
(2015) 11 KAR CK 0331
In the Karnataka High Court
Case No : Criminal Petition No. 101176/2015

Chaitra Projects Ltd. and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 420

Citation : (2015) 11 KAR CK 0331

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : R.H. Angadi, Advocate, for the Appellant; Raja Raghavendra Naik, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—Though this matter is listed for admission, with the consent of both the parties it is taken up for final disposal. I have heard arguments of the learned counsel for the petitioner, learned Govt. Pleader for respondent No. 1-State and learned counsel appearing for respondent No. 2-complainant.

2. Learned counsel appearing for the petitioner submitted that, in respect of the same contract work and the arrears to be paid by the petitioners to the respondent No. 2-complainant already a civil suit has been filed in O.S. No. 350/2014 on the file of learned Senior Civil Judge & JMFC, Hosapete. Hence, it is his submission that when the respondent No. 2-complainant has already taken steps for recovery of the amount, there is no question of filing the present petition to initiate criminal proceedings as against the present petitioners. He submitted that it is nothing but abuse of process of the Court. It is also his submission that, in the similar set of circumstances this Court has already taken view that the proceedings are civil in nature and hence the criminal proceedings is nothing but abuse of process of the Court and quashed the proceedings. In this regard learned counsel for the petitioner relied upon the order passed by this

Court in Crl. P. No. 101191/2015 dated 09.10.2015.

3. Learned counsel further submitted that even if the entire complaint as well as the other materials produced on behalf of the complainant are perused no offence under Section 420 of the IPC is attracted. Hence, learned counsel submitted that these things were not at all considered by the trial Court and even when the petitioners have filed the application seeking their discharge from the proceedings, the trial Court has not correctly read the pleadings and the materials placed on record and wrongly rejected that application also. Hence, he submitted to allow the petition and to quash the proceedings.

4. Learned counsel for the petitioner relied upon the following decisions.

"i) Vesa Holdings P. Ltd. and Others Vs. State of Kerala and Others

ii) Sharad Kumar Sanghi Vs. Sangita Rane

iii) Binod Kumar Vs. State of Bihar,

iv) Crl. P. No. 101191/2015 (M/s. Ray Construction Limited v. State & Anr.)"

5. Per contra learned counsel appearing for the respondent No. 2-complainant during the course of his arguments submitted that, simply because a civil suit is already pending, it cannot be said that there cannot be a criminal complaint or criminal proceedings against the present petitioners. He further submitted that, looking to the complaint averments as well as the materials produced by the complainant-respondent No. 2 before the trial Court the materials clearly goes to show that the present petitioners have committed the offence punishable under Section 420 of IPC. It is also his further submission that, it is not only the question of recovery of the amount in the civil suit but as the work was not executed as per the agreed terms it is with an intention on the part of the present petitioners to cheat the respondent No. 2-complainant. Hence, he submitted that, considering these aspects of the matter the offence under Section 420 of IPC can be clearly made out which was properly appreciated by the trial Court and the trial Court rightly rejected the application filed by the present petitioners seeking their discharge from the proceedings. He submitted that, even the act done by the present petitioner is with an intention to cheat the complainant, certainly the criminal proceedings are maintainable and it cannot be said that there is abuse of process of the Court.

6. In support of his contention, learned counsel for the respondent No. 2-complainant relied upon the decisions of the Hon'ble Supreme Court reported in:

"i) M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others,

ii) M. Krishnan Vs. Vijay Singh and Another,

iii) (2006) 3 Supreme Court cases (Cri) 188 (Indian Oil Corpn. v. NEPC India Ltd.,

and Others).

iv) Kamaladevi Agarwal Vs. State of West Bengal and Others, "

In view of the above, learned counsel submitted that the proceedings cannot be quashed. Hence, there is no merit in the contention raised by the present petitioners in this petition and submitted to dismiss the same.

7. I have perused the averments made in the petition and also perused the complaint filed u/S 200 Cr.P.C. before the trial Court, FIR and all other materials produced along with the petition by the petitioners herein.

8. As submitted by the learned counsel appearing for the petitioners herein, civil suit in O.S. No. 350/2014 has already been filed before the trial Court for recovery of the amount which was said to be due according to the plaintiff in the said case and the said suit is pending.

9. On perusing the averments made in the said suit, though it is averred regarding the sub contract given to the petitioners and its non-performance or execution of the said work, it is averred in the plaint about the due amount that is to be payable by the petitioners herein in the said suit.

10. I have carefully examined the facts narrated in the said suit. Nowhere it is pleaded by the plaintiff in the said suit that nonperformance or execution of the work is with an intention to commit fraud or to cheat the complainant. The only allegation in the said plaint are with regard to the due amount from the present petitioners. Therefore, looking to the averments made in the said plaint it cannot be said that there are averments even with regard to the commission of the alleged offence u/S 420 of IPC.

11. I have perused the decisions relied upon by both the sides and the principles enunciated therein. But, looking to the materials placed on record in this particular case they clearly go to show that the matter is purely civil in nature and for enforcement of the rights under civil law steps have already been taken by the respondent No. 2-complainant for recovery of the due amount which is yet to be decided by the Civil Court in the pending suit.

12. Looking to these materials on record and also perusing the order passed by this Court in the similar set of circumstances, taking view that the matter is purely of a civil nature and initiation of the criminal proceedings are nothing but abuse of process of Court. All these aspects of the matter were not at all taken into consideration by the trial Court even while considering the application filed by the present petitioners seeking their discharge.

13. Looking to the totality of the facts and circumstances of the case so also the legal position as per the decisions relied upon by both the sides, I am of the opinion that it is not necessary to proceed with the criminal proceedings pending against the present petitioners and it is abuse of process of the Court. Accordingly, petitioners have made out a case for quashing the proceedings

which was registered against the present petitioners. Accordingly, petition is allowed. Criminal proceedings initiated against the present petitioners and which are challenged in this petition are hereby set aside.