

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.3821 of 2015

ORDER:

This criminal petition is filed by the petitioner-accused under Section 482 Cr.P.C. to quash the order passed by the Metropolitan Sessions Judge, Hyderabad in Crl.R.P.No.25 of 2015 dated 02.04.2015 and consequently to direct the IX Additional Chief Metropolitan Magistrate, Hyderabad to take cognizance in CC SR No.4861 of 2014 against the respondents No.2 to 5.

2. The case of the petitioner in brief was that he filed a private complaint before the IX Additional Chief Metropolitan Magistrate, Hyderabad against the respondents 2 to 5 for the offences under Section 120B, 406 and 420 IPC. On 01.12.2014 the IX Additional Chief Metropolitan Magistrate dismissed the complaint under Section 203 Cr.P.C. The petitioner preferred a revision before the Metropolitan Sessions Judge, Hyderabad under Section 397 Cr.P.C. The said criminal revision case No.25 of 2015 was dismissed on 02.04.2015. He filed the present petition to quash the said order.

3. The petitioner further submitted that he along with one Mr. L. Purushotham Reddy entered into an agreement of sale with Respondents No.2 to 5 on 09.01.2006 for purchase of Acs.23.00 of land covered by Sy.Nos.194, 195, 198 and 199 in Kalwakurthy village and Mandal, Mahaboobnagar District @ Rs.6,52,000/- per acre. All the accused offered to sell the above land for a total sale consideration of Rs.1,52,26,000/-. On the promise made by all the accused, the

complainant agreed to purchase the above land for a total sale consideration of Rs.1,52,26,000/-. Out of the total sale consideration, the complainant's father by name B. Yadagiri Reddy (late) paid an amount of Rs.1,00,000/- on 07.01.2006 at the residence of the complainant and all the accused executed a receipt on Ten rupees non-judicial stamp papers in the presence of witnesses. On 09.01.2006, the complainant along with his partner Purushotham Reddy paid an amount of Rs.30,40,000/- to all the accused and they inturn executed a receipt on a revenue stamp in the presence of the witnesses. As per the agreement dated 09.01.2006, the complainant had to pay the balance sale consideration to the accused within a period of 90 days from 09.01.2006. The complainant got issued a legal notice dated 06.04.2006 through their Advocate at Hyderabad requesting all the accused to fulfil the terms and conditions of the agreement of sale dated 09.01.2006 and they were ready to pay the balance sale consideration. Having received the legal notice dated 06.04.2006, the accused did not comply the conditions as mentioned in the agreement of sale hence, the complainant was constrained to approach the civil court for recovery of money with interest. The same was pending adjudication vide OS. No.265 of 2009 on the file of XII Additional Chief Judge, City Civil Court, Hyderabad.

4. While the matter stood thus, on 23.04.2011 all the accused Nos.2 to 4 and the wife and son of Accused No.2 sold out the said property to four persons through registered sale deed before the Sub-Registrar, Kalwakurthy, Mahabubnagar District vide registered

document No.3386 of 2011 dated 23.04.2011. Inturn the vendees in sale deed No.3386 of 2011 sold out the same property to four others vide registered document No.4252 of 2012 dated 24.04.2012. Inturn the said persons executed a registered deed of right of redemption vide registered deed No.8677 of 2012 dated 01.09.2012. All the accused with an intention to cheat the complainant from the very inception of the transaction determined not to pay back the amount received at the time of entering into the agreement of sale dated 09.01.2006 and committed the offence of cheating and criminal breach of trust. The complainant approached the Narayanaguda police to lodge a report, but police advised them to file a private complaint. The learned IX Additional Chief Metropolitan Magistrate, Hyderabad recorded the sworn statement of the petitioner on 13.11.2014. The complainant besides examining himself as PW.1, also examined his partner L.Purushotham Reddy as another witness. Though their statements revealed that the respondents-accused committed the offence of cheating and criminal breach of trust, the IX Additional Chief Metropolitan Magistrate passed order dated 01.12.2014 dismissing the complaint. It was a non-speaking order. No reasons were given except stating that the matter was civil in nature. The Metropolitan Sessions Judge, Hyderabad also dismissed the Criminal Revision Petition No.25 of 2015 dated 02.04.2015 supporting the order of the IX Additional Chief Metropolitan Magistrate opining that the case was purely of civil nature. The accused were neither returning the amount they had secured as

advance nor inclined to transfer the land against the balance sale consideration by executing registered sale deed in favour of the complainant. The mere fact that civil liability would arise out of the dispute and the party had taken recourse to the civil remedy would not be a ground to refuse criminal prosecution and prayed to allow the petition by setting the aside the orders of the learned Metropolitan Sessions Judge in Crl.R.P. No.25 of 2015 dated 02.04.2015.

6. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor. Notices served on respondents No.2 to 5 through their Advocate on record were returned as unclaimed.

