

(2021) 09 KAR CK 0002
In the Karnataka High Court
Case No : Criminal Petition No. 5767 Of 2021

Dinesh Kamath K.

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 08-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 120B, 420, 504, 506

Citation : (2021) 09 KAR CK 0002

Hon'ble Judges : K. Natarajan, J

Bench : Single Bench

Advocate : K. Shrihari, Mahesh Shetty, S.N. Bhat

Final Decision : Allowed

Judgement

K. Natarajan, J

1. This petition is filed by accused No.1 under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing the F.I.R. in Crime No.142 of 2021 registered by Sanjay Nagar Police Station, Bengaluru, for the offences punishable under Sections 420, 120B, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

2. Heard the arguments of the learned counsel for the petitioner-accused No.1, learned counsel for respondent No.2- complainant and the learned High Court Government Pleader for respondent No.1-State.

3. The case of the petitioner is that, on 23-7-2021, Uttamchand-respondent No.2 filed a complaint alleging that he has entered into Agreement of Sale on 31-1-2013 with Ramesh-accused No.2 for purchase of land in Survey No.145 of Varthur Hobli, Ammani Belandur Khane, Marathahalli Village, Bengaluru West, for total consideration of Rs.4.10 crore and paid Rs.4.00 crore to accused No.2 by way of cash. Accused No.2 did not execute the sale deed in his favour and was dragging the same. Hence, he approached the petitioner for settlement and

handed over the original documents of the property to him. When the petitioner failed to get the sale deed in his favour, he sought to return of original documents and the petitioner failed to return the said documents. Suspecting the foul play, he applied for Encumbrance Certificate and found that on 14-9-2016, a sale deed was registered in the name of the petitioner. He further alleges that the said property was later sold in favour of M/s. Divyashree Infrastructure Private Limited. Being aware of the aforesaid transactions, he approached the petitioner and the petitioner assured that the complainant will receive the amount he is entitled for, but he has not paid the said amount. On 5-7-2021, he approached the petitioner for the amount, but he is said to have threatened him with dire consequences by showing gun. Hence, he requested the Police to take action against the accused persons for cheating. The Police registered the complaint and issued F.I.R., which is under challenge.

4. Learned counsel for the petitioner has contended that the contention of the complainant cannot be acceptable that he paid Rs.4.00 crore to accused No.2 by way of cash and there is no document to show that he has paid the said amount to accused No.2. Even otherwise, there is no connection between the petitioner and the complainant. The petitioner is a bonafide purchaser of the property from accused No.2 for valuable consideration and he has paid the amount through cheque as well as bank transactions. Subsequently, he has sold the property to third person and there is no privity of contract between the petitioner and the complainant. The dispute is civil in nature. If the complainant has any grievance with regard to execution of sale deed, he has to file a suit for specific performance against accused No.2 for getting the sale deed executed, but he has filed false complaint to the Police only to harass the petitioner. He further contended that respondent No.2 has already filed the complaint to the Commissioner of Police in June-2020 and there is no whisper about the Agreement of Sale dated 31-1-2013 between the complainant and accused No.2. Further in the complaint addressed to Commissioner of Police, on 1-6-2020, he has stated that the said property was attached to Project 77 owned by Bhaskar Raju, Director of Divyashree Developers and as the petitioner was familiar with Bhaskar Raju, the petitioner called the complainant to negotiate the property for development at 50:50 share and entered into the joint development agreement. After few days, the petitioner was offered to purchase the whole property instead of joint venture as Bhaskar Raju was not interested in the joint venture. Believing him, sale deed was executed in the name of the petitioner on 14-9-2016 and after execution of sale deed, the petitioner started avoiding him. Hence, he approached the petitioner to return his money, he started abusing him in filthy language. He further contended that the complaint has been verified by the Police on 18-6-2020 that the dispute is civil in nature and the CCB Police have already given endorsement to that effect. He further submitted that Subramanya Nagar Police Station, after making enquiry and after obtaining statement of the petitioner, directed the complainant to approach the Civil Court. The complainant instead of filing the suit for specific performance of contract, he

has filed false complaint to harass the petitioner. If the Police are permitted to investigate the case, it is nothing but abuse of process of law. Hence, he prayed for quashing the F.I.R.

