(2014) 09 AP CK 0142

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 21422 of 2002 and 4687, 8096, 8786 and 17623 of 2010

V. Janardhana Babu APPELLANT

Vs

Station House Officer RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 34(1), 51, 79, 79(1)(f), 79(1)(h)
Constitution of India, 1950 — Article 226
Copyright Act, 1957 — Section 44, 45, 52A, 53A, 63
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 120(B), 120B, 34, 406, 409

Citation : (2015) 1 ALD(Cri) 873

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : G. Jhansi, Advocate for the Appellant

Judgement

A. Ramalingeswara Rao, J.—These Writ Petitions are being disposed of by this common order as they all seek quashing of Crimes in the respective petitions.

WRIT PETITION No. 21422 of 2002

2. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

3. The petitioners are the Executive Members of the Jubilee Hills Cooperative House Building Society who were elected in November 2000. Prior to that, the Society was under the management of the Official-Person-In-charge Committee appointed by the Registrar of Cooperative Societies after superseding the earlier Managing Committee. While so, the third respondent issued a show cause notice on 26.03.2002 calling for explanation from the petitioners and others as to why the Managing Committee should not be superseded under Section 34(1) of the Andhra Pradesh Cooperative Societies Act on the grounds stated in the said show

cause notice. The petitioners submitted explanation and without considering the same, the third respondent passed an order on 18.05.2002 superseding the Managing Committee and appointing the second respondent as the Special Officer to manage the affairs of the Society. Aggrieved by the same, the petitioners filed an appeal before the Cooperative Tribunal, Hyderabad on 02.07.2002. The third respondent appointed one Sri K.Srinivasulu, Joint Registrar to conduct an enquiry into the affairs of the Society under Section 51 of the Andhra Pradesh Cooperative Societies Act. Pursuant to the same, Sri K. Srinivasulu issued a notice on 30.09.2002 calling upon the petitioners to appear before him on 17.10.2002 for enquiry. He submitted a report pursuant to the enquiry on 21.10.2002 and on the basis of the report, the third respondent directed the second respondent to lodge a criminal complaint against the petitioners and others with the first respondent. Accordingly, the second respondent lodged a complaint with the first respondent on 25.10.2002 at 10:40 pm. Upon receipt of the said complaint, the first respondent registered the same as Crime No. 326 of 2002 under Sections 406, 423, 465, 467, 477(A) IPC and under Sections 79(1)(f), 79(1)(h) and Sections 83(B)(1)(d) of the Andhra Pradesh Cooperative Societies Act. Challenging the same the present Writ Petition was filed.

4. In the complaint it was alleged that the petitioners along with others formed into a ring and concocted a plan to dole out 7 pieces of society land meant for public utility in the name of lease for 50 years entering into a clandestine understanding with some members and accepted graft in huge amounts and they termed this operation as Build, Operate and Transfer (BOT) and showed in the file that they issued notification in the press calling for open tenders or by other means of Media and they have also cooked up the record in their favour without following the due procedure for this transaction. The entry in the file as to cheques issued as EMD were all bogus and the Accountant of the Society had given a statement that neither tenders nor cheques were received from anybody. It is further stated that Sri T. Sreenivasulu, Joint Registrar, Managing Director, had submitted the inquiry report under Section 51 of the Andhra Pradesh Cooperative Societies Act on the so called BOT transaction by the Society and recommended for criminal action for criminal breach of trust under IPC and other relevant Sections. The statutory enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act also brought out five irregularities in the functioning of the Society and they also constituted various offences punishable under the Andhra Pradesh Cooperative Societies Act and IPC. It was alleged that the transactions were done by tampering the records by incorporating false resolutions.

5. Learned Counsel for the petitioners submits that the management of the Society was superseded on the selfsame allegations and an appeal was preferred before the Andhra Pradesh Cooperative Tribunal against the order of supersession. Since the allegations relate to the management of the Society, it cannot be said that any action taken by the members of the Committee can

constitute an offence under the provisions of the Indian Penal Code and the provisions of the Andhra Pradesh Cooperative Societies Act.

6. Learned Counsel for the second respondent submits that the allegations mentioned in the enquiry report can form the basis for supersession of the managing committee as well as taking action under the provisions of the Indian Penal Code. The truth or otherwise of the said allegations have to be enquired by the Police and at the threshold it cannot be said that investigation should not be made in respect of those allegations. He further submits that the allegations were based on the enquiry report submitted by the Joint Registrar of Cooperative Societies and also on the basis of the note submitted by the Vigilance and Enforcement Department.

