

M/S. Speed Projects And Infrastructure Pvt. Ltd. Vs State Of Telangana

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: Sept. 17, 2021

Acts Referred: Indian Penal Code, 1860 " Section 120B, 405, 406, 415, 420
Code of Criminal Procedure, 1973 " Section 156(3), 161, 200, 482
Arbitration and Conciliation Act, 1996 " Section 9

Hon'ble Judges: K. Lakshman, J

Bench: Single Bench

Final Decision: Allowed

Judgement

„

1. This Criminal Petition is filed by the petitioners under Section - 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C." to quash",

the proceedings in Crime No.883 of 2020 of Narsingi Police Station, Cyberabad Commissionerate.",

2. The petitioners herein are accused Nos.1 and 2 in the said crime registered on the complaint referred under Section - 156 (3) of the Cr.P.C. The,,

offences alleged against them are under Sections - 420, 406 and 120B of the IPC.",

3. Heard Mr. E. Uma Maheshwar Rao, learned counsel representing Mr. Sanjay Kishore, learned counsel for the petitioners, and Mr. Mohd.",

Islamuddin Ansari, learned counsel representing Mr. Ghanta Sridhar, learned counsel for respondent No.2 and learned Assistant Public Prosecutor",

appearing on behalf of respondent No.1 - State.,

4. CASE OF PROSECUTION:,,

i) Respondent No.2 is the father and GPA Holder of Chirla Niyanthi Reddy.,

ii) She is the absolute owner of land, admeasuring Ac.0-20 guntas in Survey Nos.163/E, 174/A, 174/AA, 174/EE, 174/D, 176/A, 176/AA, 176/E,,

176/EE and 176/D, situated at Kokapet Village, Rajendra Nagar Mandal, Ranga Reddy District.",

iii) Accused No.1 represented by its Managing Director, accused No.2 and accused No.3 - Mr. Vajrender Rao approached respondent No.2 and",

expressed their interest to take the aforesaid land apart from the lands of other abutting owners for development of the said land into a residential /,

commercial villas, named as "Legend Chimes".,

iv) Pursuant to the said request, the daughter of respondent No.2 entered into a Development Agreement - cum - General Power of Attorney",,,

(DAGPA) on 06.01.2007 with accused No.1 - M/s. Speedy Projects and Infrastructure Private Limited, represented by accused Nos.2 and 3",,,

empowering them to manage, look after and administer the affairs of the said property and also to apply for construction permission, and to enter into",,,

agreement of sale, to receive advances or entire sale consideration and to execute sale deeds etc.",,,

v) The time stipulated for completion of the project was six (6) years. However, accused Nos.2 and 3 representing accused No.1 breached the terms",,,

and conditions of the said DAGPA by not completing the project within the stipulated period.,,,

vi) Moreover, the Club House and the amenities which come under the lifestyle development areas admeasuring 5084 square yards together with a",,,

building comprising of ground plus four upper floors admeasuring 75,000 square feet was sold twice, and thereby committed breach of trust.",,,

vii) Accused No.1 sold out the Club House to accused No.11 - M/s. Legend Estates Private Limited, represented by its Managing Director, Mr. B.",,,

Nageswara Rao, accused No.12 under a sale deed dated 20.04.2011 without any supporting sale consideration.",,,

viii) Accused No.11, in turn, sold the Club House to accused No.13, represented by its Managing Director and Director, Mr. Pratap Jadeja and Mrs.",,,

B.Sunitha, wife of B. Nageswara Rao, accused Nos.14 and 15, respectively.",,,

ix) Accused No.15 is none other than the wife of accused No.12 and she is one of the Directors in accused No.13 - M/s. Blue Planet Courtyard,,,

Private Limited. This shows the criminal intent of the accused in commission of the offences alleged against them.,,,

x) The accused brought into existence a Memorandum of Understanding dated 10.07.2007 and a Supplementary Deed dated 08.03.2021 to claim,,,

ownership over the said Club House as if he is representing the land owners based on the DAGPA.,,,

xi) DAGPA never empowered accused No.1 to sell the Club House.,,,

xii) In a meeting held with the land owners on 09.11.2014, the accused informed them that none of their Villas have been mortgaged or encumbered",,,

with any Governmental or Quasi-Governmental Authorities. But, later the complainant came to know that Villa No.48 allotted to her was mortgaged to",,,