5. Per contra, the learned High Court Government Pleader and learned counsel for respondent No.2 have contended that the petitioner has received the money and has not executed the sale deed. The petitioner has received the original documents and has registered the sale deed in his name and thereby, he has cheated the complainant. The matter is required to be investigated by the Police. Hence, he prayed for dismissal of the petition.

6. Upon hearing the arguments and on perusal of the record, the case of the complainant is that, he agreed to purchase the property from accused No.2 and entered into agreement of sale by paying Rs.4.00 crore by way of cash and accused No.2 did not execute the sale deed. Subsequently, he approached the petitioner for settling the issue. Later, he came to know that the petitioner has got executed sale deed in his name and thereby, the accused persons cheated him. Perusal of the complaint given by respondent No.2 before the Commissioner of Police in June 2020, wherein he has stated that himself and accused No.2 purchased the land and the same was registered in favour of accused No.2. As the said property was attached to Project 77 owned by Bhaskar Raju, Director of Divyashree Developers and as the petitioner was familiar with Bhaskar Raju, the petitioner called the complainant to negotiate the property for development at 50:50 share and entered into the joint development agreement. After few days, the petitioner was offered to purchase the whole property instead of joint venture as Bhaskar Raju was not interested in the joint venture. Believing him, sale deed was executed in the name of the petitioner on 14-9-2016 and after execution of sale deed, the petitioner has started avoiding him. Hence, the complaint was referred to Subramanya Nagar Police Station and in turn, the Police after making enquiry by issuing notice to the petitioner and on 19-6-2020 recorded the statement of the petitioner in the presence of the Deputy Commissioner of Police and later, they sent a Report to the Office of the Commissioner of Police and also to accused No.2. Based upon the Report, the Commissioner of Police issued endorsement stating that the dispute is civil in nature. Therefore, directed the complainant, accused No.2 as well as V.R. Shekar to approach the Civil Court. The endorsement is issued on 4-8-2020. Previously, Subramanya Nagar Police issued endorsement that they have closed the complaint which was referred by the Commissioner of Police and intimated the same to accused No.2 and directed accused No.2 and the complainant to approach the Civil Court for resolving the dispute. Now, suppressing those documents, the complainant has filed the complaint before Sanjay Nagar Police Station. On perusal of the complaint, absolutely, there are two complaints filed by the complainant, i.e. one before the Commissioner of Police along with accused No.2 and V.R. Shekar which was referred to Subramanya Nagar Police Station, wherein the complaint has been closed after enquiry and endorsement has been issued that the matter is civil in nature. Apart from that, if at all sale

deed is not executed by accused No.2 in favour of the complainant, he has to approach the Civil Court for specific performance of contract directing accused Nos.1 and 2 to execute the sale deed in his favour by canceling the sale deed of the petitioner. Further, the contention that he has paid Rs.4.00 crore to accused No.2 can be agitated before the Civil Court. The dispute is purely of civil in nature, but the complainant is trying to give colour of criminal case. Except bald statement that the petitioner abused him in fifthly language and threatened him with gun, there is no ground to issue F.I.R. If the Police are permitted to investigate the case, it is nothing but abuse of process of law. The complainant has to approach the Civil Court for appropriate relief.

7. Accordingly, the petition is allowed. The F.I.R. in Crime No.142 of 2021 registered by Sanjay Nagar Police Station, Bengaluru, for the offences punishable under Sections 420, 120B, 504 and 506 read with Section 34 of the IPC against the petitioner-accused No.1 is hereby quashed.

In view of the disposal of the petition, I.A. No.1 of 2021 does not survive for consideration and accordingly, it is dismissed.