WRIT PETITION No. 4687 of 2010

7. Heard the learned Counsel for the petitioner and the learned Government Pleader for the first respondent. None appeared for the fourth respondent.

8. The petitioner is the daughter of Sri Javid Ali of Peddapalli. Her marriage with Sri Shahzaad Aufauqui took place on 01.02.2008, and her husband is employed in Saudi Arabia. She applied for issuance of Indian passport vide File No. HYD/Z/152493/2008 dated 01.03.2008 and she was not informed about the status of the passport by the third respondent, in spite of several visits to his office. The fourth respondent is the divorced wife of her husband. In order to deny the passport to the petitioner, she foisted false criminal cases by filing private complaints in the Court of the learned First Special Judicial Magistrate of Second Class, Karimnagar, one after another with same witnesses and similar allegations. The cases filed by her in C.C. No. 776 of 2007 and C.C. No. 335 of 2008 ended in acquittal and dismissed on 25.08.2008 and 24.02.2009 respectively. Now, only one case in C.C. No. 285 of 2009 is pending on the file of the learned Judicial Magistrate of Second Class, Karimnagar. The petitioner further states that the witnesses are same in all the cases i.e., Smt. Matam Laxmi and Sri Abdul Nayeem. The allegations are also similar. While filing the complaints, she did not show the pendency of the earlier criminal cases. Though A-8 in C.C. No. 285 of 2009 was'' out of country since 28.08.2007, she was implicated in the case. The fourth respondent has no regard to truth and is abusing the process of law. The petitioner, therefore, filed the present Writ Petition for quashing the private complaint in C.C. No. 285 of 2009 on the file of the learned Judicial Magistrate of Second Class, Karimnagar, and also sought an order for issuance of passport, pending disposal of the Writ Petition.

9. This Court, by order dated 02.03.2010, directed the third respondent to consider the petitioner''s application for issuance of passport, without reference to C.C. No. 285 of 2009, pending on the file of the learned Judicial Magistrate of Second Class, Karimnagar.

10. It is represented by the learned Counsel for the petitioner that pursuant to the said order, passport was issued to the petitioner. A reading of the complaint

shows that when the complainant along with LWs 1 and 2 got down the bus at Ambedkar Chowrasta, Karimnagar, for medical check up on 24.02.2009 at about 5:00 pm, the petitioner along with others suddenly pounced on her, abused her in filthy language such as "suwar", "Gadhe" and "kamine" etc., and beat her with hands on several parts of the body. LWs 1 and 2 intervened and reported the matter, and when they did not take any action, she filed the complaint.

11. Learned Counsel filed copies of the complaint in C.C. No. 335 of 2008 as well as C.C. No. 776 of 2007. The allegations are same in both the cases. In view of the above allegations, it has to be seen whether the complaint made against the petitioner by the fourth respondent is bona fide or abuse of process of law.

WRIT PETITION No. 8096 of 2010

12. Heard the learned Counsel for the petitioners, the learned Government Pleader for respondent Nos. 1 to 3, and the learned Counsel for the fourth respondent.

13. The petitioners along with eleven others entered into a partnership under the name and style of M/s. Dwaraka Real Estate, Nellore, for the purpose of dealing in the purchase, development of land, sites and other real estate activities. It was registered on 24.09.1984 with the Registrar of Firms, Hyderabad. A registered General Power of Attorney was executed on 25.03.1985 giving authority to the petitioners. In the year 1988 one of the partners, Sri P. Kannaiah, passed away, and the firm was reconstituted. Thereafter, some misunderstandings arose among the partners. One of the partners filed O.S. No. 446 of 2005 on the file of the learned I Additional Senior Civil Judge, Nellore, for dissolution of the partnership firm and to recover his share in profits and assets. The fourth respondent in the present Writ Petition was arrayed as the ninth defendant in the suit.

