

HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

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Criminal Petition No.11242 OF 2022

Between:

Sarwan agarwal 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

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*K.SURENDER, J*

\* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 11242 of 2022

% Dated 06.02.2023

# Sarwan agarwal 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 C.Sharan Reddy

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

Sri Bankatlal Mandani for R2

>**HEAD NOTE:**

? **Cases referred**

<sup>1</sup> (2009) 7 Supreme Court Cases 444

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL PETITION No.11242 OF 2022**

**ORDER:**

1. Petitioners are being prosecuted for the offences under Sections 406 and 420 of IPC on the file of IX Additional Metropolitan Magistrate at Medchal on the basis of private complaint filed by the 2<sup>nd</sup> respondent and taken cognizance by the learned Magistrate.

2. Briefly, the facts of the case are that the 2<sup>nd</sup> respondent, his wife along with these petitioners purchased undivided share in open land at Dullapally village, Quthbullapur Mandal, Medchal Malkajgiri District to an extent of Ac.1.30 gts in Sy.No.155, Ac.0.11.332 gts in Sy.No.154 & Ac.0.13.444 gts in Sy.No.154 admeasuring Acs. 2-14.776 gts. There were civil disputes in respect of the land and the cases were pending before the civil court.

3. It is alleged that the 2<sup>nd</sup> respondent issued a notice to these petitioners on 11.06.2018 asking these petitioners not to alienate their share in the entire property without giving first option of purchase to the 2<sup>nd</sup> respondent. However, these petitioners issued reply notice on 26.07.2018 stating

that there was no such understanding and mentioned that the 2<sup>nd</sup> respondent had already refused offer of purchase of share of these petitioners. The 2<sup>nd</sup> respondent's wife filed O.S.No.316 of 2018 on the file of XVI Additional District & Sessions Judge, Cyberabad at Malkajgiri, against these petitioners for partitioning the property. The Civil Court by order dated 03.10.2018 in I.A.No.1152 of 2018 directed these petitioners not to alienate the property and such interim orders were extended up to 28.02.2019.

4. The allegations in the present complaint are that the petitioners have sold the said property through four sale deeds on 23.02.2019 and 28.02.2019 when the interim orders were subsisting. For the reason of selling the property without demarcating the share of the 2<sup>nd</sup> respondent and his wife, which is 1/6<sup>th</sup> share in the property, a criminal complaint was filed with the police Pet Basheerabad and the same was registered for the offence under Section 420 r/w 34 of IPC.

5. The police having investigated the case filed final report stating that the dispute was purely civil in nature and accordingly filed final report.

6. The 2<sup>nd</sup> respondent filed protest petition before the XXII Metropolitan Magistrate, Cyberabad at Medchal. The learned Magistrate, having examined P.Ws.1 and 2 found that there was *prima facie* evidence of criminal misappropriation and cheating against these petitioners. Accordingly, learned Magistrate directed issuance of summons to these petitioners to be tried for the said offences. Learned Magistrate found that according to the sale deeds, the 2<sup>nd</sup> respondent and his wife and these petitioners have jointly purchased the property, however, these petitioners have alienated the said property to third parties. In the civil suits that were filed by the wife of the 2<sup>nd</sup> respondent, Petitioners/accused admitted that the 2<sup>nd</sup> respondent and his wife have rights in the property and also stated in the written statement that there is no property available for partition and the 2<sup>nd</sup> respondent does not have any right over the subject land. On the said basis, learned Magistrate found that *prima facie* case of Section 420 IPC and 406 of IPC are made out. Learned Magistrate also relying on the judgment of Hon'ble Supreme Court found

that pendency of civil suit does not bar criminal prosecution.

7. After taking cognizance, the petitioners filed petition under Section 245 of Cr.P.C with a prayer to discharge them from the case, mainly on the ground that by virtue of Section 44 of the Transfer of Property Act, the petitioners have right to alienate their share in the joint property. However, the learned Magistrate found that though the property was sold, the petitioners have failed to mention the details of the undivided share and boundaries of the 2<sup>nd</sup> respondent and his wife before selling the property. When the boundaries did not indicate the property of the 2<sup>nd</sup> respondent, it implies fraudulent intention of the petitioners. Since several factual aspects are involved including the permissibility under Section 44 of the Transfer of Property Act, learned Magistrate refused to discharge the petitioners. Aggrieved by the said dismissal of discharge, petitioners herein approached the learned Sessions Court by filing Criminal Revision Petition No.31 of 2022. The learned Sessions Judge found that since the documents do not disclose the details of 1/6<sup>th</sup> share of the property, dismissal

of discharge application by the learned Magistrate was proper.

