

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE Dr. JUSTICE D.NAGARJUN

CRIMINAL PETITION Nos. 24661 & 24626 of 2017

Between:

V. Purnachandra Rao, S/o. Ngabhushanam, aged 55 years, Occ-Software Employee, Presently residing at 548 Trudate Court, Oakville, ON-L6L 4H1, Canada, Permanent resident at Flat.103, Plot.71.77, Puja Residency, Srinivasa Nagar, Chintal, Ranga Reddy District, represented by his GPA holder V.Rama Rao, S/o. Ngabhushanam, aged about 64 years, Occ-Rtd. Bank Employee, R/o. D.No. 74-28/1-8 Ayyappa Nagar, Vijayawada, AP-520007 (Accused No.1)

...PETITIONER

AND

1. State of Telanana Rep by P.P, High Court of Judicature at Hyderabad through SHO, Jeedimetla P.S., Ranga Reddy District

...RESPONDENT

2. Kanneganti Subba Rao, S/o Late K. Sambaiah, aged 56 years, Occ: Private Employee, R/o H No 8-35 Srinivasa Nagar Colony Chintal Quthubullapur Mandal and Municipal Circle, Ranga Reddy District Colony

...RESPONDENT/COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings CC.No.942 of 2016 on the file of the VI Metropolitan Magistrate at Medchal, Ranga Reddy District in Crime No.412 of 2016 dated 22.06.2016 on the file of the P.S. Jeedimetla P.S. Cyberabad, Ranga Reddy District against the petitioner herein.

I.A. NO: 1 OF 2017

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all further proceedings in C.C.No.942 of 2016 on the file of the VI Metropolitan Magistrate at Medchal, Ranga Reddy District in Crime No. 412 of

2016, dated 22.06.2016 on the file of Jeedimetla P.S., Cyberabad, Ranga Reddy District including appearance of the petitioner.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri C. Shanmukha Rao, Advocate for the Petitioner and the Public Prosecutor (TG) on behalf of the Respondent No.1 and of Sri P. Subba Rao, Advocate for the Respondent No.2.

CRIMINAL PETITION NO: 24626 OF 2017

Between:

1. V. Raman Rao, S/o Nagabhushanam, aged 64 years, Occ - Retd. Bank Employee, R/o. D.No. 74-28/1-8, Ayyappa Nagar, Vijayawada - 520 007, A.P (Accused No.2)
2. V Mohan Rao, S/o Nagabhushanam, aged 65 years, Occ: Retd. Railway Employee, R/o H.No. 14-252 Mahadevapuram Colony, Vijaywada, Krishna District, AP (Accused No.3)
3. A Pardhasarathi, S/o Kannayya, aged 47 years, Occ: Business, R/o 1-32 Brahmananthapuram, Atmakur, Kurnool District AP (Accused No.)

...PETITIONERS

AND

1. State of Telangana, Rep by its Public Prosecutor, High Court of Judicature at Hyderabad, Through SHO, Jeedimetla P.S., Ranga Reddy District.

...RESPONDENT

2. Kanneganti Subba Rao, S/o Late K. Sambaiah, aged 56 years, Occ: Private Employee, R/o H.no. 8-35 Srinivasa Nagar Colony, Chintal, Quthubullapur Mandal and Municipal Circle, Ranga Reddy District

...RESPONDENT/COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings CC.No.942 of 2016 on the file of the VI Metropolitan Magistrate at Medchal, Ranga Reddy District in Crime No.412 of 2016 dated 22.06.2016 on the file of the P.S. Jeedimetla P.S. Cyberabad, Ranga Reddy District against the petitioner herein.

I.A. NO: 2 OF 2017

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to Stay of all further proceedings in CC No. 942 of 2016 on the file of the VI Metropolitan Magistrate at Madchal, Ranga Reddy District, in Crime No. 412 of 2016 dated 22.06.2016 on the file of Jeedimetla P.S., Cyberabad, Ranga Reddy District including appearance of the Petitioners.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri C. Shanmukha Rao, Advocate for the Petitioner and the Public Prosecutor (TG) on behalf of the Respondent No.1 and of Sri P. Subba Rao, Advocate for the Respondent No.2.

The Court made the following: COMMON ORDER

THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION Nos.24661 & 24626 of 2017

COMMON ORDER:

Crl.P.No.24661 of 2017 is filed by the petitioner/A1 and Crl.P.No.24626 of 2017 is filed by the petitioners/A2 to A4 in C.C.No.942 of 2016 on the file of the VI Metropolitan Magistrate, Cyberabad at Medchal to quash the proceedings in C.C.No.942 of 2016 against them.

