



**UPDATE ON THE SUPREME COURT DECISION ON THE CRIMINAL COLOUR
GIVEN TO DISPUTES ARISING OUT OF JDAS AND GPAS**

The Supreme Court of India in its recent judgement in *Mitesh Kumar J. Shah v. State of Karnataka and others* discussed the law relating to criminalisation of civil disputes with specific reference to the disputes arising out of Joint Development Agreements and General Powers of Attorney.

FACTUAL BACKGROUND

- On 07/08/2013 Respondent No. 2 had initially executed a Joint Development Agreement (JDA) for developing a particular property with the company of the Appellants, i.e., Rajarajeshwari Buildcon Private Ltd. (hereinafter referred to as ‘the builder company’). In furtherance of the Joint Development Agreement, a General Power of Attorney (GPA) was also executed on the same date.
- Further, in lieu of payment of certain amount of loan taken by the 2nd Respondent from a third party, a Memorandum of Understanding (MoU) was entered into by Respondent No. 2 with the builder company, whereby the builder company was authorized to sell 8000 sq. ft out of Respondent No.2’s share in the undivided area and super built-up area, also backed by an oral agreement. Pursuant to this agreement, the builder company sold three apartments from the 2nd Respondent’s share.
- The 2nd Respondent unilaterally revoked the GPA granted to the builder company alleging breach of the terms of the JDA by the builder company. Aggrieved by this, the builder company initiated arbitration proceedings praying for an injunction against the 2nd Respondent restraining them from alienating property or creating third party interest in the property. The 2nd Respondent then filed a complaint contending firstly that the GPA was not executed in favour of the company, thus the apartments could not be sold, and secondly, that the flats No. 002,301,304 and 404 sold by the builder company belonged to the 2nd Respondent’s share.

CONTENTIONS OF THE APPELLANT

- The Appellants contend that the sequence of events that have transpired do not constitute an offence and that the second Respondent is merely trying to impart criminal colour to a civil dispute. The Supreme Court's judgement in **Prof. R.K. Vijayasarathy & Anr. Vs Sudha Seetharam & Anr.** has been relied on. The agreement to allot additional area of 8000 Sq. ft. to builder was not in writing and hence 2nd Respondent is making attempts to showcase the transaction to be criminal nature.
- Since the 2nd Respondent has withdrawn his claim with respect to excess flats and has preferred to pursue civil proceedings rather than to pursue his claim in arbitral proceedings, therefore the criminal complaint filed on the same issue must be quashed.
- The complaint is liable to be squashed because the dispute has been adjudicated by the arbitrator already.

CONTENTIONS OF THE RESPONDENTS

I. Contentions of Respondent No. 1- State

- In case where there are clear allegations that sale deeds of flats have been executed without authority, there are no grounds to interfere with the matter. clear ingredients of offences punishable under Sections 406, 419 and 420 read with Section 34 are made out.

II. Contentions of Respondent No. 2

- Relying on the dictum in **State of Karnataka vs M. Devendrappa & Anr**, the 2nd Respondent contends that reliance must be placed on whether the complaint spells out the ingredients of a crime. The Respondent asserts that the sale of Flat Nos. 002,301,304 and 404 is in excess of their share and that relevant ingredients to constitute an offence under sections 405 and 415 have been made out.
- The Appellants cannot evade a criminal case merely on the ground that a civil suit has been filed for recovery of property. The judgement delivered by Apex court in **Priti Saraf & Anr.**

vs **State of NCT of Delhi & Anr.** and **Sri Krishna Agencies vs. State of Andhra Pradesh & Anr** was relied on. It is contended that the cause of action in civil and criminal proceedings are separate and independent of each other. Therefore, criminal proceedings cannot be quashed.

COURT RULING

I. Whether offences punishable under Sections 406,419 and 420 are made out?

- Agreeing with the 2nd Respondent's contention, the Court held that the Appellants have not deceptively or intentionally tried to sell excess flats.
- The court has held that although one set of facts can be both of civil and criminal nature; each of these proceedings can be pursued regardless of each other.
- The court referred to decision in **Hridaya Ranjan Prasad Verma & Ors v State of Bihar & Anr.** and held that Conviction under Sections 405, 419 and 420 require the presence of dishonest or fraudulent intentions however, in the instant case, neither dishonesty nor fraudulent intent is made out and hence requires the intervention of the court. The facts do not disclose a case of criminal breach of trust or cheating, but there is a mere breach of contract.

II. Whether dispute is entirely civil in nature and therefore liable to be quashed?

- The court relied on judgements rendered in **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd & Ors, State of Haryana & Ors. Vs Ch. Bhajan Lal and Ors.** Although the immediate case involves determination of civil issues, the Court can secure the ends of justice by invoking Sections 482 of the IPC.
- Referring to **Randheer Singh vs. the State of UP**, the court held that giving a criminal imputation to a civil dispute to take advantage of a quick relief is an abuse of the process of law and must be discouraged in entirety. The court has found that attempts have been made to stretch the contours of a civil dispute thereby essentially imparting a criminal colour to it.



OUR COMMENT ON THE JUDGEMENT

This judgement is a welcome relief for Developers, as unscrupulous landowners have been using money, muscle power, and other tactics to coerce them to enter settlements in JDA & GPAs. Unless there are strong ingredients of criminal nature such as malicious intent, conspiracy, wilful intent to defraud etc. are made out, criminal proceedings such as cheating and criminal breach of trust cannot be sustained. The Apex Court has ensured that buyers refrain from asserting their *malafide* interests with impunity since Developers are also guaranteed protection against such fallacious criminal complaints.

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