HMDA in 2009 itself and continues to be mortgaged and its release from mortgage is subject to the completion of project, which has been abandoned",,,

by the accused.,,,

xiii) In the said meeting dated 09.11.2014, it was also informed by accused Nos.1, 11 and 12 that the Club House is the jewel of the project",,,

and it has not been either mortgaged or encumbered in any way, whereas, in reality, accused had already sold the said club house on 20.04.2011.",,,

xiv) The accused behind the back of the complainant sold away common properties of the complainant and other land owners without any,,

authorization. Thus, the accused played fraud on all the land owners.",,

xv) Land owners filed A.O.P. No.656 of 2016 against accused Nos.1, 2, 11 and 12 before the IV Additional District Judge, Ranga Reddy District,",,

wherein accused Nos.1 and 2 filed counter affidavit stating that they did not sell the club house to accused No.11, and thereby misled the Court.",,

xvi) Accused No.2 in collusion and criminal conspiracy with each other, accused No.11 transferred an amount of Rs.8.00 Crores to accused No.1",,,

under MOU dated 10.07.2007 and the same was never informed to the complainant and other land owners. In fact, the said amount ought to have",,,

been distributed amongst the land owners. Now, accused No.11 is asking the complainant and other land owners to return the said amount which",,,

shows the intention of accused in cheating the complainant and the land owners.,,,

xvii) As per Clause - 34 of the DGPA, the complainant and other land owners would get one Villa of 3500 sft. in a plot size of 500 square yards each,",,

and so also the developer. However, they were allotted 4000 sft. In a plot of 500 square yards. But, accused Nos.1 and 11 clandestinely have allotted",,,

themselves larger size Villas with an area of 14000 sft.,,

xviii) Based on the application of accused No.1, HMDA had released a revised permission on 28.07.2017, and as per the said revised permission, a",,,

park was converted into 10 Villas which were clandestinely allotted among the accused, even though the park land remains an undivided share of the",,,

complainant and the land owners as per the DAGPA.,,

xix) Accused No.1 mortgaged Villa Nos.40 to 53 and 26 to 39 and later Villa Nos.172 and 173 and accordingly executed mortgage deeds in favour of,,

HMDA and, thereafter the HMDA had granted permission on 06.01.2010. But, accused Nos.1, 2, 11 and 12 in furtherance of their criminal intention",,,

colluded with each other and sold mortgage Villa Nos.49, 52 and 172 to third parties and keeping the said fact in dark, the accused got the revised",,,

permission from HMDA on 03.06.2013.,,

xx) Thus, the accused played fraud on the complainant and the land owners and cheated them by committing criminal breach of trust etc.",,

5. SUBMISSIONS ON BEHALF OF PETITIONERS:,,

i) Petitioner No.1 is the absolute owner and possessor of land admeasuring Acs.4-20 guntas in Sy. Nos.161, 181, 183, 184 and 185 of Kokapet Village,",,

Rajendranagar Mandal.,,

ii) The individuals owning their respective land parcels in Sy. Nos.158, 161, 162, 167/4 and 171 to 187, situated in Kokapet, intended to pool their lands",,,

and undertake common development into a residential - commercial lifestyle space. Petitioner No.1 accepted the said proposal and accordingly,,

entered into 38 separate registered DAGPAs, and as per which, Acs.38.06 guntas of land was given to petitioner No.1 for development.",,

iii) Accused No.1 approached petitioner No.1 with a proposal to undertake development of the property by constructing high end luxury Villas. After,,

taking consent of all the land owners, petitioner No.1 entered into an MOU dated 10.07.2007 for development of the property and accordingly",,,

petitioner No.1 handed over the possession of the aforesaid land to accused No.11 for construction of Villas.,,

iv) Pursuant to the said MOU, a registered Supplementary Agreement was executed on 08.03.2011 between petitioner No.1 and accused No.11. As",,,

per the said Supplementary agreement, the land owners were allocated 78 Villas, petitioner No.1 was allocated 25 Villas, while accused No.11 was",,,

allocated 150 Villas.,,

v) As per Clause - 18 of MOU and Clause - 4 (iv) and (v) of the Supplementary Agreement, the Club House / Resort land and its appurtenant area",,,

admeasuring 5086 square yards was owned by accused No.11, and he had a right to alienate it. However, all the land owners shall have right to enter",,,

the Club house and utilize its services/ facilities, but neither land owners, nor petitioner No.1 shall have any title over the said Club House.",,

vi) Subsequently, accused No.11 added additional land of about Acs.7-16.84 guntas and obtained a revised sanction plan from HMDA on 03.06.2013.",,

