

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.10575 OF 2022

Between:

Kasula Karunakar Goud and others ... Petitioners

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.02.2023
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 the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 10575 of 2022

% Dated 06.02.2023

Kasula Karunakar Goud and others ... Petitioners

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another. ... Respondents

! **Counsel for the Petitioner:** Sri T.Prasanna Kumar

^ **Counsel for the Respondents:** Sri S.Sudershan
Additional Public Prosecutor for R1

Sri Police Venkat Reddy for R2

> **HEAD NOTE:**

? **Cases referred**

¹ 2023 LiveLaw (SC) 67

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10575 of 2022****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against petitioners/A1 to A3 in C.C.No.312 of 2022 on the file of XX Metropolitan Magistrate, at Medchal, Cyberabad.

2. The 2nd petitioner filed a complaint stating that he executed registered agreement of sale-cum-General Power of Attorney in favour of A1 on 09.12.2014 for a consideration of Rs.80.00 lakhs in respect of land admeasuring Acs.1.11 gts in Sy.No.35, situated at Thumkunta village. At the time of registration of the document, the petitioners allegedly shown two DDs Rs.40.00 lakhs in favor of the 2nd respondent. Believing the accused, the 2nd respondent registered the document. However, the 2nd respondent found that the said DDs which were shown to have obtained in his favour for Rs.40 lakhs each were in fact taken for an amount of Rs.400/- and the said DDS were fabricated as Rs.40.00 lakhs. For the said reason, the petitioners have cheated the 2nd respondent. Accordingly, complaint was filed and petitioners were charge-

sheeted for the offence under Sections 406, 420, 465, 467, 471, 474 r/w 34 IPC and 506 of IPC.

3. Learned counsel for the petitioners would submit that the said registered document was in the year 2014 and the present complaint is filed with a delay of eight years making false allegations. He further submits that as seen from the said document No.3786 of 2014 dated 09.12.2014, it is a registered document and it is mentioned in the document that total consideration of Rs.25,50,000/- was already received. In the said circumstances, the allegation that Rs.80.00 lakhs DD's were shown and got the document registered in their favour cannot be accepted. Since there is steep increase in the prices of land, false complaint is made to extract money from the petitioners.

4. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Usha Chakraborty and another v. State of West Bengal**¹ and argued that when the transactions are predominantly civil in nature, when it is given

¹ 2023 LiveLaw (SC) 67

a cloak of criminal offence, the same has to be quashed. Criminal proceedings cannot be filed to intimidate the parties.

5. On the other hand, learned counsel appearing for the 2nd respondent would submit that the 2nd respondent and petitioners are all closely related. For the said reason, the 2nd respondent registered the land in favour of 1st and 2nd petitioners with an understanding that Rs.80.00 lakhs would be given and the value shown in the document is government value. Having shown the said DDs for Rs.80.00 lakhs the said DDs were not handed over prior to registration stating that they would be handed over after registration. After registration, the DD's were not given. In the said circumstances, civil suit in O.S.No.351 of 2018 was filed for cancellation of the agreement of sale-cum-GPA executed in favour of the 1st petitioner and the same was decreed in favour of the 2nd respondent. The II Additional District Judge, Medchal-Malkajgiri while passing orders in O.S.No.351 of 2018 cancelled the document executed in favour of petitioners 1 and 2. Further, the DDs which were produced by the 1st and 2nd petitioners were enquired during investigation and the

Bank has intimated the police that the said bankers cheques were issued for Rs.400/- and not Rs.40.00 lakhs.

6. Having perused the record, the document in question is agreement of sale-cum-GPA with possession executed by the 2nd respondent in favour of A1 which is document No.3786 of 2014. A1 thereafter executed sale deed in favour of A2, who is his brother, which is document No.1370 of 2016, dated 12.05.2016. The allegation of the 2nd respondent is that said document was executed when two DDs for Rs.40.00 lakhs each were shown to him and believing them, 2nd respondent registered the property. The police, during the course of investigation examined the Officer of the State Bank of Hyderabad and DDs bearing Nos.600017232740 and 600017232741 and according to investigation, it was informed by the Bank that they issued for Rs.400/- and not for Rs.40.00 lakhs.

7. Though there is a mention that the 1st and 2nd petitioners have shown the bankers' cheques, the said document is of the year 2014 and executed in favour of A1. It is the bald statement and assumption of the 2nd respondent that the 2nd

petitioner was also involved in fabricating the DDs. The said DDs are not sent to the expert to ascertain that the 2nd petitioner/A2 is involved in any manner in fabricating the said DDs.

8. The alleged fraud committed by A1 for transferring the property on to his name and the subsequent transfer by A1 in favour of A2, both the documents were questioned before the civil court and the civil court had cancelled the said document.

9. To attract an offence under Section 420 IPC, there should have been a fraudulent inducement subsequent to which the property must have been delivered. The first petitioner had shown such DDs and the registration was done in his favor. Whether there was any such fraudulent misrepresentation and as to any DDs were taken in the name of the 2nd respondent by the 1st petitioner, can only be explained during the course of trial and same cannot be ascertained in a quash proceeding.

10. Under Section 92 of Indian Evidence Act, when the terms of any disposition of property is reduced into the form of document, no evidence would be admitted between the parties

contradicting its terms. The said provision would not come to the aid of the petitioners for the reason of fraud allegedly being played upon, pursuant to which the document was registered in favour of A1.

11. For the foregoing discussion, the proceedings against A2 in C.C.No.312 of 2022 on the file of XX Metropolitan Magistrate are only quashed since no useful purpose would be served in continuing the criminal prosecution against him. However, the trial Court is directed to proceed against A1 and A3 for the alleged offences against them.

12. Accordingly, the Criminal Petition is partly allowed. As a consequence, miscellaneous applications pending, if any, in this Criminal Petition, shall stand closed.

K.SURENDER, J

Date :06.02.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10575 of 2022

Date: 06.02.2023

kvs