THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No. 1278 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner/accused No.2 to quash the proceedings against her in C.C. No. 6112 of 2022 on the file of the learned II Additional Chief Metropolitan Magistrate Court, Visakhapatnam, for the offences punishable under Sections 403, 405, 120-B, 415, 417, 420, 503, 504 and 506 of the Indian Penal Code (for brevity, 'the I.P.C.').

2. The case of the petitioner, in brief, is that she has been falsely arrayed as an accused without there being any material against her. The documents enclosed with the complaint clearly reveal that basing on the agreement of sale, respondent No.2 gave report. Without considering the material in its proper perspective, the learned Trial Court took cognizance against the petitioner/accused No.2. The material clearly reveals that an agreement was entered into by accused No.1 and that, without filing civil suit, respondent No.2 gave report with false averments. Non-registration of the property does not attract criminal offences. After lapse of three years, respondent No.2 gave the report. The ingredients of Sections 403, 405 and 420 of the I.P.C. are not attracted against the petitioner.

3. Case of the prosecution is as follows:

Accused Nos.1 and 2 are wife and husband. Accused Nos.1 to 3 developed acquaintance with respondent No.2 and made him believe that he could enter into an agreement with accused No.1 in respect of the property in Sy. Nos. 9/1 and 9/4, situated at Kasamkota near Anakapalli village, Visakhapatnam District. Accused Nos.1 and 2 also made respondent No.2 believe that they had been doing real estate business. Respondent No.2 paid Rs.60,00,000/- to Rs.70,00,000/- to accused Nos.1

and 2 under the guise of a sale agreement dated 07.06.2017, and the respondent No.2 agreed to purchase the land for Rs.2,40,000/- per acre. The accused postponed registration on the ground that they were taking steps to obtain revenue records and complete the registration. Though the respondent No.2 requested the accused to register the property, they postponed the same. Thereafter, accused No.1 informed that he obtained agreement of sale dated 05.05.2017 from the original owners Sri Duvvada Savitramma and Duvvada Samba Murthy. Thereafter also, accused No.1 continued to make the respondent No.2 believe that he was taking steps for registration. On 26.07.2017, accused took the respondent No.2 to the Registrar's Office, where a dispute arose between accused No.1 and the said original owners. As a result, registration was not completed. The respondent No.2 finally came to conclusion that he had been cheated by the accused including the petitioner. Thereafter, the respondent No.2 also tried to get the documents registered in his favour, but in vain. All the accused hatched a plan to take money from respondent No.2 and made him believe that accused No.1 would register the document in his name. Respondent No.2 sustained huge financial losses and disposed of his L.I.C. bonds, gold, etc. Accused No.1 also convinced respondent No.2 that he had filed a suit in O.S. No.152 of 2018 on the file of the Additional Civil Judge (Senior Division), Anakapalli, and that he would execute the registered sale deed. Respondent No.2 gave a report vide Receipt No.63 of 2022, but the same was not registered.

4. Heard Sri R.Siva Sai Swarup, learned counsel for the petitioner, Sri T.M.K. Chaitanya, learned counsel for respondent No.2, and Smt. K. Priyanka Lakshmi, learned Assistant Public Prosecutor for the State. Perused the petition, complaint and other material available on record.

5. Learned counsel for the petitioner would argue that basis for filing the complaint is the agreement of sale dated 07.06.2017, the petitioner/ accused No.2 is in no way concerned with the alleged agreement of sale, which was said to have been executed by accused No.1, the civil suit filed by accused No.1 in O.S. No.152 of 2018 is dismissed and respondent No.2 has not filed any suit. Further, the ingredients of Sections 403 and 120-B of the I.P.C. are not attracted against the petitioner, Sections 406 and 420 of the I.P.C shall not run together, as per Section 468 of the Cr.P.C., the limitation period for filing a complaint in respect of the aforementioned offences is three years and as such, the complaint is barred by limitation. Learned counsel relied upon the following judgments:

1. ***Arshad Neyaz Khan v. State of Jharkhand and Another[1].***
2. ***Urmila Devi and Others v. Balram and Another[2].***
3. ***Radhe Shyam and Others v. State of Rajasthan and Another[3].***
4. ***Rikhab Birani and Another v. State of Uttar Pradesh and Another[4].***