Due to the said revised sanction plan, certain changes were made with regard to the internal road, size of plots etc., and, therefore, accused No.11",,,

obtained third revised sanction plan from HMDA.,,

vii) In terms of the MOU, several villa plots including villa plot No.48 of the complainant were mortgaged in favour of the HMDA, which selects the",,,

Villas for mortgage purpose and, therefore, petitioner No.1 had no role in selection of villas for mortgage.",,

viii) As per Clause - 3 of MOU, accused No.11 deposited Rs.8.00 Crores with petitioner No.1 by way of refundable interest free deposit. Though, it",,,

was to be repaid after completion of the Project work, but the land owners insisted to obtain possession of their villas in an incomplete stage for their",,,

personal reasons. Thus, accused No.11 demanded the repayment of Security Deposit for handing over possession of villas. With no alternative",,,

petitioner No.1 was compelled to pay back the said amount to accused No.11 by way of transferring its personal property under eight registered sale,,

deeds.,,

ix) There are civil and criminal proceedings initiated by the land owners and petitioner No.1.,,

x) Referring to the above, the learned counsel for the petitioners would submit that the complaint does not make out commission of any of the",,,

offences alleged against the petitioners. The dispute between the petitioners and the complainant is civil in nature and does not satisfy any of the basic,,

ingredients of the offences alleged in the complaint.,,

xi) As per Clause - 18 of the MOU and Clause - 4 (iv) and (v) of the Supplementary Agreement, the Club House and its appurtenant area is",,,

exclusively owned by accused No.11. Therefore, the allegations that petitioner No.1 sold the Club House to accused No.11 keeping the land owners",,,

and the complainant in the dark, and thereby played fraud on them and cheated them etc. are all incorrect. In view of the said MOU and the",,,

Supplementary Agreement, the question of cheating by the petitioners also does not arise.",,

xii) He would further submit that the complaint does not attract the ingredients of criminal breach of trust under Section - 406 of IPC.,,,

xiii) Learned counsel would also submit that whatever transactions took place were in writing and there was no hide and seek game being played. In,,

fact, the complainant and the other land owners entered into DAGPA with petitioner No.1, represented by petitioner No.2 and accused No.3 for",,,

development of their respective land into a common pool apart from the land of petitioner No.1. Pursuant to the said DAGPA, petitioner No.1 entered",,,

into a MOU on 10.07.2007 for undertaking construction, and thereafter, a supplementary deed on 08.03.2011, wherein allocation of ratios of",,,

respective parties have also been mentioned and, thus, everything was on paper. In view of the same, the question of petitioners playing fraud",,,

cheating them and committing the breach of trust etc., does not arise. Moreover, any violation of term that occurs would attract a civil remedy and not",,,

a criminal remedy as alleged in the complaint.,,

With the aforesaid submissions, learned counsel for the petitioners sought to quash the proceedings against the petitioners in the aforesaid crime.",,

6. SUBMISSIONS ON BEHALF OF RESPONDENT No.2:,,

i) Learned counsel for respondent No.2 would submit that there are specific allegations against each of the accused made by the complainant. After,,

going through the entire complaint filed under Section - 200 of Cr.P.C., the learned Magistrate after satisfying himself, referred the same to the police",,,

under Section - 156 (3) of Cr.P.C. Pursuant to the same, the police registered the aforesaid crime against the petitioners and others and took up",,,

investigation.,,

ii) He would further submit that the petitioners and other accused in furtherance of their common intention to cheat the complainant and other land,,

owners, played fraud on them, cheated them and committed breach of terms and conditions of DAGPA and, thus, all of them are liable to be",,,

prosecuted in a Court of law for the aforesaid offences.,,

iii) He would further submit that right from the beginning, petitioner No.1 started cheating the complainant and other land owners as is evident by the",,

DAGPA.,,

With the aforesaid submissions, learned counsel sought to dismiss the criminal petition.",,

7. SUBMISSIONS ON BEHALF OF PROSECUTION:,,

S.No.,Case Number,Cause title

1.,OS No.600/2009,Mrs.B. Kalyani v. Kondakalla Balraj & others

2.,OS No.363/2015,Mrs.Soudamma Doughter v. SPIPL & others

3.,Consumer Case No.63/16,"Mr. Phanindra Dasika & others v. SPIPL & ors.

