

Andhra Pradesh High Court - Amravati

Bheemireddy Uma Maheswari vs The State Of A.P, Rep., Pp And ... on 12 May, 2023

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

CRIMINAL PETITION No.6897 of 2015  
(Through physical mode)

Bheemireddy Uma Maheswari W/o. Venkata Ramana,  
Aged about 46 years, Occ: House wife,  
Resident of D.No.378, Hudco colony,  
Balaga, Srikakulam Town and District.

.. Petitioner

versus

The State of A.P., rep. by its Public Prosecutor,  
High Court, and another.

.. Respondents

ORDER

Dt: 12.05.2023 This criminal petition under Section 482 Cr.P.C. has been filed for quashing the proceedings against the petitioner in C.C.No.85 of 2015 on the file of the learned Judicial Magistrate of First Class, Kotturu, Srikakulam District.

2. Facts of the case, briefly stated, are that the 2nd respondent - defacto complainant filed a private complaint on the file of the learned Judicial Magistrate of First Class, Kotturu, Srikakulam District, alleging that the petitioner/accused and her husband approached him and one Bhaskara Rao Patro, expressing willingness to sell their house bearing H.No.378 situated in Srikakulam, upon which the defacto complainant and Bhaskara Rao Patro agreed to purchase the same. It was alleged that the accused and her HNJ husband suppressed the real facts with regard to the title of the property and entered into an agreement of sale with them for a sale consideration of Rs.15,30,000/-, out of which an amount of Rs.5,00,000/- was paid as advance. It was further alleged that in the sale agreement, neither the measurements of the property nor the names of the boundary holders were mentioned and even the link document was also not provided, that the accused purchased the said house from her vendor under an unregistered document, that the title of the vendor of the accused itself was highly doubtful and the accused intentionally and wilfully suppressed all those details, with a view to cheat the defacto complainant and Bhaskara Rao Patro. It was further alleged that in the above circumstances, the defacto complainant and Bhaskara Rao Patro issued notice to the accused asking her to cancel the agreement of sale and refund the advance sale consideration of Rs.5,00,000/- with costs and interest, but the accused did not do the needful. Upon forwarding of the said complaint to the concerned police for investigation, the police registered a case in Crime No.107 of 2014, conducted investigation and filed charge sheet against the accused for the offence punishable under Section 420 I.P.C.

3. It is argued by the learned counsel for the petitioner that the transaction between the parties is in relation to sale of an immovable property pursuant to the alleged agreement of sale entered into between them and the same being purely civil transaction, the defacto complainant has to pursue civil remedies in that regard and no offence of cheating is HCJ made out, even if the entire allegations are taken to be true on their face value. Learned counsel, therefore, prays for quashing the proceedings against the petitioner.

4. Per contra, learned Public Prosecutor would oppose the prayer made, stating that whether the accused has committed the alleged offence or not has to be decided by the trial Court after completion of trial and on the basis of the evidence adduced by the parties.

5. This Court has considered the submissions made by the learned counsel for the parties and perused the record.

6. In *S.W. Palanitkar v. State of Bihar* reported in (2002) 1 SCC 241, the Hon'ble Supreme Court held that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made and it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. It was further held that a mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. In the said case, the parties entered into an agreement under which the complainant/respondent No.2 therein was appointed as consignment stockist of appellant No.1-company, the terms whereof were alleged to have been violated. The Hon'ble Supreme Court, having found that the acts alleged against appellant Nos.1 to 6 and 8 therein did not HCJ constitute the offences punishable under Sections 406, 420 and 120-B I.P.C., has set aside the issue of process against them.

7. In *Mitesh Kumar J. Sha v. State of Karnataka and others* reported in 2021 (2) ALD (CrL.) 719 (SC), the issue pertained to execution of a Joint Development Agreement for development of a property and the breach of the terms and conditions thereof. When a criminal case was filed by one of the parties, the Hon'ble Supreme Court observed that the dispute between the parties could, at best, be termed as one involving a mere breach of contract. Referring to various earlier decisions, it was observed that though the dispute involved determination of issues which are of civil nature, one can, by no means, stretch the dispute to an extent, so as to impart a criminal colour to it, and imparting criminal colour to a civil dispute is nothing but an abuse of the process of law.

8. In the case on hand also, the parties are said to have entered into an agreement of sale in relation to a house property and the accused is said to have received an amount of Rs.5,00,000/-, out of the total sale consideration of Rs.15,30,000/-, towards advance sale consideration. Later, the defacto complainant entertained a doubt as to the title of the accused to the said house property and, therefore, sought for refund of the advance sale consideration paid by cancelling the agreement of sale. Thus, the dispute between the parties is in relation to the alleged agreement of sale entered into between them, for which the defacto complainant has a HCJ remedy in civil law. When the dispute is purely civil in nature and the act alleged did not constitute the offence of cheating, even prima facie, satisfying the necessary ingredients thereof, this Court is of the considered opinion that

continuation of criminal proceedings against the petitioner would amount to abuse of process of law and, thus, it is a fit case for exercise of power under Section 482 Cr.P.C.

9. Accordingly, this criminal petition is allowed and the proceedings against the petitioner herein in C.C.No.85 of 2015 on the file of the learned Judicial Magistrate of First Class, Kotturu, Srikakulam District, are hereby quashed. As a sequel, Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ IBL