



THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No. 449/2009

ORDER:

1. This Criminal Petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking to quash the proceedings in CC No.869/2008 on the file of VII Metropolitan Magistrate, Cyberabad, which was registered for an offence punishable under Section 420 IPC.

2. The allegations in the charge sheet are as under:

On 31-10-2008, the first respondent herein lodged a report stating that himself along with his partners (1) Baddam Satyanarayana Reddy; (2) Maddula Bhaskar Redy (3) Dr.Chandrakiran; (4) Bandari Ashok Reddy; (5) Bhanooth Peer Nayak; (6) Kusuma Ramnarayana; (7) Mudugoni Narsimha purchased land ad-measuring Ac.2-08 guntas in S.No.338 situate at Turkyamjal village on 27-9-2006 from T. Raju @ Rajesh by paying advance of Rs.50,00,000/- and when they visited the petitioner to receive the balance sale consideration, he was reluctant to receive the same and refused to register the sale deed. When they wanted the petitioner to return the advance sale consideration, he refused to return the same. The petitioner raised huts in the land sold to the respondents without returning the advance sale consideration. Basing on the said allegations, a case in Cr.No.647/2008 came to be registered for an offence under Section 420 IPC. The police investigated into the matter and filed a charge sheet.

3. The learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true, no offence under Section 420 IPC is made out against the petitioner. According to him, the material placed before the court does not anywhere indicate that there was dishonest intention from inception. He would further



contend that the matter is purely a civil nature and the respondents have either to file suit for specific performance of agreement or for recovery of the advance amount. Thus, according to him, continuation of proceedings against the petitioner would be an abuse of process of law.

4. Though notice is served on the first respondent, there is no representation on his behalf.

5. The learned Public Prosecutor representing the State opposed the criminal petition stating that a reading of the charge sheet *prima facie* disclose commission of offence under Section 420 IPC and this court should not interdict the proceedings by invoking the inherent jurisdiction of this Court under Sec. 482 Cr.P.C.,

8. Section 482 of Cr.P.C. envisages three circumstances under which inherent jurisdiction can be exercised viz. (1) to give effect to an order under the Code; (2) to prevent abuse of process of Court; and (3) to otherwise secure ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. The said power cannot be invoked to interdict a legitimate prosecution and it has to be exercised very sparingly to render real and substantial justice to the parties. As held by the Apex Court, it is to be exercised very sparingly and with circumspection in rare cases to prevent abuse of process of Court or to otherwise secure ends of justice.

9. The Apex Court in **State of Haryana v. Bhajan Lal**^[1] laid down certain guidelines for exercising the power under Section 482 of Cr.P.C. which are as follows:

“In the following categories of cases the power of under Section 482 Cr.P.C. can be exercised either to prevent abuse of the process of Court or otherwise to secure the ends of justice. (a) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not, *prima facie*, constitute any offence or make out a case against the accused; (b) Where the uncontroverted allegations made in the FIR or the complaint, and the evidence collected in support of the same, do not disclose the commission of any offence, and make out



a case against the accused; and (c) Where a criminal proceeding is manifestly attended with *mala fides* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge.”

10. In **State of Karnataka v. M.Devendrappa**^[2], the Hon’ble Supreme Court held as under:

“Section 482 Cr.P.C. saves the inherent power of the High Court and, thereunder, nothing in the Code of Criminal Procedure shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 482 Cr.P.C. does not confer any new power on the High Court. It only saves the inherent power which the Court possessed even before the enactment of the Code. While exercising power, under Section 482 Cr.P.C., the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully, with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for which alone Court exists. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the power, the Court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the material to assess what the complainant has alleged, and whether any offence is made out even if the allegations are accepted in toto.”

11. In **G.Sagar Suri v. State of U.P.**^[3] and **State of Karnataka v. L.Muniswamy**^[4], the Apex Court observed that “jurisdiction under Section 482 of the Code has to be exercised with great care and caution”.

12. In **Janata Dal v. H.S.Chowdhary**^[5] and **Raghubir Saran (Dr.) v. State of Bihar**^[6], the Apex Court observed that:

“The power possessed by the High Court under Section 482 of the



Code are very wide, and the very plenitude of the power requires great caution in its exercise. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court, being the highest Court of a State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.”

13. In **Padal Venkata Rama Reddy v. Kovvuri Satyanarayana**

Reddy^[7], the Apex Court cautioned that “if the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.” Further, the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The power under Section 482 of Cr.P.C. does not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

14. The point for consideration would be whether the petitioner has committed an offence punishable under Section 420 of IPC.

