

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

**MONDAY, THE FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

A.S. NO: 2217 OF 2004

Appeal under Section 96 of C.P.C against the Judgement and Decree dated 04.11.2003 in O.S.NO.68/2002 on the file of the Court of Senior Civil Judge, Karimnagar.

Between:

Rachakonda Narendar, S/o Maruthi

...APPELLANT

AND

Agina Srinivas, S/o Murali

...RESPONDENT

I.A. NO: 1 OF 2012(ASMP. NO: 1147 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant stay of further proceedings in OS.No. 68 of 2002 including execution EP.No. 10 of 2006 on the file of the court of the Senior Civil Judge, Jagtial.

Counsel for the Appellant: SRI. C RAMESH SAGAR, ADVOCATE

Counsel for the Respondent: M RAM MOHAN REDDY

The Court delivered the following: JUDGEMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S.No.2217 of 2004

JUDGMENT :

The appellant in this suit is defendant in O.S.No.68 of 2002 on the file of Senior Civil Judge, Karimnagar and the present appeal is preferred by the appellant/defendant against the Judgment and Decree dated 04-11-2003 by which the suit of the respondent/plaintiff was decreed for a sum of Rs.5,15,000/- with costs and interest @ 12% per annum from the date of promissory note till the date of decree and further interest @ 6% per annum from the date of decree till the amount is realized.

2. The appellant has challenged the Judgment of the trial Court on the ground that the trial Court committed an error by passing decree in favour of the plaintiff in spite of the fact that the respondent/plaintiff himself stated in the plaint that he has no money and he has borrowed the same from his relatives without specifying their names. The respondent/plaintiff failed to produce any evidence in support of the plea that he borrowed the money from his friends and relatives. The appellant has pleaded before the trial Court that he is not due to pay any amount to the respondent and also pleaded that the promissory notes are devoid

of consideration, for that reason only no receipt was obtained by the respondent. The appellant further pleaded that he filed a written statement stating that the respondent has no capacity to lend such a huge amount but the respondent could not produce any record or material to show that he arranged money through his relatives. But the trial Court did not consider his claims and passed a decree in favour of the respondent/plaintiff.

3. The appellant further pleaded that the trial Court failed to appreciate the fact that the respondent/plaintiff has not filed one promissory note dated 24-06-1999 for Rs.1,00,000/- but filed a certified copy of complaint registered in Crime No.43 of 2001 of Karimnagar, II Town police station. The said document was marked as Ex.A5 but it was not proved by way of examining Sub-Inspector of police. Therefore, the trial Court ought not to have granted decree for the said amount.

4. The appellant find fault with the observations made by the trial Court with regard to the contention raised by the respondent/plaintiff that the appellant herein snatched away the promissory note dated 24-06-1999 when the subject matter of the case is pending before the Tribunal Court.

5. He has also claimed that the trial Court committed an error in granting decree on the basis of alleged promissory notes

which are not admissible in evidence as they were not sufficiently stamped as per the amended Stamp Act. Thereby, the Judgment and Decree suffers from legal lacunae and unsustainable under law.

6. The appellant further contended that the trial Court failed to appreciate the facts in a correct way. There is no plea by the respondent that the payment of money under the alleged promissory notes has been made through cheques and demand drafts nor it was his case that the money has been paid by the relatives of the respondent directly to the appellant herein. In the absence of any receipt from the appellant, the suit of the respondent ought not to have been decreed. The trial Court having found that there is no agreement between the parties for payment of interest ought not to have awarded interest @ 12% per annum. The Court below observed that there is no evidence by the respondent/plaintiff to the effect that the appellant agreed to pay interest on the amount borrowed as such, the trial Court ought not to have awarded interest. The appellant has also claimed that the trial Court committed an error in believing the evidence of PWs.2 to 4. There was no evidence from PW.2 about the passing of consideration of Rs.2,05,000/- to the appellant. The respondent did not explain either in the pleadings or in the

evidence as to why he has obtained two (2) promissory notes separately on 10-06-1999 and three (3) promissory notes on 24-06-1999, when it is his case that he paid Rs.2,05,000/- on 10-06-1999 and Rs.3,15,000/- on 24-06-1999.

7. The appellant has claimed that he has filed his evidence in the form of affidavit before the Court below. He could not attend the Court for cross-examination as the criminal case was posted for Judgment on the same day. Thereby, he sought for an adjournment in this suit but the trial Court without giving any adjournment, posted the suit for judgment. Thereafter, he filed an application for recalling him, but his application was dismissed on 04-11-2003. Therefore, his evidence affidavit remained unchallenged, there was no cross-examination. The respondent did not take steps to procure the presence of appellant as such, his evidence is admissible under Sections 137 and 138 of Evidence Act.