14. While so, the fourth respondent sent a representation to the first respondent on 14.03.2010 stating that the reconstituted firm was dissolved on 30.06.1991, as it was constituted for a fixed term till 30.06.1991. No Power of Attorney was executed by the reconstituted firm and, in any event, the earlier power came to an end by dissolution of the firm on 30.06.1991. But, by falsely representing to the public that they were having a General Power of Attorney dated 25.03.1985, the first and second petitioners induced the purchasers into a false belief and sold certain plots to scheme members, and again sold the same plots to the partners of the firm and their associates. They opened a current account in the Andhra Bank, R.R. Street, Nellore, to obtain bank guarantee, and the partners deposited fixed amounts in the said branch, and the first and second petitioners were authorized, to operate the said account. When the National Highway Authority acquired the lands of the firm for formation of the National Highway and paid compensation of Rs. 10,84,700/-, the first, second and fourth petitioners received the said amount but did not bring it to the accounts of the firm and misappropriated the same. Stating as such, he requested the first

respondent for investigation by CID branch, Tirupathi, on the ground that they committed offences punishable under Sections 419, 420, 409 IPC read with 120(B) IPC. Thereafter, the, first respondent obtained an opinion from the Legal Assistant, CID, Hyderabad, which reads as follows:--

"It can be seen that partners of the firm "The Dwaraka Real Estates" had executed a registered GPA on 25.03.1985 for a fixed period of seven years in favour of 3 partners, D. Laxmi Narayana, P. Sesha Reddy and P. Badri Narayana Rao, to look after the affairs of the firm and to conduct business.

Subsequently, one of the partners died and hence remaining partners reconstituted the firm. No fresh GPA was executed in favour of the above said GPA holders.

Finally, the firm was dissolved in the year 1991. In spite of such dissolution, above said persons, under the authority of GPA executed in the year 1985, continued to sell plots which can be said they did it without any authority. The company being dissolved, any transaction in the capacity of GPA holder is null and void and amounts to an offence of cheating as their right extinguishes with dissolution of partnership and the relation of principal and agent ceases to exist between executants and GPA holders. It is also evident from the petition''s enclosures that a legal notice was also issued in the year 2003 to GPA holders, stating that they were no more agents of the company. Even after such intimation, during the years 2004-2005, GPA holders conducted business with mollified intention and failed to account for, to the firm. Though the matter between the parties is a civil dispute, liability of a person can be both civil and criminal at the same time.

Therefore, a case can be registered u/s. 420 IPC r/w 34 IPC."

After extracting such opinion in the Memo bearing C. No. 3261/C3/CID/2010 dated 05.03.2010, he directed the second respondent to take action. The second respondent endorsed the said memo to the third respondent to register the case and take necessary action, in pursuance of which FIR No. 66 of 2010 was registered in P.S. Nellore IV Town.

15. The present Writ Petition is filed for quashing FIR No. 66 of 2010 dated 14.03.2010 on the file of the Nellore IV Town P.S.

16. Though the fourth respondent filed a detailed counter affidavit, it is not necessary to traverse the averments made therein, in view of the disputed facts leading to the filing of the complaint and in view of the narrow compass within which this lis has to be decided.

17. Learned Counsel for the petitioners submits as follows:

(i) In respect of the disputes among the partners, O.S. No. 446 of 2005 is pending on the file of the learned I Additional Senior Civil Judge, Nellore, and the present complaint is" not maintainable at the instance of the erstwhile partner.

(ii) There is no complaint from any purchaser or from any third party alleging fraud or improper conduct by the petitioners.

(iii) Though the firm was dissolved on 30.06.1991, as per the complaint itself, the complaint was lodged on 14.03.2010 with the first respondent with a statement that the persons involved were influential at Nellore and the local Police were not inclined to take appropriate action. The complainant did not avail the remedies open under the provisions of the Code of Criminal Procedure before approaching the first respondent and thus, the complaint is not maintainable.

(iv) The complaint lodged by the fourth respondent is mala fide and the allegations are of civil nature."

18. Learned Counsel for the petitioners relied on Bhuban Mohan Das Vs. Surendra Mohan Das, , Swarn K. Jain Vs. Ravi Mahajan and Others, , and Vankina Chamundeswaranath v. S.H.O. Nagarampalem Law and Order 2011 (1) ALD (Crl.) 1 (AP) in support of his contentions.

19. On the other hand, learned Counsel for the fourth respondent submits as follows:

"(i) The criminal law can be set in motion by any person and not necessarily by the aggrieved.

(ii) The complaint was lodged since the complainant came to know of the transactions just before the complaint and as he was not aware of the fraudulent activities earlier, he did not give a complaint earlier.

(iii) The complainant gave reason for not approaching the local Police and the representation to the first respondent is maintainable, and the crime was validly registered on the basis of such complaint."

