HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.81 of 2018

ORDER:

Heard the learned counsel for the petitioner and the respondents.

The present revision case is filed questioning the orders passed in Crl.M.P.No.219 of 2016 in C.C.No.342 of 2014 dated 06.01.2018 on the file of the XXVI Metropolitan Magistrate, Cyberabad at Maheshwaram, Ranga Reddy District, dismissing the petition filed under Section 239 Cr.P.C., to discharge the petitioner for the offences punishable under Section 403 read with Section 34 IPC.

The facts of the case are that the 2nd respondent herein lodged a complaint on 28.03.2012 before the Station House Officer, Kandukur Police Station, Kandukur Mandal, Ranga Reddy District. In the said complaint, it is stated that on 07.02.2007 one Smt. G.Pavani, Director of Sahasra Estates India (Pvt) Limited, sent the petitioner to canvas for purchase of a plot at Mucherla Village, Kandukur Mandal, Ranga Reddy District. The 2nd respondent bonafidely believing the petitioner, agreed to purchase plot No.77 admeasuring 403 square yards. Pursuant thereto, an agreement of sale was entered into and the 2nd respondent paid an amount of Rs.2,01,500/- as advance through ICICI cheque No.288343 on 25.04.2007. On the same day, she paid a sum of Rs.60,000/- in cash and made payment of Rs.6,04,950/- vide two cheques. Thus, in all a sum of Rs.8,66,450/- was paid by her as total sale consideration for plot No.77 at Mucherla. Though, the 2nd respondent waited to get the plot registered in her name, the same could not be executed. In fact, as per the memorandum of understanding entered into between them, they have to execute a registered sale deed at the end of 90 days i.e., on or by 26.07.2007 and if there is any delay in execution of the registered document, they would buy-back the plot from her after one year with 30% hike in the rate of the plot. Even after receiving the entire sale consideration, no sale deed was executed in her favour. In fact, the said Smt. G. Pavani and her husband are not coming into contact with the 2nd respondent. Since the memorandum of understanding contemplates that in case of problem or delay in registration, they would buy-back the property from the 2nd respondent after one year with 30% hike in the rate of the plot, the 2nd respondent requested the said Smt. G. Pavani to buy-back the plot as per the document. Even for the same, Smt. Pavani did not respond and later totally disappeared. In those circumstances, she filed a complaint. Pursuant to the said complaint, a crime was registered vide FIR.No.53 of 2012 for the offence under Section 420 IPC. After registration of the crime, investigation was made and charge sheet was filed against A1 to A4 which include the petitioner being A4. After filing of the charge sheet, the learned XXVI Metropolitan Magistrate, Cyberabad at Maheshwaram, Ranga Reddy

District taken cognizance of the offence and numbered the case as C.C.No.342 of 2014. During the pendency of the C.C., the petitioner filed a petition under Section 239 Cr.P.C., to discharge him for the charges framed against him vide Crl.M.P.No.219 of 2016.

The 1st respondent State filed counter denying the contentions raised by the petitioner herein and contended *inter alia* that the 2nd respondent is having acquaintance with the petitioner and having believed his version, she purchased plot No.77 after paying an amount of Rs.8,66,450/-. In fact, the petitioner along with other accused created fake documents and executed the same in favour of the 2nd respondent. The petitioner has taken his share of Rs.2,00,000/- and then he disappeared. In fact, the petitioner admitted in the confession statement about creating a fake document. It is also stated that the petitioner is behind all the accused and they were acted on the directions of the petitioner. After hearing, the learned Magistrate dismissed the petition on 06.01.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that there are no specific allegations of cheating against the petitioner in the complaint, FIR and charge sheet, except the petitioner showing the plot to the 2nd respondent. The petitioner is no way connected or concerned with the business of A1 to A3. In fact, the police could not trace out any semblance of evidence against the petitioner that he is a party to the said offence. There is no case of misrepresentation or playing fraud on the part of the petitioner. Learned counsel also contended that the Court below transgressed the orders passed by this Court in Crl.R.C.No.2408 of 2016 dated 24.08.2016 with regard to finding out as to whether the allegations made against the petitioner would constitute any prima facie offence under Section 420 IPC. However, the Court below erroneously observed that there is adequate material to frame charge for the offence under Section 403 read with 34 IPC against the petitioner while observing that no offence was made out under Section 420 IPC. The learned counsel also submitted that there is no material to show that any movable property was given to the petitioner so as to prima facie attract the offence under Section 403 read with Section 34 IPC. Even as per the version of the 2nd respondent, she entered into an agreement with M/s. Sahasra Estates India Private Limited and paid a sum of Rs.8,66,450/- towards sale consideration to Smt. G. Pavani, who is the Director of the said Sahasra Estates India Private Limited. Even on that count also there is no allegation or evidence that the petitioner has received the sale consideration. A perusal of the complaint as well as the charge sheet would not reveal any allegation with regard to payment of the amount to the petitioner. The Court below also failed to consider that the confessional statement of A1 and the evidentiary value of the same cannot be looked into and the same is not admissible in evidence. Therefore, relying on the confessional statement, the petitioner cannot be charged for the offence under Section 403 read with Section 34 IPC. He also pointed out, referring to the material papers, that the agreement, memorandum of understanding and the receipts for payment of the amount are signed by Smt. G. Pavani, Director of the said Sahasra Estates India Private Limited. Learned counsel also brought to the notice of the Court the confessional statement made by A1, wherein nothing is said against the petitioner. In the supplementary charge sheet filed on 17.01.2016, the alleged confessional statement of the petitioner is contrary to the complainant's version i.e., he along with other accused commenced real estate project at Mucharla, but the case of the 2nd respondent is that the petitioner came to her only to canvass to purchase the plot. Therefore, he sought to allow the revision case.

