

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.1801 of 2011

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C., to quash the proceedings in Crime No.134/2010 of Atmakur Police Station, Nellore District, registered against the petitioner/Accused for the offence punishable under Section 420 of IPC.

2. On the complaint of respondent No.1, the S.H.O., Atmakur Police Station, registered a case in Crime No.134/2010 against the petitioner/Accused for the offence punishable under Section 420 of IPC. Aggrieved by the registration of said crime, the petitioner has filed the present Criminal Petition to quash the proceedings against him in the aforesaid Crime No.134/2010.

3. The brief allegations in the complaint lodged by respondent No.1 on 03.12.2010 before the Station House Officer, Atmakur Police Station, Nellore District, are that the petitioner/Accused met him and introduced himself as 'Organiser' in Pears Agrotech Corporation Limited (PACL) and asked respondent No.1 to take a policy of PACL stating that the Company would allot a house plot depending upon the money paid by the subscriber and respondent No.1 believing the Organiser, went to the PACS Office at Nellore on

18.10.2010 and took a policy of PACS for Rs.30,000/- and paid an amount of Rs.2,760/- towards first instalment and obtained a Bond of PACL. One week later, again he went to PACL Office at Nellore and asked Mr. Satish Kumar, the Branch Manager, about the allotment of site to him, but the said Branch Manager did not give him proper reply and asked him to contact Mr. Paras Thyagi, who is a Development Manager, for information. The complainant contacted the said Mr. Paras Thyagi over phone, but his phone was switched off. The other Branch Manager told him that he was not concerned with the said transaction. Thereupon the complainant had enquired about the PACL and found that there was no Company with that name in the State of Andhra Pradesh. He also found that the Company does not have any plots in its name and it is not issuing any PACL Policies. Thereafter, he enquired some other persons and came to know that they were also not allotted house plots and that they were also cheated by the Company after receiving payments from them. Basing on these allegations, the police registered a case in Crime No.134/2010 against the petitioner herein. The petitioner has filed the present Criminal Petition for quashing of the proceedings in the above crime.

4. Heard the arguments of Sri C. Sharan Reddy, learned counsel for the petitioner/Accused, as well as Sri Bankatlal Mandhani, learned counsel for respondent No.1 –

complainant and the learned Public Prosecutor appearing for 2nd respondent-State. Perused the material on record.

5. Learned counsel for the petitioner submits that PACL is having Head Office at Delhi and having Branches all over the State of Andhra Pradesh, including the one in Nellore District. As per the terms mentioned in the Bond, after payment of full amount by way of instalments, plot will be registered in the name of respondent No.1, but, respondent No.1 had paid only one instalment, and asked for information with regard to existence of the Company and for the availability of plots.

6. Learned counsel for the petitioner placed reliance on a decision rendered in PACL INDIA LTD. v. AXIS BANK¹, whereunder this Court allowed the writ petition filed by PACL in respect of another crime registered against the PACL filed for freezing of Accounts of the Company by the Bank. This Court held that the relief claimed was unsustainable. It is further submitted that the Head Office of PACL is existing in Delhi and the Company is having Branches and lands all over India. He further submitted that PACL is running a Scheme and as per that Scheme, after payment of all instalments, the subscribers would be allotted plots.

7. Learned counsel for the respondent No.1 submits that PACL has issued a Bond to respondent No.1 after receipt of first instalment of Rs.2,760/-, but the Bond does not contain

¹ 2008 (5) ALT 755

the recitals about allotment of plot. It is further argued that the allegation of respondent No.1 that when he enquired about PACL, he came to know that there is no Company existing with that name and it does not have any Branches all over India and also plots for allotment to the subscribers is incorrect.

8. Learned counsel for the petitioner, referring to the judgment cited supra, submitted that the PACL India Limited was in existence and the Writ Petition filed for freezing Bank Accounts of the Company was dismissed. It shows that the allegations in the complaint are false.

9. At the outset, this Criminal Petition is filed by an Organiser working in Pears Agrotech Corporation Limited (PACL). The 1st respondent has lodged a complaint against him stating that the Accused has induced him to take a policy of PACL for purchase of a plot and a policy was issued to him. The policy contains the general terms and conditions. The 1st respondent without even going through the contents of the general terms and conditions has filed the complaint stating that the petitioner has cheated him and also several other persons and requested to seize the PACL company. The allegations made in the complaint are already referred above.

10. In order to quash the proceedings by exercising inherent jurisdiction under Section 482 Cr.P.C., the following circumstances are to be taken into consideration:

- (i) If the allegations made in the complaint do not constitute any offence much less the offence alleged to have been committed by the petitioner;
- (ii) Even if the allegations made in the complaint *ex facie* taken to be true and correct, there is no possibility of conviction of the petitioner;
- (iii) If the registration of the case against the petitioner is prohibited by any law for the time being in force;
- (iv) If the registration of crime and continuation of investigation would amount to misuse of process of law; and
- (v) To secure the ends of justice.

11. In the light of the above guidelines, it has to be tested whether the complaint lodged by the 1st respondent has got any allegations in respect of the offence under Section 420 IPC. The allegations made in the complaint do not constitute any offence much less the offence under Section 420 IPC. The allegations with regard to ingredients of Section 420 IPC are not present in this case. The contents of the complaint reveals that it is only a hearsay evidence and except that there is no cogent material produced along with the complaint.

12. It is appropriate to refer to a decision rendered by the Hon'ble Apex Court in CBI v. A. RAVISHANKAR PRASAD² referred to a leading case in STATE OF HARYANA v. BHAJAN

² (2009) 6 SCC 351

LAL³, wherein some guidelines have been formulated for exercising provision under Section 482 Cr.P.C. The guidelines in BHAJAN LAL's case (3 supra), 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.

In RAVISHANKAR PRASAD's case (2 supra), the Hon'ble Supreme Court, in paragraphs 45 and 48, observed as follows:

³ 1992 Supp. (1) SCC 335

45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in proper perspective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court under section 482 Cr.P.C. the trial of this case could not be completed and concluded.

48. In this view of the fact, in the interest of justice we direct that the trial be now completed as expeditiously as possible. The trial court is directed to conduct the trial on day to day basis and parties are directed to cooperate with the trial court. The trial court shall ensure that unnecessary adjournments be avoided and trial be concluded as expeditiously as possible.

13. In the light of the above decision and in view of the nature of allegations made in the complaint, this is a fit case to quash the proceedings. The complainant, if wanted any information, ought to have contacted the Branch Manager concerned and obtained the same, but instead of doing so, he initiated criminal prosecution against the petitioner, which is nothing but an abuse of the process of Court. Absolutely, there are no grounds for the police to register the FIR without even verifying the factual aspects properly. Respondent No.1 may seek his remedies for redressal of his grievance for violation of the terms and conditions of the policy, if any by PACL in appropriate Forum. Since the FIR lodged against the petitioner is without any basis, the same is liable to be quashed with exemplary costs.

14. Accordingly, this Criminal Petition is allowed quashing the proceedings in Crime No.134/2010 of Atmakur Police Station, Nellore District, registered against the

petitioner/Accused for the offence punishable under Section 420 of IPC and Respondent No.1 is directed to pay exemplary costs of Rs.25,000/- (Rupees twenty five thousand only) to the High Court Legal Services Committee, High Court Buildings, Hyderabad, within two months from the date of receipt of a copy of this order.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

12.10.2017.
Msr

GUDISEVA SHYAM PRASAD, J



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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