8. The appellant has further submitted that the trial Court wrongly put the burden of proof of consideration on the appellant inspite of the failure of respondent to discharge his initial burden of showing that he brought money from his relatives and paid the same to the appellant. According to the appellant, the document marked as Ex.A5 is certified copy and secondary evidence is not

permissible since the original is not a public document. The Court below did not give any opportunity to the appellant for producing his evidence thereby, he prayed for setting aside the Judgment and Decree passed in favour of the respondent.

9. The suit vide O.S.No.68 of 2002 was filed by the respondent/plaintiff on the ground that the appellant herein borrowed Rs.5,15,000/- as hand loan and executed five (5) different promissory notes for Rs.1,00,000/- each. The appellant executed five (5) different promissory notes on the ground that he want to discharge the promissory notes as and when he got the money and for the purpose of easy discharge, he has executed five different promissory notes. It is also averred in the plaint that during the course of time on 19-12-2000, the appellant called the respondent/plaintiff over phone and asked him to bring one promissory note since he wanted to discharge the said promissory note. The respondent along with his friend went to Mukkarampura but the appellant herein without payment snatched the bag containing the promissory note, abused the respondent/plaintiff. The respondent filed a complaint before police which was registered as a case against the appellant herein. Subsequently, the respondent filed the suit for recovery of money.

10. The appellant filed a written statement admitting his friendship with the respondent but denied the other averments including the borrowing of money, execution of promissory notes and other averments made by the respondent. The trial Court framed five (5) issues as follows :

1. Whether the defendant had borrowed an amount of Rs.2,05,000/- on 10-06-1999 and Rs.3,10,000/- on 24-06-1999 and executed five pronotes?
2. Whether the defendant snatched away a pronote dated 24-06-1999 for Rs.1,00,000?
3. Whether the pronotes are devoid of consideration?
4. Whether the plaintiff is entitled to suit claim?
5. To what relief?

11. During trial, the respondent/plaintiff himself was examined as PW.1. He has examined PWs.2 to 4 and marked Exs.A1 to A5. The appellant herein filed his evidence affidavit before the trial Court but did not attend the Court for cross-examination thereby, his affidavit was not considered and having heard both parties and considering the oral and documentary evidence, the trial court passed a decree in favour of the respondent/plaintiff directing the appellant herein to pay Rs.5,15,000/- with interest @ 12% per annum from the date of promissory notes till the date of decree and interest @ 6% per annum from the date of decree till the amount is realized.

12. The learned counsel for the appellant has submitted that even as per the plaint averments, it is very clear that the respondent/plaintiff has no capacity to lend such huge amount to the appellant herein. The respondent has claimed that he has arranged the money by borrowing the same from his relatives but he could not substantiate the said plea. Both the parties to the suit are Advocates by Profession. The appellant herein has no necessity to borrow money from the respondent. The Court below did not consider the cross-examination of witnesses examined by the respondent/plaintiff and plea taken by the appellant herein and passed a decree in favour of the respondent thereby, it is liable to be set aside.

13. Now the points arose for consideration are :

1. Whether the appellant herein borrowed money from the plaintiff as claimed by the respondent ?
2. Whether the appellant executed promissory notes in favour of the respondent/plaintiff ;
3. Whether the respondent is entitled to recover the suit amount ?
4. Whether the Judgment and Decree passed by the trial Court are liable to be set aside as prayed for ?

Points :

14. The appeal has been filed mainly on the ground that the plaint averments would show that the plaintiff was not having

sufficient funds, he has borrowed money from his relatives and friends and arranged the sum to the defendant i.e., appellant herein. Therefore, according to the learned Advocate for the appellant such a claim is highly unbelievable. He has also argued that the evidence placed before the Court may not establish the execution of promissory notes by the appellant but the Court below came to a wrong conclusion and granted decree in favour of the respondent/plaintiff.

15. It is true in the plaint and in the evidence, it is stated that when the appellant herein sought for loan, the plaintiff arranged the amount with the help of his friends and relatives from whom he received money. The discussion in the plaint and evidence on record would show that both the appellant and respondent are practicing Advocates. Therefore, the respondent considering the Profession and acquaintance with the appellant might have arranged the loan. Simply because it is averred in the plaint that he borrowed money from friends and relatives, it does not mean that he has no capacity to arrange the loan and the execution of promissory notes can be disbelieved. As per the material averments of the plaint and evidence of both parties, the respondent/plaintiff has claimed that the appellant herein borrowed Rs.2,05,000/- on 10-06-1999, Rs.3,10,000/- on

24-06-1999 and executed different promissory notes i.e., one pro-note for Rs.1,00,000/- and another promissory note for Rs.1,05,000/- which was marked as Exs.A1 and A2 in the trial. The appellant herein having disputed the execution of promissory notes, pleaded that Exs.A1 and A2 are invalid and he need not pay any amount to the respondent.