20. Learned Counsel for the fourth respondent relied on N. Natarajan Vs. B.K. Subba Rao, , Shriram Krishnappa Asegaonkar Vs. State of Maharashtra and Another, , Arun Bhandari Vs. State of U.P. and Others, , Indian Oil Corporation Vs. NEPC India Ltd. and Others, , Kamaladevi Agarwal Vs. State of West Bengal and Others, and B. Sudhakar Reddy Vs. The S.H.O. and 4 Others, .

21. Now the point for consideration is whether FIR No. 66 of 2010 is liable to be quashed on the grounds raised by the learned Counsel for the petitioners.

22. It is the admitted case of the parties that the petitioners and the fourth respondent were partners of M/s. Dwaraka Real Estate, Nellore. They were doing business under a registered partnership deed dated 24.09.1984, which was reconstituted consequent to the death of one of the partners in the year 1988. In respect of the disputes among the partners, O.S. No. 446 of 2005 is pending on the file of the learned I Additional Senior Civil Judge, Nellore. When all the partners were doing real estate business, certain sales took place during the course of their business activities, and the learned Counsel for the fourth respondent submits that the sales were made by misusing the Power of Attorney

granted in favour of the first and second petitioners at the time of formation of partnership initially.

23. The Full Bench of the Calcutta High Court in Bhuban Mohan Das''s case (supra) held that a charge under Section 406 IPC cannot be framed against a person who, according to the complainant, is a partner with him and is accused of the offence in respect of property belonging to both of them as partners.

24. In the decision reported in B. Suresh Yadav''s case (supra) the Supreme Court considered the case of a party to an agreement against whom a complaint was made alleging commission of an offence under Section 420 IPC when a suit was pending in relation to the same subject matter before a Civil Court. The Supreme Court considered the ingredients of cheating and accepted the arguments of the appellant that the allegations contained in the complaint petition, even if given face value'' and taken to be correct in their entirety, do not disclose any offence, and accordingly quashed the proceedings.

25. In Suneet Gupta Vs. Anil Triloknath Sharma and Others, the Supreme Court considered the case of involvement of partners in respect of offences punishable under Sections 468, 406 read with 120B IPC and upheld the order of the High Court as the allegations were of civil nature.

26. A learned single Judge of this Court in Vankina Chamundeswaranath''s case (supra) considered the scope of Article 226 of the Constitution of India in relation to Section 482 Cr.P.C. and held that in view of the ratio of the Apex Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, a Writ Petition can be maintained.

27. Learned Counsel for the fourth respondent relied on N. Natarajan''s case (supra) for the proposition that in criminal law, a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In the instant case, though the complainant is not an affected party it is submitted that in view of the ratio laid down in the above case, he can maintain the complaint. He relied on a decision reported in Shriram Krishnappa Asegaonkar''s case (supra) for the same proposition. He also relied on Arun Bhandari''s case (supra) and contends that though the complaint may reveal a commercial transaction or a money transaction, but that is hardly a reason for holding that the offence of cheating would elude from such a transaction. He also relied on Indian Oil Corporation''s case (supra), wherein the principles relating to the quashing of a compliant were enumerated. He submits that though the petitioners may have several defenses, those defenses have to be put forth and considered during the trial and at the threshold the complaint cannot be quashed. For the same proposition he relied on Kamaladevi Agarwal''s case (supra). Ultimately he also relied on B. Sudhakar Reddy''s case (supra) and relied on the following observations:

"...It is not as if the petitioner-accused would suffer irreparable loss and injury if the FIR is not quashed, for it would only result in the complaint being investigated; and if the investigation reveals that the accused has not committed the offence, alleged against him under the Act, he cannot be proceeded against thereafter; and, even otherwise, he would be entitled to avail his legal remedies at that stage..."

WRIT PETITION No. 8786 of 2010:

28. Heard the learned Counsel for the petitioner and the learned Government Pleader for the first respondent.

29. The case of the petitioner is that the second respondent filed O.S. No. 1145 of 2006 on the file of the learned I Junior Civil Judge, City Civil Court, Secunderabad, for recovery of Rs. 16,340.50 ps. together with interest. The trial Court decreed the suit ex parte on 10.04.2007 for the said sum with future interest at 5% per annum along with costs. He filed E.P. No. 1 of 2009 on the file of the learned Junior Civil Judge, Yellareddy, Nizamabad, for realization of the decretal amount. The said proceedings are pending. While so, the second respondent filed a private complaint before the learned Judicial First Class Magistrate, Yellareddy, on 12.04.2010 under Section 420 IPC on the allegation that the Panchayat Secretary issued a certificate dated 19.03.2010 showing the house number 4-2-64 and 4-2-65 stood in the name of the petitioner and issued ownership certificate. The learned Magistrate referred the same to the first respondent and FIR No. 29 of 2010 was registered under Section 420 IPC by the first respondent and the investigation was in progress. Challenging the said registration of crime, the present Writ Petition was filed.

