

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.2255 OF 2021

Between:

Rebala Kishore Kumar Reddy and another

... Petitioners

And

The State of Telangana,
Through SHO, CCS, Hyderabad,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.01.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 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. 2255 of 2021

% Dated 10.01.2023

Rebala Kishore Kumar Reddy and another ...Petitioners

And

\$ The State of Telangana,
Through SHO, CCS, Hyderabad,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another ... Respondents

! **Counsel for the Petitioners:** Sri K.S.Suneel.

^ **Counsel for the Respondents:** Sri S.Sudershan, Additional Public
Prosecutor for R1
Sri Rahul Khandharkar for R2

>**HEAD NOTE:**

? **Cases referred**

¹ (2017) 2 Supreme Court Cases 779

² (2012) 1 Supreme court Cases 656)

³ (2015) 11 Supreme Court Cases 776)

⁴ (2013) 10 Supreme Court Cases 581)

⁵ (2021 SCC OnLine SC 315)

⁶ (2009) 8 Supreme Court Cases 751

⁷ (2006) 6 Supreme Court Cases 736

⁸ 1992 Supp (1) Supreme Court Cases 335

**HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.2255 OF 2021**

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioners/A1 and A2 in FIR No.198 of 2020 on the file of SHO, CCS, Hyderabad.

2. The petitioners are questioning the registration of crime for the offences under Sections 406 and 420 IPC by the CCS, Hyderabad mainly on the ground that though the civil proceedings were pending between the parties since the year 2009 regarding the property in question, the police erred in registering the crime after the 2nd respondent lost civil litigation right up to the Supreme Court.

3. The case of the 2nd respondent is that the petitioners herein, who are A1 and A2 and 7 others were responsible for cheating and committing misappropriation. The 2nd respondent and his family members executed GPA in favour of 1st petitioner herein on 27.03.2006. The 1st petitioner introduced A3 as the Chairman and Managing Director of Trend Set Builders Private Limited for development of 16,660 sq.yds of the property of the 2nd respondent.

The petitioners herein obtained signatures of the 2nd respondent and his brother on blank cheques stating that they were necessary for approvals in Government Departments. However, first petitioner opened an account in South Indian Bank and maintained transactions from 2006 to 2010 in collusion with A3. The petitioners and other family members also opened account in Karur Vysya Bank and obtained Demand Draft worth Rs.1,00,80,000/- stating that they would deduct the said amount from the sale price. Since the said amount of Rs.1,00,80,000/- was deducted from their accounts, when questioned, the 1st petitioner issued 15 cheques. However, the said cheques issued by the 1st petitioner were returned unpaid. When the said dishonor of cheques was questioned, the 1st petitioner requested the 2nd respondent and his family members not to present remaining cheques and entered into MOU dated 07.11.2009 stating that construction would be completed within three years in 16,660 sq.yds. Thereafter, the 1st petitioner entered into agreement with A3 without their knowledge and received an amount of Rs.6.50 Crores. Since disputes arose with respect to the property, the parties approached the civil courts, High Court and Supreme Court.

4. On the basis of the said complaint that the 2nd respondent and family members have been cheated in respect of the property, criminal action was initiated and accordingly, present FIR was registered.

5. Learned counsel appearing for the petitioners would submit that the 2nd respondent having lost his claim before the Hon'ble Supreme Court in SLP Civil No.17457 of 2016 dated 11.04.2018 has filed the complaint only to coerce the petitioners and others into settling civil dispute. There are several civil disputes that are filed with regard to the said property and the parties have been pursuing with the said disputes in the Civil Court. For the said reason of the allegations in the complaint being civil in nature, FIR has to be quashed.

6. On the other hand, learned counsel for the 2nd respondent would not dispute that there are civil disputes among the parties. However, in the order dated 26.11.2015 of the XIV Additional Chief Judge, City Civil Court in Arb.O.P.No.2739 of 2013, the court found that the 1st petitioner herein, who is the 2nd respondent therein did not file any material to prove that payment of sale consideration

was made and in fact different plea was taken by the 1st petitioner herein stating that Rs.8.00 Crores were paid to the 2nd respondent's family. There is inconsistency with respect to the plea taken by the 1st petitioner herein. Further, the Civil Court did not believe that 1st petitioner and others made payment of Rs.8.00 Crores to the 2nd respondent family.