15. Section 420 deals with punishment for cheating and it reads as under:

420. Cheating and dishonestly inducing delivery of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating is defined in Section 415 IPC which is as under:



“Whoever, by deceiving any person, fraudulently or dishonestly, induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage, or harm to that person in body, mind, reputation or property, is said to "cheat".

To constitute an offence of cheating under Section 420 IPC, it has to be shown that not only a person has cheated someone, but also that by doing so, he has dishonestly induced a person who was cheated to deliver any property, etc. A person can be said to have done an act dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. ‘Wrongful loss’ is the loss by unlawful means of property to which a person losing it, is legally entitled, while ‘wrongful gain to a person’ means a gain by unlawful means of property to which the person gaining is not legally entitled. These are the two facets of definition of ‘dishonestly’. A reading of Section 415 IPC, which defines ‘cheating’, it is manifest that two different classes of acts are set forth which the person deceived may be induced to do so. In the first class, he may be induced fraudulently or dishonestly to deliver any property to any person. Second class of facts set forth in the section are that doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, inducement must be fraudulent or dishonest. In the second class of acts, inducement must be intentional but not fraudulent or dishonest. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise. In a case of mere failure to keep up promise subsequently, such culpable intention right at the beginning i.e. when he made a promise, cannot be presumed.

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16. In **BMW India Pvt. Ltd., Gurgaon, Haryana v. State of A.P.** ^[8], this Court while interpreting the word ‘abuse of process of Court’ held



that the words would mean an improper use of legal process with a view to obtain unfair advantage or undeserving benefit. It should be considered having due regard to the provisions of the Code and keeping in mind the underlying object for which the provision has been enacted with a view to preventing Courts from being rendered impotent by any omission of the Code. This Court also held that the ends of justice will be achieved when a matter is decided on the basis of a material available on record. What would mean 'ends of justice' would always depend upon the facts and circumstances of each case.

17. Keeping in view the principles laid down by the Apex Court, I proceed to deal with the matter.

18. The investigation done by the police lead to filing of the charge sheet. The 161 Cr.P.C., statements of the witnesses coupled with averments in the charge sheet would clearly reveal that the petitioner received a sum of Rs.50 lakhs towards part of sale consideration as advance in respect of the land ad-measuring Ac.2-08 guntas in S.No.338 situate at Turkyamjal village on 27-9-2006 from respondents 1 to 9 herein. Subsequently, when the respondents wanted to get the land registered in their names by receiving the balance of sale consideration, the petitioner was postponing the same on one pretext or the other. Ultimately, the petitioner has raised shutters in the land sold to the respondents. The above facts would clearly spell out that the petitioner/accused had dishonest intention from inception as he had no intention to register the land in favour of the petitioner. Further, the investigation done by the police would disclose that the land sold by the petitioner is a disputed land. Therefore, knowing that the land to be sold to the respondents is a disputed land, the petitioner sold the same to the respondents by collecting huge amount. From the above, it can be inferred that there was dishonest intention from inception. Truth or otherwise of the allegations made in the charge sheet have to be enquired into during the course of trial.

19. In RAVINDRA KUMAR MADHANLAL GOENKA V.



RUGMINI RAM RAGHAV SPINNERS (P) LTD^[9], the Apex Court after referring to various cases laid down certain principles relating to exercise of jurisdiction under Section 482 Cr.P.C., Clause V of the said guidelines would show that merely because the allegations made in the charge sheet would lead to availing a civil remedy, the same by itself is no ground to quash the criminal proceedings. Same is the case on hand.

20. Since a reading of the charge sheet would prima facie disclose commission of offence, which not only caused wrongful loss to the respondents but also wrongful gain to the petitioner, this court is of the view that continuation of proceedings against the petitioner would not amount to abuse of process of law. A legitimate prosecution cannot be stifled by invoking the inherent jurisdiction under Section 482 Cr.P.C., In that view of the matter, the proceedings against the petitioner cannot be quashed at this stage.

19. Accordingly, the Criminal Petition filed seeking to quash the proceedings in CC No.869/2008 on the file of VII Metropolitan Magistrate, Cyberabad, is hereby dismissed. The miscellaneous petitions, if any pending shall stand closed.

C. PRAVEEN KUMAR, J

Date: 01-07-2013
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^[1] AIR 1992 SC 604

^[2] (2002) 3 SCC 89

^[3] (2000) 2 SCC 636

^[4] (1977) 2 SCC 699

^[5] (1992) 4 SCC 305



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[\[6\]](#) AIR 1964 SC 1

[\[7\]](#) 2011 (2) ALD (CrI.) 278 (SC)

[\[8\]](#) 2012 (2) ALD (CrI.) 211 (AP)

[\[9\]](#) (2009) 11 SCC 529