

ITEM NO.44 Court 11 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 2636/2021

(Arising out of impugned final judgment and order dated 19-01-2021 in CRLP No. 4819/2020 passed by the High Court Of Andhra Pradesh At Amravati)

THE STATE OF ANDHRA PRADESH

Petitioner(s)

VERSUS

CHEKKA GURU MURALI MOHAN & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.43350/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.43856/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(Cr1) No. 2701/2021 (II)

(IA No.44416/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.46152/2021-APPLICATION FOR PERMISSION)

SLP(Cr1) No. 2549/2021 (II)

(FOR ADMISSION and I.R. and IA No.42049/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.43878/2021-PERMISSION TO ADD FURTHER ADDITIONAL PRAYERS IN THE APPLICATION FOR DIRECTION)

SLP(Cr1) No. 2637/2021 (II)

(FOR ADMISSION and I.R. and IA No.43351/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.43872/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(Cr1) No. 2699/2021 (II)

(FOR ADMISSION and I.R. and IA No.44410/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.46149/2021-APPLICATION FOR PERMISSION)

SLP(Cr1) No. 2874/2021 (II)

Date : 19-07-2021 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. Dushyant Dave, Sr. Adv.
Mr. C. Nageswara Rao, SR. Adv.
Mr. J.N. Bhushan, AAG

Mr. Mahfooz Ahsan Nazki, AOR
 Mr. Polanki Gowtham, Adv.
 Mr. Shaik Mohamad Haneef, Adv.
 Mr. T. Vijaya Bhaskar Reddy, Adv.
 Mr. Amithabh Sinha, Adv.
 Mr. K.V. Girish Chowdary, Adv.

For Respondent(s) Mr. Shyam Divan, SR. Adv.
 Mr. Vipin Nair, Adv.
 Ms. Prerna Singh, Adv.
 Mr. Guntur Pramod Kumar, AOR
 Mr. Sugosh Subramaniam, Adv.

Mr. S. Sirajudeen, SR. Adv.
 Mr. Parnam Prabhakar, Adv.
 Mr. R.Ravi, Adv.
 Mr. Shashwat Goel, AOR
 Ms. Naina Rattan, Adv.

Mr. Paras Kuhad, Sr. Adv.
 Mr. Krishna Dev J., Adv.
 Ms. Bhabna Das, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

These six Special Leave Petitions ("SLPs") by the State of Andhra Pradesh are directed against the respondent-buyers of the property, who were the petitioners before the High Court. The complainant is also impleaded as a respondent. For the sake of convenience, we are taking up the first SLP, being SLP (Cr1.) No. 2636/2021 as lead matter and disposing of all the connected SLPs by this common order.

This SLP has been filed against the judgment and order of the High Court dated 19-01-2021 passed in CRLP No. 4819/2020 whereby the FIR lodged against respondents no. 1 & 2 (Buyers) for offences under Sections 420, 409, 406 & 120B of the Indian Penal Code, 1860 ("IPC") and all proceedings initiated pursuant thereto, have been quashed.

Very briefly, the relevant facts are that the respondent-buyers had purchased certain lands from the sellers, who are not parties to the present proceedings. The sale deeds were executed sometime in the year 2014-2015. The FIR, admittedly, was lodged on 16.10.2020, on the basis of complaint dated 07.09.2020 filed by the respondent no.3. The main allegation in the FIR is that the buyers were aware of the fact that the capital city of State of Andhra Pradesh was going to be established in the area where the lands in question were situated and without disclosing the aforesaid fact, the buyers purchased the said lands from the sellers and, thus, cheated the sellers, as the value of such lands was likely to increase manifold.

