

(2010) 01 KAR CK 0078

In the Karnataka High Court

Case No : Criminal Petition No's. 820 and 821 of 2006

Dr. G. Ramachandrappa

APPELLANT

Vs

Smt. Padma Ramachandrappa

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 468, 482

Citation : (2010) CriLJ 2666 : (2010) 6 KarLJ 106 : (2010) 3 KCCR 1821 :
(2011) 6 RCR(Criminal) 238

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : A.H. Bhagavan, for the Appellant; Sudindranath, for Sudindra Sai Associates, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—As both the parties to these petitions are common and since these petitions involve common questions of fact and law they were heard together and are being disposed of by this common order.

2. In both these petitions filed u/s 482 of Cr.P.C. the common petitioner who is accused No. 1 in C.C. No. 5557/04 and C.C. No. 19835/04 on the file of the 11 Addl. CMM, Bangalore, has sought quashing of the criminal proceedings in those cases.

3. The common respondent in both these petitions is the complainant before the learned Magistrate. It is an undisputed fact that the respondent is the wife of the petitioner, their marriage having been solemnized on 12.10.1980 and from out of the said wedlock two children are born. It is also an undisputed fact that after the marriage both husband and wife lived together in U.K. till the year 2000. According to the respondent, between 1994 and 1997 a site in BTM Layout, Bangalore was acquired in the name of the petitioner from out of the joint investment made by her and her husband at a cost of Rs. 24.50.000/-. The sale deed

dated 05.11.1997 was obtained in favour of the petitioner herein. According to the respondent-complainant in the year 2000 the entire family came back to India with an intention to settle down at Bangalore. However, since their daughter could not secure a seat in Medical College in India, the complainant along with tier children went back to U.K. while the petitioner-husband stayed back in India and subsequently also, the petitioner did not join the wife and children in U.K. Thereafter, the respondent came to know that in the sale deed dated 05.11.1997 the petitioner herein with a dishonest intention of eliminating her contribution for acquisition of the property had shown the total sale consideration of only Rs. 9.50,000/- though the total sale consideration paid was Rs. 24,50,000/-. According to the respondent-complainant, she further learnt that the very site was sold by the petitioner herein under the registered sale deed dated 06.11.2003 in favour of Sri Murali Puttaparthi and P. Aswathanarayana for a sum of Rs. 86.00.000/- however, with a dishonest intention, the consideration under the sale deed was shown only as Rs. 30,24,000/-. Under these circumstances, the respondent filed two complaints on 2.11.2004, one relating to the sale deed dated 05.11.1997 and the other relating to sale deed dated 06.11.2003 alleging offence u/s 423 of IPC.

4. Upon presentation of the complaints, the learned Magistrate took cognizance of the offence alleged and after recording sworn statement of the complainant, issued summons to the petitioner herein and other persons arrayed as accused in the two complaints. Pursuant to the service of summons, the petitioner herein appeared before the learned Magistrate in both the complaints and participated in the proceedings. In the meanwhile Murali Puttaparthi and P. Ashwalhanarayana who had been arrayed as accused Nos. 2 and 3 in C.C. No. 19835/04 filed petition before this Court u/s 482 Cr.P.C. in criminal petition No. 358/05 seeking quashing of the proceedings against them. The said petition came to be allowed by this Court by order dated 04.03.2005 and consequently the proceedings against them in C.C. No. 19835/04 came to be quashed, it is thereafter the petitioner has. presented these two petitions u/s 482 Cr.P.C. on 15.02.2006, inter-alia on the grounds that the allegations made in the complaints, sworn statements and the documents produced by the complainant taken at their face value do not disclose any offence much less the offence punishable u/s 423 IPC as alleged and in spite of the same, the learned Magistrate has taken cognizance of the same and has issued summons and that the prosecution has been launched maliciously to wreck personal vengeance against the petitioner who is the husband of the complainant and this malice as well as the vengeance attitude of the complainant is clear from the fact that she had filed several criminal and civil cases against him. It was also contended that the complaint filed in the year 2004 in respect of the sale deed 05.11.1997 is barred by limitation u/s 468 Cr.P.C. and this aspect of the matter has not been considered at all by the learned Magistrate at: the time of taking cognizance as such, the proceedings pending before the learned Magistrate are liable to be quashed.

5. Upon service of notice of these petitions, the respondent has appeared

through her learned Counsel. I have heard both sides.

6. Sri A.H. Bhagavan, learned Counsel appearing for the petitioner in both these petitions contended that even if the allegations made in the complaint as well as the sworn statement and the documents produced along with the complaints are read as a whole, they do not make out any prima facie case for the offence punishable u/s 423 IPC, as such, the cognizance taken by the learned Magistrate is illegal and the proceedings are liable to be quashed.