2. The facts in brief, as per the charge sheet are as under;
3. The de-facto complainant being a builder has entered into development agreement cum-GPA bearing document No.6270 of 2012 dated 06.06.2012 in respect of Plot Nos.71 and 77 to a total extent of 536 square yards with the petitioners for construction of flats. Both of them have also entered into a supplementary agreement indicating which of the flats will be taken by the de-facto complainant and which of them will be taken over by the petitioner.
4. The total number of flats agreed to be constructed are 12. The de-facto complainant being the builder has obtained all the permissions from the GHMC and others and completed the construction. When the brother of A1 was interfering, the de-

facto complainant has filed O.S.No.168 of 2015 in respect of one flat for perpetual injunction and the same is pending. On 30.05.2016, the de-facto complainant came to know that A1 and his brothers/A2 and A3, have colluded with each other and fraudulently created a sale deed bearing document No.13427 of 2014 registering a flat bearing No.G1 consisting of two rooms admeasuring 250 square feet along with undivided share of 10 square yards out of 536 square yards with one 2 wheeler parking place. The said flat was constructed by converting the parking area and the same was attested by A2 and A3 with a dishonest intention without any right and the stilt floor has to be exclusively used for parking and that nobody including the accused has any right to convert the said parking area to create one flat i.e., G1.

5. The de-facto complainant submitted that he has reported the matter to the police, Jeedimetla, but they have not taken any action and also he has approached the police higher-ups, including the Commissioner of Police, and as there was action, he has also sent complaints by registered post through acknowledgement due and after exhausting all the remedies, he filed the complaint under Section 200 Cr.P.C., before the

learned Magistrate alleging that the petitioners/accused have committed the offence under Section 420 IPC.

6. The learned Magistrate has referred the matter to the police, who have registered a case in Crime No.188 of 2016 dated 15.03.2016. During the course of investigation, the police have examined the witnesses, including the de-facto complainant and after collecting all the documents and other material required, charge sheet is filed alleging that the accused has committed offence under Section 420 IPC. Aggrieved by the said taking of cognizance against the petitioners/accused Nos.1 to 4, the petitioners have filed the present petitions seeking quashment.

7. It is submitted by the learned counsel for the petitioners that the de-facto complainant for the purpose of settlement of the civil disputes pending between them has filed false complaint before the Court. Each flat owner has been given 20 square yards of undivided share and for the remaining 296 square yards A1, being the owner of the land, is only having the right and either the flat owners or the de-facto complainant is not having any right over it. A2 and A3 are only the witnesses to the sale deed and that they are no way concerned with the

sale consideration of flat No.G1. If the de-facto complainant has a right over the flat No.G1, he has to challenge the said document before the competent civil Court and that the de-facto complainant has filed the complaint after lapse of one and half years from the date of sale of flat No.G1 and therefore, prayed the Court to allow the petitions.

8. Heard both sides and perused the record.
9. Now, the point for consideration is whether the proceedings against the petitioners in C.C.No.942 of 2016 can be quashed?
10. Accused No.1 is no other than the owner of the land. As per the development agreement, the de-facto complainant has constructed the flats.
11. The grievance of the de-facto complainant is that A1 and with A2 and A3 have converted a part of the parking place in the said apartment and constructed a flat bearing No.G1 having 250 square feet. According to the de-facto complainant, the accused have no right to convert the part of the parking place as a flat and sell the same in favour of A4 through registered sale

deed thereby the petitioners have committed offence punishable under Section 420 IPC.

12. Now, the questions would be whether whatever the alleged construction made by A1 to A3 will amount to the offence under Section 420 IPC. A1 is exclusive owner of two plots over which the de-facto complainant has made constructions and built flats as per the development agreement. So far as the development agreement and supplementary agreement are concerned, there are no disputes at all. They have shared the flats as agreed and if at all there are any disputes between them, they have to file suit in the civil Court and the civil Court will take care of it.

13. The questions whether the de-facto complainant will have any right in respect of the project or in respect of the undivided share once the project is completed and that whether A1 will have any right over the property, which was already converted into flats and whether after selling of undivided share to the flat owners, and if at all any undivided common place is left over, whether the owner will have any right over the property and whether A1 can convert part of the parking place into a flat without there being any valid permission and if at all that

construction is made whether A1, who is landlord, or the de-facto complainant will have any interest in the said flat are the questions, which the civil Court has to decide in case the matter is placed before the civil Court.

14. For the limited purpose of this petition, the allegation against the petitioners is that the petitioners/accused have converted part of the parking area into a flat and sold to third parties. In order to attract the provisions under Section 420 IPC, A1 to A3 with an intention to cause loss to the de-facto complainant must have induced him from the inception of the development agreement in respect of the development of land and in fulfillment of such inducement, the petitioners/A1 to A3 must have caused loss to the de-facto complainant.

