

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.No.7823 of 2014
and M.P.Nos. 1 to 3 of 2014

1. C.Kuppusamy
2. K.Nirmala
3. Kalaiselvi
4. Dr.Karthik
5. Prasad

... Petitioners/Accused

Vs.

I.Arokiya Doss

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.17 of 2014 pending on the file of the learned Judicial Magistrate No.II, Panruti Taluk, Cuddalore District and quash the same.

For Petitioners : Mr.P.B.Sampath Kumar
For Respondent : Mr.M.S.Palaniswamy

O R D E R

This petition has been filed to quash the proceedings in C.C.No.17 of 2014 on the file of the learned Judicial Magistrate NO.II, Panruti Taluk, Cuddalore District.

2.The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to 5 in C.C.No.17 of 2014 on the file of the learned Judicial Magistrate No.II, Panruti, having been taken cognizance for the offences under Sections 406, 417 and 420 of IPC on the private complaint filed by the respondent herein. According to the complainant, the first petitioner intended to sell his property to the respondent to the price of Rs.2,10,00,000/-. The respondent had paid a sum of Rs.5 lakhs to the first petitioner in the presence of second petitioner and other family members as advance and also executed the sale agreement. Thereafter the second petitioner executed a sale agreement with the petitioners 3 to 5 herein, and the first petitioner refused to execute the sale deed in favour of the respondent and cheated him.

2.1. The learned counsel appearing for the petitioner further submitted that the first petitioner and the respondent

are very close friends and the first petitioner received a sum of Rs.5 lakhs as a hand loan from the respondent and not for the purpose of any sale of property. The second petitioner is the original owner of the said property and she is in possession and enjoyment of the property. Though the first petitioner is the husband of the second petitioner and he has no title over the property. Even according to the respondent, the second petitioner did not receive any amount from the respondent and she never assured and entrusted the respondent to sale the property. In respect of the other petitioners are concerned, absolutely no role played by them in the transactions, even as alleged by the prosecution.

2.2. Further more, the entire dispute is civil in nature and the respondent has suppressed so many facts and filed the false complaint as against the petitioners. In fact the respondent also issued legal notice to call upon the petitioners to specific performance pursuant to the sale agreement dated 15.11.2010. Thereafter the respondent also lodged a complaint before the Inspector of Police, Kadampuliyur Police Station, Cuddalore and the same was registered in Crime No.171 of 2012 for the offence under Section 420 of IPC. After thorough investigation, the Inspector of Police found that the entire complaint is false and closed the complaint as "Mistake of Facts" on 21.03.2013 itself. In fact, the respondent did not file any protest petition on the closure report filed by the Police Officials. Without invoking the provisions, the respondent simply filed this complaint and the learned Magistrate without considering the above facts and circumstances have taken cognizance for the offences under Sections 417 and 420 of IPC as against the petitioners. Therefore, he prayed for quashment of the proceedings.

3. Per contra, the learned counsel appearing for the respondent/ defacto complainant submitted that the first petitioner entered into sale agreement with the respondent and received a sum of Rs.5 lakhs as advance. The other petitioners are witnessed to the sale agreement and they also ensured the execution of sale deed in his favour. Thereafter the respondent came to understand that the first petitioner is not the owner of the said property and the second petitioner is the original owner of the property. Thereafter, the second petitioner entered into the sale agreement with other petitioners 3 to 5. Therefore the petitioners cheated the respondent and the offences under Sections 417 and 420 of IPC are attracted as against them. Hence, he prayed for dismissal of the quash petition.

4. Heard Mr.P.B.Sampathkumar, learned counsel appearing for the petitioners, Mr.M.S.Palaniswamy, learned counsel

appearing for the respondent.

5. The petitioners are arraigned as A1 to A5 in the private complaint filed by the respondent. The learned Magistrate have taken cognizance for the offences under Sections 406, 470, 420 of IPC in C.C.No.17 of 2014, on the allegations that the first petitioner received a sum of Rs.5 lakhs as advance to sell his property and executed the sale agreement in favour of the respondent herein. Thereafter, the respondent came to understand that the property in question is not belong to the first petitioner and it belongs to the second petitioner. The second petitioner is none other than the wife of the first petitioner and she executed the sale agreement in favour of the other petitioners in respect of the very same property. Hence the complaint.

6. On perusal of the complaint and documents, it is seen that the first and second petitioners are husband and wife and the property in question is owned by the second respondent. It is also seen that the first petitioner issued receipt for the sum of Rs. 5 lakhs to sell the property situated at 135/1, Panikkankuppam, Panruti Taluk, Coimbatore District in favour of the respondent. It is also seen that the respondent issued notice to the first respondent on 28.05.2011 call upon him to execute the sale deed. On receipt of the same the first petitioner caused reply notice stating that he borrowed a sum of Rs.5 lakhs as hand loan from his close friend and he never intend to sell the property to the respondent herein. After receipt of the reply notice again the respondent cased notice to the first and second petitioners herein on 09.07.2011. The said notice was also replied by reply notice dated 25.07.2011.

