



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

FRIDAY ,THE FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CRIMINAL PETITION Nos: 2762 and 2761 of 2019

CrI.P.No.2762 of 2019

Between:

Kapil Infra Avenues Pvt Ltd and **...PETITIONER/ACCUSED(S)**
Others

AND

The State Of Ap and Others **...RESPONDENT/COMPLAINANT(S)**

Counsel for the Petitioner/accused(S):

1.G RAMA GOPAL

Counsel for the Respondent/complainant(S):

1.Pasala Ponna Rao,DEPUTY SOLICITOR GENERAL OF
INDIA

2.PUBLIC PROSECUTOR (AP)

3.0

4.GIRI BABU MARTHI

CrI.P.No.2761 of 2019

Between:

Ramya Constructions Ltd and Others ...**PETITIONER/ACCUSED(S)**

AND

The State Of Ap and Others ...**RESPONDENT/COMPLAINANT(S)**

Counsel for the Petitioner/accused(S):

1.G RAMA GOPAL

Counsel for the Respondent/complainant(S):

1.Pasala Ponna Rao,DEPUTY SOLICITOR GENERAL OF
INDIA

2.PUBLIC PROSECUTOR (AP)

3.GIRI BABU MARTHI

The Court made the following:

COMMON ORDER:

Criminal Petition No.2762 of 2019 is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.9 of 2019 on the file of the IV Additional District Judge – cum – II Additional Metropolitan Sessions Judge – cum – the Special Judge for trial of Economic Offences at Visakhapatnam, registered for the offences punishable under Section 76A of the Companies Act, 2013 for violation of Section 73 of the Companies Act 2013 read with Companies (Acceptance of Deposit) Rules, 2014.

2) Criminal Petition No.2761 of 2019 is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.10 of 2019 on the file of the IV Additional District Judge – cum – II Additional Metropolitan Sessions Judge – cum – the Special Judge for trial of Economic Offences at Visakhapatnam, registered for the offences punishable under Section 76A of the Companies Act, 2013 for violation of Section 73 of the Companies Act 2013 read with Companies (Acceptance of Deposit) Rules, 2014.

3) C.C.No.9 of 2019 was registered against M/s. Kapil Infra Avenues Private Limited and others and C.C.No.10 of 2019 was registered against M/s.Ramya Constructions Limited and others, but the complainant and allegations made against the petitioners in both the cases are one and the same in both the cases.

4) As the complainant, the allegations made therein and the point involved in both the cases is one and the same, I find that it is expedient to decide both the petitions by common order taking Criminal Petition No.2762 of 2019 as leading petition.

5) The Registrar of Companies lodged complaint against the petitioners herein on the basis of the complaint received by him from one Guruzala Venkateswara Rao, defacto complainant, on various dates, alleging that in the course of the real estate business, petitioner No.1 company acquired lands abutting the National/State Highway in and around the District Head Quarters in the States of Andhra Pradesh and Telangana, where there are chances for potential development of the real estate. After acquiring the lands, the Company submitted an application for conversion of the agricultural lands into non-agricultural lands before the Competent Revenue Authorities and thereafter obtained permission from the Director of Town and Country Planning (DTCP) for development of the 75% of land into layouts of residential plots and 25% of the land immediately abutting the National Highway which is earmarked for constructing high rise buildings at a future date. The company offered the residential plots for the prospective purchasers by outright sale on paying the entire sale consideration in a short span of time before the sale deed is registered by the Company. Further, the Company also offered for sale, residential plots on installment basis and after payment of all the installments, the prospective purchaser will get the sale deed registered in his favour by the Company. In this regard, the prospective purchaser of the company entered into a written agreement enumerating all the terms and conditions of the sale. The company also offered for sale of the undivided share of the land earmarked for constructing high-rise buildings to the prospective purchasers by receiving part of the sale consideration around 80% by entering into a written agreement i.e. Memorandum of understanding. In the said agreement, it is

stipulated that the transfer of the land in favour of the prospective purchaser will be made at a future date mutually agreed between the parties in the MOU. Before the said stipulated period, if the prospective purchaser, is satisfied about the developmental activity around the property agreed to be sold, and the viability of the market value, the prospective purchaser will pay the balance 20% of the sale consideration and will have the sale deed registered in his favour. Advance sale consideration received pursuant to the sale of immovable property offered by petitioner No.1 company to the prospective purchasers will be treated as "Deposit accepted from the public" and the said deposit is in violation of Section 73 (1) of the Companies Act, 2013.

