THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition Nos.3583 & 3585 of 2011

COMMON ORDER :

Crl.P.No.3583 of 2011 :

This is a petition filed under Section 482 of Cr.P.C. seeking to call for the records in C.C.No.132 of 2011 on the file of the Court of the I Additional Judicial Magistrate of First Class, Kadapa, and quash the same in so far as the petitioners/accused Nos.2 to 4 are concerned.

Crl.P.No.3585 of 2011 :

This is a petition filed under Section 482 of Cr.P.C. seeking to call for the records in C.C.No.132 of 2011 on the file of the Court of the I Additional Judicial Magistrate of First Class, Kadapa, and quash the same in so far as the petitioner/accused No.1 is concerned.

In view of the fact that two criminal petitions arise out of the same C.C.No.132 of 2011, they are heard together and disposed by this common order.

These criminal petitions are preferred by petitioners/accused Nos.1 to 4 under Section 482 of Cr.P.C. to call for the records in C.C.No.132 of 2011 from the file of the Court of the I Additional Judicial Magistrate of First Class, Kadapa and quash the same.

The contention of petitioners/accused Nos.1 to 4 is that the entire allegations leveled against petitioners are purely civil in nature and there is long lapse of delay of four years and three months. When the 2nd respondent/de facto-complainant executed registered sale deed, the general presumption is that the entire sale transaction was completed only after payment of sale consideration. No prudent man can execute the registered sale deed without receiving total sale consideration.

It is further contended that had the total consideration under the earlier documents were not paid, respondent No.2 and his relatives would not have executed subsequent sale deeds for remaining extent. This complaint is filed only to harass the petitioners/accused.

On the other hand, the 2nd respondent/de facto-complainant contended that he and his relatives executed sale agreement in favour of accused No.1 agreeing to sell the land property of Ac.0.73 cents in Sy.Nos.871, 871/1 & 871/4 at the rate of Rs.50,000/- per cent. It is further contended that at the request of accused No.1, the second respondent and his relatives executed sale deeds in favour of accused Nos.2 to 4 and others on the promise of accused No.1 that they will make payment of the balance consideration. Believing their words, the de facto-complainant and other share holders did not insist to pay the entire sale consideration on the same day and executed registered sale deeds. Finally, when requested for balance consideration, all the petitioners made evasive replies. The final contention of the de facto-complainant is that petitioners induced the de facto-complainant and other share holders to sell away the property with a *mala fidi* intention and believing their words, respondent No.2 and other share holders executed sale deeds in their favour and all the accused after obtaining regular sale deeds, did not pay the balance sale consideration, thereby cheated the de facto-complainant and others.

A perusal of the record goes to suggest that the 2nd respondent/ de facto-complainant filed a private complaint against petitioners alleging that the de facto-complainant and other share holders agreed to sell the property to accused No.1 and executed a sale agreement in his favour. They executed regular sale deeds in favour of accused Nos.2 to 4 and others on the promise of accused No.1 to pay the balance consideration, but he failed to pay, having collected the amount from accused Nos.2 to 4.

The complaint was forwarded to I Town Police Station, Kadapa under Section 156(3) of Cr.P.C., which was registered as case in crime No.183 of 2006. After investigation, the Police filed a final report stating that the respondent No.2 and other share holders executed agreement of sale in favour of accused No.1. At the time of registration, accused No.1 paid Rs.16,50,000/- to the legal heirs and failed to pay the entire consideration as promised at the time of agreement. The de facto-complainant and other legal heirs suspecting the activities of accused No.1, approached accused Nos.2 to 4 and demanded the amount for which, accused Nos.2 to 4 informed that they paid the entire share amount to accused No.1 who kept the remaining amount to be paid with him and finally opined that it is purely civil litigation and civil in nature.

Aggrieved by the said order, a private complaint was filed by the respondent No.2 under protest basing on which the Court took cognizance and numbered it as C.C.No.132 of 2011 for the offence under Section 420 I.P.C.

The petitioners in both criminal petitions in support of their contention that there is no inducement or intention of cheating at the inception of the contract and they never cheated respondent No.2 relied on the following decisions :

In the case of ***Vir Prakash Sharma v. Anil Kumar Agarwal***[1] wherein it was held that in determining the question it has to be kept in mind that the distinction between mere breach of contract and 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.

