

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.5435 OF 2018

Between:

D.Balamani and another

... Petitioners

And

The State of Telangana

through Public Prosecutor and another. ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :09.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No.5435 of 2018

% Dated 09.01.2024

D.Balamani and another

... Petitioners

And

\$ The State of Telangana

through Public Prosecutor and another.

Respondents/Complainants

! Counsel for the Petitioners: Sri V.Umapathi Sarma

^ Counsel for the Respondents: Addl. Public Prosecutor for R1

Sri N.M.M.Murthy for R2

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.5435 of 2018

ORDER:

1. The 2nd respondent filed private complaint which was referred to the police for the purpose of investigation. The said complaint was received by the police on 02.01.2016 and it was registered for the offences under Sections 406, 415, 418, 420 r/w 120-b of IPC.

2. The case of the 2nd respondent/Lw1 is that A2 is professional caterer since 1997 and he got acquaintance with the *defacto* complainant and through him he got introduced to A1. Through A1, he came to know that A1's husband intended to sell open plot situated at Yellareddyguda, bearing plot Nos.30 and 31 admeasuring 542 sq.yds. According to L.W.1, he obtained encumbrance certificate and entered into an agreement of sale for the above said property for a consideration of Rs.1,22,000/-. He paid an amount of Rs.10,000/- in cash and Rs.25,000/- by cheque. Later, he also paid balance sale consideration on different dates and obtained receipts. A1 and A2 never came to register the sale

deed. He came to know that family of A2 left for their native place. Later A1's husband personally requested him that he will pay the sale amount already taken but they have not done so in spite of lapse of six years. They have also not executed registered sale deed in his favour. When he gave complaint to Neredmet police, the husband of accused No.1 promised to get the sale deed registered by A1, but it was registered on the name of A4, in spite of knowing earlier transaction with complainant. A suit was also pending between them and he filed complaint against A1 to A4. Police examined L.W.1 and filed final report as lack of evidence.

3. Having received notice from the police that the case is closed as lack of evidence, 2nd respondent filed protest petition which was taken up for consideration by the learned Magistrate. During the course of enquiry, the 2nd respondent marked Exs.P1 to P32 and also deposed on the facts of the case. Learned Magistrate having recorded the statement, by order dated 25.11.2017, directed that summons be issued to these petitioners and two others.

4. Learned counsel appearing for the petitioners would submit that the transactions are purely civil in nature and the learned Magistrate without considering the facts has mechanically taken cognizance of the offences and issued summons. The complaint is filed with delay of nearly 16 years. The suit filed by the 2nd respondent for specific performance vide O.S.No.409 of 2006 was decreed in favour of the 2nd respondent. However, in the appeal filed by the 1st petitioner herein, the decree was set aside by the learned District Judge, in favour of 1st petitioner.

5. On the other hand, it was argued on behalf of the respondents that the petitioners having taken the amount from the 2nd respondent failed to register the land in his favour. Further to cheat the 2nd respondent, transferred the said land in favour of A4. During the course of investigation under the influence of the police officer, the complaint was closed. However, adequate reasons were given by the learned Magistrate to take cognizance and try the petitioners for the criminal offences.

6. Admittedly, the transactions pertain to the year 1998. In the year 2006, the 2nd respondent preferred suit for specific performance. The learned Senior Civil Judge directed the 1st petitioner to execute the sale deed in favour of the 2nd respondent by judgment dated 11.09.2008. However, the said judgment was set aside by the District Court on 11.04.2012 on the ground that the 2nd respondent was not in a position to prove the execution of the sale agreement and there is a delay of nearly six years in filing the suit. The 2nd respondent failed to prove the transaction before the trial Court and substantiate his claim of making payment towards sale consideration to be correct.

7. The civil Court has considered the transaction in between the 1st petitioner and the 2nd respondent regarding the sale transaction and framed issues accordingly. Though the trial Court found that the 1st petitioner had to execute the sale deed in favour of the 2nd respondent, the said direction was set aside by the learned District Judge on Appeal. The said litigation is still pending before this Court. However, when the

District Court has found that the 2nd respondent was not eligible for direction from the Court to register the plot of the 1st petitioner in his favour, the learned Magistrate has erred in finding that *prima facie* the offence of cheating or criminal misappropriation was made out.

8. In the order of the learned Magistrate dated 25.11.2017 except narrating the facts that transpired in between the parties, it is not mentioned as to how the transactions make out any *prima facie* case either for cheating or criminal misappropriation. The fact that the transaction pertains to the year 1997 and the 2nd respondent having lost before the civil Court has approached the criminal, were not considered by the Magistrate. Apparently to coerce settlement, criminal complaint was filed.

9. Issuance of summons in a criminal case is a serious issue. Every transaction pertaining to the sale if not registered in favour of the purchaser, would not be a criminal offence. Having considered the facts of the case in appeal filed by the 1st petitioner, the District Court found that the direction of the

trial Court to register the plot in the name of the 2nd respondent was incorrect. When the Appellate Court has found that the 1st petitioner need not register the plot in favour of the 2nd respondent, the learned Magistrate has committed error in asking the petitioners to face criminal trial for the offence of cheating regarding the very same sale transaction.

10. The transaction is purely civil in nature. Being unsuccessful before the civil Court, the criminal complaint is filed nearly 18 years after the alleged sale transaction, which cannot be permitted.

11. To attract an offence of cheating there should be an act of deception played by the person. Deceived by the said act, the person should have delivered the property. There are no such allegations in the present complaint. It is not in dispute that the 1st petitioner was the owner of the plot and decided to sell the plot. However, the sale transaction could not be completed for various reasons. It cannot be said that in the present circumstances, the petitioners had an intention to cheat the 2nd respondent from the inception of the transaction. Further,

the question of criminal misappropriation does not arise in the present circumstances. Accordingly, petitioners succeed and proceedings against them are liable to be quashed.

12. In the result, the proceedings against the petitioners/A1 & A4 in C.C.No.742 of 2017 on the file of XX Metropolitan Magistrate, Cyberabad at Malkajgiri, are hereby quashed.

13. Criminal Petition is allowed.

K.SURENDER, J

Date : 09.01.2024

Note: LR copy to be marked.

B/o

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.5435 of 2018
Dt.09.01.2024

kvs