(2019) 06 UK CK 0091

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 346 Of 2014

Amrita Sondhi And Anr	APPELLANT
Vs	
State Of Uttarakhand And Anr	RESPONDENT

Date of Decision : 21-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 406, 415, 420

Citation : (2019) 06 UK CK 0091

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : H.C. Pathak, Sandeep Tandon, Lalit Miglani, Shivangi Gangwar, Sandeep Tiwari

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of this petition, moved under Section 482 Cr.P.C., petitioners have sought quashing of the charge sheet dated 22.09.2013 and summoning order dated 21.11.2013 and entire proceedings of criminal case no. 3111 of 2013, State vs. Amrita Sondhi and another, under section 420 and 406 IPC pending in the court of Chief Judicial Magistrate, Dehradun.

2. Facts, in nutshell, are that criminal complaint has been lodged by the second respondent against the petitioners with the allegations that first petitioner, who is the owner of the house, was willing to sell the house and agreed to sell the same for an amount of Rs. 1 crore to the second respondent and received an amount of Rs.10 lakh as advance. An agreement to sell was executed between the first petitioner and the second respondent on 30.12.2011. Despite repetitive request made by the second respondent, first petitioner has not executed the sale deed in his favour as a result of which second respondent issued legal notice through his Advocate, but the first petitioner refused to accept the same and did not execute the sale deed. Thus, second respondent constrained to lodge FIR against

the petitioners. Petitioners approached to this Court and got interim protection in their favour. In the meantime, an amount of Rs. 5 lakh has been paid to the second respondent by petitioner.

3. The trial court appears to have summoned the accused in respect of offences punishable under section 406 and 420 IPC, vide summoning order dated 21.11.2013.

4. In the counter affidavit, filed by the second respondent, it is contended that second respondent agreed to purchase the property of the first petitioner for an amount of Rs. 1 crore and advance of Rs. 10 lakh has been paid to the first petitioner in this regard but first petitioner after receiving an advance of Rs. 10 lakh deliberately delayed the execution of the sale deed in the favour of second respondent and thus committed offence of cheating and second petitioner was also involved in the fraud and the learned Magistrate has rightly took cognizance under section 420 and 406 IPC.

5. On the other hand, learned counsel for the petitioners would contend that the dispute between the parties is purely civil in nature, as same pertains to transaction between the parties pursuant to an agreement dated 30.12.2011. It is further submitted that even if allegations made in the complaint given face value and taken to be correct in its entirely, do not disclose an offence under section 420 of IPC.

6. Section 415 IPC 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".

7. Perusal of the FIR would reveal that none of the ingredients of the offence punishable under section 406 and 420 IPC is made out against the petitioners. For the purpose of constituting an 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. Even in a case where allegations are made in regard to failure on the part of the accused to keep his/her promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under section 420 IPC can be said to have been made out.

8. The Hon'ble Apex Court in the case of V.Y. Jose and another vs. State of Gujarat and another reported in (2009) 3 SCC 78 held as follows:-

21. There exists a distinction between pure contractual dispute of 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 whatsoever

that in 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.

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

25. In Hira Lal Hari Lal Bhagwati v. CBIthis Court held : (SCC p. 280, para 40)

"40. It is settled law, by a catena of decisions, 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 his 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. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. 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. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with Duncan and Sushila Rani judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process.

9. The present case is in hand is purely of civil in nature. The matter which essentially involves dispute of civil nature should not be allowed to become subject matter of criminal proceedings. This Court is of the view that learned Magistrate has failed to exercise its jurisdiction and took cognizance against the petitioners. Thus, the impugned order and charge sheet filed against the petitioners are liable to be set aside.

10. In view of the above, charge sheet dated 22.09.2013 as well as impugned summoning order dated 21.11.2013 and entire proceedings of criminal case no. 3111 of 2013 are hereby quashed. Consequently, C-482 petition is allowed. However, second respondent would be at liberty to avail appropriate remedy of civil suit, if so advised.