16. In order to prove his claim, the respondent was examined as PW.1 and he has examined two more witnesses. PW.2 is an independent witness, PW.3 is another Advocate, both these witnesses have deposed about the money transaction between the appellant and respondent. According to the evidence of PW.2, he has categorically stated that the appellant herein filled up the promissory notes in his own hand writing and subscribed his signature on the Revenue stamps. Therefore, there is no necessity to obtain separate receipt from the appellant. The evidence of PW.1 is corroborated by these two independent witnesses. The appellant has claimed that the suit promissory notes were not executed on proper stamp papers thereby inadmissible. However, as rightly observed by the trial Court in issues No.3 and 4, the appellant could not produce any proof in support of his claim. The contention of the appellant that suit promissory notes are devoid of consideration is not established.

The signatures of the appellant on the suit promissory notes are proved through the evidence of PWs.1 to 3. The appellant, who is a practicing Advocate cannot claim that the suit promissory notes are not supported by consideration because once the execution of promissory notes is proved, unless the contrary is established, it shall be presumed that the pro-notes are supported by consideration. PWs.1 to 3 categorically stated the circumstances under which Exs.A1 to A4 were executed. The appellant, who was filed his evidence affidavit did not enter the witness box for cross-examination. Therefore, the trial Court rightly discarded the said affidavit. It is true the respondent did not produce any promissory note and filed a copy of his complaint against the appellant, wherein it is alleged that the respondent snatched one pronote. The appellant was not able to substantiate his contentions as he was not ready to face the cross-examination. There is no evidence in support of his claim. Whereas, the evidence of respondent/plaintiff who was examined as PW.1 and his other witnesses proved the execution of pro-notes by the appellant and there is no proof that he has discharged the loan. The trial Court considered all the claims of appellant and passed a reasoned order. Therefore, the appellant is not able to establish that the

Judgment of the trial Court is liable to be set aside. Therefore, the appeal is liable to be dismissed.

17. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.

There shall be no order as to costs.

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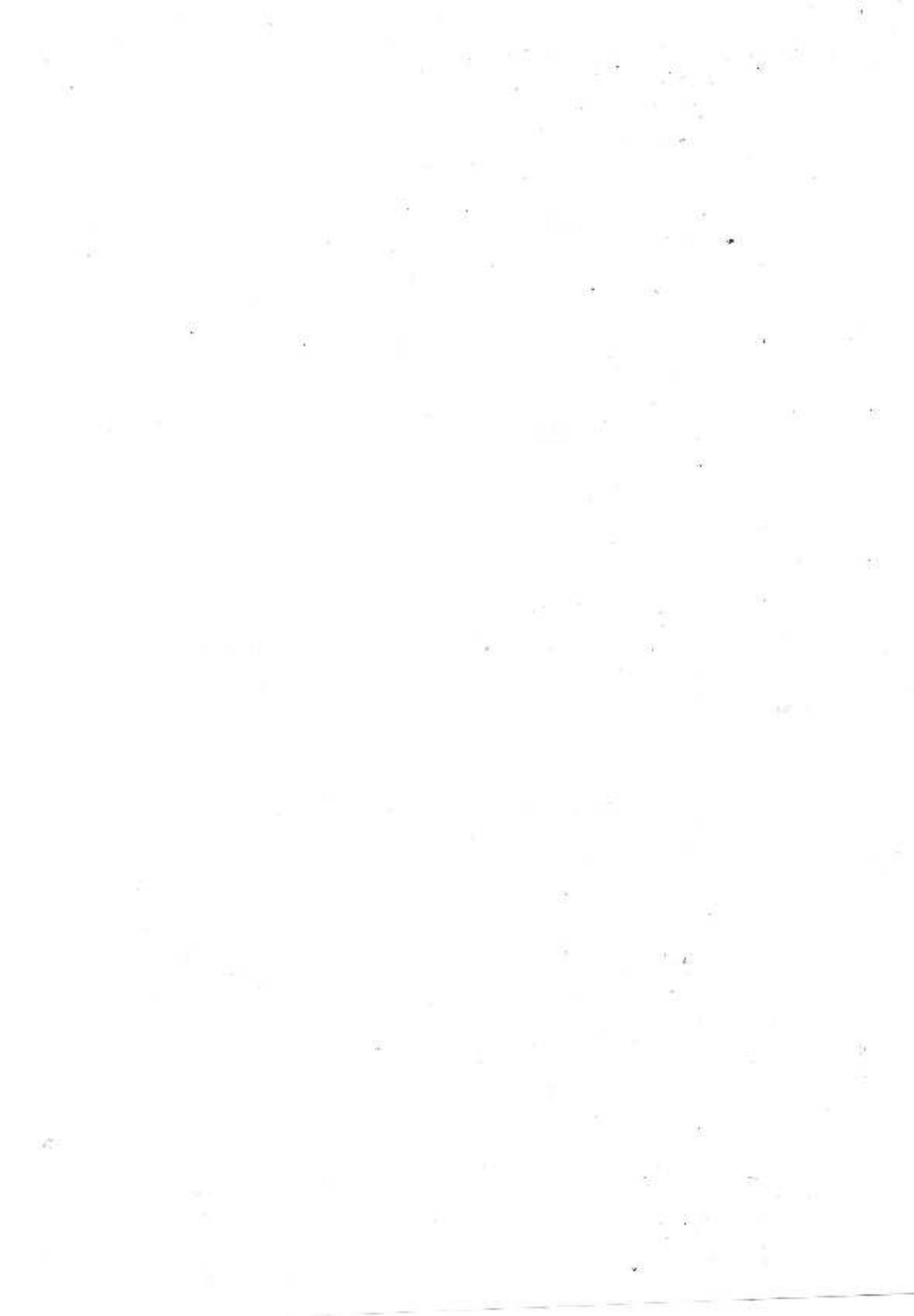
SD/-M.MANJULA
DEPUTY REGISTRAR
Gp
SECTION OFFICER