30. The complaint reads as follows:

"1. Brief facts of the case are that the complainant filed a Execution Petition before the Hon''ble Junior Civil Judge''s Court, Yellareddy which is numbered as E.P. No. 1 of 2009 against the accused for attachment of House No. 4-2-64 and 4-2-65. The accused herein appeared before the Hon''ble Junior Civil Judge''s Court, Yellareddy and filed his counter affidavit on 04.12.2009 through his Advocate Sri G. Gopal Rao, Advocate-Yellareddy in which the accused denied the ownership of House No. 4-2-64 and 4-2-65. The said counter affidavit is attested by Sri Sai Prakash Deshpande, Advocate-Yellareddy on 04.12.2009. The complainant approached the Grama Sachivalayam, Yellareddy and filed an application to issue ownership certificate in respect of House No. 4-2-64 and 4-2-65 under the provisions of Right to Information Act and the LW-1 who is Panchayat Secretary, Yellareddy issued a certificate dated 19.03.2010 showing the House No. 4-2-64 and 4-2-65 stands in the name of the accused and issued ownership certificate. Thus the accused cheated the complainant through his counter affidavit dated 04.12.2009 that the accused is not the owner of House No. 4-2-64 and 4-2-65. But according to the ownership certificate issued by LW-2 the accused in the owner of House No. 4-2-64 and 4-2-65. As such the accused cheated the complainant and mis-represented the facts to the Hon''ble Junior Civil Judge''s Court, Yellareddy through his counter affidavit dated

04.12.2009 which is filed by the accused through his Advocate Sri G. Gopal Rao (LW-2) and the said counter affidavit is signed by the accused on oath in the presence of Sri Sai Prakash Deshpande (LW-3), Advocate-Yellareddy.

2. The acts of the accused constitute the offence under Section 420 IPC."

WRIT PETITION No. 17623 of 2010

31. Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

32. This is another Writ Petition seeking quashing of charge sheet in C.C. No. 605 of 2009 on the file of the learned XV Additional Chief Metropolitan Magistrate and Special Court for Trial of Video Piracy Cases, Nampally, Hyderabad.

33. The petitioner states that he is a petty business man running video parlour at Shop No. 36, Brundavan Complex, Beasant Road, Vijayawada, and eking out his livelihood by hiring and selling VCDs and DVDs of various pictures for the last 12 years produced by the concerned production companies. While so, on 17.02.2009 at about 5.00 a.m., the Sub-Inspector of Police, Vijayawada along with mediators entered his shop. When the petitioner was sitting in his shop they started enquiring him his details with regard to name, age, occupation etc. and also enquired as to the possession of VCDs and DVDs having copyrights. They were accompanied by one Sri P.V. Satyanarayana, who claimed to be the Coordinator, Anti Video Piracy Cell of Andhra Pradesh Film Chambers. The fifth respondent recorded the statement of the petitioner and seized 371 DVDs of 24 movies from his shop. Thereafter, the fifth respondent registered Crime No. 46 of 2009 in P.S. Governorpet under Sections 52A and 63 of the Copyright Act, 1957. The petitioner was arrested on 17.02.2009 and sent to judicial custody. Later he was released on bail. After investigation, the Police filed charge sheet on the file of the learned XV Additional Chief Metropolitan Magistrate and Special Court for Trial of Video Piracy Cases, Nampally, Hyderabad, and the same is pending.

