

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No. 7020 of 2014

Between:

K.Venkatachalam Chetty,
S/o.Late K.Narayana Chetty, Aged about 69 years,
R/o.Dandapalli Road, Kothapeta,
Palamaner Town, Palamaner Post and Mandal,
Chittoor District, Andhra Pradesh.

... Petitioner/A.1

And

1. The State of A.P., Represented by Station House Officer,
Palamaner Police Station, Chittoor District through Public
Prosecutor, High Court of Andhra Pradesh, Amaravati.
.... Respondent/Complainant
2. K.V.Ramana Reddy, S/o.Not known to the petitioner,
Aged not known, Working as Zonal Manager,
A.P.Industrial Infrastructure Corporation Limited,
Palamaner, Chittoor District,
Andhra Pradesh. Respondent/Defacto Complainant

DATE OF JUDGMENT PRONOUNCED: **06-09-2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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! Counsel for Petitioner : Sri N.Bharat Babu

^ Counsel for Respondents : Asst.Public Prosecutor (State)

< Gist:

> Head Note:

? Cases referred:

1. AIR 1992 SC 604
2. 2021 SCC OnLine SC 976
3. (2019) 16 SCC 739

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.7020 of 2014

ORDER:

In this Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") the petitioner/A.1 seeks to quash the criminal proceedings against him in Crime No.123 of 2014 of Palamaner Police Station, Chittoor District, registered for the offence under Section 420 IPC.

2. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State.

3. The facts in issue are that APIIC/Government have acquired the lands in Sy.No.532-2 Ac.0.12 cents; Sy.No.533-4 Ac.2.44 cents; Sy.No.533-5 Ac.1.58 cents and in Sy.No.533-6 Ac.1.48 cents, through Award No.2/Genl./95-96, dated 18.09.1995 for establishment of the Industrial Development Area at Palamaner, Chittoor District. The said lands were handed over to APIIC by the Revenue Department on 25.02.2002 and ever since, the possession was taken and the lands were under the control of APIIC. It is further alleged that during the inspection, on 23.04.2014, the APIIC officials have observed that somebody laid fencing to the subject land and a ground breaking ceremony was performed. On enquiry, they

came to know that one of the land owners namely, K.Venkatachalam Chetty, has given a power of attorney in favour of one G.Govardhan in respect of the land to an extent of Ac.1.48 cents situated in Sy.No.533/6 and they have sold the said land to 44 different persons for house sites duly making plots. The Sub-Registrar, Palamaner entertained the illegal activity and accepted for registration of the said plots in their favour. As such, the present complaint was filed for taking action against the petitioner/A.1 and two others.

4. Learned Senior Counsel for the petitioner would submit that the Government intended to acquire the land to an extent of Ac.14.54 cents situated in different survey numbers at Palamaner Village and Mandal and some lands of Nagamangalam and issued a Draft Notification under Section 4(1) of the Land Acquisition Act on 21.01.1993. He would further submit that under Section 11-A of the Land Acquisition Act, within two years from the date of the notification, award has to be passed, whereas, in the present case, award has been passed beyond two years. Later, the Writ Petition filed by the petitioner questioning the land acquisition proceedings was also dismissed by this Court on 23.07.2001. He would further submit that after lapse of 20 years, in order to cover up their laches, a false and fictitious complaint has been lodged on

15.05.2014 by the 2nd respondent. Further, he would submit that the petitioner/A.1 has not received any compensation for the land said to have been acquired in Sy.No.533/6. Even according to the Government, the petitioner is the owner of the subject land. He would further submit that the dispute is of civil nature and is to be decided by a competent Civil Court and the 2nd respondent initiated the present criminal proceedings by giving the colour of criminal offence and therefore, the ingredients of Section 420 IPC are not attracting against the petitioner and hence, the proceedings in the above crime are liable to be quashed.