To,

1. The Senior Civil Judge (with records)
2. One CC to Mr. C Ramesh Sagar, Advocate [OPUC]
3. One CC to Mr. M Ram Mohan Reddy, Advocate [OPUC]
4. Two CD Copies

VII





HIGH COURT

DATED: 05/09/2022

JUDGEMENT

AS.No.2217 of 2004



DISMISSING THE APPEAL
WITHOUT COSTS

⑥ VW
25/1/23

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

FRIDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 10574 OF 2022

Between:

Dr. Paidipalli Narasimha Rao, S/o Late Sri Paidipalli Narayana, aged about 76 years, Occupation, Doctor, resident of 8-2- 293/82/A1016A, Road No.46, Jubilee Hills, Shaikpet, Jubilee Hills, Hyderabad, Telangana -500033.

Wrongly mentioned in CC as: P.Narasimha Rao, S/o Late P. Narayana, age 55 years, Occ.Doctor, R/o Plot No.1016/A, Road No.51, Jubilee Hills, Hyderabad.

...PETITIONER/ACCUSED(S)

AND

1. THE STATE OF TELANGANA, Through Police Station Jubilee Hills, Represented by Public Prosecutor, High Court for the State of Telangana, Hyderabad
2. H.RAMESH, S/o A.Haridas, aged 55 years, Occupation, Business, R/o Plot No.1016/A, Road No.46, Jubilee Hills, Hyderabad.

...RESPONDENTS/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 Criminal proceedings initiated against the Petitioner/Accused No.1 CC.No.3885 of 2022 on the file of the Learned XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

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 stay all further proceedings including appearance of the Petitioner/Accused No.1 in C.C.No.3885 of 2022 on the file of the Learned XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad pending disposal of the above Criminal Petition; and pass

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

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10574 of 2022

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioner/A1 in C.C.No.3885 of 2022 on the file of XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad for the offences under Sections 406 and 420 of IPC.
2. The 2nd respondent namely H.Ramesh filed complaint before the Jubilee Hills Police stating that he is the owner of H.No.1016/A admeasuring 720 sq.yds in Road No.51, Jubilee Hills out of a total extent of 1422 sq.yds of the petitioner in the year 1996. In the sale deed executed in favour of the 2nd respondent by the GPA holder of the petitioner, road was shown on the northern side of the plot. However, the GHMC Vigilance cell issued notice on 11.01.2022 stating that the approach road to his house is encroached land forming part of the green belt. If the approach road is closed, the 2nd respondent will not have ingress and egress facility to his property and the petitioner herein had fraudulently

misrepresented that the northern side of the plot was road and sold it to him, suppressing that it was GHMC property. For the said reason, on the basis of a complaint by 2nd Respondent, police investigated and filed charge sheet for the offence under Sections 406 and 420 of IPC.

