

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

**MONDAY ,THE SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 4628 OF 2022

Between:

Gampa Krishnaveni, W/o. Late. Gampa Mahender, Age. 46 Years, Occ. Housewife, R/o. H.No. 7-2-67, Shivalayam Street, Jammikunta Village and Mandal, Karimnagar District.

...PETITIONER/ACCUSED

AND

1. The State of Telangana, through S.H.O., P.S. Jammikunta Town, represented by Public Prosecutor, High Court at Hyderabad.
2. Sudam Siva Kumar, S/o. Veeresham, Age. 40 Years, Occ. Business, R/o. H.No. 3-1-47, Main Road, Opposite RTC Bus Stand, Jammikunta, Karimnagar District.

...RESPONDENT/DEFACTO 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 charge sheet in C.C. No. 690 of 2020, on the file of II Additional Judicial Magistrate of First Class at Huzurabad, Karimnagar District

I.A. NO: 1 OF 2022

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 including appearance of the petitioner in C.C. No. 690 of 2020, on the file of Hon'ble II Additional Judicial Magistrate of First Class at Huzurabad, Karimnagar District

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri K VENUMADHAV, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No. 1 and none appeared for the Respondent No. 2.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.4628 OF 2022

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.') by the petitioner/Accused to quash the proceedings in C.C.No.690 of 2020 on the file of II Additional Judicial Magistrate of First Class at Huzurabad, Karimnagar District. The offences alleged against him are under Sections 420, 406, 323 and 506 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent – State. Perused the record.

3. The 2nd respondent filed a complaint on 13.03.2020 alleging that an amount of Rs.63,00,116/- was given to the husband of the petitioner herein towards purchase of property, in pursuance of the agreement of sale entered into between the petitioner's husband and the 2nd respondent. Thereafter, though the 2nd respondent was willing to pay the

balance sale consideration, the husband of the petitioner did not execute the document. The said issue was taken up before the elders wherein it was agreed by the petitioner herein and the husband to return the advance sale consideration along with an excess amount of Rs.7 lakhs to the 2nd respondent within three months from 29.09.2019. However, neither the amount was returned, nor the property was registered by taking the balance amount, for which reason, a complaint was filed.

4. The Police having registered the case investigated into the offences and filed charge sheet for the offences under Section 420, 406, 323 and 506 of the Indian Penal Code.

5. Learned counsel appearing for the petitioner would submit that the entire money was taken by the husband of the petitioner, however this petitioner is being prosecuted for the death of her husband. In fact, civil suit was filed for specific performance which was pending adjudication before the concerned Court vide OS.No.4 of 2020. In the said circumstances, proceedings have to be quashed.

6. On the other hand learned counsel appearing for the 2nd respondent would submit that though the amounts were taken by the husband of this petitioner, this petitioner has also given an undertaking that the amounts would be returned or the property would be registered in favour of the 2nd respondent. He further submits that subsequently in the year 2019, this petitioner is a party to an agreement to return the amounts or register the document. For the said reason, when the amounts were taken and not returned, the question of quashing the proceedings against this petitioner does not arise, since it is a clear case of cheating committed by this petitioner.

7. Admittedly, civil suit is filed for specific performance of the agreement of sale dt.22.06.2017. It is further admitted that the entire amount of Rs.63,00,116/- was paid to the husband of this petitioner as on 12.10.2017. The petitioner is not a party to the agreement of sale dt.22.06.2017.

8. To attract an offence under Section 420 of the Indian Penal Code, it has to be established that the accused

entertained fraudulent intention of cheating since the inception of the transaction. The property was agreed to be sold by the husband of the petitioner herein in the year 2017 and received the amount. It cannot be said that this petitioner had entertained the intention of cheating the 2nd respondent herein, when the transactions are in between the husband of this petitioner and 2nd respondent. Further, to attract an offence under Section 406 of the IPC, it has to be established that the amounts were entrusted to a person which was subsequently misappropriated. Even according to the complaint and the 2nd respondent, the entrustment of the amount of Rs.63,00,116/- was to the husband of the petitioner and nowhere it is mentioned that the petitioner was in any way involved in the sale agreement in between the 2nd respondent and the husband or while receiving the amounts on various dates till 12.10.2017. The ingredients of Section 406 of IPC are lacking.

9. Learned Counsel appearing for the 2nd respondent would submit that the petitioner was trying to dispose of the property by transferring the property in the name of her son.

10. Admittedly, a civil suit was filed for specific performance of the agreement of sale dated 29.06.2017. Any subsequent transaction pertaining to the said property would be invalid, for the reason of pending suit before the Civil Court. Since there are no specific utterances which are mentioned in the complaint regarding any criminal intimidation, this Court deems it appropriate to quash the proceeding against this petitioner. The transactions are purely civil in nature and the remedy if any lies with the Civil Court wherein the civil suit is already filed.

11. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner in C.C.No.690 of 2020 on the file of II Additional Judicial Magistrate of First Class at Huzurabad, Karimnagar District, are hereby quashed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- C. PRAVEEN KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The II Additional Judicial Magistrate of First Class at Huzurabad
2. The III Additional District Judge at Karimnagar
3. The Station House Officer, Jammikunta Police Station, Karimnagar
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
5. One CC to SRI. K VENUMADHAV, Advocate [OPUC]

HIGH COURT

KS, J

DATED: 06/03/2023

ORDER

CRLP.No.4628 of 2022



ALLOWING THE CRIMINAL
PETITION

(9) Copies
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31/3/23