6. Per contra, learned counsel for the respondent No.2 initially would contend that the aspect of conspiracy cannot be considered at this stage, particularly in a petition filed under Section 482 of the Cr.P.C., it has to be considered during trial, the averments in the complaint clearly attract the ingredients of the aforementioned offences against all the accused, accused No.2 is none other than the wife of accused No.1 and though she has not signed the sale agreement, both of them made respondent No.2 believe to enter into agreement of sale and pay the amounts. Learned

[1] 2025 LiveLaw (SC) 950
[2] 2025 INSC 915
[3] 2024 INSC 1064
[4] 2025 INSC 512

counsel for respondent No.2 further would argue that the contention was regarding delay cannot be considered as a ground to quash the proceedings and that a prima facie case clearly reveals the commission of cognizable offences, civil and criminal cases can run together and relied upon the following judgments:

1. ***Income Tax Office v. Anil Tuteja and Others[5].***
2. ***Assistant Collector of Customs and Others v. L.R. Malwani and Others[6].***
3. ***Pratibha Rani v. Suraj Kumar and Others[7].***
4. ***State of Bihar v. Ramesh Singh[8].***
5. ***Yogesh v. State of Maharashtra[9].***
6. ***Bilal Hajar v. State[10].***
7. ***H.S. Thakoor v. State of Himachal Pradesh[11].***

7. Learned Assistant Public Prosecutor would argue that all the contentions raised by the learned counsel for the petitioner have to be considered during trial, this is not the stage to consider them and specific allegations have been leveled against all the accused, including the petitioner.

8. As seen from the record, respondent No.2 filed complaint under Sections 190 and 200 of the Cr.P.C., making the aforementioned allegations against all the accused and the learned Magistrate took cognizance of the offences stated supra. It is not in dispute that the

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[5] MANU/DE/0055/2024
[6] MANU/SC/0279/1968
[7] MANU/SC/0090/1985
[8] MANU/SC/0139/1977
[9] MANU/SC/7528/2008
[10] MANU/SC/1149/2018
[11] MANU/HP/1393/2012

petitioner/ accused No.2 is none other than the wife of accused No.1 and that accused No.1 executed an agreement of sale dated 07.06.2017 in favour of respondent No.2, agreeing to sell land measuring Ac.10.00 situated in Sy. Nos. 9/1 and 9/4 at Kasamkota near Anakapalli village, Visakhapatnam District. Accused No.1 also filed suit in O.S. No.152 of 2018, against the original owners. During arguments, learned counsel for the petitioner submitted that the said suit is dismissed. It is also not in dispute that respondent No.2 had not filed any civil suit seeking execution of a regular sale deed in his favour. According to respondent No.2, both the accused, who are wife and husband, made him believe that they were doing real estate business and had been selling several lands and they represented that they already had an agreement of sale in favour of accused No.1 and that they would sell the aforementioned land for Rs.2,40,000/- per acre, they received nearly Rs.60,00,000/- to Rs.70,00,000/- and respondent No.2 suffered losses. It is categorically mentioned in the complaint that all the accused, including the petitioner, hatched a plan and, without having any right or title to the property, made respondent No.2, who was acquainted with them, pay amounts under the guise of an agreement of sale and cheated him. Further, respondent No.2 suffered a huge financial loss and tried to get the documents registered. Learned counsel for respondent No.2 submitted that, since accused No.1 had no right or title over the said land, respondent No.2 had not filed any civil suit and, since they had cheated him by making false promises, he filed the complaint. It is settled law that, to establish the offence of cheating, the respondent No.2 is required to show that the petitioner and the other accused had a fraudulent or dishonest intention at the time of making a promise or representation regarding the sale of the said property and the failure to fulfil the agreement. Such culpable intention at the very

beginning, when the promise was made, cannot be presumed but has to be established by cogent facts.

9. In the facts of the case at hand, according to respondent No.2, neither accused No.1 nor accused No.2 had any right or title in their favour, yet they made him believe that they would execute a registered sale deed, as they were doing real estate business, and received the amounts. It is also settled law that every act of breach of trust may not result in a penal offence unless there is evidence of fraudulent misappropriation of property entrusted to a person. In a case of criminal breach of trust, if a person comes into possession of property and receives it lawfully, but thereafter unlawfully retains it or converts it to his own use contrary to the terms of the contract, the question whether such retention is with dishonest intention and whether it amounts to criminal breach of trust or only civil liability would depend on the facts and circumstances of the case.