7. He relied on the judgment in the case of **State of Telangana v. Habib Abdullah Jeelani**¹ in which, the Hon'ble Supreme Court held that at the time of registration of crime, the genuineness or otherwise of the information mentioned in the complaint is not relevant. He also relied on the judgment reported in the case of **Suraj Lamp and Industries Private Limited v. State of Haryana**² and argued that power of attorney is not an instrument of transfer with regard to any right, title or interest on the immovable property. The said power is revocable and could be terminated.

¹ (2017) 2 Supreme Court Cases 779

² (2012) 1 Supreme court Cases 656)

8. He also relied upon the judgment in the case of **HMT Watches Limited v. M.A.Abida and another**³ and argued that the High Court under inherent powers under Section 482 Cr.P.C cannot decide the cases on the basis of disputed questions of fact.

9. Further in the case of **Vinod Raghuvanshi v. Ajay Arora and others**⁴, the Hon'ble Supreme Court held that quashing of criminal proceedings at the inception would amount to stifling legitimate prosecution and investigation should not be scuttled at the very inception. He also relied on the judgment of Hon'ble Supreme Court in the case of **Neeharika Infrastructure Private Limited v. State of Maharashtra**⁵, wherein it is held that the discretion has to be given to the investigating agency to decide the course of investigation and also the High Court under the powers under Section 482 of Cr.P.C cannot pass orders in the manner of closing a legitimate criminal proceeding. Therefore counsel prayed to dismiss the petition.

³ (2015) 11 Supreme Court Cases 776)

⁴ (2013) 10 Supreme Court Cases 581)

⁵ (2021 SCC OnLine SC 315)

10. As evident from the record, there are ongoing disputes in between the parties since the year 2006. All the issues in between the parties were carried to the civil courts. The civil courts have adjudicated upon the disputes in between the parties and admittedly, most of the suits were also disposed off by the civil courts. Three of the cases are still pending and the said details are given in a tabulated form by the counsel for the petitioners and details regarding the pendency of cases and status mentioned in the said table are not disputed. For the sake of convenience, the said table is extracted hereunder:

S.No	Case No.	Appellant/ Plaintiff	Respondent/ Defendant	Court	Status	Date of Judgment
1	Arb.O.P.No 2739/2013	Kazmi Group (defacto Complainant)	Petitioners in the present criminal petition others	XXIV ACJ, CCC	Allowed	26.11.2015
2	CMA No.959, 960, 1023 of 2015	Petitioners in the present criminal petition others	Aslam Kazmi and Others (defacto complainant)	HIGH COURT	Partly allowed	10.02.2016
3	Civil Appeal No.3747 of 2018	Petitioners in the present criminal petition others	Kazmi Group (defacto complainant)	SUPREME COURT	Allowed	11.04.2018

4	O.S.No.749/2018 Suit for Specific Performance	M/s. Koushik Project & another	The petitioners herein and Kazmi Group	III ACJ, CCC	Pending	—
5	I.A.No.2927/2018 in O.S.No.749/2018	M/s. Koushik Project & anr	The petitioners herein and Aslam kazmi & Others	III ACJ, CCC	Dismissed	04.01.2019
6	O.S.No. 664/2014 Suit for Specific Performance	Syed Vaseemuddin	The petitioners herein and Aslam kazmi & Others	III ACJ, CCC	Dismissed	22.01.2020
7	O.S.No. 43/2011 Suit for Specific Performance	Krishnamurthy	Aslam kazmi & Others	XIV ACJ, CCC	Pending	16.12.2022
8	O.S. No. 3631/2009	Mount Meru Apartments Welfare Association	Aslam kazmi & Others	VII JCJ, CCC	Dismissed	23.04.2012
9	O.S.No. 1374/2009	A. Eswaramma	Aslam Kazmi & Others	IV SC Judge CCC	Dismissed	24.01.2011
10	O.S.No. 416/2012	Mohd. Ahmed Khan Pashaa	Aslam Kazmi & Others	IV SC Judge CCC	Dismissed	30.7.2014
11	O.S.No. 99/2012	Bilkhis Begum	Aslam Kazmi & Others	III ACJ, CCC	Dismissed	26.11.2012