By the impugned judgment and order dated 19.01.2021, the High Court has firstly considered the aspect of *locus standi* of the *de facto* complainant, who lodged the complaint with the police, as the complainant was neither the seller nor any party directly concerned with the sale transaction. However, after holding that the question of *locus* was not germane to the criminal proceedings, the High Court has noted the fact that the *de facto* complainant lodged the FIR after lapse of six years, which was a relevant factor requiring consideration. The concept of insider trading in property dealings has also been dealt with by the High Court and has been found to be alien to the proceedings under IPC, being a concept related to the trading in company scripts and is an offence only under the Securities and Exchange Board of India Act, 1992. The High Court has also found that the right to acquire property is a constitutional and legal right. Thereafter, taking into account the

facts of the case, the High Court has rendered a categorical finding that the provisions of Sections 420 and 415 IPC would not be attracted. According to the High Court, the recitals of the sale deeds belied the version of the complainant, as it had not been the buyers who approached the sellers to sell the property but, it were the sellers who offered to sell their lands to the buyers to meet their legal necessities and, thus, it could not be said that the buyers induced the sellers to sell their lands by suppressing facts.

The High Court also dealt in detail the question of information relating to location of capital city, which according to the finding recorded by the High Court, was very much in public domain even at the time of the transactions in question. The High Court also discussed the question of applicability of Sections 406 and 409 IPC to the facts of the case and opined that the same would not be attracted as there was no breach of trust. The High Court also clearly held that the offence under Section 120B IPC would also not be attracted as there was no question of any criminal conspiracy.

After considering the law laid down by the Constitution Bench decision of this Court in the case of State of Haryana Versus Bhajan Lal, 1992 Suppl.(1) SCC 335 and various subsequent decisions of this Court, the High Court has found it a fit case for quashing the FIR and the proceedings initiated pursuant to the same.

Mr. Dushayant Dave, learned Senior Counsel appearing for the petitioner assisted by Mr. Mahfooz Ahsan Nazki, AOR has made two-fold arguments. Firstly, that Section 418 IPC read with Section 55

(5) of the Transfer of Property Act would be attracted, which has been overlooked by the High Court. Secondly, it was submitted that the High Court was not required to go into the factual aspect of the case, which ought to have been left to the investigating agency and then to the trial court. The learned counsel has referred to various decisions, including those in R. P. Kapur Versus The State of Punjab, 1960 (3) SCR 388; M. S. Sheriff Versus The State of Madras, 1954 (5) SCR 1144; and Medchl Chemicals & Pharma (P) Ltd. Versus Biological E. Ltd., (2000) 3 SCC 269.

Mr. Paras Kuhad, learned Senior Counsel appearing for the complainant/respondent no. 3 has adopted the submissions made by Mr. Dushyant Dave. In addition, he has contended that the High Court has wrongly relied on the decision in Emperor Versus Bishan Das, (1905) ILR 27 All.561, which, according to him, has not been subsequently approved by the Division Bench of the Allahabad High Court in Banwarilal Versus The State, AIR 1956 All. 341. The learned counsel has also referred to the decision in Kuldip Singh Versus The State 1954 (VII) ILR(Punjab) 691. Mr. Kuhad has even submitted that there is a possibility of public officials being arraigned under Section 13 of the Prevention of Corruption Act, 1988 in this case, if the investigation is allowed to proceed without being scuttled at this stage.

Per contra, Mr. Shyam Divan, learned Senior Counsel appearing for some of the respondent-buyers has submitted that the judgment of the High Court is a well-balanced and fair judgment and the High Court has rightly interfered in the matter as it is a case of gross abuse of the process of the Court. He contended that the complaint

has been filed on 07.09.2020 after more than six years of the transaction, which had taken place in the year 2014 and that too, by a person who is not a seller or an affected party. It is submitted that the provisions of Section 55 (5) of the Transfer of Property Act are not attracted and the provisions of Section 418 IPC would not be applicable, and, in fact, the same were rightly neither mentioned in the FIR, nor argued before the High Court nor any ground in that regard has been taken before this Court in the Special Leave Petition.

Mr. Sidharth Luthra, learned Senior Counsel appearing for another set of buyers has submitted that since there is no question of breach of trust in the particular matter, the provisions of Sections 406 & 409 IPC are not attracted at all. It is further contended that Section 418 IPC requires the ingredients of Section 415 IPC to be there in the matter, which are totally lacking in the present case. He also supported the submissions of Mr. Divan that the provisions of Section 55(5) of Transfer of Property Act are not attracted in this case.

