HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.10903 of 2014

ORDER:

The present Writ Petition came to be filed seeking issuance of Certiorari, calling for the records in Crime No.397 of 2013 of Sadasivpet Police Station, Medak District and quash the same is illegal and arbitrary and barred by limitation. Originally, the present Writ Petition was filed seeking issuance of writ of mandamus but subsequently the said prayer was amended to one under Writ of Certiorari by way of filing W.P.M.P.No.2643 of 2016, which was allowed on 04.04.2017.

2) The averments in the affidavit filed in support of the Writ Petition are as under :-

The 3rd respondent herein filed a private complaint before the court of Special Mobile and Judicial First Class Magistrate, Sangareddy on 24.08.2013 alleging that he is the holder of agreement of sale-cum-general power of attorney of land admeasuring Ac.5.28 guntas situated at Maddikunta village, Sadashivapet Mandal, Medak District. He also claims to be the absolute owner of the land admeasuring Ac.8.15 guntas situated at Suraram Mandal, Sadashivapet Mandal, Medak District. As he was in need of Rs.10 lakhs, he approached the petitioner and sought for a handloan. Then the petitioner is alleged to have insisted the respondent to execute a sale deed in his favour with regard to the land in question, so as to enable him advance the money, with an assurance that he would re-register the land in favour of third respondent on repayment of loan amount. Believing the same, the third respondent executed a sale deeds bearing Doc.Nos.3258 of 2006 and 3257 of 2006 dated 03.08.2006. Subsequently, the 3rd respondent approached the petitioner requesting him to take back the loan amount and execute a registered sale deeds in his favour. Refusal to do so, lead to registration of the present crime for the offences punishable under Sections 406, 420, 504 and 506 IPC.

3) Heard leaned counsel for the petitioner, learned Government Pleader for Home and the respondents, who filed the vacate stay petition. With the consent of all, the main writ petition itself is heard for final disposal.

4) Learned counsel for the petitioner would submit that the allegations made in the report even taken at their face value, do not make out an offence of cheating or breach of trust. It is his case that the sale deeds which were executed in the year 2006 show outright sale and as such the question of re-transmission of the property would not arise. He further submits that, if really, the 3rd respondent offered to pay back the money, there was no need for him to wait till 2013, to lodge a report. It is said that since there is abnormal increase in the rates of the land in the locality, the third respondent, with an intention to get back the said land, lodged a private complaint. It is said that if really the third respondent was

aggrieved by the transaction, he should have take steps for cancellation of the sale deed before a competent civil court and that the criminal case cannot be maintained against the petitioner. The averments in the affidavit further disclose that pursuant to a notice dated 04.03.2014 issued under Section 91 Cr.P.C., by the Inspector of Police, Sadashivpet, the petitioner herein submitted an explanation. The action of the police in registering the crime and also threatening the petitioner to settle the matter is the cause for filing this writ petition.

5) By an order dated 21.04.2014, this Court while admitting the writ petition granted stay of all further proceedings including arrest of the petitioner.

6) A counter came to be filed by the third respondent along with vacate stay petition disputing the averments made in the affidavit filed in support of the Writ Petition. In paragraph 4 of the counter, it is averred that in the year 2007, he approached the writ petitioner requesting him to receive the money and return the property by executing a registered sale deed in his favour, but the petitioner failed to do so. However, on a request made by the third respondent, the petitioner came to Sadasivapeta on 23.08.2013, where the third respondent offered to pay Rs.10 lakhs with interest and requested the petitioner to register the sale deed in his favour. But the petitioner bluntly refused to do so. It is said that subsequent

to the present sale transaction, the petitioner herein sold the properties to third parties without accepting the debt amount and as such the said action of the writ petitioner in selling the properties to third parties in the year 2015 and 2016 amply establish, his intention to cheat.

7) The Counter filed by the second respondent i.e., the S.I. of Police, Sadashivpet Police Station is in line with the averments made in the counter filed by the third respondent.

8) The case of the petitioner, as per the undisputed documents, is that it is a case of outright sale and delivery of possession. The case of the respondent is that for the purpose of lending a hand loan of Rs.10 lakhs, the petitioner got the sale deeds registered in his favour, with an understanding that the same would be re-transferred in the name of the second respondent on payment of money. In the year 2007 the second respondent though wanted to pay back the money and get the lands re-transferred in his name, the petitioner kept quiet without giving any reply. However, in the year 2013, the present report came to be lodged.