5. Learned Assistant Public Prosecutor would submit that the land to an extent of Ac.1.48 cents in Sy.No.533/6 has been acquired by APIIC/Government for establishment of the Industrial Development Area at Palamaner and in this connection, land acquisition proceedings were initiated by the Land Acquisition Officer and a Draft Notification under Section 4(1) of the Land Acquisition Act was submitted to the Government and the notification was published. Further, he would submit that since the Land Acquisition Officer/Revenue Divisional Officer, Madanapalle, was authorized to perform the functions of the Collector to conduct enquiry under Section 5-A of the Land Acquisition Act, he invited objections from the

respective land owners and their objections were overruled and petitioner's land was acquired for establishment of Industrial Development Area and an Award was passed and immediately, the APIIC officials had taken over the possession of the subject land from the Revenue Department on 25.02.2002. He would further submit that having knowledge about the acquisition of the land, the petitioner/A.1 executed a GPA in favour of one G.Govardhan in respect of the land situated in Sy.No.533/6 to an extent of Ac.1.48 cents and both the petitioner and the GPA holder in collusion formulated the plots and sold the same to the third parties with a fraudulent intention, and the allegations in the complaint are sufficient to constitute the offence under Section 420 IPC. Therefore, the present criminal proceedings were initiated against the petitioner/A.1 and he prays to dismiss the petition.

6. Having perused the relevant facts and contentions made by the learned counsel for the petitioner and the learned Assistant Public Prosecution for the State, in my considered opinion, the foremost issue, which requires determination in the instant case is,

Whether the allegations made against the petitioner/A.1 would attract the accusation made against him and whether there are any merits in the criminal petition to allow?

POINT:

7. In a decision reported in **State of Haryana & Others Vs. Ch.Bhajanlal and Others**¹, the Hon'ble Apex Court held that in exercise of extraordinary power conferred under Article 226 of Constitution of India or the inherent powers under Section 482 Cr.P.C, the following categories of cases are given by way of illustration, wherein, such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise clearly defined and sufficiently channelized and inflexible guide, myriad kinds of cases wherein, such power should be exercised. The relevant guidelines read as under:

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

¹ AIR 1992 SC 604

without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. As can be seen from the decision *supra*, the 1st guideline is to the effect that even if the complaint allegations are accepted to be true on their face value, if they do not constitute any offence, then the criminal proceedings against the petitioner/A.1 can be quashed.

9. In the instant case, the petitioner/A.1 is the absolute owner of the land in Sy.No.533/6 to an extent of Ac.1.48 cents and admittedly, the Government intended to acquire the land to an extent of Ac.14.54 cents comprised in different survey numbers for establishment of Industrial Development Area at Palamaner and the Land Acquisition Officer-cum-Revenue Divisional Officer, Madanapalle issued Section 4(1) notification on 21.01.1993 as mentioned in the Writ Petition No.22968 of 1995 filed by the petitioner/A.1. The Declaration under

Section 6 was published on 24.09.1993 preceded by Section 5-A enquiry conducted and the petitioner/A.1 expressed his willingness for acquisition of the land in Sy.No.533/1 to an extent of Ac.1.05 cents and received compensation to the said land and admittedly he declined willingness for the land in Sy.No.533/6 to an extent of Ac.1.48 cents and no compensation was received by the petitioner/A.1 for the said land. The Award No.2/Genl./95-96, dated 18.09.1995 was passed and the said Award reveals that the petitioner/A.1 who is the land owner in Sy.No.533/6 to an extent of Ac.1.48 cents along with four others have not consented to be part with their respective lands for the acquisition. Except that, rest of the owners have consented and expressed their willingness for acquisition of the lands @ Rs.40/- per square foot. Accordingly, the Award was passed on 18.09.1995 and the said Award was enclosed along with the complaint and the above facts reveal the same.

10. However, as per Section 11-A of Land Acquisition Act, 1894, within two years from the date of notification, award has to be passed, whereas, in the present case, award has been passed beyond two years.

11. At this juncture, it is relevant to refer to Section 11-A of The Land Acquisition Act, 1894 reads as follows:

“11A. Period shall be which an award within made. - *The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:*

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.”

12. As per the above provision, the draft notification issued under Section 4(1) of the Land Acquisition Act was approved by the Collector *vide* Proceedings in Roc.L7/17458/88, dated 02.12.1992 and the draft declaration issued under Section 6 of the Land Acquisition Act was also approved by the Collector *vide* Proceedings in Roc.D12/17458/88, dated 28.08.1993, CTR/199. But, the Award was passed on 18.09.1995, which is beyond two years from the date of the publication of the Declaration.

13. The first and foremost contention of the petitioner/A.1 is with regard to lapse of acquisition on account of non-passing of the impugned award within a period of two years from the date of issuance of the final notification as contemplated under Section 11-A of the Land Acquisition Act is no longer *res integra*.

