

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND TEN

PRESENT

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION NO : 511 of 2009

Between:

1. Sohan Modi, S/o. Satish Modi, R/o. H.No. 5-4-187/3&4,
M.G.Road, Secunderabad.
2. Gaurang Modi, S/o. Jayanthilal Modi, R/o. H.No. 5-4-187/3&4,
M.G.Road, Secunderabad.

..... PETITIONERS

AND

1. State of A.P., rep.by Public Prosecutor, High Court of A.P.,
Hyderabad.
2. Smt. P. Varalakshmi, W/o. Ravinder Reddy, R/o. H.No. 1-402,
May Flower Park, Mallapur, Ranga Reddy District.

.....RESPONDENTS

Petition under Section 482 of CrI.P.C praying that in the circumstances stated in the petition/affidavit/memorandum of grounds filed therewith, the High Court will be pleased to quash all further proceedings in CC.No. 763/2008 on the file of the III Metropolitan Magistrate, Cyberabad, at L.B.Nagar, Ranga Reddy District

The Petition coming on for hearing, upon perusing the Petition/affidavit/memorandum of grounds filed in support thereof and upon hearing the arguments of Sri K.SARVA BHOUMA RAO, Advocate for the Petitioner and of the Public Prosecutor, for the Respondent No.1 and of Sri Mohammed Zaferullah Advocate for the Respondent No.2.

The Court made the following:order

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.511 OF 2009

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') is filed by the petitioners seeking to quash the proceedings in C.C.No.763 of 2008 on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar, for the offence punishable under Sections 406 and 420 of Indian Penal Code.

Initially, the *de facto* complainant P.Varalaxmi lodged a written report before the Station House Officer, PS Nacharam, Cyberabad, submitting that she being the owner of Flat No.402 and a member of Mayflower Park Owner's Association, Mallapur, which is a registered association, filed a Public Interest Litigation Writ Petition No.23228/2007 for removal of cellphone tower of Reliance Communications existed over her flat. The High Court allowed the said Writ Petition on 31.12.2007, in pursuance of which, the said tower was removed. It is her grievance that the counter affidavits and documents by respondents 3 and 4 in said Writ Petition before the High Court disclosed fraud, cheating and criminal breach of trust by way of fraudulently and dishonestly executing lease deeds in favour of Reliance Infocomm by collecting Rs.48000/- deposit apart from monthly rent of Rs.8000/- with periodical increases by A.1 in the capacity of General Secretary of said Association and A.2 stood as a witness to the said agreement. It is complained that the petitioners illegally executed the lease agreement deed without informing the same to other members of

the Association and swallowed the rents to the tune of Rs.5 lakhs and gained wrongfully.

Basing on the above complaint, Police registered a case in Crime No.40 of 2008 for the offence punishable under Section 420 of Indian Penal Code. However, after completion of due investigation, Police filed final report referring the case as 'Civil Nature'. Aggrieved by the same, *de facto* complainant filed protest petition and after recording the statements of witnesses, learned Magistrate observing that *prima facie* case is made out against the accused for the offence punishable under Sections 406 and 420 of Indian Penal Code. Aggrieved by the same, the present Criminal Petition is filed by the petitioners-accused.

Heard.

Learned counsel for the petitioners submitted that to attract an offence punishable under Section 420 of Indian Penal Code, the element of deception at inception and for attracting the offence punishable under Section 406 of Indian Penal Code, there should be elements of entrustment and intentional misappropriation, which are absent in the present complaint. Learned counsel for the petitioners further submitted that such Association was not in existence at the time of erection of tower and also petitioners, being the builders of the flats, reserved their rights for further construction and also for utilization of the same while selling the flats to various persons and the present complainant is not an authorized person to lodge the complaint. As such, he prayed to quash the proceedings.

As seen from the records, the petitioner No.1 is the builder, who sold flats to various persons. Further, the persons who

purchased the flats formed into an Association as per the terms and conditions and also they have their own elected President and Secretaries apart from bye-laws. The allegations against the present petitioners are that even after handing over the flats to various purchasers, they allowed the Reliance Communication to erect towers in the open terrace, collected rents and also had advance amount of Rs.50000/-.