10. Learned counsel for the petitioner relied upon the following judgments:

(i) ***Arshad Neyaz Khan*** (supra), the Hon'ble Apex Court while referred to the case in ***Delhi Race Club (1940) Ltd. and Others v. State of Uttar Pradesh and Another***[12], observed that, for cheating, criminal intention is necessary at the time of making a false or misleading representation and in criminal breach of trust, mere proof of entrustment is sufficient and thus, in a case of criminal breach of trust, the offender is lawfully entrusted with the property and dishonestly misappropriates it, whereas, in a case of cheating, the offender fraudulently or dishonestly induces a person, by

[12] (2024) 10 SCC 690

deceiving him, to deliver property, and in such a situation, the two offences cannot coexist in the same set of facts, as they are antithetical to each other.

(ii) ***Inder Mohan Goswami (supra)*** the Hon'ble Apex Court held that the court must ensure that criminal prosecution is not used as an instrument of harassment, private vendetta, or to pressure the accused with an ulterior motive. It is neither possible nor desirable to lay down any inflexible rule governing the exercise of inherent jurisdiction. The inherent jurisdiction of the High Courts under Section 482 of the Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, and only when justified by the tests specifically laid down in the statute itself.

(iii) ***Rikhab Birani*** (supra), the facts are different from the facts of the case at hand. In that case also, the Hon'ble Apex Court discussed civil and criminal liability.

(iv) ***Urmila Devi*** (supra), there was a delay of more than seven years and, having considered the other peculiar circumstances, the Hon'ble Apex Court quashed the proceedings. In another case, ***Vishal Noble Singh v. State of Uttar Pradesh and Another***[13], it is held that the court has to ensure that the machinery of criminal justice is not misused to achieve oblique motives and agendas.

(v) In ***Radhe Shyam*** (supra), a commercial transaction took place and both parties entered into an agreement and due to non-payment of loan dues and other related aspects, the Hon'ble Apex Court quashed the proceedings on the ground that mere non-registration of a sale or refusal to register it cannot amount to cheating. In the present case, neither accused No.1 nor accused No.2 had any title to execute a document in

[13] 2024 SCC Online SC 1680

favour of respondent No.2. It is the consistent stand of respondent No.2 that both accused, who are wife and husband, hatched a plan to take money from him under the guise of the alleged agreement of sale.

11. Following judgments are relied upon by the learned counsel for Respondent No.2:

(i) ***Income Tax Office*** (supra), High Court of Delhi held that conspiracy is an issue of fact and can be proved or disproved by the parties by leading evidence during trial. It cannot be ascertained merely by appreciating documents or arguments, and therefore, no definitive conclusion on such an issue can be reached by any court at the stage of taking cognizance.

(ii) ***Assistant Collector of Customs*** (supra), Hon'ble Apex Court did not consider the argument of accused that, because of the delay in launching the complaint, the prosecution amounted to an abuse of the process of the Court.

(iii) ***Pratibha Rani*** (supra), it was observed as follows:

> "23.There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but are clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person or the property of the State, for which the accused, upon proof of the offence, is deprived of his liberty and, in some cases, even his life. This does not, however, affect the civil remedies available for suing the wrongdoer in cases like arson, accidents, etc. It is anathema to suppose that, when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import."

(iv) ***State of Bihar*** (supra), ***Yogesh*** (supra), ***Bilal Hajar*** (supra) and ***H.S. Thakoor*** (supra). In all these cases, it was held that, when there are

strong suspicious circumstances in respect of conspiracy, the prosecution case shall not be rejected and the matter has to be proved during trial.

12. Coming to the facts of the case on hand, it is the consistent stand of respondent No.2 that he was cheated by the accused, who conspired together and made him pay amounts and enter into the agreement, though accused No.1 had no right or title in respect of the aforementioned land, he executed an agreement of sale dated 07.06.2017 and failed to execute the registered documents and he also lost opportunity to file a civil suit seeking execution of a regular sale deed. As stated above, the complaint filed under Sections 403, 405, 120-B, 415, 417, 420, 503, 504 and 506 of the I.P.C. This is not the stage to consider which allegations are attracted against which accused. Accused No.1 and the petitioner are wife and husband. As per the material available on record, they both approached respondent No.2 and induced him to pay amounts, which he accordingly paid. This is not the stage to conduct a roving inquiry or a mini-trial. After completion of the evidence, if the offences are not made out against any of the accused, the Trial Court would consider the material available before it and finally adjudicate the case.

