

APHC010166822022



IN THE HIGH COURT OF ANDHRA  
PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)

[3396]



TUESDAY, THE THIRTY FIRST DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL PETITION NO: 3049/2022**

**Between:**

R.VENKATA RAMANA, S/O LATE CHALAMAIAH, HINDU, AGED 43  
YEARS, R/O PLOT NO.21, MARUTHI MEGA CITY, NANDYAL  
CHECKPOST, KURNOOL TOWN.

**...PETITIONER/ACCUSED**

**AND**

- 1.THE STATE, INSPECTOR OF POLICE, KURNOOL II TOWN PS,REP.BY  
ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P. AT AMARAVATHI.
- 2.SATISH CHANDRA, S/O A.GURUSWAMY, HINDU, AGED 31 YEARS,  
OCE- PVT. EMPLOYEE, R/O FLAT NO.201, A.BLOCK, SUNKESULA  
ROAD, KURNOOL TOWN, KURNOOL DISTRICT.

**...RESPONDENT/COMPLAINANT(S):**

**Counsel for the Petitioner/accused:**

- 1.K VISWANATHAM

**Counsel for the Respondent/complainant(S):**

- 1.PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**ORDER:**

The instant petition under Section 482 of Code of Criminal Procedure, 1973<sup>1</sup> has been filed by the Petitioner/Accused, seeking quashment of the proceedings against him in C.C.No.2572 of 2019 on the file of the Court of Judicial First Class Magistrate, Kurnool for the offence under Section 420 of the Indian Penal Code, 1860<sup>2</sup>.

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<sup>1</sup> for short 'Cr.P.C'

<sup>2</sup> for short 'IPC'

2. Heard Sri K.Viswanadham, learned counsel for the Petitioner and Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor for Respondent No.1/State. Learned Assistant Public Prosecutor represented that, since Respondent No.2 is not available in India, notice could not be served on him.

3. Learned counsel for the Petitioner would submit that the alleged agreement of sale is created and fabricated with an intention to grab the property of the Petitioner. Learned counsel would further submit that the Petitioner was falsely implicated in the present case. Even if the alleged agreement of sale is correct, Respondent No.2 has to approach a competent Civil Court for redressal and the pure civil dispute is given the colour of criminal offence. Learned counsel would finally submit that no *prima facie* case is made out against the Petitioner for the alleged offence. Hence, prayed for quashment of the proceedings against the Petitioner. In support of his contention, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in **Trilok Singh and Others vs. Satya Deo Tripathi**<sup>3</sup>.

4. Learned Assistant Public Prosecutor would submit that there are specific allegations leveled against the Petitioner for the commission of the alleged offence. The truth or otherwise of the said allegations have to be decided during investigation. At this stage, the proceedings against the Petitioner cannot be quashed. Hence, prayed to dismiss the petition.

#### **Point for Determination**

5. Having heard the submissions of the learned counsel representing both the parties, now the point that would emerge for determination is:

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<sup>3</sup> AIR 1979 SC 850

*Whether there are any justifiable grounds for quashment of the proceedings against the Petitioner/Accused in C.C.no.2572 of 2019 on the file of the Court of Judicial First Class Magistrate, Kurnool?*

### **Determination by the Court**

6. A bare perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) *to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice.* A court while sitting in Section 482 jurisdiction is not functioning as a trial court, court of appeal or a court of revision. It must exercise its powers to do real and substantial justice, depending on the facts and circumstances of the case. These powers must be invoked for compelling reasons of abuse of process of law or glaring injustice, which are against sound principles of criminal jurisprudence.

7. Specific circumstances warranting the invocation of the provision must be present. The decision rendered by the Hon'ble Apex Court in **State of Haryana and others v. Bhajanlal and others**<sup>4</sup> is considered as the guiding torch in the application of Section 482 Cr.P.C. At paras 102 and 103, the circumstances are spelt out as follows:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently*

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<sup>4</sup> AIR 1992 SC 604

*channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) 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.*

*(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) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or 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.*

*(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.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(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.*

*(7) Where a criminal proceeding is manifestly attended with mala fide 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.*

**103.** *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that 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 and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

*(emphasis supplied)*

**8.** It is the case of the prosecution that, Respondent No.2 along with his wife entered into an agreement with the Petitioner/Accused to purchase a land of an

extent of Ac.2.75 cents in Sy.No.89/2B-1 situated near by D.No.45/306, Labour Colony, Mamidalapadu Village limits for an amount of Rs.89.00 lakhs and paid an amount of Rs.26.00 lakhs towards advance sale consideration to the Petitioner/Accused on the condition that the said land would be registered after payment of balance sale consideration. Subsequently, when Respondent No.2 approached the Petitioner with the balance sale consideration for getting the land registered in his favour, the Petitioner/Accused postponed the same with a dishonest intention. The Petitioner neither registered the land nor returned the advance amount and thereby cheated Respondent No.2. Further, the Petitioner had obtained loan from State Bank of India, by mortgaging the said land. As such the present complaint has been lodged by Respondent No.2 against the Petitioner for the alleged offence.

9. At this juncture, it is relevant to refer to Sections 415 and 420 IPC which read as follows:

**“415. Cheating.**—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”.

**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 a 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.”

10. Perusal of the above Sections would reveal that, to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Admittedly, the present dispute is with regard to execution of an agreement of sale relating to a landed property. As rightly put by the learned counsel for the Petitioner, there is no iota of evidence to prove the alleged agreement and that if really there exists an agreement of sale between the parties, Respondent No.2 would have approached a competent Civil Court for redressal of his grievance. It is not the case of Respondent No.2 that he filed a civil suit for specific performance of agreement of sale.

11. In **Mohammad Ibrahim and others v. State of Bihar and another**<sup>5</sup>, the Hon'ble Apex Court has held as under:

*“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.....”*

(emphasis supplied)

12. In the present case, a bare perusal of the allegations leveled against the Petitioner, would clearly go to show that no *prima facie* case is made out against him for the offence alleged. Moreover, the allegations leveled against the Petitioner would clearly show that the matter is of civil nature and the same was given the cloak of criminal offence. In view of the above discussion and the judgments referred to *supra*, this Court is of the view that there are no ingredients to attract the offence under Section 420 IPC against the Petitioner/Accused.

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<sup>5</sup> 2009 (8) SCC 751

Therefore, it is a fit case to exercise the powers under Section 482 Cr.P.C., for quashing the proceedings against the Petitioner.

**13.** Accordingly, the Criminal Petition is allowed quashing the proceedings against the Petitioner/Accused in C.C.No.2572 of 2019 on the file of the Court of Judicial First Class Magistrate, Kurnool for the offence under Section 420 IPC.

Pending miscellaneous petitions, if any, shall stand closed.

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**Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date:31.12.2024

*Dinesh*

THE HONOURABLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

**Crl.P.No.3049 of 2022**

**Dt.31.12.2024**

*Dinesh*