

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2408 of 2016

ORDER:

This revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the docket order dated 15.09.2016 passed in C.C.No.342 of 2016 by the Junior Civil Judge, Maheshwaram, Ranga Reddy District, whereby the petition filed by the petitioner herein under Section 239 of Cr.P.C. was dismissed.

The petitioner is accused No.4 as per the charge sheet, who allegedly committed an offence punishable under Section 420 of I.P.C.

The main contention of the petitioner is that no allegation was made against this petitioner to attract any offence punishable under Section 420 of I.P.C. but police filed charge sheet in most casual manner.

The trial Court passed the impugned order dated 15.09.2016 dismissing the application on the ground that the petitioner-accused No.4 induced the complainant to purchase the plot. In the confessional statement of accused No.1, she admitted the role of accused No.4 and clearly stated that accused No.4 has misappropriated the amount and as on the date of filing of complaint against accused No.1, accused No.4 was absconding so the charge sheet was filed against accused No.1 only by showing accused Nos.2 to 4 as absconding, however on further investigation police recorded confessional

statement of accused No.4, in which he confessed about the commission of offence, thereby police filed charge sheet against accused No.4 also.

The order is now questioned in the present revision on the ground that there was no material to proceed against the petitioner – accused No.4 since the material collected during further investigation was not placed before the Court, but still the trial Court allegedly considered the further investigation conducted after filing charge sheet against accused No.1 to 4 showing accused Nos.2 to 4 absconding. In the absence of any material collected during further investigation, it is difficult to conclude that accused No.4 also committed an offence punishable under Section 420 of I.P.C.

In the absence of any material in the statements recorded by the police under Section 161 of Cr.P.C., the petitioner cannot be proceeded further for the offence punishable 420 read with 120-B of I.P.C. It is also contended that there is no material *prima facie* to frame charge against the petitioner for the offence punishable under Section 420 of I.P.C. but the trial Court on erroneous appreciation of facts and law dismissed the petition.

During hearing Sri B.Nalin Kumar, learned counsel for the petitioner contended that in the absence of any permission from the Court to conduct further investigation, the collection of any material including alleged confessional statement of accused No.4 recorded by police is illegal and unsustainable

under law and the finding recorded by the trial Court is not based on any material. Therefore, the petitioner is liable to be discharged for the offence punishable under Section 420 of I.P.C. and requested this Court to allow the petition and set aside the order passed by the trial Court. It is also contended that the counter filed by the respondent before the investigating agency before the trial Court was not considered by the trial Court and various allegations made therein would disclose that no prima facie material is available to proceed against the petitioner herein, thereby the order passed by the trial Court is cryptic and prayed to discharge the petitioner for the offence punishable under Section 420 of I.P.C.

Sri O.Kailashnath Reddy learned counsel for the respondent No.2 herein supported the order in all respects while requesting this Court to confirm the order passed by the trial Court.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

“Whether the prosecution against the petitioner herein is groundless, if not, whether the Court below can proceed against the petitioner for the offences punishable under Sections 420 of I.P.C.?”

P O I N T:

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power

only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to section 239 of Cr.P.C. if the Court is of the opinion, upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be

groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing

of charge as held by the Apex Court in “***P.Vijayan v. State of Kerala***¹”

Admittedly, charge sheet was filed against accused Nos.1 to 4 and accused No.1 was produced before the Court on execution of P.T. warrant, accused No.2 – Revella Vamsidhar, accused No.3 – M.V.Vamsi Kishore @ Vamsi Krishna and accused No.4 – Tekumalla Durga Prasad were shown as absconding. Later accused No.4 was produced before the Court on execution of N.B.W. on 18.12.2015.

In the first charge sheet, no specific allegation was made against accused No.4 except observing that the accused No.4 – T.Durga Prasad was known to the defacto complainant, who canvassed for purchase of a plot at Muchrla Village, Kandukur Mandal, Ranga Reddy District stating that they had commenced a real estate development project, since the defacto complainant knew accused No.4 – T.Durga Prasad, she bonafidely believed him and agreed to purchase Plot No.77, admeasuring 403 Sq.yards etc.

At the end of first charge sheet, it is alleged as follows:

“accused No.1 has registered 3 acres of total land intended for the project in the name of herself/her associates and that they had faced great difficulty in getting payment for the same, thus they learnt that accused No.1 – Gaddam Pavani and her associates accused Nos.2 to 4 have cheated them collecting money to register the plot and misappropriated their amouitn and further the accused Nos.1 to 4 are cheaters and fraudsters.”

¹ AIR 2010 SC 663

Curiously in the supplementary charge sheet, a bare allegation is made against the accused, which is extracted hereunder.

“The entire money of Rs.8.66 lakhs paid by the L.W – 01 has been utilized by the accused A1, her husband A2 and their associates A3 & A4 for personal use and they have misappropriated the money of LW-01. Thus, the evidence collected is clearly established that the accused persons A1 to A4 noted in col.No.11 of this charge sheet have committed an offence punishable U/s.420 IPC.”

Thus, the role of petitioner herein – accused No.4 as per the allegations made in the supplementary charge sheet is that Accused Nos.3 and 4, who are the alleged associates of accused Nos.1 and 2, misappropriated the money, but the offence allegedly committed the petitioner is punishable under Section 420 of I.P.C.

Section 420 of I.P.C. deals with punishment for the offence of ‘cheating’.

Cheating is defined under Section 415 of I.P.C and it is as follows:

“415. Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients to constitute the offence of cheating are:

- (i) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In **V.Y.Jose v. State of Gujarat**² the Apex Court laid down following ingredients to constitute cheating.

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the

² (2009) 3 SCC 78

time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.”

But the trial Court came to a different conclusion that the petitioner – accused No.4 induced the complainant to purchase plot, which is not based on any material. Even in the statements recorded by the police during investigation there is an allegation that T.Durga Prasad (petitioner herein) worked as legal advisor and he has share in the business as per the statement of Narayana Reddy. Similarly, statements of other witnesses recorded under Section 161 of Cr.P.C. also do not disclose the ingredients *prima facie* to constitute the offence punishable under Section 420 of I.P.C. But the trial Court did not consider any of the statements recorded by the police under Section 161 Cr.P.C. and the counter filed by the investigating agency was also not considered by the trial Court.

In view of the law declared by the Apex Court in “**P.Vijayan v. State of Kerala**” (referred supra) while deciding an application under Section 239 of Cr.P.C. the Court is required to consider the material produced along with the charge sheet or final report filed under Section 173 of Cr.P.C. and on verification if found that the charge is groundless and no *prima facie* material is found against the petitioner to

proceed further by framing charges, the Court may discharge the petitioner. But here in the present case, the trial Court did not consider the counter filed by the investigating agency and the material produced before the Court including the allegation made in the first/original charge sheet and supplementary charge sheet against the petitioner to find out whether those allegations would constitute any offence *prima facie* under Section 420 of I.P.C., thus committed an error in passing impugned order. Hence, the order passed by the trial Court is contrary to the principles laid down by the Apex Court in “**P.Vijayan v. State of Kerala**” (referred supra).

In the result, the criminal revision case is allowed, setting aside the order dated 15.09.2016 passed in C.C.No.342 of 2016 by the Junior Civil Judge, Maheshwaram, Ranga Reddy District while remanding the matter to the trial Court with a direction to consider the entire material afresh and pass appropriate reasoned order in accordance with law after affording a reasonable opportunity to the petitioner and respondents herein, within a month from the date of receipt of a copy of this order. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

25.10.2017
Ksp