In rejoinder, Mr. Dave contended that the actual Notification with regard to the location of capital city was issued in the year 2015, which we find was neither filed before the High Court, nor it is relevant for this case. Mr. Kuhad, learned Senior Counsel for the complainant has reiterated that there was a concealment by the respondent-buyers with regard to the proposed location of the capital city, because of which the price of lands was much higher and was likely to increase.

We have heard learned counsel for the parties at length and

have perused the record.

With regard to the submission of the learned Senior Counsel for the petitioner regarding Section 418 IPC being attracted in the present case, we may observe that in our considered view, the same would not be attracted in the facts of the present case. The said question was neither argued before the High Court nor any ground with regard to the same has been taken in the Special Leave Petition. The said submission is noted, only to be rejected. There was also no question of loss being caused to the sellers or any cheating by the buyers because neither by law nor by a legal contract, the buyers were obliged to disclose the likelihood of the location of capital city, which facts were already in public domain. Moreover, there was no such pre-existing legal relationship between the buyers and the sellers for which, the buyers were bound to protect the interest of the sellers.

The other part of submissions of Mr. Kuhad on the possibility of public officials being arraigned under Section 13 of the Prevention of Corruption Act, 1988 after investigation in this case, suffice it to observe that all the transactions in question are between private individuals involving private lands and, as found by the High Court, the information about the likely location of the capital city was very much in public domain at the time of the transactions in question. This part of submissions does not make out a case for interference.

The judgments relied upon by Mr. Dave and Mr. Kuhad are all distinguishable on facts.

However, noticeable it is that the common thread in the

referred decisions is that even while observing on the limitations of the scope of jurisdiction of High Court while exercising inherent powers to prevent abuse of process of any Court or otherwise to secure the ends of justice, this Court has observed that no inflexible rule could be laid down which would govern the exercise of this inherent jurisdiction. In those cases, as also in the case of Bhajan Lal (supra), this Court has pointed out, illustratively, the cases in which such powers could be exercised. The present one has not been a case of the High Court embarking upon an inquiry as to whether the evidence in question is reliable or not. What the High Court has examined is as to whether the stated facts of the complaint make out any case of deception or not and thereafter has concluded that no case of constituting offences under Sections 420, 406, 409 and 120B of IPC is made out. The cases relied upon by the learned senior counsel for the petitioner-State and also the learned senior counsel for the complainant, otherwise proceeding on their own facts, do not make out a case for interference in the order passed by the High Court.

With regard to the submission that the High Court ought not to have gone into the facts of the case and recorded the factual findings, we may only observe that without considering the facts of the case, the question as to whether the allegations in the FIR or complaint prima facie constitute any offence or make out a case against the accused, cannot be decided. Even in the case of Bhajan Lal (supra) and other judgments of this Court noticed by the High Court, the FIRs have been quashed only after considering the facts of the case. In case the submission of Mr. Dave is accepted, then

in no case the Courts could examine as to whether the inherent powers to prevent abuse of the process of the Court or otherwise to secure ends of justice be exercised or not. In our considered view, what the Court is required to see is as to whether on the facts as narrated in the criminal complaint or an FIR, any case for proceeding against the accused is made out or not. The High Court has considered this aspect at great length and we are of the opinion that there is no perversity or illegality in the findings recorded by the High Court while allowing the Petition and quashing the FIRs and the proceedings pursuant thereto.

For the foregoing reasons, we find no merit in this special leave petition which is, accordingly, dismissed.

No order as to costs.

In view of the above order, the other connected special leave petitions stand dismissed, accordingly.

(ARJUN BISHT)
(COURT MASTER (SH))

(PRADEEP KUMAR)
(BRANCH OFFICER)

(ASHWANI THAKUR)
AR-CUM-PS