BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.15831 of 2016
and
Crl.M.P.(MD)No.7597 of 2016

1.D.S.Velmurugan
2.D.S.Senthilvel ... Petitioners/Accused Nos.19 & 20

-Vs-

1. State Rep. by
The Inspector of Police,
Usilampatti Town Police Station,
Usilampatti,
Madurai District.
(Cr.No.381 of 2007) ... 1st Respondent/Complainant

2. Ramar ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to quash the charge sheet in C.C.No.209 of 2011 on the file of the District Munsif Cum Judicial Magistrate No.I, Usilampatti, Madurai District and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.K.P.S.Palanivel Rajan
For R1 : Mr.R.Erottuchamy
Government Advocate (Crl.side)
For R2 : No Appearance

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.209 of 2011 on the file of the District Munsif Cum Judicial Magistrate No.I, Usilampatti, Madurai District, as against the petitioners.

2.The crux of the complaint is that the subject property originally belongs to Kallar Kalvi Kalagam, Usilampatti Taluk, Madurai District. They purchased the property by way of a registered sale deed, dated 05.10.1950 vide document No.3216/1950. After purchasing the said property, it was leased out to the petitioner's father as a vacant land. Therefore, from the date of lease, the petitioners and their predecessors are in possession and enjoyment of the property for the past forty years. Thereafter, the petitioners have constructed the building and running the Transport office. While being so, on 29.02.2012, the Kallar Kalvi Kalagam decided to sell the property and convened a meeting and also passed a resolution in order to sell the property. Accordingly, the Kallar Kalvi Kalagam made offer to the petitioners herein for selling all the property and the same was accepted by the Administrative Committee of the said Kallar Kalvi Kalagam and also received a sum of Rs.4,00,000/- as advance on 07.12.2003. Thereafter, after receipt of the entire payment of sale consideration, executed a sale deed dated 09.06.2004, vide document No.1343 of 2004 in the office of the Joint Sub Registrar, Arasaradi, Madurai. Further it is alleged that the second respondent is a life time member of the Kallar Kalvi Kalagam and the office bearer of the Kallar Kalvi Kalagam, forged the signature of the members and passed resolution. Thereby, authorized Administrative Committee and Secretary decided to sell the property in favour of A19 and A20. The property value is at Rs.65 lakhs, whereas the said property sold out only for the sale consideration of Rs.25,54,333/-, Thereby, they caused loss to the Kallar Kalvi Kalagam.

3.There are totally twenty accused, in which the petitioners are arrayed as A19 and A20. They are purchaser of the subject property, which originally belongs to Kallar Kalvi Kalagam. But the entire allegations are that the first accused is the Chairman of the Kallar Kalvi Kalagam and the second accused is the Secretary of the Kallar Kalvi Kalagam and the third accused is the Treasurer of the Kallar Kalvi Kalagam and A4 to A16 are the Executive Committee Members of the Kallar Kalvi Kalagam and the 17th accused is the Principal of the Kallar Kalvi Kalagam and the 18th accused is the Clerk of the said Kallar Kalvi Kalagam. On 29.12.2002, they have passed a resolution permitting the authorised Administrative Committee to sell the subject property. Accordingly, the petitioners were being arrayed as A19 and A20 agreed to purchase the property for the total sale consideration of Rs.25,54,333/- and also paid a sum of Rs.4,00,000/- as advance on 07.12.2003. Thereafter, on 09.06.2004 on payment of balance sale consideration, a sale deed was executed in their favour, vide document No.1343 of 2004 with the officers of the Joint Sub Registrar, Arasaradi, Madurai.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent. Though notice has been served on the second respondent and his name also printed in the cause list, no one is represented on behalf of the second respondent.

5.Even according to the second respondent, A1 to A18 forged the signature of other Executive Committee members and passed a resolution to sell the property belongs to the Kallar Kalvi Kalagam. Admittedly, the petitioners are not the office bearers of the Kallar Kalvi Kalagam and the members of the Kallar Kalvi Kalagam. They never participated in the Executive Committee Meeting conducted by the other accused persons on 29.12.2002. Now they are charged for the offence under Sections 193, 406, 418, 420, 423, 468 and 471.