4.,Consumer Case No.30/16,"Smt.Praveena Mallika Kanteti Chimes Residents v. SPIPL & ors.

5.,Consumer Case No.46/16,"Dr.K. Sanjeeva Reddy & 4 ors v. State & ors.

6.,Consumer Case No.31/16,"Mr.Bhupendra Chopra & Samidha Chimes Residents v. SPIPL & ors.

7.,WP No.26701/2016,Chirla Niyanti Reddy v. State & ors.

8.,AOP No.298/2017,"E. Uttam Kumar & 5 ors v. SPIPL & Legend & ors

9.,WP No.32521/2017,Legend Estates Pvt. Ltd. v. The State & ors.

10.,CMA No.859/2017,E. Uttam Kumar & 5 others v. SPIPL & ors.

11.,WP No.26182/2017,V. Vajrender Rao v. The State & Ors.

12.,WP No.26795/2017,Legend Estates v. The State & Ors.

13.,WP No.25956/2017,"Jai Prakash Naragoni & 6 ors v. The State & ors

14.,CMA No.856/2017,E. Uttam Kumar & 5 ors v. SPIPL & Ors.

15.,WP No.25931/2017,"Chimes Residence Association v. State & ors.

16.,Arb.Case of 2018,"E. Uttam Kumar & 5 ors v.M/s. SPIPL & ors.

17.,OS No.198/2020,V. Vajrender Rao v. Speed Projects & 6 ors.

18.,CC No.803/2020,V. Vajrender Rao v. State & ors.

19.,WP 19234/2020,Dr.Sanjeeva Reddy v. State & ors.

v) In the said private complaint also, respondent No.2 has narrated all the events right from 06.01.2007, on which date, the daughter of respondent",,

No.2 and other land owners executed DAGPA with accused Nos.1 to 3 till issuance of revised permission i.e., 28.07.2017. Thus, respondent No.2 had",,

filed the said complaint with abnormal delay. There is no explanation for the delay caused in filing the complaint under Section - 200 of Cr.P.C.,,

vi) As stated above, with regard to the very same property, the proceedings in the above referred cases are pending, and the issues which were",,

comprehensively raised by the parties have to be decided by this Court in the above writ petitions and CMAs and also by the Civil Court in the above,,

civil cases. As stated above, W.P. No.26701 of 2016 filed by daughter of respondent No.2 is also pending for adjudication. Respondent No.2 did not",,

mention about filing and pendency of the same in his complaint filed under Section 200 of Cr.P.C. Thus, there is a suppression of fact.",,

vii) It is also relevant to note that Mr. Chirla Baba Prasad Reddy is the father of Chirla Niyanthi Reddy and he is the General Power of Attorney,,

Holder of his daughter, whereas, he filed the said complaint under Section - 200 of Cr.P.C. in his individual capacity instead of filing the said complaint",,

in the capacity of GPA Holder of his daughter, C. Niyanthi Reddy. Admittedly, respondent No.2 is not an aggrieved party and he cannot be the",,

complainant. At the most, he has to represent his daughter in terms of the GPA executed by his daughter in his favour. Instead of filing the complaint",,

in the capacity of GPA Holder, he filed the complaint in his individual capacity, that too with abnormal delay.",,

viii) The allegation of respondent No.2 in the complaint is that the land owners including his daughter have undivided share in the Club House and that,,

accused No.1 sold the said Club House to accused No.11, and it amounts to cheating and criminal breach of trust on the part of the accused. A",,

perusal of MOU dated 10.07.2007 and the supplementary agreement dated 08.03.2011 would reveal that in Clause - 18 of MOU and Clause - 4 (iv),,

and (v) of the Supplementary Agreement, it is specifically mentioned that the Club House / Resort land and its appurtenant area admeasuring 5086",,

square yards would be exclusively owned by and belong to Legend Estates (accused No.11), as the Club House is for the explicit purpose of providing",,

recreational and cultural centre, it was also expressly agreed that the Landowners shall have the right to enter the Club house, but neither the",,

