners had interest in the subject land, claim for compensation on acquisition per i.e., cannot be faulted. Therefore, in this set of facts, cheating or criminal misappropriation, especially as the petitioners made good the amounts

received with interest is not being made out. In the facts and circumstances this Court is of the considered opinion that the prosecution against the petitioners on the alleged grounds is dispensable.

14. For the aforesaid, this petition is allowed. Consequently, the Crime No. 274 of 2012 on the file of Police Station, Chikkadpally and the proceedings therein against the petitioners/1st to 3rd accused are hereby quashed.

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

N. TUKARAMJI, J

Dt: 29.11.2022
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THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION No. 3171 OF 2013

Date:29.11.2022

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