3. Learned counsel appearing for the petitioner would submit that there is no fraudulent inducement made by the petitioner herein, who had sold his plot in the year 1996 itself to the 2nd respondent through GPA holder(A2). In fact, the 2nd respondent, has written to the society, which is Jubilee Hills Cooperative House Building Society for modification of the approved plan and for regularization of the approach road, which is to the Northern side of his plot. The 2nd respondent had addressed letters to the MCH, the Society and also the Municipal Commissioner in the said regard. In the said circumstances, when the 2nd respondent was having knowledge about all the facts, the question of cheating by the petitioner does not arise. Accordingly, prayed to quash the proceedings. In support of his contentions, he relied on the following judgments: i) State of Haryana and others v.

Bhajanlal and others¹; ii) Prof. R.K.Vijayasathay v. Sudha Seetharam²; iii) Binod Kumar and others v. State of Bihar³; iv) Mitesh Kumar J. Sha v. State of Karnataka⁴; v) Randheer Singh v. State of U.P⁵ and vi) Mohammed Ibrahim and others v. State of Bihar⁶.

4. On the other hand, learned counsel appearing for the 2nd respondent would submit that it is a clear case of cheating committed by the petitioner with the help of A2. Having knowledge that the northern side of the plot was not road, but the property of the GHMC, it was falsely mentioned as road when the plot was sold to the 2nd respondent. It is the responsibility of the petitioner to give ingress and egress to the plot of the 2nd respondent through his plot. Earlier, the plot was 1422 sq.yds which had access and the petitioner had cheated the 2nd respondent by selling half of the plot by showing the land belonging to MCH as the road for approach, for the said reason, the proceedings cannot be quashed and

¹ 1992 Supp(1) Supreme Court Cases 335

² (2019) 16 SCC 739

³ (2014) 10 SCC 663

⁴ 2021 SCC OnLine SC 976

⁵ 2021 SCC OnLine SC 942

⁶ (2009) 8 SCC 731

the petitioner has to be tried for the offence of cheating and criminal misappropriation.

5. Admittedly, half of the plot which belongs to this petitioner was sold in the year 1996. The present complaint is filed after 26 years stating that this petitioner has cheated him. The 2nd respondent had approached both the municipal authorities and also the society for regularizing the approach road, which is on the northern side of his plot. He also filed W.P.No.7936 of 2005 before this Court and this Court by order dated 09.12.2009 left option open to the 2nd respondent to make appropriate representation seeking permission for usage of the land which belongs to the GHMC and he was using it as ingress and egress to the plot.

6. To attract an offence of cheating, there has to be fraudulent inducement by a person and believing the same, the person induced should have delivered property. In the present case, plot was purchased in the year 1996 and 2nd respondent also constructed the building in the said land and was using northern side of the road. He was making attempts by approaching the Society and also municipal authorities and

the Courts to get access to his plot from the northern side. After 26 years, it cannot be said that the 2nd respondent did not have knowledge about the said issue pertaining to the plot which he purchased in the year 1996.

7. Further, to attract an offence of criminal misappropriation under Section 406 of IPC, it has to be established that the petitioner was entrusted with certain property which was converted to his own use by criminal misappropriation. There is no such allegation in the complaint. In the present facts of the case, the 2nd respondent having purchased the plot in the year 1996 and having knowledge about ingress and egress to the plot and having taken steps before the various forums, cannot now allege that he was cheated by the petitioner herein after a period of 26 years. The remedy against the petitioner is by approaching the Civil Court as the petitioner is bound to give ingress and egress to the plot which he has sold to the 2nd respondent.

8. On the facts of the case, none of the ingredients of either cheating punishable under Section 420 or criminal

misappropriation punishable under Section 406 of IPC are made out against this petitioner.

9. It is not out of place to mention that the petitioner had in fact given GPA in respect of the plot to A2. It was A2, who had registered the plot in favour of 2nd respondent herein. It cannot be said that the 2nd respondent, without looking into any of the issues pertaining to the plot had purchased the same in the year 1996.

10. In the result, the proceedings against the petitioner in C.C.No.3885 of 2022 on the file of XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

11. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications pending, if any, shall stand disposed.

Sd/- V. KAVITHA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Learned XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.
2. The Station House Officer, Jubilee Hills Police Station, Hyderabad.
3. Two CC to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. One CC to Sri Dharmesh D.K. Jaiswal, Advocate [OPUC]
5. Two CD Copies

 B.J.L.B.
DL

HIGH COURT

KS, J

DATED:03/03/2023

ORDER

CRLP.No.10574 of 2022

CRIMINAL PETITION IS ALLOWED



Q
MA
13/3/23