

2022 LiveLaw (SC) 1030

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
S. ABDUL NAZEER; J., J.B. PARDIWALA; J.**

DECEMBER 15, 2022

CRIMINAL APPEAL NO. 2290 OF 2022 (Arising out of S.L.P. (Criminal) No. 4629 of 2021)

R. NAGENDER YADAV versus THE STATE OF TELANGANA AND ANR.

Code of Criminal Procedure, 1973; Section 482 - Complainant alleged that his signature on a sale deed has been forged - Later filed civil suit seeking cancellation of sale deed - High Court refused to quash the complaint - While allowing the appeal, the Supreme Court said : A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, the High Court should have quashed the criminal proceeding to prevent abuse of process of court - This order (1) will not come in the way of instituting appropriate proceedings in future in case the Civil Court comes to the conclusion that the disputed sale deed is forged (2) shall not be cited as a precedent.

Code of Criminal Procedure, 1973; Section 482 - While exercising its jurisdiction under Section 482 of the Cr.P.C., the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. (Para 16)

Code of Criminal Procedure, 1973; Section 482 - Perfunctory investigation cannot be a ground either to quash the criminal proceedings or even to acquit the accused. (Para 14)

(Arising out of impugned final judgment and order dated 01-06-2021 in CRLP No. 4687/2020 passed by the High Court for the State of Telangana at Hyderabad)

For Petitioner(s) Mr. Abhijit Sengupta, AOR Mr. Rohit Jaiswal, Adv. Mr. Kumar Neeraj, Adv. Mr. R.S. Mishra, Adv. Ms. Shivani Jain, adv.

For Respondent(s) Mr. S.. Udaya Kumar Sagar, AOR Ms. Sweena Nair, Adv.

J U D G M E N T

J.B. Pardiwala, J.

1. Leave granted.
2. This appeal is at the instance of the original accused and is directed against the order passed by the High Court for the State of Telangana at Hyderabad dated 1st of June, 2021 in Criminal Petition No. 4687 of 2020 by which the High Court declined to quash the criminal proceedings instituted against the appellant herein at the instance of the respondent No. 2 (original complainant) and accordingly rejected the application filed by the appellant herein under Section 482 of the Code of Criminal Procedure (CrPC) for quashing of the proceedings.

Factual Matrix

3. This litigation highlights one of the most perfunctory investigations at the hands of the police. The subject matter of this litigation is an open plot admeasuring 321 square yards situated at the village Nallagandla, District Ranga Reddy, State of Telangana. The respondent No. 2 herein (original complainant) claims to be the lawful owner of the said plot. It is not in dispute that the original complainant had purchased the said plot of land by way of a sale deed executed in his favour dated 09.05.2008 bearing registration No. 102/2008.

4. It is the case of the complainant that in the sale deed dated 09.05.2008, the appellant herein is one of the attesting witnesses. The appellant herein also happens to be the cousin of the complainant. It is the case of the complainant that all the original documents of the plot in question remained in possession of the appellant as necessary permissions from different authorities were to be obtained. It is the case of the complainant that one fine day he came to know that the plot in question had been transferred in favour of one Smt. Kalpana Yadav Mangalarapu, a resident of USA. The transfer took place by way of a sale deed said to have been executed by the complainant on 29.12.2010 in favour of Smt. Kalpana Yadav Mangalarapu. In the said sale deed, the appellant herein is shown as one of the attesting witnesses. According to the complainant, at no point of time he had executed any such sale deed in favour of Smt. Kalpana Yadav Mangalarapu and a bogus and concocted sale deed dated 29.12.2010 bearing registration No. 4405/2010 came to be created by the appellant herein in collusion with Smt. Kalpana Yadav Mangalarapu, Smt. Pramila Yadav and one R. Nagender Yadav. It is the case of the complainant that his signature on the alleged sale deed has been forged as a part of the criminal conspiracy hatched by the appellant herein in collusion with the other co-accused named above.

5. In such circumstances referred to above, the complainant lodged a complaint in the Court of the First Additional Junior Civil Judge-cum-XVI Additional Metropolitan Magistrate, Cyberabad at Rajenderanagar. The complaint came to be registered as Criminal Complaint No. 1029 of 2015 for the offences punishable under Sections 120-B, 420, 468 and 471 resply of the Indian Penal Code. The complaint was lodged in the Court on 24th of April, 2014.

6. It appears that the learned Magistrate thought fit to pass an order directing the police to undertake the investigation under Section 156(3) of the CrPC. The Sub-Inspector of Police Raidurgam District carried out the investigation and filed charge sheet only against the appellant herein. The other persons named above were dropped and not arrayed as accused. At the end of the investigation, the investigating agency arrived at the conclusion that the original accused No. 1 namely Smt. Kalpana Yadav Mangalarapu and accused No. 2 namely Smt. Pramila Yadav could be said to be *bona fide* purchasers of the property for value without notice. According to the investigating agency, the person who actually impersonated the complainant before the Sub-Registrar at the time of registration of the disputed sale deed was found to be an unknown person.

7. The record further reveals that the complainant later in point of time also instituted Original Suit No. 1343 of 2016 in the Court of the District Judge, Ranga Reddy District at Kukatpally seeking cancellation of the sale deed dated 29.12.2010 . The said suit came to be instituted sometime in December 2016 i.e. after the criminal

prosecution came to be instituted against the appellant herein. In the civil suit, the appellant herein has been impleaded as the defendant No. 3.