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[1] (2007) 7 SCC 373

In the case of ***Uma Shankar Gopalika v. State of Bihar***[2] wherein it was held that it is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

In the case of ***V.P.Shrivastava v. Indian Explosives Ltd.***[3] wherein it was held that it is plain from a bare reading of the section that to hold a person guilty of cheating, as defined in Section 415 IPC, it is necessary to show that at the time of making the promise he had fraudulent or dishonest intention to retain the property or to induce the person so deceived to do something which he would not otherwise do.

In the case of ***V.Y.Jose v. State of Gujarat***[4] wherein it was observed that we have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/ dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence.

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[2] (2005) 10 SCC 336
[3] (2010) 10 SCC 361
[4] (2009) 3 SCC 78

In the case of ***Nageshwar Prasad Singh v. Narayan Singh***[5] wherein it was held that the liability, if any, arising by the breach thereof is civil in nature and not criminal.

I have gone through the entire material on record. From the above catena of decisions the settled law is that for establishing the 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. From their making failure to keep promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made, cannot be presumed.

Section 415 of the Penal Code defines cheating as under :

> "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 allegation in the complaint is that in the year 2001 accused No.1 Y.Chandra Shekar Reddy expressed his intention to purchase Ac.0.73 cents of land in Sy.Nos.871, 871/1 and 871/4 at the rate of Rs.50,000/- per cent. Accordingly the de facto-complainant and his relatives executed sale agreement in favour of accused No.1. Subsequently, on 22.4.2002 the de facto-complainant executed regular sale deeds in favour of accused Nos.2 to 4 and others, but according to

[5] (1998) 5 SCC 694

the de facto-complainant, he executed the regular sale deeds in favour of accused Nos.2 to 4 and others at the request of accused No.1 to pay the balance consideration later, but without paying the balance consideration, accused came on postponing, hence, the cheating.

In the complaint there is no specific allegation whether there is any such intention of cheating at the time of agreement of sale or obtaining registered sale deeds in favour of accused Nos.2 to 4 and others. In the entire statements of witnesses recorded by the police as stated in the final report and in the complaint and in protest petition or in the final report no where there is an allegation indicating expressly or impliedly any intentional deception or fraudulent dishonest intention on the part of petitioners right from the time of agreement or making promise to pay the balance consideration at a later stage or misrepresentation. Nothing has been said on what those misrepresentations were and how petitioners duped and what were roles played by petitioners in the alleged offence. There was absence of dishonest and fraudulent intention at the very inception of the agreement or obtaining regular sale deeds or any inducement on the 2nd respondent to execute the registered sale deeds and he was deceived to execute registered sale deeds which he would not have been otherwise do.

The above circumstances clearly goes to suggest that absolutely there was no dishonest or fraudulent intention on the part of petitioners, hence the question of committing an offence under Section 420 I.P.C.

does not arise. More over, the Investigating Officer filed the final report in crime No.183 of 2006 in the earlier complaint filed by respondent No.2 opining that it is purely civil litigation and civil in nature. Aggrieved by which, the present protest petition is filed by respondent No.2. Respondent No.2/de facto-complainant has not made out any specific overt act against petitioners for the offence of cheating or that petitioners had fraudulent or dishonest intention at the time of making the promise or representation to pay the balance consideration. In the absence of dishonest or fraudulent intention, the question of committing offence under Section 420 I.P.C. does not arise. Accordingly, there is abuse of process by respondent No.2 by filing a complaint and after consequent final report, filing a protest petition. I am satisfied by the grounds raised by petitioners. In the absence of any material on record to *prima facie* make out that petitioners have fraudulent or dishonest intention at the time of agreement or made any such promise at the time of obtaining regular sale deeds, no prudent man can believe that the 2nd respondent and others executed the registered sale deeds in favour of accused Nos.2 to 4 and others without receiving the entire sale consideration. The matter involves dispute of civil nature which cannot be allowed to become subject matter of criminal proceedings which may be resorted to as a short cut to execution of non-existent decree.

Accordingly, the proceedings in C.C.No.132 of 2011 on the file of the Court of the I Additional Judicial Magistrate of First Class, Kadapa, are hereby quashed.

In the result, both criminal petitions are allowed.

Consequently, miscellaneous petitions pending, if any, in these criminal petitions shall stand closed.

JUSTICE N.BALAYOGI

16th October, 2017

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