

APHC010170602020



IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI [3396]  
(Special Original Jurisdiction)

THURSDAY ,THE FIRST DAY OF AUGUST  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL PETITION No. 2401 of 2020**

**Between:**

Munukoti Samudram @M.Siva Samudra Rao ...**PETITIONER/ACCUSED(S)**  
and Others

**AND**

The State Of Andhra Pradesh Rep By ...**RESPONDENT/COMPLAINANT(S)**  
Public Prosecutor and Others

**Counsel for the Petitioner/accused(S):**

1.P S P SURESH KUMAR

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

1.K JYOTHI PRASAD

2.PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**ORDER:**

1. The instant Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed, by the Petitioners/A.1 to A.3, seeking to quash the Proceedings in Cr.No.74 of 2020 of Mummidivaram Police Station, East Godavari District, registered for the offences punishable under Sections 420, 409 and 506 read with 34 of IPC, against them.

**2. The case put up by the Complainant, in brief, is as follows:**

a. *De facto* Complainant is respondent No.2 and Accused Nos.,1 to 3 are the Petitioners in this Criminal Petition. *De facto* Complainant filed a private Complaint before the Court of Additional Judicial Magistrate of First class,

Mummidivaram against Petitioners alleging that the Petitioners/accused had landed properties to an extent of Ac.0.30 cents in R.S.No.96/1 of Ananthavaram village and they offered to sell away the same for a sale consideration of Rs.21,78,000/-. *De facto* Complainant paid Rs.6,00,000/- to the Petitioners and having received the same, they executed an unregistered Agreement of Sale dated 20.02.2017, as per the terms, whenever *de facto* Complainant made ready with the balance sale considerations, the Petitioners have to execute the sale deed in his favour.

**b.** *De facto* Complainant paid the remaining balance sale consideration in instalments and requested the Petitioners to execute the registered sale deed and to deliver the possession of the property. On the date of registration, both parties went to the Sub Registrar's Office and Petitioner No.1/A.1 informed that the registered exchange deed stood in the name of A.1 and A.2 and he will give photo copies of the same and he took back the original agreement of sale stating that the original is going to be executed, there is no need to keep the original agreement of sale with him.

**c.** Believing the same, the *de facto* Complainant returned the same. Petitioner No.1/A.1 on the pretext of stomach ache went away stating that he will take tablets from the medical shop. Petitioner Nos., 2 and 3/A.2 and A.3 and the scribe waited but A.1 did not turn up. Since the Petitioners have been postponing the registration of the document, in vain, *de facto* Complainant filed the Private Complaint against the Petitioners and the trial Court forwarded the

same to the police and the police registered the same as a case and issued FIR.

**d.** Seeking quashment of the Proceedings in the Crime, Petitioners/A.1 to A.3 filed the present Criminal Petition.

**3.** Heard Sri P.S.P.Suresh Kumar, learned counsel for Petitioners/A.1 to A.3, learned Assistant Public Prosecutor for respondent No.1/State and Sri K.Jyothi Prasad, learned counsel for respondent No.2.

**4.** Perused the material on record.

**5.** Learned counsel for the Petitioners would submit that the allegations made against the Petitioners are that they have agreed to sell the land to an extent of Ac.0.30 cents to respondent No.2/*de facto* Complainant and entered into an Agreement of Sale to that effect on 20.02.2017 and also paid advance sale consideration. It is stated that on 27.02.2017, when *de facto* Complainant is very much ready to pay the remaining sale consideration and went to the Sub Registrar's Office for registration, Petitioner No.1/A.1 left Sub Registrar's Office on the pretext of his ill health and did not turn up. It is pointed out that the Petitioners 2 and 3/A.2 and A.3 signed on unregistered sale deed.

**6.** Learned counsel further submits that basing on the private complaint filed by respondent No.2 referred to the police under Section 156(3) Cr.P.C., by the learned Magistrate, the present crime has been registered. Learned counsel submits that the complaint itself would show that the title deeds and Pattadar pass books relating to the subject land were handed over to respondent No.2/*de facto* Complainant. The original Agreement has been

taken away by Petitioner No.1/A.1 and the only allegation against the Petitioner /A.1 is that he avoided execution of the sale deed in pursuance of the agreement of sale.

7. Learned counsel further submits that the Complaint would also show that the registered gift deed in the name of A.3 which was executed by A.1 and A.3 was also given to the *de facto* Complainant. Respondent No.2 did not chose to file a civil suit seeking specific performance of the agreement of sale. The remedy left to respondent No.2 is to file a civil suit. Mere non-registration of the sale deed is not amounting to an offence punishable under Section 420 IPC. Learned counsel submits that the alleged sale deed is dated 27.02.2017 and the present Criminal Case has been lodged on 21.03.2020. Learned counsel submits that continuation of criminal proceedings against the Petitioners/A.1 to A.3 is an abuse of process of law and prays for quashment of the crime against the Petitioners.