8. The criminal case as well as the civil suit referred to above are pending as on date in the respective courts.

9. The appellant herein went before the High Court with an application filed under Section 482 of the CrPC and prayed for quashing of the criminal prosecution. The High Court declined to quash the criminal prosecution as in its view there is a *prima facie* case against the appellant for being put to trial for the alleged offence.

10. Being dissatisfied with the impugned order passed by the High Court rejecting the quashing application filed by the appellant, the appellant is here before this Court with the present appeal.

Analysis

11. We have heard the learned counsel appearing for the respective parties and have also gone through the entire records.

12. As stated earlier, the police could be said to have made a mockery of the entire investigation. When it is the specific case of the original complainant that at no point of time he had executed the disputed sale deed dated 29.12.2010 and his signature on the disputed sale deed has been forged, then the first thing the police should have done was to obtain the specimen hand writings of the complainant so as to be compared with the disputed signature on the sale deed through a hand writing expert. We are informed that as on date there is no report of the hand writing expert in regard to the genuineness of the signature of the complainant on the disputed sale deed. Second thing which the investigating agency ought to have done is to investigate whether the sale consideration had been paid to the purchaser of the disputed plot or not and if the sale deed consideration had been paid, then in what manner. There is nothing on record in this regard. We fail to understand on what basis the police filed charge sheet against the appellant herein. If it is the case of the original complainant that a conspiracy was hatched, then in such circumstances why did the police drop the purchaser and the other individuals from the charge sheet stating that they are the *bona fide* purchasers of the plot in question for value without notice.

13. As on date, there is no convincing legal evidence on record to put the appellant herein to trial for the alleged offences. Since the purchaser of the plot in question and others have not been arrayed as accused, the entire theory of criminal conspiracy collapses like a pack of cards. Of course, it is true that the stance of the appellant herein is very clear that it is the complainant who executed the sale deed dated 29.12.2010 in favour of Smt. Kalpana Yadav Mangalarapu for the sale consideration as shown in the sale deed on his own free will and volition and in the said sale deed, he attested the signature of the Vendor i.e. the original complainant.

14. It appears that the aforesaid aspects of the matter have been overlooked by the High Court. We are conscious of the fact that perfunctory investigation cannot be a ground either to quash the criminal proceedings or even to acquit the accused. We take notice of the fact that as on date the parties are before the Civil Court. The civil suit being the Original Suit No. 1343 of 2016 between the parties is pending wherein the contention of the complainant as a plaintiff is that no sale deed dated 29.12.2010 was executed, whereas the contention of the appellant herein as a defendant in the suit is that the sale deed had been executed by the complainant. The Civil Court is

therefore seized of the question as regards the legality and validity of the disputed sale deed. The matter is *sub judice* in the Civil Court. At this juncture and more particularly in the peculiar facts and circumstances of the case, it will not be proper to permit the criminal prosecution to proceed further on the allegation of the sale deed being forged. That question will have to be decided by the Civil Court after recording the evidence and hearing the parties in accordance with law. It would not be proper having regard to what has been highlighted by us to permit the complainant to prosecute the appellant on this allegation when the validity of the sale deed is being tested before the Civil Court.

15. At this stage, we quote the following relevant part of the disputed sale deed dated 29.12.2010:-

“AND WHEREAS now the above named Vendor herein has offered to sell the above said property to the Vendees for a total sale consideration of Rs. 24,08,000/- (Rupees Twenty Four Lakhs Eight Thousand Only), and the Vendee hereby agreed to purchase the same for the said sale consideration, and which is more fully described in the schedule and plan annexed hereto and marked in Red Color and hereinafter for the sake of brevity referred to as the “SCHEDULE PROPERTY/SAID PROPERTY”

NOW THIS DEED OF SALE WITNESSETH AS UNDER:

The Vendor hereby declares, agrees and acknowledges that he has received the entire sale consideration of Rs. 24,08,000/- (Rupees Twenty Four Lakhs Eight Thousand Only), from the Vendee in the manner mentioned hereunder:

(1). Rs. 24,08,000/- (Rupees Twenty Four Lakhs Eight Thousand Only) financed by the AXIS Bank Ltd.

And the receipt of which sum the Vendor do hereby admit and acknowledge.”

[Emphasis supplied]

16. It appears *prima facie* from the aforesaid that the purchaser (Vendee) might have obtained finance from AXIS Bank Ltd. for the purpose of purchasing the plot in question. The police should have investigated whether the amount of Rs. 24,08,000/- (Rupees Twenty Four Lakhs Eight Thousand Only) was paid by AXIS Bank Ltd. directly to the original complainant (respondent No. 2 herein). There is no clarity even in this regard. This aspect shall also be looked into while deciding the civil suit between the parties.

17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.

18. We therefore allow this appeal, set aside the impugned order of the High Court and quash the criminal proceedings of Criminal Complaint No. 1029 of 2015. We clarify that this will not come in the way of instituting appropriate proceedings in future

in case the Civil Court comes to the conclusion that the disputed sale deed dated 29.12.2010 is forged. We refrain ourselves from expressing any opinion as regards the genuineness or otherwise of the sale deed in question as this question is wide open before the Civil Court. The Civil Court shall decide the civil suit pending between the parties on its own merits and on the basis of the evidence that may be led by both the sides. It shall be open to the Civil Court to take the opinion of the hand writing expert as regards the signature of the complainant on the disputed sale deed.

19. We clarify that we have passed the aforesaid order in the facts and circumstances of the present case and the same shall not be cited as a precedent.

20. Pending application, if any, also stands disposed of.

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