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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 425 OF 2016

Rajesh Upadhyay, S/o Late K.R. Upadhyay, aged about 45 years, R/o Plot No.05, Vivekanand Colony, Vaishali Nagar, Supela, Police Station Supela, Bhilai, District Durg (C.G.)

... Petitioner

Versus

1. Sandeep Mathur, S/o Late S.S. Mathur, aged about 44 years, R/o B/101, Surya Vihar, Phase-02, Bhilai, Police Station- Supela, Bhilai, District Durg (C.G.)

2. Mukesh Dodi, S/o Late Prithviraj Dodi, aged about 50 years,

3. Smt. Archana Dodi, W/o Mukesh Dodi, aged about 46 years,

Both R/o Malviya Nagar, Durg, Police Station- Mohan Nagar, District Durg (C.G.)

... Respondents

For Petitioner	:	Mrs. Fouzia Mirza, Advocate.
For Respondent 1	:	Mr. Shikhar Sharma, Advocate.
For Respondents 2 and 3	:	Mr. Arvind Kumar Dubey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/06/2016

1. The present petition under Section 482 of CrPC has been filed challenging the order dated 8.2.2016 passed by the Additional Sessions Judge, Durg in Criminal Revision No. 000016 of 2016, whereby the Revisional Court has dismissed the revision preferred by the Petitioner upholding the order of the Judicial Magistrate First Class, Durg in an unregistered complaint case on 9.12.2015 rejecting the complaint preferred by the Petitioner against the Respondents registering a case for the offence under Sections 406, 418, 420, 467, 468, 471 and 120(B) of IPC.

2. For considering the issue involved in the instant petition, the brief facts relevant are that the Petitioner/Complainant had entered into an agreement for sale with Respondent No.1 on 7.1.2013 in respect of

purchase of around 4000 sq. ft. of land for a sale consideration of Rs. 40 Lakh. On 7.1.2013 they had entered into an agreement in the presence of two witnesses and the Petitioner also gave an advance amount of Rs. 10 Lakh at the time of the execution of the agreement to sale and it was agreed that the remaining part of the amount i.e., Rs.30 Lakh shall be paid at the time of the execution of the sale deed.

3. According to the Petitioner/Complainant, in spite of a specific agreement entered into between the Petitioner and Respondent No.1, the Respondent No.1 without further acting upon the said agreement and selling the property to the Petitioner and without even the knowledge of the Petitioner, is said to have sold the property to Respondents No. 2 and 3 on 30.6.2014. This act on the part of Respondent No.1 in selling the property to Respondents No. 2 and 3 in spite of there being a specific agreement for selling the property to the Petitioner and for which he had also taken an advance amount of Rs. 10 Lakh, amounts to an act of cheating on the part of Respondent No.1.

4. Aggrieved by the action of Respondent No.1, the Petitioner herein filed a complaint case before the Court of the Judicial Magistrate First Class for taking cognizance on the complaint and proceeding against the Respondents for having committed the offence under Sections 406, 418, 420, 467, 468, 471 and 120-B of IPC.

5. Initially, the Judicial Magistrate First Class had rejected the complaint on 8.9.2015, against which the Petitioner had also preferred a revision which was registered as Criminal Revision No. 168 of 2015 and the Revisional Court on 6.10.2015 had allowed the revision and remanded the matter back to the Court of Judicial Magistrate First Class with a direction of passing a speaking order taking into consideration the provisions of Section 203 of CrPC. Subsequently, the Judicial Magistrate

First Class again taking into consideration the directives given by the Revisional Court on 6.10.2015, again found that the nature of complaint does not constitute a criminal offence and that it was apparently a civil dispute between the parties and the appropriate remedy for the Petitioner would have been for initiating proceedings for specific performance of contract and again rejected the complaint vide its order dated 9.12.2015.

6. This order of 9.12.2015 passed by the Judicial Magistrate First Class, Durg was put to test before the Revisional Court in Criminal Revision No. 000016 of 2016. The Revisional Court also taking into consideration the entire factual matrix of the case rejected the revision petition upholding the decision of the Judicial Magistrate First Class holding that the revision does not have any merits and that from the facts of the case as narrated in the complaint it clearly reflects of the dispute civil in nature and the nature of allegation attributed in the complaint does not constitute a criminal offence.

7. It is this order which is being assailed in the present Criminal Misc. Petition invoking the powers of the High Court under Section 482 of CrPC.

8. Assailing the two orders passed by the Courts below, learned Counsel for the Petitioner submits that here is a case where the Respondent No.1 has reflected his dishonest intentions all along and in the process has deceived the Petitioner after entering into an agreement with the Petitioner and accepting heavy amount of Rs.10 Lakh as advance, but subsequently backed out from the said agreement and sold the property to Respondents No. 2 and 3 which clearly falls within the definition of cheating as provided under Section 415 of IPC.

9. Counsel for the Petitioner further submits that right from the time of the execution of agreement on 7.1.2013, the Petitioner was all along ready to perform his part of the contract but it was the Respondent No.1

who was deliberately and with fraudulent and dishonest intentions to deceive the Petitioner had entered into an agreement with him and never tried to perform his part of the contract in spite of repeated requests and reminders made by the Petitioner to Respondent No.1 and ultimately without the consent and knowledge of the Petitioner and in breach of the said agreement dated 7.1.2013 sold the property to Respondents No. 2 and 3 on 30.6.2014.