13. In this regard, it is to be noted that it is well settled that, for the purpose of exercising power under Section 482 of the Code of Criminal Procedure to quash an FIR or a complaint, the High Court would have to proceed on the basis of the allegations made in the complaint or the documents accompanying it, as they stand, and has no jurisdiction to examine the correctness of the allegations. It is also well settled that, if the allegations made in the FIR, taken at face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. Further, the power to quash

criminal proceedings should be exercised very sparingly and with circumspection, and only in rare cases. The court will not be justified in embarking upon an inquiry into the reliability or genuineness of the allegations made in the FIR or complaint. The extraordinary or inherent powers do not confer arbitrary jurisdiction on the Court to act according to its whims or caprice, as held by the Hon'ble Apex Court in ***State of Haryana and Others v. Bhajan Lal and Others***[14]. Further, the Hon'ble Apex Court has enunciated seven cardinal principles, which are reproduced as follows:

> "1) Where the allegations made in the first information report or the complaint, even if taken at face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.
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> 2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers under Section 156(1), except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of them do not disclose the commission of any offence or make out a case against the accused.
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> 4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
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> 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable that no prudent person could ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

[14] 1992 Supp 1 SCC 335

> 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act under which a criminal proceeding is instituted, to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.
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> 7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive to wreak vengeance on the accused and with a view to spite him due to a private and personal grudge."

14. There can be no dispute with the settled principle that the jurisdiction under Section 482 of the Code of Criminal Procedure is to be exercised sparingly and with circumspection. At the same time, the Court is required to examine the allegations and the material collected during investigation to ascertain whether continuation of the proceedings would amount to an abuse of the process of law. In ***Mahmood Ali v. State of Uttar Pradesh***[15], the Hon'ble Supreme Court reiterated that, while considering a petition for quashing, the Court may examine the attending circumstances emerging from the record and is not required to confine itself mechanically to the recitals in the First Information Report alone.

15. The principles laid down in ***Bhajan Lal*** (supra) also indicate the recognised categories in which the inherent power may be exercised, including cases where the allegations, even if taken at face value, do not constitute an offence; where the uncontroverted allegations and material collected do not disclose the commission of an offence; or where continuation of the proceedings would otherwise result in an abuse of the process of the Court. However, the power is not intended to conduct a meticulous appreciation of the evidence or to determine the truthfulness of

[15] 2023 INSC 681

disputed factual assertions at the stage of considering a petition for quashing.

16. The record clearly reveals that all the allegations made in the complaint, even if taken at face value and accepted, constitute a prima facie case against the petitioner along with the other accused.

17. The judgments relied upon by the petitioner lay down the settled principles, however, the said principles have to be applied to the facts and material of each case. In the present case, the charge sheet cannot be said, at this stage, to contain no material whatsoever against the petitioner. The allegations are matters that have to be tested by the Trial Court on the basis of the evidence adduced by the prosecution and the defence available to the petitioner. This Court, in exercise of its inherent jurisdiction, cannot undertake a mini-trial or weigh the respective versions of the parties. The allegations, if accepted at face value, are capable of attracting the ingredients of the offences for which the charge sheet has been filed.

18. Having regard to the totality of the circumstances and the material placed before this Court, this Court is of the considered view that the case does not fall within any of the categories warranting the exercise of inherent jurisdiction to quash the proceedings. The allegations and the material collected during investigation disclose a prima facie case requiring adjudication by the Trial Court. The contentions raised by the petitioners involve disputed questions of fact that cannot appropriately be decided in a petition under Section 482 of the Cr.P.C.

19. **In the result,** this Criminal Petition is dismissed. The proceedings in C.C. No.6112 of 2022 on the file of the II Additional Chief Metropolitan Magistrate Court, Visakhapatnam, shall proceed in accordance with law. It

is made clear that the observations made herein are only for the purpose of deciding the present petition and shall not prejudice the Trial Court while considering the case on its merits.

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

SUNITHA GANDHAM, J

Date: 03.11.2026
SSA/ knl

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No. 1278 OF 2023

Date: 03.11.2026

SSA/ knl