6) On the basis of the said complaint, an inspection was ordered, thereafter, inspecting officers have inspected the records of petitioner No.1 company and submitted a report dated 14.08.2018 to the Government of India, Ministry of Corporate Affairs. The gist of the report is that the company has been collecting money as advance for sale of property during the financial years 2014-15, 2015-16 and 2016-17 and has been paying interest for such deposits and refunding the money with interest at the end of the period within which period the land should be registered or when the parties demand refund at the optional dates mentioned in the MoU. Further, the inspection report revealed that the company has been accepting the above amounts from public by receiving applications through agents engaged by the company, which are shown as advance for the sale of property being a percentage of standard selling rate fixed by the board from time to time (with condition that the balance amount is payable within a specified period) with

advance optional interest rate to be payable on monthly or on cumulative basis till the actual registration of the land or till the amount is refunded. From the scrutiny of some of the applications verified during the course of inspection, it is found that the company is taking amount as advance for sale of plots or undivided share out of total land mentioned in the MOU, for which the company has agreed to pay monthly and cumulative interest. It is further stated in the report that the company is collecting money as advance for sale of plots, in the brand name of Kapil Homes, however, the application form signed by the applicant contains terms and conditions which provide for much lesser cost of land and lesser period for finalizing the transaction. The complaint received from the Registrar of Companies was registered as C.C.No.9 of 2019. The criminal petition No.2762 of 2019 has been filed seeking to quash the C.C.No.9 of 2019.

7) On 25.04.2019, when Criminal Petition Nos.2762 and 2761 of 2019 came up for admission, this Court passed the following interim order.

“..... Post on 10.06.2019.

Till then, there shall be stay of all further proceedings as prayed for.”

8) Thereafter, the said interim order has been extended from time to time.

9) During hearing, Sri S.Sriram, learned Senior Counsel representing Sri G.Rama Gopal, learned Counsel for the petitioners, would submit that the complaint filed by respondent No.2 under the provisions of the Act suffers from infirmities and is a gross abuse of

process of law. He further submits that the allegations against the petitioners under Section 73 of the Act are not maintainable inasmuch as the amounts accepted by petitioner No.1 do not come under the purview of 'deposits' as they are purely in the nature of an immovable property transaction. He further submits that a perusal of the provisions of Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014, makes it very clear that the Rules exclude the advances received towards sale consideration of immovable property, pursuant to an agreement or arrangement from the purview of 'deposit', provided that such an advance is adjusted against such property in accordance with the terms of agreement or arrangement. The petitioners have entered into agreements/M.O.U.s upon receipt of such advances from customers. Further, they have refunded the advance sale consideration received by them, only to those persons, who have not paid the entire sale consideration, or in other words, petitioners have refunded the advance sale consideration received by it with interest, to only those persons, who have failed to pay the balance sale consideration, within the period agreed for payment of the second and final instalment, as per the terms of the agreement.

10) He further submits that a perusal of the complaint reflects that the allegation against the petitioners is that the amounts are being collected without an intention to sell the property, but the defacto complaint has no cogent facts or evidence to prove the said allegation and for this reason, the complaint is liable to be quashed as the same is without any basis and that the defacto complainant has further noted that the transactions were concluded in respect of certain transactions where money was received in full. He also

submits that the Registrar of Companies has acted on whimsical complaints of one Gurazala Venkateswarlu, who had foisted many complaints against the petitioners, and filed many Writ Petitions before this Court, without any basis. He further submits that Rule (2) (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014 makes it clear that the amounts received as advance by the petitioners cannot be deemed to be a “deposit” and requested to allow these petitions.