7. It is also seen that on 07.09.2011, the second petitioner executed sale deed in favour of the petitioners 3 to 5, for the total sale consideration of Rs.40,87,000/-, in respect of the property comprised in 185/1, old No. 243/1, Panikkankuppam, Panruti Taluk, Coimbatore District, ad measuring 1.41 acres. Whereas it is seen from the receipt issued by the first petitioner in respect of the property namely situated at 135/1, Panikkankuppam, Panruti Taluk, Coimbatore District ad measuring 600'X150', that too for the sale consideration of Rs.2,10,00,000/-. That apart, the respondent also filed suit in O.S.No.98 of 2014 on the file of the Sub Court, Cuddalore for specific performance as against the petitioners. He also filed private complaint as against the petitioners on the very same set of allegations, though there is a civil dispute between the first petitioner and the respondent. Even according to the complaint, there is no transactions between the other petitioners and the respondent.

8. In this regard, the learned counsel appearing for the petitioners relied upon the judgment reported in (2000) 3 SCC 269 in the case of Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E Ltd and others, as follows :-

"11. While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Learned Single Judge. But can the factual situation as narrated above in the longish reproduction of the complaint lend support to the observations of the Learned Judge, the answer is pivotal one but before so doing one other aspect as regards the powers under Section 482 Cr.P.C. ought to be noticed. As noted herein before this power is to be exercised with care and caution and rather sparingly and has been so held on more occasions than one.

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15. In the matter under consideration, if we try to analyse the guidelines as specified in Shivalingappas case (supra) can it be said that the allegations in the complaint do not make out any case against the accused nor it discloses the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion

that there is sufficient ground for proceeding against the accused. In the present case, the complaint as noticed above does not, however, lend credence to the questions posed. It is now well settled and one need not dilate on this score, neither we intend to do so presently that the allegations in the complaint will have to be accepted on the face of it and truth or falsity of which would not be gone into by the Court at this earliest stage as noticed above: whether or not allegations in the complaint were true is to be decided on the basis of the evidence led at the trial and the observations on this score in the case of Nagpur Steel & Alloys Pvt. Ltd. v. P. Radhakrishna [1997 SCC (Crl.) 1073] ought to be noticed. In paragraph 3 of the report this Court observed:

3. We have perused the complaint carefully. In our opinion it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously."

9. He also relied upon the judgment reported in (2002) 1 SCC 241 in the case of S.W.Palanitkar and others Vs.State of Bihar and another, which reads as follows :-

"20. Turning to the facts of the case, there is nothing either in the complaint and/or in the sworn statements of the

complainant and the three witnesses that any property was entrusted to any of the appellants at all or the appellants had domain over any of the properties of respondent no. 2 which they dishonestly converted to their own use so as to satisfy the ingredients of Section 405 IPC punishable under Section 406 IPC. Further the agreement also did not require entrustment of any property to the appellants. Taking the complaint and the statements of the witnesses as they are, it cannot be said even prima facie, that the appellants committed any offence punishable under Section 406 IPC, since the ingredients of that offence were not satisfied. Hence the learned Magistrate committed a serious error in issuing process against the appellants for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

21. It is clear from the allegations made in the complaint and the sworn statements that the appellant no. 1 company entered into an agreement with the respondent no. 2 on certain terms and conditions. It is alleged that the appellant no. 7 went to Patna and contracted respondent no. 2 and induced him to enter into an agreement assuring him of huge profit. At the time of arriving at such an agreement, none of the other appellants either met the respondent no. 2 or induced him to enter into any agreement with a view to cheat him. The agreement was further renewed for a period of one year. It is not the case that there was no supply of goods at all as it has come on record that there was supply of 400 ton of fertilizer, may be it was far less than the required quantity. The allegations made against the appellants other than the appellant no. 7 are very vague and bald. From the material that was placed before the Magistrate, even prima facie, it cannot be said that there was conspiracy or connivance between the other appellants and the appellant No. 7. If the

appellants have committed breach of agreement, it is open to respondent no. 2 to seek redressal in a competent court or forum to recover damages, if permissible in law in case he had sustained any loss. 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 pre-sumed as an act leading to cheating."

10. In the case on hands to attract the offences under Sections 406, 417, 420 of IPC, there is absolutely no ingredients to make out a case for the said offences as against the petitioners. Admittedly, there is a civil dispute, in which the respondent initiated suit for specific performance as against the petitioners. Therefore, the judgement passed by the Hon'ble Supreme Court of India is squarely applicable to the case on hand. The impugned proceedings is nothing but clear abuse of process of Court and it cannot be sustained as against the petitioners.

11. Accordingly, this Criminal Original Petition stands allowed and the proceedings C.C.No.17 of 2014 on the file of the learned Judicial Magistrate No.II, Panruti Taluk, Cuddalore, is hereby quashed, insofar as the petitioners are concerned. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rts

To

The Judicial Magistrate Court No.II,
Panruti Taluk, Cuddalore District .

2 cc's to Mr.P.B.Sampath Kumar, Advocate, Sr.No. 35174

+1 cc to Mr.M.S.Palaniswamy, Advocate, Sr.No. 34544

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SV(CO)

CSL/03.05.2019