34. Learned Counsel for the petitioner submits that Section 52A of the Copyright Act casts a duty on the publisher to display the information mentioned in the said Section. Section 63 of the Copyright Act makes it punishable if the person not only infringes or abets the infringement of the copyright in a work or any other right conferred by this Act (except the right conferred by Section 53A). The said Section provides that if the infringement has not been made for gain in the course of trade or business the Court may impose a lesser punishment. When the petitioner is selling CDs and DVDs he cannot be called as a publisher and no offence can be attributed to him. He also submits that unless the particular movie or product is duly registered under Sections 44 and 45 of the Copyright Act, no action can be taken for the alleged infringement of copyright. He also submits that none of the owners/producers of the movies have registered their work under the provisions of the Copyright Act but they are entering into individual agreements on non-judicial stamp papers with private parties and conveying their right to them in respect of their movies and it has nothing to do

with the Copyright Act. He relied on Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt. Ltd. Laws (BOM) 2012 (3) 12, Brundaban Sahu Vs. B. Rajendra Subudhi, , B.K. Dani and Others Vs. State of M.P. and Another, , V. Errabhadrarao (wrongly described as Veerabhadrayya in decree) and Another Vs. B.N. Sarma and Another, , Muppala Ranganayakamma Vs. K. Ramalakshmi and Others and Ushodaya Enterprises Limited Vs. T.V. Venugopal and another, in support of his contention.

35. On the other hand, learned Government Pleader submits that absence of particulars on the video film as mandated under Section 52A itself is an infringement of copyright as held by the Supreme Court in State of A.P. Vs. Nagoti Venkataramana, and hence it cannot be held that the petitioner has not violated the law.

LAW ON QUASHING OF COMPLAINTS/CHARGE SHEETS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA:

36. Now the above cases have to be examined in the light of the law laid down by the Apex court.

37. The Supreme Court, after considering various decisions in the famous case in State of Haryana and others Vs. Ch. Bhajan Lal and others, listed out the categories of cases, wherein the power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice and such cases are as follows:

"(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 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 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."

38. In Gudavalli Murali Krishna and Others Vs. Gudavalli Madhavi and Another, this Court had an occasion to consider the issue with regard to the maintainability of the petitions to quash the FIR under Section 482 Cr.P.C. This Court extensively considered the scope of Section 482 Cr.P.C. and ultimately held that the inherent power of the High Court under Section 482 Cr.P.C. can be invoked to quash the proceedings even at the threshold - be it a FIR or a complaint or a charge sheet. The inherent powers to be exercised by the High Court under Section 482 Cr.P.C. is an efficacious remedy. When such an alternative remedy is available, the High Court should be loath and circumspect to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

39. The said order of the learned single Judge was followed by another learned single Judge in Killaparthi Suri Appa Rao Vs. Sub-Inspector of Police and Another, , who held that a Writ Petition for quashing FIR cannot be entertained as the petitioner has an effective remedy of approaching this Court under Section 482 Cr.P.C.

40. A three Judge Bench of the Supreme Court in Shri Mahavir Prashad Gupta and Another Vs. State of National Capital Territory of Delhi and Others, quoted with approval the addition of another qualification mentioned in Bhajan Lal''s case (supra), that the power of quashing a criminal proceeding should be exercised Very sparingly and with circumspection and that too in the rarest of rare cases''. The same principle was reiterated in M. Narayandas Vs. State of Karnataka and Others, .

41. The Supreme Court again in State of Bihar and Another Vs. Md. Khalique and Another, quoted with approval the ratio laid down in Bhajan Lal''s case (supra).

42. In view of the above decisions, the ratio laid down in Bhajan Lal''s case (supra) rules the field. This Court is not denuded of the power to quash the proceedings in appropriate cases when the aggrieved invoke the jurisdiction of this court. But what this Court has to see is the reason for not invoking the alternative remedy available under Code of Criminal Procedure apart from the law laid down by the Apex court while dealing with this type of cases. When these principles are kept in mind, the following relief has to be granted in the above Writ Petitions.

RELIEF:

43. In W.P. 21422 of 2002, the complaint was filed by the Joint Registrar/Special Officer of Jubilee Hills Coop. House Building Society, Jubilee Hills, Hyderabad, on the basis of inquiry report submitted under Section 51 of Andhra Pradesh Cooperative Societies Act and the report of the Vigilance & Enforcement Department. The inquiry officer who conducted an enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act gave individual findings in respect of each charge and submitted a report to the fourth respondent on 21.10.2002. The Vigilance & Enforcement Department, Govt. of A.P. have enquired into the allegations against the Managing Committee of the Society on the issue of giving BOT contract to certain interested persons in violation of procedures & norms and concluded that the action of the Managing Committee of the Society has been against the overall interest of the Society''s members. The fourth respondent had come to the prima facie opinion that the Managing Committee members have committed offences of criminal breach of trust and falsification of accounts of the Society under Sections 79 and 83 of the Andhra Pradesh Cooperative Societies Act and relevant sections of IPC and accordingly issued proceedings on 24-10-2002 sanctioning prosecution to initiate Criminal Proceedings against the petitioners and four others. A reading of the contents of enquiry report and the note of the Vigilance & Enforcement Department, Govt. of A.P. discloses serious irregularities requiring investigation and the truth or otherwise cannot be decided at threshold and the investigation cannot be stalled. The investigation is held up for the last 12 years and it is expedient to complete the investigation as early as possible and complete the same in public interest. In view of the ratio of the above decisions, the Writ Petition is liable to be dismissed and is accordingly dismissed.