Landowners nor the petitioners have any right or claim or interest or title over the club house. Thus, according to the learned counsel for the",,

petitioners, in addition to the landowners, the Club house was also intended to enroll members from outside the community as it was planned to be a",,

substantial commercial / lifestyle space. Therefore, in supplementary agreement, more particularly, Clause (v), it is specifically mentioned that M/s. ,,

Legend Estates has a right to alienate the Club house to anyone, provided the third party purchasers uphold the said primary objectives of the Club",,,

house at all times and the same principle is binding on all subsequent title holders of the Club house. Referring to the same, learned counsel for the",,,

petitioners would submit that there was never any agreement to grant the Landowners an undivided share in the Club house, but only the right to",,,

membership and access to use it was provided. Therefore, there is no breach of trust or cheating committed by the petitioners herein. There is not",,,

even a breach of contract with regard to the said Club house. There is no mention either in the DAGPA, dated 06.01.2007, or in MOU dated",,,

10.07.2007 or in Supplementary Agreement dated 08.03.2011 that the landowners will be given undivided share in the Club house.,,,

ix) With regard to the allegation that accused No.1 to 3, 11 and 12 have played fraud on all the land owners including the daughter of respondent No.2",,,

with regard to mortgaging the villa of complainant viz., Villa No.48, in Clause - 16 of the DAGPA, it is clearly mentioned that HMDA (earlier known",,,

as HUDA) would have the sole discretion to select which parts of the land / houses are to be mortgaged and the complainant has evidently agreed to,,

the same in the very beginning itself. The mortgage of the said Villa No.48 in favour of the HMDA is in accordance with the HMDA Regulations and,,

the same will be released once the project is completed. Referring to the same, the learned counsel for the petitioners would submit that the mortgage",,,

is part of the terms and conditions of the said DAGPA, MOU and the Supplementary Agreement and, therefore, there is no criminal breach of trust",,,

and cheating on the part of the petitioners herein.,,,

x) Referring to Clause - 3 of the MOU, the learned counsel for the petitioners would submit that accused No.11 had deposited an amount of Rs.8.00",,,

Crores with accused No.1 by way of refundable interest free deposit, and once the possession of the villas were taken by the landowners, accused",,,

No.1 was compelled to pay back the Security Deposit to accused No.11 in kind by way of transfer of its personal property in favour of the nominees,,

of Legend Estates through eight (8) registered sale deeds, thereby representing a value equivalent to the Security Deposit. The said amount of Rs.8.00",,,

Crores was only a security deposit and respondent No.2 has no right or claim on the same and, therefore, the question of petitioners herein committing",,,

criminal breach of trust and cheating does not arise.,,,

xi) With regard to the revised plan, it is relevant to note that accused Nos.1 and 2 have obtained permission from HMDA dated 06.01.2010, but",,,

accused No.11 has obtained revised permission dated 28.07.2017.,,

xii) Thus, the above stated facts would reveal that there are disputes between the daughter of respondent No.2 and the landowners and the accused",,,

with regard to the construction of the above said villas, a gated community in terms of the DAGPA dated 06.01.2007, MOU, dated 10.07.2007 and the",,,

supplementary agreement dated 08.03.2011. According to the land owners, developer has not completed the villas within the time and in terms agreed",,,

therein. Thus, there is a violation of terms and conditions of the DAGPA and MOU and the Supplementary Agreement.",,,

xiii) As stated above, the proceedings in the above suits, writ petitions, consumer cases etc. are pending. There are allegations and counter allegations.",,,

This Court vide order dated 24.04.2018 directed the parties to maintain status quo. Vide order dated 31.08.2017 in CMA MP No.1444 of 2017.,,

restrained accused Nos.11 and 12 from dealing with the subject property.,,

xiv) As discussed above, respondent No.2 has filed the present complaint in September, 2020, that too during the pendency of the proceedings",,,

including W.P. No.26701 of 2016. Respondent No.2 had not mentioned about filing of the said writ petition and pendency of the same in the complaint,,

filed under Section - 200 of Cr.P.C.,,

xv) Section - 405 of IPC deals with criminal breach of trust and Section - 415 of IPC deals with cheating. To attract the charge as defined under,,