This Court perused the records produced on behalf of the *de facto* complainant and also heard arguments on her behalf.

By looking into the documents filed along with this Criminal Petition, this Court is of the view that as rightly pointed out by the learned counsel for the petitioners even admitting the allegations alleged by the *de facto* complainant in her complaint to be true, ingredients of Sections 420 and 405 of Indian Penal Code are not attracted. Further, the resolution dated 05.06.2008 passed by the said Association reveals that the said Association accepted the proposal of Modi Properties & Investments Pvt. Ltd. (to which A.1 is the Managing Director) to pay a compensation of Rs.1,50,000/- towards erection of reliance communication tower and accordingly said amount was paid by A.1 to the Association through cheque bearing No.118673 dated 05.06.2008 drawn on HDFC bank Limited and it is seen from the record that in view of said payment, the Association decided not to proceed further against the persons concerned. It is further seen from the records that the petitioner-builder has reserved his right over the terrace of the apartments concerned.


In a criminal prosecution, for prosecuting a person, it should be proved that said person acted in a manner with an intention to

commit a crime and *mens rea* is the prime element to attract a criminal offence. In the present case, *mens rea* is totally absent and further the allegations made by the complainant by no stretch of imagination attract an offence alleged in the complaint. In view of the same, this Court is of the view that there is need to proceed further in the matter, which would amount to an abuse of process of law.

Hence, the Criminal Petition is allowed and the proceedings in C.C.No.763 of 2008 on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy, are hereby quashed.

SD/-P.S.SOMAYAJULU
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To

1. The III Metropolitan Magistrate, Cyberabad at L.B.Nagar, R.R.Dist
2. The Station House Officer, Nacharama Police Station, Nacharam, Cyberabad.
3. Two CCs to the Public Prosecutor, High Court of A.P., Hyderabad(OUT)
4. Two CD Copies
5. One CC to Sri K.Sarvabhuma Rao , Advocate(OPUC)
6. One CC to Sri Mohammed Zafarullah , Advocate(OPUC)

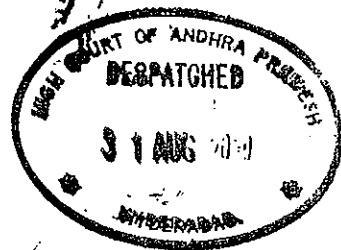
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HIGH COURT

Dated: 26/08/2010

ORDER

CRL.P.NO.511 OF 2009



Allowing the Crl.P

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o/c

COURT OF THE XIII METROPOLITAN MAGISTRATE, CYBERABAD.

Present. SRI G.Uday Kumar, MA,LLM,
XIII M.M. Cyberabad.

Dated this the 21st day of December 2010.

C.C 264/09

Between:-

The state of AP through
P.S Nacharem complainant.

a n d

1. Sohan Modi s/o Satish Modi.
2. Gaurang Modi s/o Jayanthilal Modi.

...accused

Charge : U/s 406 and 420 of IPC.

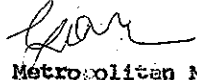
The matter is coming before me for hearing in the presence of the learned APFO for the complainant and Sri Bala gopah, counsel for the accused and upon hearing and on perusal of the record the court made the following

DOCKET ORDER

Both Accused are absent. Petition ~~is~~ for them is filed and allowed. Counsel for the accused filed an order copy of the Hon'ble High court of AP in Cr.Pet N^o 511/09 and submitted that the Hon'ble High court is pleased to quash proceedings in C.C no 763/08 on the file of III M.M at L.S.Nagar. Perused. The C.C 763/08 was transferred to this court and was renumbered as C.C 264/09.

As the proceedings against both accused are quashed by the hon'ble High court through the above order the proceedings are closed and both accused are discharged.

Given under my hand under the seal of the court on this the 21st day of December 2010.


XIII Metropolitan Magistrate,
Cyberabad.