9) There is no dispute with regard to proposition of law that while quashing an FIR, this Court cannot make a roving enquiry. It has to see whether the allegations in the report do make out a *prima facie* case or not. In **International Advanced Research Centre for Powder**

Metallurgy and New Materials (ARCI) and others[1], the Apex Court while dealing with the quashing of proceedings in C.C.No.840 of 2008, which was taken on file for the offence punishable under Sections 419 and 420 IPC, observed as under :-

"15. The essential ingredients to attract Section 420 Indian Penal Code are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating Under Section 420 Indian Penal Code. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar and Ors. v. State of Bihar, this Court held as under: (SCC p.250, para 21)

21. ...In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

[1] (2016)1 Supreme Court Cases 348

10) In **Hridaya Ranjan Prasad Verma v. State of Bihar[2],** the Apex Court, on the facts of that case, observed as under :-

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(See also Indian Oil Corporation v. NEPC India Ltd.[3])

11) In **V.Y.Jose and another v. State of Gujarat and another[4],** the Apex Court held as under :-

"21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt

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[2] (2000) 4 *SCC* 168

[3] (2006) 6 *SCC* 736

[4] (2009)3 Supreme court cases 78

whatsosever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure."

12) From a reading of the judgments referred to above, it is clear that there exists a distinction between a contractual dispute and an offence of cheating. The intention to cheat at inception is a pre-requisite to make out an offence of cheating. As per the averments made in the report, the accused failed to re-register the sale deeds in spite of the fact that the informant wanted to repay and get a sale deed registered in his favour.

13) Learned counsel for the third respondent (informant) would submit that the subsequent conduct of the accused in selling away the property clearly shows his intention to cheat. It is to be noted that the transaction was in the year 2006. The respondent herein is alleged to have approached the petitioner in the year 2007. But not even a little finger was raised questioning his conduct till the year 2013. No reasons are given in the report as to why it took nearly 7 years to lodge a report against the petitioner herein, questioning his inaction in not registering the sale deeds. Be that as it may, the allegations in the report neither indicate that the petitioner executed any document indicating giving of loan nor does it say that the informant was in possession of a document showing receipt of loan from the petitioner. A reading of the sale deed, executed by the third respondent in favour of the petitioner, would show that the vendor

has offered to sell the scheduled property individually and severally to meet his family and legal necessities, for a consideration of Rs.1,67,500/- and the vendee has agreed to purchase the same, which is free from encumbrances for the said consideration. The terms of the sale deed do not anywhere indicate that the said property was being sold with a condition to re-transfer the same in favour of the third respondent on fulfilling certain conditions.

14) The record discloses that in the year 2013, the respondent herein filed O.S.No.8 of 2016 in the court of VII Addl. District and Sessions Judge, Sangareddy against the petitioner and subsequent purchasers for cancellation of sale deeds. It appears to be a case where civil court has to decide whether the said registered documents require cancellation. The subsequent conduct of the petitioner, in selling away the property in the year 2015 and 2016, i.e., nearly 10 years after the registration, cannot be made a basis to show that the petitioner has any intention to cheat the 3rd respondent in the year 2006, moreso having regard to the contents of registered sale deeds. When the covenants in the registered sale deed state that possession was delivered after receiving the consideration, no ban can be imposed on the sale of the said property, moreso when the execution of registered sale deed is not in dispute. When once a conveyance deed was executed conveying the right, title and interest in respect of an immovable property and that too by appearing before the Sub-Registrar concerned and admitting the execution and receipt of the consideration which formed the basis for the transaction, it is impermissible for the third respondent, after 7 years to turn around and make the same an issue. Ergo, this Court is of the view that the matter is purely civil in nature and ingredients to constitute an offence under Sections 406 and 420 are not made out.

15) In view of the finding, arrived at, any amount of doubt would arise as to whether the incident as alleged, would have occurred on 23.08.2013. When the main allegations were found to be false and when the nature of allegations made, do not make out a case as alleged, this Court is of the view that continuation of investigation would be an abuse of process of law.

16) Accordingly, the Writ Petition is allowed quashing the FIR in Crime No.397 of 2013 of Sadasivpet Police Station, Medak District. No costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:27.04.2017
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