11) Learned Deputy Solicitor General appearing for respondent No.2 contended that petitioner – companies herein have been collecting money as advance for sale of property and paying interest on such advances and refunding money without actual sale of such properties. As a result of which, Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014 is attracted to term such advance money collected as “Deposits”. It is stated that since the advance money collected by the petitioners as consideration for an immovable property under an agreement of arrangement (M.O.U.), if such advance is not adjusted against such property in accordance with the terms of agreement or arrangement, it comes under the definition of deposits. In the instant case, the exemptions in the proviso to Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014 are not applicable to the petitioners companies in view of the fact that they been intentionally collecting advance and paying interest on such advance without actual sale of property for which the agreement/M.O.U. was entered into between the petitioners – companies and their subscribers. He also submits that it is irrelevant to state whether or not such collected advance is refunded, as the company never intended to

adjust such collected money for the sale of immovable property, which is evident from the Balance Sheets of the petitioners companies showing the opening balance, amount accepted during the year, amount refunded during the year, balance lying at the end of the year and interest paid to the applicants during the year. Thus, the petitioners have committed the offence punishable under Section 76-A of the Act by violating Section 73 of the Act and requested to dismiss the petitions.

12) Learned counsel for respondent No.3 and Assistant Public Prosecutor appearing for respondent No.1, reiterated the contentions urged by the learned Deputy Solicitor General appearing for respondent No.2.

13) Having heard the submissions made by the learned counsel representing both parties and on perusal of the material available on record, the point that arises for consideration is as follows:

“Whether the proceedings against the petitioners in C.C.No.9 of 2019 and C.C.No.10 of 2019 on the file of the IV Additional District Judge – cum – II Additional Metropolitan Sessions Judge – cum – the Special Judge for trial of Economic Offences at Visakhapatnam are liable to be quashed by exercising jurisdiction under Section 482 of Cr.P.C.?”

P O I N T:

14) The petitioners filed the present petitions under Section 482 of Cr.P.C.

15) Section 482 of Cr.P.C saves the inherent powers of the High Court to make such orders as may be necessary to give effect to

any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

16) Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

17) Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of

the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in “***Mrs.Dhanalakshmi v. R.Prasanna Kumar***¹”

18) In “***State of Haryana v. Bhajan Lal***²” the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 FIR 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 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

¹ AIR 1990 SC 494

² 1992 Supp (1) SCC 335

investigation is permitted by a police officer 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.

19) Keeping in view the above principles, I would like to examine the case on hand.

20) A perusal of the material on record would show that basing on the complaints lodged by one Guruzala Venkateswara Rao on various dates alleging that the petitioners – companies have been collecting deposits through various schemes and have defaulted in refund of matured amounts to the depositors, respondent No.2 ordered inspection of the petitioners Companies. The record also reveals that respondent No.3 - Guruzala Venkateswara Rao filed W.P.No.15333 of 2017 before this Court. By an order dated 11.09.2017, a Division Bench of this Court observed as under:-

“1. This is perhaps the 106th case filed by the petitioner against the private respondents, seeking a Writ of Mandamus to declare the action of the respondents 1 to 5 in failing to conduct a

proper investigation, pursuant to the raids conducted by the 3rd respondent.

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3. This is at least the second round of litigation that the very Bench has come across from the very same petitioner against the very same respondents. In W.P.Nos.11301, 13295, 1318 and 13159 of 2016, disposed of on 19.07.2016 by a Bench of this Court, observed that the petitioner had virtually declared a war on the contesting respondents before different forums. It appears that the scores and scores of writ petitions were filed seeking a direction against the Income Tax Department, Enforcement Directorate, Central Bureau of Investigation, local police and various other authorities. The petitioner appears to have withdrawn some of those writ petitions after advancing arguments. Despite noting this, this Court took a lenient view and merely closed W.P.No.11301 of 2016 and batch, lastly on 19.07.2016, after making certain observations.