10. Counsel for the Petitioner addressed here on the fact that the nature of allegations levelled in the complaint clearly indicates of having all the ingredients that are required for an act of cheating and therefore the order of the Judicial Magistrate First Class rejecting the complaint and the order of the Revisional Court upholding the same are bad in law and deserve to be set aside and the matter be sent to the Court of Judicial Magistrate First Class directing the Magistrate to register a complaint and proceed further prosecuting the Respondents for the offence under Sections 406, 418, 420, 467, 468, 471 and 120-B of IPC.

11. Shri Shikhar Sharma, learned Counsel for Respondent No.1, opposing the petition submitted that all the submissions and allegations made by the Petitioner are false and baseless. He further submitted that in fact the two orders passed by the Courts below are speaking orders passed with proper application of judicial mind and the contentions raised by the Petitioner in the present petition find place in the orders passed by the two Courts below which shows that they have been considered by the Courts below. Further, the two Courts below have given reasons while rejecting the complaint and the revision of the Petitioner and the reasons so assigned are proper, legal and justified and do not warrant any interference more so exercising the extraordinary powers under Section 482 of CrPC conferred upon the High Court.

12. Having considered the rival contentions and on perusal of the records enclosed along with the petition what is an admitted position from the version of the Complainant himself is that there was an agreement between the Petitioner and Respondent No.1 on 7.1.2013 for the sale of a property belonging to Respondent No.1. What is important is that the said agreement very categorically stipulated a condition that the balance of amount of Rs. 30 Lakh had to be paid by April, 2013 by which time the registration of the property should be carried out. From 7.1.2013 till 30.6.2014 i.e., after a period of around 1½ years there appears to have been no steps taken by the Petitioner for the execution of the sale deed dated 7.1.2013 though the sale had to be completed by April, 2013 i.e., within a period of about four months from the time of execution of the agreement.

13. It is also an admitted position that the Petitioner did not invoke any of the legal remedies available against the Respondent No.1 to execute the sale deed. During the said period the Petitioner had the remedy of approaching the Court of law for the specific performance of the contract in case the Petitioner was serious about the said agreement dated 7.1.2013, which the Petitioner did not avail either within the period prescribed under the agreement or even within one year from the date of the execution of the agreement. All these facts indicate that the Petitioner was not serious about the agreement entered into with Respondent No.1.

14. The facts also reflect that since the Petitioner was not showing any response in spite of over one year having been passed, the Respondent No.1 who intended to sale the property sold it to Respondents No. 2 and 3. The contention of the Petitioner that the act on the part of Respondent No.1 falls within the ambit of Section 416 of CrPC does not seem to be proper for the reason that Respondent No.1 waited for almost one and

half year from the date of the agreement and since there was no effort shown by the Petitioner towards compliance of the agreement the Respondent No.1 got the property sold to Respondents No. 2 and 3. This by no stretch of imagination can be said to be an act of fraud or dishonesty nor can it be said the deliberate act of deceiving the Petitioner. The contention of the Petitioner would had been correct if the Respondent No.1 would have sold the property to some third person by April, 2013 which was the period provided to the Petitioner for providing the balance amount and getting the property registered. Since in the instant case the property has been sold after one and half year and in between the Petitioner has not taken any recourse available to him against Respondent No.1 in spite of ample remedies available, gives an inference that the Petitioner was not serious about the execution of the contract.

15. From the documents enclosed with the petition itself it is apparent that there is a misconceived criminal proceeding intended by the Petitioner against the Respondents. The Petitioner being fully aware that his remedies lie under the civil law and if he does not avail the said remedies at the proper time would himself be made accountable if the other party in the contract does something which does not suit the interest of the Petitioner. From the pleadings it also does not reflect that there was any inducement made by Respondent No.1 on the Petitioner with respect to the property rather it was a pure agreement to sale with a clause that the sale had to be completed within four months and there appears to have been no act committed by Respondent No.1 during the said period or within a considerable period of further one year from April, 2013 and therefore it cannot be said to be an act of fraud or dishonesty on the part of Respondent No.1.

16. In order to hold a person guilty for an offence of cheating it has to be shown that his intention was dishonest at the time of making of the promise, which in the instant case was the making of the agreement to sale. The said intention would have been inferred if during the period within which the sale had to be completed the Respondent No.1 would have sold the property to third person. Such is not the case. For constituting of offence of cheating as is defined under Section 415, the complainant has to establish that the person had dishonestly and fraudulently induced the complainant to deliver any property, which the Petitioner in the instant case has miserably failed.

17. A perusal of the impugned order passed by the Revisional Court reflects that the Revisional Court had aptly taken into consideration the judgments of the Supreme Court passed in the case of **Indian Oil Corporation Vs. NEPC India Limited** [2006 (6) SCC 736] and also in the case of **G. Sagar Suri Vs. State of U.P.** [2000 (2) SCC 636] while rejecting the revision of the Petitioner.

18. The view of the Revisional Court and the judgments relied upon by the Revisional Court while rejecting the revision stands further fortified from a recent decision of the Supreme Court reported in 2014 (10) SCC 663 [**Binod Kumar and others Vs. State of Bihar and another**]. The Supreme Court has made an observation that criminal proceedings are not a shortcuts for other remedies. Relied upon the earlier decision in the case of Indian Oil Corporation (supra), the Supreme Court has very categorically held that a civil liability cannot be converted into a criminal liability and the same would amount to abuse of the process of Court.

19. In the opinion of this Court, there has been no illegality or perversity committed on the part of the two Courts below in rejecting the complaint and the revision preferred by the Petitioner.

20. The Criminal Misc. Petition being devoid of merits, the same is dismissed.

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Sd/-
(P. Sam Koshy)
Judge