HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No.5936 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner/ accused No.5 to quash the proceedings against her in C.C. Noo.652 of 2018 on the file of learned II Additional Junior Civil Judge, Tanuku, West Godavari District, for the offences punishable under Sections 406, 420 and 120-B read with Section 34 of the Indian Penal Code.

2. Case of the petitioner/ accused No.5 is that she was not a signatory to the agreement of sale dated 25.05.2013 or to the continuation agreement dated 25.06.2014, neither agreement nor the receipts relied upon by the prosecution bear her signature, the first agreement contained statement of accused Nos.1 and 2 that they were representing the petitioner/ accused No.5 and other flat owners, the petitioner/ accused No.5 has not executed any General Power of Attorney in favour of accused Nos.1 and 2, or any other person, to execute an agreement of sale on her behalf. Further, she is not related to the other accused and had no knowledge of the alleged transactions or of any deception said to have been practised upon the respondent No.2, she was initially examined as a witness and came to know about the registration of the case through the Human Resources Department of her company, she had purchased a flat and the dispute arose out of the acts or omissions of the partnership firm and her inability to repay the loan instalments, and except for a general reference about her in the concluding paragraph of the charge sheet, no specific allegation is there to connect her with the alleged offences.

3. The prosecution case, in brief, is that respondent No.2 entered into transactions relating to the purchase of flats in Sri Nilayam Apartments at Srinivasapuram Layout, Kovvur, agreements of sale dated 25.05.2013 and 25.06.2014 were executed in connection with the flats, the respondent No.2 paid

substantial amounts towards the sale consideration, the transactions were not completed as promised, all the accused committed the alleged offences, cheated him and he sustained substantial losses.

4. Heard Sri Mangena Sree Rama Rao, learned counsel for the petitioner and Smt.K.Priyanka Lakshmi, learned Assistant Public Prosecutor representing State. Perused the material available on record.

5. The point for consideration is whether the allegations in the charge sheet and the material collected during investigation, taken at their face value, disclose the commission of the alleged offences by the petitioner or show her participation in the alleged conspiracy.

6. The power under Section 482 of the Code of Criminal Procedure must be exercised sparingly and with caution. However, the Court is required to examine whether the allegations, even if accepted in their entirety, disclose the essential ingredients of an offence against the person seeking quashing. In ***State of Haryana v. Bhajan Lal***[1], the Hon'ble Supreme Court identified categories of cases in which criminal proceedings may be quashed, including where the allegations taken at face value do not constitute an offence or where continuation of the proceedings would amount to an abuse of the process of the Court.

7. In ***M/s.Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra***[2], the Hon'ble Supreme Court reiterated that the High Court should not ordinarily assess the reliability of prosecution evidence or conduct a mini-trial while considering a quash petition. At the same time, the Court may interfere where the material, even if accepted as it stands, does not disclose an offence against the petitioner. The present petition must therefore be decided on the allegations and material in the charge sheet, without resolving disputed questions of fact.

[1] 1992 Supp (1) SCC 335
[2] (2021) 19 SCC 401

8. For an offence under Section 420 IPC, the prosecution must allege facts showing deception and dishonest or fraudulent intention at the time the complainant was induced to part with property or money. For an offence under Section 406 IPC, there must be material showing entrustment of property or dominion over it and dishonest misappropriation, conversion or use contrary to law or to the terms governing the entrustment. A charge of conspiracy under Section 120-B IPC requires material from which an agreement to commit an illegal act, or a legal act by illegal means, may reasonably be inferred. A commercial transaction or a subsequent failure to perform an obligation does not, by itself, establish these ingredients against every person connected with the property or business.

9. In ***Mohammed Ibrahim v. State of Bihar***[3], the Hon'ble Supreme Court explained that the ingredients of cheating must emerge from the allegations and that criminal liability cannot be inferred merely from a general allegation of fraud or association with a transaction. Though the facts of that case were different, the relevant principle is that the acts attributed to an accused must disclose the ingredients of the offence alleged.

10. In the present case, the agreements of sale dated 25.05.2013 and 25.06.2014, do not bear the signature of the petitioner. The receipts relied upon by the prosecution are also did not contain her signature. The assertion that Accused Nos.1 and 2 represented her does not, by itself, establish that they had authority from her or that she knowingly participated in any false representation. Learned counsel for the petitioner denied execution of any General Power of Attorney in their favour and the material identified in the charge sheet does not disclose any such authority executed by her.

11. It is also significant that the petitioner was initially examined as a witness and that, according to the material placed before this Court, the charge sheet

[3] (2009) 8 SCC 751

does not specify any act performed by her in furtherance of the alleged transaction. Apart from a general reference to her in the concluding portion of the charge sheet, no particular representation made by her to the respondent No.2, no amount received or entrusted to her, no document executed by her, and no act indicating her agreement to commit an offence is identified, and specific material shown to indicate that she knew the alleged representations made by accused Nos.1 and 2 or shared a dishonest intention with them.

12. This Court is conscious that a conspiracy may be proved by circumstantial evidence and that every participant need not personally sign a document or receive money. Nevertheless, the charge sheet must disclose some material from which the petitioner participation in the alleged common design can reasonably be inferred. A bare statement that other accused persons represented her, without material showing her authorisation, knowledge, participation or dishonest intention, is insufficient to sustain the prosecution against her. Her connection with the property or the partnership firm cannot, by itself, substitute for the essential ingredients of the alleged offences.

13. As per the version of petitioner, she purchased a flat and later faced difficulty in paying the loan instalments need not be accepted or rejected in these proceedings. The question is not whether the wider dispute between the complainant and the other accused is genuine, nor whether the complainant may have a civil remedy. The question is whether the material collected by the investigating agency discloses a prima facie criminal role on the part of this petitioner. On the material placed before this Court, the essential link between the petitioner and the alleged deception, entrustment or conspiracy is absent.

14. This is not a case in which the Court is required to weigh competing versions or assess the credibility of witnesses. Even taking the prosecution material, the specific allegations and documents referred to above do not disclose the necessary ingredients of the alleged offences against the petitioner.

Permitting the prosecution to continue against her solely on the basis of a general reference in the charge sheet, without material indicating her knowledge or participation, would amount to an abuse of the process of the Court. The case, insofar as the petitioner is concerned, falls within the principles stated in **Bhajan Lal** (supra).

15. For the foregoing reasons, this Court is satisfied that continuation of the criminal proceedings against the petitioner/ accused No.5, is not justified. This conclusion is confined to the petitioner and is based on the absence of specific allegations and supporting material connecting her with the alleged offences.

16. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner/ accused No.5 alone in C.C. Noo.652 of 2018 on the file of learned II Additional Junior Civil Judge, Tanuku, West Godavari District, for the offences punishable under Sections 406, 420 and 120-B read with Section 34 of the Indian Penal Code.

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

SUNITHA GANDHAM, J

Date: 03.11.2026
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