Per contra, the learned Public Prosecutor appearing for the 1st respondent State opposed the case of the petitioner and contended *inter alia* that the subject plot was sold to the 2nd respondent only through the petitioner and thus a *prima facie* case is made out with regard to the role played by him apart from creating fake documents.

Pursuant to the order of this Court, notice is taken out to the 2nd respondent, but she refused to receive the same and the registered cover sent to her is returned un-served with an endorsement "not claimed". Therefore, this Court is of the opinion that it is deemed service on the 2nd respondent.

Having heard both the counsel and a perusal of the material on record, it is revealed that the specific allegation of the 2nd respondent in her complaint is that A1 sent the petitioner to canvass for purchase of a plot at Mucherla Village, Kandukur Mandal, Ranga Reddy District, where they have commenced a real estate development project. Pursuant thereto, the 2nd respondent agreed to purchase a plot and an agreement of sale was entered into and amounts were paid to the 1st accused through cheques. In all Rs.8,66,450/- was paid as total sale consideration. It is also the specific case of the 2nd respondent that along with the agreement, a memorandum of understanding was also executed by Sahasra Estates to the effect that they have received full amount and the plot will be registered within 90 days i.e., 26.07.2007 and if there is any delay or any problem in registration of the document, they would buy-back the plot from her after one year with 30% hike in the rate. In spite of the same, the plot was not registered in the name of the 2nd respondent. When the 2nd respondent went to Mucherla Village, she came to know that the property was in the name of other persons and the 1st accused has abandoned the project. Therefore, the accused have cheated her.

After investigation, a charge sheet was laid initially on 29.07.2012 against all the accused, including the petitioner, for the offence under Section 420 IPC. However, in the said charge sheet, it was mentioned that A2 to A4 were absconding and the prosecution sought permission to file supplementary charge sheet against them. Subsequently, on further investigation, a supplementary charge sheet was also filed on 17.01.2016. Even in the second charge sheet also all the accused, including the petitioner, have been charged for the offence under Section 420 IPC and it was mentioned that A2 and A3 were absconding and after their arrest, supplementary charge sheet will be filed. It is mentioned in the second charge sheet that the petitioner has been apprehended on 18.12.2015 and subsequently he was released on bail with a direction to co-operate with the investigation. It is alleged that his confessional statement was recorded by LW.15 in the presence of LWs.11 and 12. During the confession of the petitioner, it is revealed that he is known to the 2nd respondent and informed that they have commenced real estate project and after canvassing, the 2nd respondent believing his version, purchased plot No.77 admeasuring 403 square yards. As far as this statement is concerned, it is contrary to the version given by the 2nd respondent in the complaint. In the complaint, the 2nd respondent has stated that the petitioner was sent by A1 to canvas for purchase of the plot. Therefore, he is nothing to do with the floating of a project in the name and style of Sahasra Estates.

A further perusal of the complaint, charge sheet and the material enclosed thereto would indicate that the entire amount has been paid only to A1 through cheques. There is no whisper that the petitioner is in any way related to the said payment except canvassing to purchase the plot by the 2nd respondent. Even the receipts filed in the material papers along with the revision also would indicate that the amounts have been paid to the 1st accused and the petitioner is nothing to do with the same. Even in the confessional statement dated 30.03.2012 of the 1st accused, nothing is stated against the petitioner. However, the second confessional statement recorded on 07.04.2012 in the custody of the police cannot be relied upon and is inadmissible in evidence. The petitioner is not a party either to agreement of sale dated 22.04.2007 or the memorandum of understanding dated 25.04.2007. In both the charge sheets, nothing is mentioned regarding the petitioner inducing the 2nd respondent to purchase the plot. Even the statements of accounts enclosed to the charge sheet also would not indicate any incriminating material against the petitioner with regard to inducement or creation of any documents by the petitioner so as to make out a *prima facie* case to constitute an offence punishable under Section 420 IPC. However, the Court below, while disposing of the petition, observed that the material produced by the prosecution is insufficient to frame a charge under Section 420 IPC against the petitioner but the said material is adequate to frame charge for the offence under Section 403 read with 34 IPC. To appreciate the same, the provisions of Section 403 are as under:

> "**403.** Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

As per the above said provision, whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either discretion for a term which may extend to two years or with fine or with both. In the charge sheet and the material enclosed thereto would not indicate that the petitioner has been benefited in any way except canvassing to purchase the plot. Therefore, the observation of the Court below that there is adequate material to frame charge for the above said offence against the petitioner is without any material. When the essential ingredients, which constitute the offence under Section 403 IPC, are made out either in the charge sheet or from the material enclosed thereto, it cannot be said that any *prima facie* case is made out against the petitioner.

In these circumstances, this Court is of the opinion that no *prima facie* case is made out against the petitioner to frame a charge against him for the offence under Section 403 read with 34 IPC and proceed with the matter. If the proceedings are allowed to continue, it amounts to abuse of process of the Court.

Accordingly, the criminal revision case is allowed, discharging the petitioner for the offence under Section 403 IPC read with Section 34 IPC in C.C.No.342 of 2014 on the file of the Court of the XXVI Metropolitan Magistrate, Cyberabad at Maheshwaram, Ranga Reddy District.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 12.06.2018.
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