Section - 415 of IPC, there should be fraudulent or dishonest inducement which is an essential ingredient for the said offence. To attract the offence",,,

under Section - 420 of IPC, the essential ingredients are; (a) delivery of property or person; and (b) make or, alter or destroy valuable security or",,,

anything signed or sealed and capable of being converted into valuable security. The said principle was laid down in Prof. R. K.Vijayasathya v.,,

Sudha Seetharam (2019) 16 SCC 739. The very same principle was also laid down in Dr. Lakshman v. State of Karnataka (2019) 9 SCC 677.,,

xvi) Learned Assistant Public Prosecutor as well as learned counsel for respondent No.2 referring to the principle laid down in M/s. Neeharika,,

Infrastructure Private Limited v. State of Maharashtra AIR 2021 SC 1918, would submit that there are several factual aspects and the matter is at",,,

crime stage and, therefore, the same cannot be quashed and investigation cannot be interdicted. In the said decision, one of the guidelines is that the",,,

High Court under Section - 482 of Cr.P.C. can quash the proceedings by giving specific reasons. Thus, there is scope in the said decision wherein it",,,

has given power to High Court under Section - 482 of Cr.P.C. to quash the FIR by giving reasons. Therefore, the said contention of the learned",,,

Assistant Public Prosecutor and learned counsel for respondent No.2 is unsustainable. It is also relevant to note that in Mahesh Co-operative Urban,,

Bank Shareholders Welfare Association v. Ramesh Kumar Bung SLP (Crl.) No.3869 of 2021, decided on 20.07.2021 the Apex Court referring to the",,,

principle laid down in M/s. Neeharika Infrastructure Private Limited (supra) and other judgments categorically held that in M/s. Neeharika (supra),,,

certainly allowed space for the High Court to pass an interim order of the nature impugned therein, "in exceptional cases with caution and",,,

circumspection, giving brief reasons. What is frowned upon in Neeharika (supra) is the tendency of the Courts to pass blanket, cryptic, laconic, non",,,

speaking orders reading "no coercive steps shall be adopted". In Paragraph No.60 of the Report in Neeharika (supra), the Apex Court recognized",,,

that there may be allegations of abuse of process of law, converting a civil dispute into a criminal dispute, with a view to pressurize the accused.",,,

9. CONCLUSION:,,

i) The above discussion would further reveal that there are disputes between the daughter of respondent No.1 and other land owners and the accused,,

with regard to construction of villas, a gated community. The said disputes are civil in nature. Admittedly, the above proceedings are pending.",,,

According to this Court, the complaint filed by respondent No.2 under Section - 200 of Cr.P.C. lack the ingredients of Sections - 405 and 415 of IPC.",,,

The daughter of respondent No.2 instead of pursuing the above said proceedings which are pending in various Courts including this Court, respondent",,,

No.2 had filed the complaint under Section - 200 of Cr.P.C. at a belated stage that too in his individual capacity, suppressing the pendency of the writ",,,

petition mentioned above. Respondent No.2 and his daughter cannot seek a finding with regard to interpretation of terms of the above said agreements,,

from Investigating Officer during investigation in Crime No.883 of 2020 under Cr.P.C., which is impermissible under law. As observed above, there is",,,

delay in filing the complaint. Thus, viewed from any angle, continuation of proceedings in Crime No.883 of 2020 pending on the file of Narsingi Police",,,

Station is an abuse of process of law. The present case squarely falls in one of the parameters laid down by the Hon'ble Supreme Court in State,,

of Haryana v. Bhajan Lal (1992) Supp. 1 SCC 335. Therefore, the proceedings in Crime No.883 of 2020 of Narsingi Police Station are liable to be",,,

quashed.,,,

ii) The present Criminal Petition is accordingly allowed and the proceedings in Crime No.883 of 2020 of Narsingi Police Station, Cyberabad",,,

Commissionerate, are hereby quashed against the petitioners - accused Nos.1 and 2 alone.",,,

As a sequel, miscellaneous petitions, if any, pending in both the Criminal Petitions shall stand closed.",,,