12	O.S.No. 100/2012	Md. Zubair Alam	Aslam Kazmi & Others	III ACJ, CCC	Dismissed	26.11.2012
13	O.S.No. 101/2012	S. Nazeem Uddin	Aslam Kazmi & Others	III ACJ, CCC	Dismissed	26.11.2012
14	E.P.No. 533/2021	Md. Zubair Alam	Aslam Kazmi & Others	III ACJ, CCC	Pending	
15	O.S.No. 240/2013	Syed Subtenabi Abdi Sohrad	Aslam Kazmi & Others	III ACJ, CCC		
16	GPA Doc. No. 1441/2013	Aslam Kazmi & Others	In favour of Shoib Bin Hamed	Dt. 22.05.2013		
17	Sale Deed No. 1440/2013	Aslam Kazmi & Others	In favour of Syed Nizamuddi n	Dt. 22.05.2013		
18	Gift Settlement Doc. No. 702/2013	Aslam Kazmi & Others	Aslam Kazmi	Dt. 07.02.2013		
19	O.S. No. 749/2018	M/s. Koushiki Projects & Kolli Vijay Kumar	Aslam Kazmi & others	III ACJ, CCC	Pending	19-12-2022
20	Sale Deed No. 6693/2018	Aslam Kazmi & others	In favour of Kolli Vijaya Kumar	28.08.2018		
21	Sale Deed No. 6694/2018	Aslam Kazmi & others	In favour of M/s Koushiki Projects	28.08.2018		

22	Agreement of sale No. 6695/2018	Aslam Kazmi & others	In favour of M/s Koushiki Projects	28.08.2018		
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11. No doubt, commercial transactions or breach of contracts in between the parties in the course of business may amount to criminal acts also which can be tried simultaneously. When the civil disputes are pending before the civil courts, only for the reason of pendency of civil disputes, it cannot be said that criminal proceedings cannot be maintained. However, the Court has to look into whether the transactions are predominantly civil in nature and whether such criminal cases are filed for the purpose of pressurizing the parties for settling civil disputes.

12. All the civil disputes which were carried to the civil courts, High Court and Hon'ble Supreme Court are not in dispute. The said disputes are from the year 2009 itself and the contract was in the year 2006. Several transactions transpired in between the parties over the period of nearly 14 years and ultimately, criminal complaint is filed. A reading of the present criminal complaint, the allegations made are regarding the agreement entered into the year

2006 in between the 1st petitioner and others and also the family of the 2nd respondent in developing the property.

13. The Hon'ble Supreme Court in the case of **Mohammed Ibrahim and others v. State of Bihar and another**⁶ held that when disputes are essentially civil in nature, it is the duty of the criminal courts to check abuse of the process and see to that criminal proceedings are not misused to pressurize and settle civil disputes.

14. The Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Limited and others**⁷ held that when the disputes arise out of breach of contract and civil remedy was available, the allegations in the criminal complaint has to be considered and the High Court under Section 482 of Cr.P.C quash such criminal proceedings which are made with an intention of setting civil disputes.

15. At this length of time only on the basis of observations of the XIV Additional Chief Judge in the judgment dated 26.11.2015 in

⁶ (2009) 8 Supreme Court Cases 751

⁷ (2006) 6 Supreme Court Cases 736

Arb.O.P.No.2739 of 2013 that the plea of the 1st Petitioner herein and 1st respondent in Arb. OP was found to be suspicious, the said observations made cannot be made basis to continue criminal proceedings. All the transactions mentioned in the complaint are subject matter of adjudication before the civil courts and since the disputes are predominantly civil in nature and parties have approached civil courts to ascertain their rights and settle grievances, I find that the criminal prosecution at this length of time on the very same facts cannot be maintained. The Hon'ble Supreme Court in the case of **State of Haryana and others v. Bhajan Lal and others**⁸ held that 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 cannot be maintained.

16. Viewed from any angle, registration of crime and continuance of criminal proceedings against the petitioners cannot be permitted which is abuse of the process of law.

⁸ 1992 Supp (1) Supreme Court Cases 335

17. In the result, the proceedings against the petitioners/A1 and A2 in FIR No.198 of 2020 on the file of SHO, CCS, Hyderabad are hereby quashed.

18. Accordingly, the Criminal Petition is allowed. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

K.SURENDER, J

Date: 10.01.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITIOIN No.2255 OF 2021

Date: 10.01.2023

kvs