4. After this Court closed the last of the series of writ petitions on 19.07.2016, there appears to have been an income tax raid on 07.04.2017 and 08.04.2017 in the premises of the 6th respondent Company. Upon seeing news items in the print and electronic media that a few crores had been recovered during the raids, the petitioner got motivated once again, commenced war against the respondents and has come up with the present writ petition. But, as we have pointed out earlier, the writ Court is not intended for people to settle private scores. The war launched by the petitioner has gone unabated from the year 2011 for the past six years. Every Court has taken a lenient view, even while dismissing the writ petitions of the petitioner, which has perhaps emboldened him to again and again make an attempt through this Court to settle a private dispute that he has. Therefore, we are of the considered view that it is high time that the abuse of process

of Court is put an end to by imposing costs. Hence, the Writ Petition is dismissed. The petitioner shall pay costs of Rs.50,000/- to the High Court Legal Services Committee, within a period of eight (8) weeks from today.”

21) Therefore, I find considerable force in the contention of the petitioners that the said Guruzala Venkateswara Rao foisted many false complaints against the petitioners in order to settle his personal scores with petitioners herein and the other group of companies. Further, the said Guruzala Venkateswara Rao is neither allottee nor he is in any way directly involved or linked with the business transactions of the petitioners.

22) Further, the short point that arises for consideration is “whether the amounts collected by the petitioners for sale of immovable property as advance would come under the purview of ‘deposits’ or could be exempted from the purview of ‘deposits’ by virtue of Rule 2(1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014”?

23) Before proceeding further, it would be appropriate to refer to Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014, which reads as under:-

“(c) “deposit” includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include –

(xii) any amount received in the course of, or for the purposes of, the business of the company,-

(a) Xxx

(b) as advance, accounted for in any manner whatsoever, received in connection with consideration for property under an

agreement or arrangement , provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement;

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

Explanation.- For the purposes of this sub-clause the amount referred to in the first proviso shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.”

24) In the complaint itself, respondent No.2 has stated that the petitioners have been intentionally collecting money as advance for sale of property, entering into M.O.U. and paying interest on such advances received without the actual sale of property. Further, none of the persons, who have paid the advance amount for sale of immovable property, have made any complaint against the petitioners. The proviso to Rule 2 (1) (c) (xii) (b) makes it very clear that only when the amount becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under the respective rules. Further, as per the explanation to the Rule 2, the amount referred in the first proviso shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.

25) Admittedly, petitioners - companies had purchased the agricultural land and after obtaining the permission from the competent authorities for conversion of agricultural land into non-agricultural land, have obtained permission for development of the said land duly converting into layout of plots for residential/commercial housing. To unlock the funds invested in development of the lay outs etc., petitioners had offered to sell the land in its possession and for this purpose entered into written agreement/arrangement. By virtue of proviso to Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014, the advances received by the petitioners for sale of immovable property are exempted from the purview of the deposits. However, the said issue has already been decided by the High Court for the State of Telangana in Criminal Petition Nos.1771, 5372 and 4731 of 2021, wherein similar complaints raised by the defacto complainant against the petitioners therein were quashed.

26) According to guideline No.7 of guidelines formulated in “**State of Haryana v. Bhajan Lal**” (referred supra), 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, the Court can exercise power under Section 482 of Cr.P.C. and quash the proceedings. In present cases also, without taking the malafide conduct of respondent No.3 - Gurajala Venkateswara Rao, respondent No.2 initiated the present criminal proceedings against the petitioners basing on the complaint submitted by respondent No.3. As discussed earlier, respondent No.3 is neither allottee nor he is in any way directly involved or

linked with the business transactions of the petitioners, however, he lodged complaint against the petitioners with some ulterior motive to wreck vengeance on the accused.

27) Having regard to the facts and circumstances of the case and in view of the proviso to Rule 2 (1) (c) (xii) (b) of the Companies (Acceptance of Deposits) Rules, 2014, guideline No.7 of guidelines formulated in "***State of Haryana v. Bhajan Lal***" (referred supra), this Court is of the considered view that continuation of proceedings against the petitioners in both cases/accused would amount to abuse of process of the Court.

28) Accordingly, the criminal petition Nos.2762 and 2761 of 2019 are allowed by quashing the proceedings against the petitioners herein in C.C.No.9 of 2019 and C.C.No.10 of 2019 on the file of the IV Additional District Judge – cum – II Additional Metropolitan Sessions Judge – cum – the Special Judge for trial of Economic Offences at Visakhapatnam.

29) The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE V.SUJATHA

04.04.2025

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