7. Perused the record. The complainant alleged that he entered into an agreement of sale with the respondents No.2 to 5 – A1 to A4 for purchase of Acs.23.00 of land at Kalwakurthy village, Mahabubnagar District @ Rs.6,52,000/- per acre for a total consideration of Rs.1,52,26,000/- and that he paid an amount of Rs.1,00,000/- on 07.01.2006 and also an amount of Rs.30,40,000/- on 09.01.2006 and issued a legal notice to the respondents No.2 to 5 requesting them to execute the sale deed by fixing a date and that they were ready to pay the balance sale consideration but having received the notices, the accused kept quiet without executing the sale deed as such filed O.S. No.265 of 2009 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad for refund of the advance amount with interest and the said suit was pending. It is his further contention that during the pendency of the said suit, A1 to A4 sold away the

property to third parties and 3 to 4 transactions took place thereafter and finally the said land was in possession of a third purchaser.

8. The IX Additional Chief Metropolitan Magistrate, Hyderabad by observing that the complainant did not seek for the relief of specific performance but only claimed refund of advance and the entire transaction was of civil nature and there were no allegations that the accused had an intention to cheat the complainant since the beginning of the contract and induced the complainant in parting with the said amount, dismissed the complaint under Section 203 Cr.P.C.

9. The Metropolitan Sessions Judge in CrI.R.P.No.25 of 2015 dated 02.04.2015 observed that from the sworn statement of the complainant it could be understood that he was seeking remedy for refund of advance which was paid by him. The notice issued by the complainant dated 06.04.2006 would show that he was bent upon pursuing his civil remedy, he had not mentioned therein that any criminal action would be initiated against the accused and not mentioned therein that the accused had cheated the complainant. The sworn statement would also show that the suit was filed by the complainant for refund of the amount. Hence, the Metropolitan Sessions Judge also opined that the case was purely of civil nature and confirmed the orders of the IX Additional Chief Metropolitan Magistrate, Hyderabad by dismissing the revision.

10. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **K. Jagadish v. Udaya Kumar G.S. and another**¹, Wherein the Hon'ble Apex Court held that:

“9. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

10. In *Pratibha Rani v. Suraj Kumar and another* [(1985) 2 SCC 370] this Court summed up the distinction between the two remedies as under:

“21. 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 clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is an 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. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

11. In *Rajesh Bajaj v. State NCT of Delhi and others* [(1999) 3 SCC 258] this Court observed:

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now:

¹ Crl.Appeal No.56 of 2020 dated 10.01.2020

“(f) A intentionally deceives Z into a belief that A has means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a colander of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.”

12. The aforesaid view was reiterated in *Kamladevi Agarwal v. State of West Bengal and others* [(2002) 1 SCC 555] as under:

“9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending.”

12. The crux of the offence under Section 420 IPC is that the accused persons had an intention to cheat the victim from the inception. The written statement filed by Defendants No.1 and 3 in O.S. No.265 of 2009 filed by the learned counsel for the petitioner would disclose that they admitted receipt of amount of Rs.1,00,000/- and Rs.30,40,000/- from the petitioner as advance on 07.01.2006 and on 09.01.2006, but later the plaintiff failed to pay the balance sale

amount and requested them to extend the time for payment and failed to fulfil the terms of the agreement and started threatening them to return the money. They stated that they offered to sell the property to meet their personal financial commitments but instead of completing the transaction, the plaintiff started threatening them that they would file one case after the other if they did not return their money.

13. Thus, the respondents failed to return the money taken by them as advance and sold the property subsequently to others. But, the said fact would not disclose that they had an intention to cheat the victim at the time of entering into the agreement of sale itself, which was necessary to constitute the offence under Section 420 IPC. In a similar way, to attract the offence under Section 405 IPC also the complainant ought to prove that the accused persons dishonestly misappropriated or converted to their own use the property entrusted to them and disposed the property in violation of any directions of law, prescribing the mode in which such trust ought to be discharged or of any legal contract touching the discharge of such trust between them. Entrustment is an essential ingredient of the offence and the accused should dishonestly misappropriate the property entrusted to them contrary to the terms and obligations of the contract.

14. As the respondents No.2 to 5 had not returned the advance amount paid to them, the complainant had rightly pursued the civil remedy for refund of the amount *vide* O.S No.265 of 2009. Since the essential ingredients for the offences under Section 420 and 406 IPC were not attracted, the learned IX Additional Chief Metropolitan

Magistrate as well as the learned Metropolitan Sessions Judge had rightly dismissed the complaint and confirmed the said order. Hence, I do not find any illegality in the said order to be considered as an abuse of process of law to be quashed by exercising the extraordinary jurisdiction of this Court under Section 482 Cr.P.C.

15. In the result, the criminal petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

February 04, 2022
KTL