8. Learned counsel appearing for the petitioners would submit that though the interim orders that were granted in I.A.No.1152 of 2018 in O.S.No.316 of 2018, whereby the civil court ordered the petitioners not to alienate the property, the petitioners did not have knowledge and notices in the said I.A were also not served on these petitioners. The docket proceedings in the interlocutory application dated 15.04.2019 would show that notices to be served on these petitioners was awaited. For the said reason, it cannot be said that there is a violation of Civil Court's order.

9. Learned counsel further submits that it is not in dispute that only 5/6<sup>th</sup> share of these petitioners was sold and 1/6<sup>th</sup> share that belongs to the 2<sup>nd</sup> respondent and his wife was not alienated. At best, the sale of land pending Civil Court's order would result in disobedience, which is punishable under Order 39 Rule 2(a) of CPC and not under Section 420 or 406 of IPC. Accordingly, learned counsel prayed to quash the criminal proceeding as the disputes are purely civil in nature.

10. On the other hand, learned counsel appearing for the 2<sup>nd</sup> respondent would submit that Section 44 of Transfer of Property Act, though enables a person to sell his part of the share, the share of the 2<sup>nd</sup> respondent and his wife are nowhere to be found in the sale deeds which were executed in favour of third parties by the petitioners and does not indicate the share of the 2<sup>nd</sup> respondent and his wife. In the event of 1/6<sup>th</sup> of the property of 2<sup>nd</sup> respondent being set aside, it would have been reflected in the sale deeds as one of the boundaries to the plot sold by the petitioners. When there is no land available, it is evident that these petitioners have cheated the 2<sup>nd</sup> respondent, for which reason, criminal prosecution has to go on against the petitioners for criminal misappropriation and cheating.

11. Having gone through the documents filed by both the parties, it is not in dispute that only 5/6<sup>th</sup> of the property out of the total extent jointly held by the petitioners and 2<sup>nd</sup> respondent and his wife was sold by these petitioners. Admittedly none of the boundaries in any of the sale deeds show the land of the 2<sup>nd</sup> respondent herein.



12. For the sake of convenience, Section 44 of the Transfer of Property Act is extracted hereunder:

**“44. Transfer by one co-owner.**—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor’s right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred. Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

13. As seen from the provision, there is no restriction on the part of joint owners to sell the part of undivided land that falls to their share. No law prohibits selling of property of a co-sharer to outsiders and there is no condition that a co-sharer has to sell his part of the property to other co-sharer, who is not willing to sell the property or offer him the land for purchase. However, the possession of the land in the undivided share cannot be handed over to the vendee unless the property is partitioned by metes and bounds either amicably or in the form of decree by a competent civil court.

14. Apparently, the purchasers of the property cannot have a better title than what the vendor of the property has. In the present case, when the petitioners have sold the

property without being partitioned, the possession of such 5/6<sup>th</sup> part of the undivided land can only be given after partition and the 1/6<sup>th</sup> share of the 2<sup>nd</sup> respondent and his wife being demarcated.

15. Since the 2<sup>nd</sup> respondent's 1/6<sup>th</sup> share was not entrusted to the petitioners herein, the question of any misappropriation does not arise and further only 5/6<sup>th</sup> part of the property was sold by these petitioners. The sale transaction by these petitioners to their vendors is purely a civil transaction as held by the Hon'ble Supreme Court in the case of **Ramdas v. Sitabai and others**<sup>1</sup>. The sale of undivided share of land is permissible even without the consent of the co-sharer. However, the possession of the property can only be handed over after demarcating. Since the issues involved are purely civil in nature and parties have already approached civil court by filing partition suit, this court deems it appropriate to quash the proceedings against these petitioners as none of the ingredients of either Section 406 or Section 420 of IPC are made out.

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<sup>1</sup> (2009) 7 Supreme Court Cases 444

16. In the result, the impugned order in CrI.R.P.No.31 of 2022 on the file of II Additional District & Sessions Judge, Medchal is set aside and the proceedings against the petitioners in C.C.No.845 of 2020 on the file of IX Additional Metropolitan Magistrate at Medchal, are hereby quashed.

17. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous petitions, if any, shall stand closed.

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**K.SURENDER, J**

Date:06.02.2023

Note: LR copy to be marked.

B/o.kvs

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

CRIMINAL PETITIOIN No.11242 OF 2022

Date: 06.02.2023

kvs