6.No specific averment is made against the petitioners herein, even according to the second respondent herein and nothing has been disclosed to attract any of the offences as alleged by the second respondent herein. In fact, the second respondent lodged a private complaint and the same was charged under Section 156 (3) Cr.P.C. and thereafter registered the complaint. On the strength of the resolution, dated 29.12.2002, the Administrative Committee of Kallar Kalvi Kalagam decided to sell the property and accordingly they offered to the petitioners herein for selling all the property and the same was duly accepted by the petitioners herein and accordingly they purchased the said property by the registered sale deed. Therefore, no offence is made as against the petitioners herein. The learned counsel appearing for the petitioners also relied upon the judgment in 2000(4) SCC 168 in the case of Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and Another, wherein Paragraph Nos.14, 15 and 16, the Hon'ble Supreme Court held as follows:

> *''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.*
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> *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 to 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.

16.Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under section 420 IPC and its allied offences under sections 418and 423 has not been made out. So far as the offences under sections 469, 504 and 120B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in State of Haryana & Ors. v. Bhajan Lal and Ors.(Supra) and as such warrants interference by the Court. Reading the avernments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in complaint. All that the respondent No. 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No. 2 part with property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-respondent no.2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.''

7.He further relied upon the judgment in (2009) 8 SCC 751 in the case of Mohammed Ibrahim and Others Vs. State of Bihar and Another, in Paragraph Nos.20 & 21 held as under:

> *''20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.*
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> *21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.*

8.In both the cases, the Hon'ble Supreme Court of India held that 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. In the case on hand, the petitioners had not induced anybody to hand over any property. Therefore there is no question of attracting the offence under Section 420 IPC and there is no ingredient for attracting the offence under Section 420 IPC as against the petitioners. Admittedly, the petitioners have purchased the property through valid sale consideration as per the resolution passed by the Kallar Kalvi Kalagam by registered sale deed. Now the entire allegations are that the non participating Executive Committee members signatures were forged by the accused persons and passed resolution to sell the said property. In respect of the allegations of the value of the property, it is worth about Rs.64,88,250/-. Thereby, they caused loss to the Kallar Kalvi Kalagam to the tune of Rs.39,33,917/- When the sale consideration was duly accepted by the Administrative Committee of Kallar Kalvi Kalagam and the said amount duly paid by the petitioners. According to the guidelines value of the subject property, there is no gain to the petitioners or no loss to the Kallar Kalvi Kalagam. Further the market value might be higher than the guideline value. However the sale consideration was fixed at the rate of Rs.25,54,333/- and the same was duly paid and also paid stamp duty to the said value. Further it was not challenged by any Court of law that the registration department also did not make any allegations as against the petitioner that they paid deficit stamp duty while purchasing the said property. In fact the concerned Sub Registrar also referred a document for payment of deficit stamp duty and the same was adjudicated and deficit stamp duty also paid by the petitioners herein. Therefore no offence is made out as against the petitioners as alleged by the second respondent.

9.In view of the above discussions, this Criminal Original Petition is allowed and the charge sheet in C.C.No.209 of 2011 on the file of the learned District Munsif Cum Judicial Magistrate No.1, Usilampatti, Madurai District is hereby quashed insofar as the petitioners alone. The trial Court is directed to complete the trial as far as the other accused persons concerned within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

// True Copy //

/ /2021
Sub Assistant Registrar(CS-)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif Cum Judicial Magistrate No.1,
   Usilampatti, Madurai.

2. The Inspector of Police,
   Usilampatti Town Police Station,
   Usilampatti,
   Madurai District.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.K.P.S.PALANIVELRAJAN, ADVOCATE IN SR No. 25479

VSD
TE : 01/02/2021 : 7P/5C

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Crl.M.P.(MD)No.7597 of 2016
15.12.2020