14. As per Section 11-A of the Land Acquisition Act, the Collector should make an Award under Section 11 within a period of two years from the date of publication of

Section 6 declaration and if no Award is made within that period, the entire proceedings of such acquisition of lands should lapse. In the instant case, the date of publication of Section 6 declaration was 28.08.1993. The 2nd respondent/Zonal Manager should have passed the Award on or before 27.08.1995, whereas, the Award was passed on 18.09.1995. Since the Award had not been passed within the mandatory period of two years from the date of the publication of the Declaration, the entire acquisition proceedings lapsed. The non-compliance of the mandatory provisions of Section 11-A of the Land Acquisition Act vitiated the entire proceedings.

15. Further, the 2nd respondent stated in the complaint that the above lands were handed over to APIIC by the Revenue Department on 25.02.2002 and ever since, the APIIC has been in possession of the said lands and lodged a complaint on 15.05.2014. The said fact is seriously disputed by the petitioner/A.1.

16. The question as to whether the possession was in symbolic or actual, fell for consideration, could all depend upon the facts and circumstances of the case. In the instant case, the possession of the subject land was taken by APIIC from the Revenue Authorities on 25.02.2002 as alleged in the complaint. But, whether the said possession was taken under the

Panchanama or not, is not indicated in the complaint by the 2nd respondent. It is necessary to note that when a panchanama for delivery of possession of the lands was conducted and the panchanama was signed by one of the officers of the Revenue Department, it is not open to the 2nd respondent to dispute about the taking possession of the lands and it is a common sense that the lands cannot be physically put in possession of anybody, and it is only a paper delivery by duly conducting panchanama on the spot wherein, handing over of the possession is recorded. In the complaint it does not indicate that under the panchanama the possession of the property was delivered to APIIC by the Revenue Authorities. This assertion would undoubtedly go to show that the possession of the land was not taken by APIIC. If the possession of the land was handed over to the APIIC by the Revenue Authorities, they would have intimated to the Registering Authorities about the acquisition of the properties in respective survey numbers not to entertain any registrations thereon, but, they did not do so.

17. Admittedly, the possession of the lands has been under the control of the petitioner/A.1 and the Revenue records reflect the name of the petitioner as an owner of the said land. If the Revenue Authorities handed over the subject property to an extent of Ac.1.48 cents in Sy.No.533/6 to the APIIC, the Pahanis

would have shown that APIIC is the owner of the said land. On a perusal of the Pahanis, dated 29.05.2014, filed along with this petition, the name of the pattadar was shown as Venkatachalam Chetty i.e., the petitioner/A.1 for the above land in Sy.No.533/6. Apart from Pahanis, Adangal copy was also filed along with the petition, wherein, the name of the pattadar was shown as Venkatachalam Chetty i.e., the petitioner/A.1 for the above said land. Further, the statement of Encumbrance on Property, dated 26.05.2014 issued by the Sub-Registrar, Palamaner, would also show that as per the records of S.R.O., from 24 years i.e., from 01.01.1990 to 25.05.2014 the land to an extent of Ac.1.48 cents in Sy.No.533/6 was in the name of the petitioner/A.1 and G.Govardhan. In the light of the above documents, it clearly indicates that the subject property has been in possession of the petitioner/A.1. Therefore, there is no merit in the contentions raised by the respondents and there is no explanation as to why the Revenue Department did not change the entries in the Revenue records. In the instant case, the 2nd respondent lodged the present complaint to cover up laches converting the civil dispute by giving criminal colour alleging that the petitioner/A.1 sold the property to third parties. But, there was no documentary proof to prove the same. On other hand, the Award itself discloses that the petitioner/A.1 and four others have not

consented to part with the land for acquisition in respective survey numbers.

18. Even otherwise, as per Section 24(2) of New Land Acquisition Act, 2013 i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in any acquisition proceedings if award is passed five years prior to the commencement of the Act and possession was not taken, the land acquisition proceedings shall be deemed to have lapsed and remedy left to the Government to initiate acquisition proceedings afresh.

19. In the instant case, the Award was passed on 18.09.1995 i.e., 18 years prior to the commencement of the Act and the possession was not taken as stated supra, which is evident from the Revenue records i.e., Pahanis and Adangal and Encumbrance Certificate, as referred to above to show that the petitioner/A.1 is the owner of the subject land. Therefore, the acquisition proceedings said to have been initiated in the year 1993 got lapsed by the operation of Law.

20. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as follows:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the

Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.”

21. In the light of the above provision, the land acquisition proceedings initiated by the Land Acquisition Officer deemed to have been lapsed.

22. In the present case, possession of the subject land has not been taken as alleged in the complaint and the compensation for the subject land was not deposited and apart from that the Award reveals that the petitioner/A.1 who is the land owner in Sy.No.533/6 to an extent of Ac.1.48 cents along with four others have not consented to be part with their respective lands for the acquisition. The 2nd respondent initiated the present criminal proceedings by giving criminal colour to the civil dispute instead of taking appropriate steps by following the provisions under the Land Acquisition Act.

23. In **Mitesh Kumar J.Sha Vs. State of Karnataka and others**², wherein, at Para Nos.29, 43, 45, 46 and 47 the Hon’ble Apex Court held as follows:

“29. Coming to the facts of the case at hands, the contested contention between the parties is that the builder company had sold four excess flats beyond its share, in terms of the JDA and

² 2021 SCC Online SC 976

supplementary agreement entered into between the parties. Respondent No. 2 contends that builder company which was entitled to sell only 9 flats in its favour, has instead executed sale deed for 13 flats in total. Thus, the company simply could not have sold the flats beyond 9 flats for which it was authorized and resultantly cannot evade criminal liability on a mere premise that a civil dispute is already pending between the parties.

43. On an earlier occasion, in case of *G. Sagar Suri v. State of UP*⁸, this Court has also observed:—

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

46. Recently, this Court in case of *Randheer Singh v. The State of U.P.*¹⁰, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:—

“33.There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal

proceedings as held by this Court in Paramjeet Batra (supra) extracted above.”

47. *Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”*

24. In another decision of Hon’ble Apex Court in **Prof.R.K.Vijayasathy and another Vs. Sudha Seetharam and another**³ it was held as follows:

18. *Section 420 of the Penal Code reads thus:*

“420. Cheating and dishonestly inducing delivery of property.—*Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

19. *The ingredients to constitute an offence under Section 420 are as follows:*

19.1. *A person must commit the offence of cheating under Section 415; and*

19.2. *The person cheated must be dishonestly induced to*

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. *Cheating is an essential ingredient for an act to constitute an offence under Section 420.*

25. In the light of the judgments referred to above, the remedy available for the 2nd respondent is to approach the Civil Court seeking an appropriate remedy by way of cancellation of the registered sale deed if executed by the petitioner/A.1 in favour of the third parties and to initiate land acquisition proceedings

³ (2019) 16 SCC 739

afresh as stated above. Admittedly, the Land Acquisition Officer has not communicated the acquisition of the subject property in Sy.No.533/6 to the Sub-Registrar, Palamaner and did not inform not to entertain any registrations from the date of handing over the possession of the property to APIIC/Government i.e., on 25.02.2002.

26. In the light above discussion, whether the possession was taken or not, as alleged in the complaint, has to be established in a proper Forum i.e., in a Civil Court. Essentially, these disputed questions of fact constitute a civil case, which has to be adjudicated in a Civil Court by adducing evidence. Instead, the 2nd respondent initiated the present proceedings by giving a colour of a criminal offence. It does not meet the strict standard of proof required to sustain a criminal accusation.

27. In view of the foregoing discussion, this Court finds that the 2nd respondent made an attempt to abuse the authority so as to do injustice. It would be an abuse of process of the Court to allow any action, which would result injustice and prevent the promotion of justice. In exercise of the powers, Court would be justified to quash any proceedings, if it finds that the initiation or continuance of it amounts to abuse of process of the Court or quashing of these proceedings would otherwise, serve the ends of justice. In fact, no offence is committed by the petitioner/A.1.

Therefore, this Court finds that it is a fit case to exercise the inherent jurisdiction of this Court under Section 482 Cr.P.C to quash the proceedings in Crime No.123 of 2014 of Palamaner Police Station, Chittoor District, registered for the offence under Section 420 IPC against the petitioner/A.1.

28. Resultantly, the criminal petition is allowed and the proceedings against the petitioner/A.1 in Crime No.123 of 2014 of Palamaner Police Station, Chittoor District, are hereby quashed.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

06.09.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.7020 OF 2014

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