44. W.P.4687 of 2010 is a case of repeated complaints against the accused on the basis of same allegations and this is evident from perusal of C.C. No. 776 of 2007 which ended in acquittal on 25.08.2008 and C.C. No. 335 of 2008 which was dismissed on 24.02.2009. The complainant did not disclose the past complaints in the subsequent complaints but repeated the same accusations. This is nothing but abuse of process of law. Accordingly C.C. No. 285 of 2009 on the file of the Judicial Magistrate of Second Class at Karimnagar is quashed and the Writ Petition is allowed.

45. W.P.8096 of 2010 relates to a complaint lodged by one of the partners alleging certain irregular transactions in relation to a partnership property by some partners when a suit for dissolution of partnership and for rendition of accounts in O.S. No446 of 2005 is pending on the file of the learned I Additional Senior Civil Judge, Nellore. The allegation is that even after dissolution of the firm in 1991, some partners sold the firm property in favour of third parties based on a General Power of Attorney executed on 25.03.1985. The complaint was given to the Additional Director General of Police, C.I.D., Hyderabad, who obtained a legal opinion on 05.03.2010. The opinion states that it is a civil

dispute and liability of a person can be both civil and criminal at the same time. However it was opined that a case can be registered under Section 430 IPC r/w. Section 34 IPC. All the alleged transactions took place in 2005 and the transaction other than those mentioned in the complaint already formed part of Annexure 1 and 1A of the plaint filed in the suit. There is no explanation for lodging a complaint after 5 years and before the Additional Director General of Police, C.I.D., Hyderabad, except stating that the accused are influential persons at Nellore. No complaint was lodged with the local police and in spite of the same it was alleged that they are not inclined to take appropriate action. The complainant, being a partner could have obtained appropriate relief in the pending suit. The filing of a criminal complaint in respect of civil transactions undertaken by the members of the firm is nothing but an abuse of process of law and malafide as held by the Full Bench of Calcutta High Court in Bhuban Mohan Das''s case (supra), Supreme Court in Suneet Gupta''s case (supra) and B. Suresh Yadav''s case (supra) and of this Court in Vankina Chamundeswaranath''s case (supra). Accordingly the Writ Petition is allowed quashing the complaint in FIR No. 66 of 2010 dated 14.03.2010 on the file of the Nellore IV Town Police Station.

46. In W.P.8786 of 2010, the allegation in the complaint is that the accused cheated the complainant and misrepresented the facts to the Hon''ble Junior Civil Judge, Yellareddy through the counter affidavit filed on 04.12.2009 in E.P.I of 2009. In Gopalakrishna Menon and Another Vs. D. Raja Reddy and Another, , it was held that the prosecution on the basis of a private complaint in the absence of a complaint from the appropriate civil court where the alleged fraudulent receipt was produced would not be sustainable. In view of the same, the Writ Petition is liable to be allowed and is accordingly allowed quashing FIR No. 29 of 2010 dated 13.04.2010 on the file of the Yellareddy Police Station.

47. W.P. 17623 of 2010 was filed challenging the charge sheet in C.C. No. 605 of 2009 on the file of the XV Additional Chief Metropolitan Magistrate and Special Court for Trial of Video Piracy Cases, Nampally, Hyderabad, on the ground that the accused cannot be tried for the offence under the provisions of Copy Right Act in the absence of registration of Copy Right and in any event, the accused not being the publisher is not liable. These issues have to be decided after trial in the case. Prima facie, the absence of particulars on the video film as mandated under Section 52A itself is an infringement of copyright as held by the Supreme Court in Nagoti Venkataramana''s case (supra) and hence it cannot be held that the petitioner has not violated the law. Hence the Charge Sheet filed in the case cannot be quashed. Consequently, the Writ Petition is dismissed.

48. The miscellaneous petitions spending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