15. Once the flats are constructed, as agreed in the development agreement, the relationship between the builder and the land lord will get served. Once the connection between the de-facto complainant and A1, the owner of plot, breaks after completion of the project, the de-facto complainant should not have any grievance against A1. If at all A1 to A3 have constructed any flat by converting part of the parking place, the flat owners will have some grievance against them and definitely

the municipal authorities will have same grievance against the petitioners as the construction of flat in the parking area would be illegal. However, basing on the facts, there are no grounds to conclude that A1 has cheated the de-facto complainant and committed offence under Section 420 IPC. At any stretch of imagination, there is no material to hold that A1 has committed offence of cheating, thereby the de-facto complainant has sustained loss.

16. The one more angle to it is if the contents of the complaint of the de-facto complainant are read carefully, it indicates that the de-facto complainant is not challenging the construction of a flat by A1 by converting part of the parking area. In fact, his grievance is that A1 has sold the said flat in favour of A4, which was attested by A2 and A3 and has not paid any part of sale consideration to him. Therefore, the de-facto complainant has sustained monetary loss on account of not sharing of sale proceedings to him. If at all the de-facto complainant intends that the very construction itself is illegal, he would have taken steps for taking this to the notice of the municipal authorities and should have stopped the said construction.

17. It is not the case of the de-facto complainant that apart from the terms of the development agreement, he himself has constructed the flat in the parking area by spending his money and thereby he is entitled for his share in the sale proceedings. If that is the case, to some extent the contention of the de-facto complainant can be considered. The de-facto complainant never pleaded that he spent money for construction thereby A1 though promise to share the sale proceedings have not shared, but the de-facto complainant is silent on the aspect as to whether he has contributed in the construction of the flat at the parking place, it can be presumed that A1 himself has spent money and got constructed the flat. Therefore, originally the site belongs to A1 and he himself constructed a flat in the parking area though against the rules. Therefore, if at all there is any grievance, as already observed, it should be either to the flat owners or to the municipal authorities.

18. Considering from any angle, the de-facto complainant should not have any grievance in respect of the construction of G1 flat, which was constructed in the parking area, as the said construction is out of the purview of either development agreement or in the supplementary agreement. Considering the same, the de-facto complainant has failed to convince this Court

that there is material to show that A1 has committed the offence under Section 420 IPC. There is no prima facie case at all as none of the ingredients of offence under Section 420 IPC is attracted to the acts allegedly done by A1. It is already observed that even if the contents of the complaint are accepted to be true, there are no ingredients to hold that there is a prima facie case to proceed with the trial under Section 420 IPC.

19. A2 and A3 are no other than the brothers of A1. A4 is the person in whose favour the said flat was transferred or sold. A perusal of the sale deed bearing No.13427 of 2014, dated 13.11.2014, it is clear that A1 has transferred the flat in favour of A4 for a valid consideration, which was attested by A2 and A3. It is not the allegation of the de-facto complainant that A2 to A4 have cheated him. All allegations are only against A1. A4 is a bona fide purchaser. A2 and A3 are the attesters. It is not the case of the de-facto complainant that A2 to A4 have also shared the sale proceedings or the benefit. Except making an averment that A1 is colluded with A2 to A4 in order to cheat the de-facto complainant nothing more is averred. It is the settled legal position that merely mentioning that A2 to A4 have cheated the de-facto complainant does not serve the purpose in order to fasten the criminal liability. The de-facto complainant

has to mention each and every overt act which the Court will consider whether that particular act or omission would attract the penal provision under Section 420 IPC. Without disclosing anything, merely mentioning A2 to A4 have cheated the de-facto complainant cannot serve his purpose. Considering from any angle, even there is no material to proceed against A2 to A4.

20 In view of the above discussion, the de-facto complainant has failed to convince the Court that the petitioners/A1 to A4 have committed offence under Section 420 IPC and therefore, the proceedings against them are liable to quashed.

21. In the result, both the criminal petitions are allowed and the proceedings against the petitioners/A1 to A4 in C.C.No.942 of 2016 on the file of VI Metropolitan Magistrate, Cyberabad at Medchal are hereby quashed.

Miscellaneous applications, if any, shall stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VI Metropolitan Magistrate, Cyberabad at Medchal, Ranga Reddy District.
2. The Station House Officer, Jeedimetla Police Station, Cyberabad, Ranga Reddy District
3. One CC to Sri C. Shanmukha Rao, Advocate [OPUC]
4. One CC to Sri P. Subba Rao, Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies
7. One Spare Copy

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HIGH COURT

1.3.1

DATED: 08/07/2022

COMMON ORDER

CRLP.Nos.24661 and 24626 of 2017



ALLOWING THE BOTH CRIMINAL PETITIONS

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1/10/22