8. *Per contra*, learned counsel for respondent No.2 would submit that due to interim stay granted, there is no progress in the investigation. It is stated that the Petitioners herein filed O.S.No.6 of 2020 seeking perpetual injunction against the *de facto* Complainant. Learned counsel further submits that entire consideration has been paid by respondent No.2 and in spite of it, the Petitioners have been postponing with an intention to cheat the complainant. Learned counsel finally submits that there are no grounds for quashment of the case against the Petitioners and prays for dismissal of the criminal petition.

9. Learned Assistant Public Prosecutor submits that the Court may pass appropriate orders.

10. As can be seen from the material on record, the allegations made against the Petitioners are to the effect that having received the entire sale consideration, they have been postponing the execution of the sale deed in favour of *de facto Complainant*/respondent No.2 on one pretext or the other. It is the case of respondent No.2 that on 27.02.2017, Petitioners/A.1 to A.3 have come to the Registrar's Office and a regular sale deed has been prepared and A.2 and A.3 put their signatures on the deed. Petitioner No.1/A.1 on the pretext of stomach ache left the place. Complaint would further show that the original title deed, pattadar passbooks, original gift deed in the name of Petitioner No.3/A.3 which was executed by Petitioners 1 and 2/A.1 and A.2 were handed over to the Complainant. It is further averred that the photo copy of the Deed was also given to respondent No.2 stating that the exchange deed contains other property details other than the subject property details.

11. . Needless to say that to attract the offence punishable under Section 420 IPC, the intention of cheating must be present from the date of inception to the alleged date of transaction. The original documents have been handed over to the Complainant. Such being the case, intention of Petitioners to cheat the *de facto* complainant from the date of inception can safely be ruled out. Except making casual reference in the Complaint that even in the presence of elders, the Petitioners threatened the Complainant with dire consequences

when he made a request to register the sale deed nothing has been stated against the Petitioners.

12. As relied upon by learned counsel for Petitioners in **Uma Shankar Gopalika v. State of Bihar**<sup>1</sup>, the Hon'ble Apex Court held that in case of breach of contract, proper remedy lies before a Civil Court by filing a properly constituted suit and that allowing police investigation to continue would amount to an abuse of process of Court and to prevent the sale, it is just and expedient to the High Court for quashing the case by exercising the power under Section 482 Cr.P.C., which has erroneously refused. It is a case where the accused assured the Complainant that when he received the insurance claim amount of Rs.4,20,000/- they would pay a sum of Rs.2,60,000/- to the Complainant, but the same has never been paid. In that regard, the Hon'ble Apex Court held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

13. In **P.Shravan Kumar and Anr v. State of Karnataka**<sup>2</sup> the Hon'ble Apex Court concluded that the dispute between the parties primarily civil in nature and it is only after the civil remedy has become barred by time that complaint has been filed and that the High Court was not justified in refusing to quash the Proceedings which are liable to be quashed.

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<sup>1</sup> (2005) 10 SCC 336.

<sup>2</sup> 2016 LawSuit(SC) 1469

**14. Vinod Natesan V. State of Kerala & Ors<sup>3</sup>** is a case where the accused failed to pay the amount mentioned in the agreement. The Hon'ble Apex Court observed that merely because the accused might not have paid the amount due and payable under the agreement, or might not have been paid the amount in lieu of agreement, the agreement by itself cannot be set said to be a cheating.

**15.** Coming to the facts of the present case, as per the contents of the Complaint, Petitioners 2 and 3/A.2 and A.3 put their signatures on the unregistered sale deed. Petitioner No.1/A.1 left the Registrar's office but the other petitioners handed over all the original documents relating to the subject property to the Complainant. Such being the case, the offence under Section 420 IPC is not attracts since the intention to cheat the Complainant from the inception is a condition precedent for lodging a case under Section 420 IPC.

**16.** A perusal of the complaint would reveal that in view of property disputes, there is exchange of words between the parties and it is alleged the Petitioners alleged to have threatened the respondent No.2 with dire consequences. At this juncture, for a better understanding, it is apposite to extract Sections 503 and 506 IPC and it read as under:

**Section 503. Criminal intimidation :-**

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to

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<sup>3</sup>2018 LawSuit(SC) 1255

cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.— A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

**Section 506. Punishment for criminal intimidation:-**

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

17. In view of the above provisions, in order to prove the offence under Section 506 IPC, respondent No.2 is required to prove that the petitioners had threatened with injury to their persons, reputation or property and that they did so with an intention to cause alarm and to cause respondent No.2 to perform any act, which he is not legally bounded to do. The threat should be a real and not just a mere word. Empty threats do not mean that the case under Section 506 IPC is made out. An offence under this Section by words cannot be made out unless it is proved that these words were uttered with specific intention. In the instant case, except bald allegations, nothing is stated to show that the petitioners threatened to cause an injury to respondent No.2. Based on mere allegation of threatening without any substantial material continuation of proceedings for the offence under Section 506 IPC would be an abuse of



process of law and hence the same is liable to be quashed. For the above reasons, the Criminal Petition deserves to be allowed.

**18.** Accordingly, the Criminal Petition is allowed. The Proceedings in Crime No.74 of 2020 of Mummidivaram Police Station are quashed against the Petitioners/Accused Nos.1 to 3.

Miscellaneous Petitions pending, if any, shall stand closed.

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

01.08.2024

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**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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