
(2007) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 245 of 2007

Arvind Srimal and Another

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120A, 120B, 34, 420, 464

Citation : (2007) 1 ALD(Cri) 1038 : (2007) 2 ALT(Cri) 303 : (2007) CriLJ 2130

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; Public Prosecutor and Nageswara Rao Pappu, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—The petitioners are A-2 and A-3 in Crime No. 322 of 2006 of Ramgopal Police Station, Secunderabad, registered for the offences under Sections 464, 468, 471, 420, 506 and 120-B read with 34 of I.P.C.

2. It is alleged in the complaint that the de facto complainant, A-1 and others are partners of a firm. They purchased one property admeasuring 908.33 square yards under a registered sale deed dated 27-1-1990. On 10-11-1981 they executed a power of attorney in favour of the first accused to enter into an agreement to receive the sale consideration and to execute a sale deed in favour of third parties. Subsequently, on 25-2-1993 the GPA was cancelled by executing a revocation deed and a copy of the cancellation deed was sent to A-1 and he received the same through an acknowledgement. A-1 seized to be the GPA holder of the complainant and other partners. Some time prior to the filing of the complaint, they came to know that the first accused sold the above property to the petitioners under a registered sale deed, dated 29-12-2003 for a sale consideration of Rs. 80,00,000/-. The first accused, by representing that he it the GPA, has executed the sale deed in favour of the petitioners. When the GPA was cancelled in 1993 and when the first accused seized to be the GPA holder, he has

no authority to sell the property in favour of the petitioners. A-1 in collusion with the petitioner executed the sale deed, which is a bogus and sham document created in pursuance of the conspiracy to deprive the complainant and other partners under the guise of the sale deed. The petitioners are not the bona fide purchasers and the execution of the sale deed is the outcome of the criminal conspiracy between the petitioners and A-1, therefore, the complainant presented a complaint to the police and it was registered as the above crime.

3. The learned Counsel for the petitioners submitted that they are the bona fide purchasers of the property, which was in their possession under lease. When the first accused represented that he is a GPA holder, they believed his words and agreed to purchase the property and after paying the sale consideration, they obtained a sale deed from the first accused. There was no criminal intention on their part to obtain any fraudulent document and there was no conspiracy with A-1, therefore, they are not liable to be prosecuted and if there are any rights to be worked out, it could be done only in a civil Court.

4. The learned Counsel for the second respondent submitted that the petitioners and the son of A-4 are partners of a firm and at the time of sale transaction, the sale consideration was received by A-1 and he in turn withdrew the said amount and paid to A-4 who is the father of one of the partners of the firm. He, therefore, submitted that from the above circumstances, it reveals that they colluded with A-1 and a sham and nominal document was executed by A-1 in favour of the petitioners making everybody to believe that the property was sold for consideration, As the petitioners failed to ascertain from the other partners of the firm whether the GPA was in force in favour of A-1, whether the other partners were consenting for the sale of the said property, there was a conspiracy between the petitioners, A-1 and A-4, therefore, the prosecution against them is not liable to be quashed.

5. After going through the complaint, it reveals that the following allegations were made against the petitioners:

On 29-12-2005 A-1 executed a sale deed for a sale consideration of Rs. 81,00,000/- though the property was worth more than 4.00 crores. The alleged transaction is not a genuine one and it is a sham and bogus one created and invented in collusion with all the accused which was evidenced by the fact that the sale consideration amount alleged to be paid by the petitioners has been drawn immediately by giving colour to the sale transaction as a genuine one, therefore, all the accused cheated them by entering into the said transaction.

6. The record prima facie disclosing that the complainant and other partners executed the power of attorney in favour of A-1 and two years later it was cancelled. The cancellation deed was sent to A-1, therefore, A-1 was aware that the power of attorney was cancelled. Despite that, he got the GPA validated by paying necessary stamp duty and by showing the said document, he offered the property to the petitioners for sale. They, being the tenants of the land, were

anxious to purchase the property and in pursuance of that, they obtained a sale deed from the first accused believing that he is the GPA holder of the partners. Though the petitioners did not ascertain from other partners of the firm whether the GPA is continued or not, the fact remains that A-1 executed the sale deed under the guise of GPA. In a registered notice, the complainant pleaded that A-1 executed the sale deed knowing fully well that he has no authority to sell the property. It is not mentioned in the notice as to what role the petitioners played in the conspiracy except saying that the petitioners are not bona fide purchasers for value and they colluded with A-1 in creating the document.

7. The learned Counsel for the second respondent drew the attention of this Court to the following decisions of the Supreme Court in favour of his contention:

In *Rajesh Bajaj Vs. State NCT of Delhi and Others*, , the Supreme Court held that in a quash proceedings, the complainant is not required to reproduce verbatim all ingredients of offence alleged in body of complaint. When the averments in the complaint prima facie making out a case for investigation, quashing of FIR is not proper.

In *State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others*, , the Supreme Court, while considering the scope of Section 120-B of I.P.C. held that:

The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. In pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

In *K. Hasim v. State of T.N.* 2005 Cri LJ 143, the Supreme Court, while considering Section 120-A of I.P.C. the Supreme Court held that:

When two agreed to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

8. By citing the above decisions, the learned Counsel for the second respondent submitted that as there is an allegation that the petitioners conspired against the complainant, though the details are not furnished, the prosecution is not liable to be quashed.

9. After going through the entire material, I am of the view that except a passing remark that the petitioners conspired with A-1 in creating the sale deed, there is no mention whether the petitioners have knowledge about the cancellation of the GPA and that the sale deed is not supported by consideration. The petitioners obtained a sale deed by paying the sale consideration from the first accused. Whether the sale deed is valid one, whether the title of the property was transferred, whether the complainant and others can execute the revocation deed against the sale deed etc. are the matters to be considered in a civil Court.

Since there is no prima facie material to show that the petitioners have knowledge that A-1 has no power of attorney in his favour, there is no prima facie material to show that they conspired with A-1 in getting the sale deed, I am therefore of the view that the continuation of the prosecution against the petitioners is unwarranted and if continued it amount to abuse of process of law. In the light of the above circumstances, I am inclined to quash the proceedings against the petitioners.

10. In the result, the Criminal Petition is allowed. The proceedings against the petitioners (A-1 and A-2) in Crime No. 322 of 2006 of Ramgopal Police Station, Secunderabad, are hereby quashed.