7. He further contended that, the complaint based on the sale deed dated 05.11.1997 is clearly barred by time and since no explanation is forthcoming on the part of the complainant in terms of Section 470 Cr.P.C. the learned Magistrate could not have taken cognizance of the offence alleged on a complaint barred by time. He further contended that though the allegations made in the complaint prima facie indicate civil dispute, certainly it cannot be a ground for initiation of criminal proceedings and the criminal proceedings initiated by the respondent wife against her husband is only with an intention to harass him and to coerce him therefore the proceedings are liable to be quashed. He further contended that since, the proceedings in the complaint based on sale deed dated 6-11-2003 has already been quasi led against Accused Nos. 2 and 3 who are purchasers under the sale deed, it is just and fair to quash the said proceedings against the petitioner also.

8. On the other hand, Sri Sudindranath, learned Counsel appearing for the respondent relying on the decision of the Supreme Court reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, contended that a complaint can be quashed only when the allegations made, in the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case alleged against the accused and since the allegation made in the complaint as well as the sworn statement and the documents produced along with the complaint read as a whole makes out a prima facie case against the petitioner for offence u/s 423 IPC, this Court cannot quash the proceedings in exercise of power u/s 482 Cr.P.C.

9. It is his further contention that the petitioner having participated in the proceedings before the learned Magistrate for a little over one year and having kept quiet, cannot be permitted to seek quashing of the proceedings at a belated stage, therefore these petitions are liable to be quashed on the ground of delay and laches. In this behalf, he placed reliance on the decision of Orissa High Court in the case of Bata alias Batakrushna Behera and Others Vs. Anama Behera, and the decision of Punjab and Haryana High Court in the case of Krishnan v. State of Haryana reported in : II (2002) DMC 61. He further contended that the quashing of criminal proceedings against the two purchasers under the sale deed dated 06.11.2003 by this Court in Criminal Petition No. 358/05 cannot be taken advantage of by the petitioner to contend that criminal proceedings should be quashed against him also. According to the learned Counsel, the petitioners therein stand on a different footing than the petitioner herein and the allegations

made in the complaint, for the offence u/s 423 IPC is directly against the petitioner herein, as such, the order in Criminal Petition No. 358/05 does not come in the way of continuing the proceedings against the petitioner herein.

10. He further contended that since in the light of the allegations made in the complaint petitions about the complainant gaining knowledge of the contents of the sale deed dated 05.11.1997 only in the month of February 2004, the complaint filed on 02.11.2004 is within the period of limitation from the date of knowledge as provided by Section 469(1)(b) of Cr.P.C. and therefore, the learned Magistrate is justified in taking cognizance of the offence alleged. It is also his contention that to find out as to whether any criminal proceeding in exercise of power u/s 482 of Cr.P.C., is required to be quashed or not, the Court is required to examine the complaint as a whole without examining the merits of the allegations or its genuineness and therefore at this stage, this Court cannot undertake detailed examination of the allegations in the complaint to find out as to whether the allegations made therein are genuine and acceptable. Therefore; at this stage the allegations made in the complaints with regard to the dishonest intention with which the petitioner had made false statement in the sale deeds regarding consideration and with regard to the knowledge of the complainant of such act. Will have to be accepted at its face value and since those allegations are sufficient to make out a prima facie case for an offence u/s 423 IPC, there are no merits in these petitions and they are liable to be dismissed.

11. In the facts and circumstance of the case and in the light of the rival submissions made, the point that arises for my consideration is "whether the criminal proceedings pending before the learned Magistrate are required to be quashed in exercise of power u/s 482 Cr.P.C.?"

12. In the case of Indian Oil Corporation v. NEPC India Limited referred to supra, the Hon'ble Supreme Court after referring to various judgments has noted the principles relating to exercise of jurisdiction u/s 482 of Cr.P.C. to quash complaints and criminal proceedings in para-9 as under:

9. The principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - x x x x x x x x x x

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The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the

accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong: or (b) purely a criminal offence: or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different, from a criminal proceeding, the mere fact that the complaint, relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceeding's. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. As noticed above, there is no dispute that: the petitioner is the husband of the respondent-complainant. The complaints were filed on 02.11.2004 alleging offence u/s 423 IPC. Section 423 IPC reads as under:

423. Dishonest to fraudulent execution of deed of transfer containing false statement of consideration

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or a persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

14. In the two complaints Tiled before the learned Magistrate, the allegations have been made that the complainant has been a working woman from the year 1990 and thus both the complainant as well as her husband together made some investments by way of bank deposits, life insurance payments and also investments on immovable property in India particularly at Bangalore. It is further averred in the complaint that an immovable property being a vacant site measuring East, to West 60" and North to South 84", in all measuring 5040 sq. ft. situated at No. 5, 1st Phase. 1st Stage, BTM Layout. Bangalore was purchased with the joint, funds of the complainant and the first accused arid also included joint family funds. It is further averred that, the complainant has documentary evidence to show that the monies were contributed for the purpose of purchasing the said immovable property. On account of longstanding husband and wife relationship, with the children born out of the wedlock, the complainant contributed the amount"s for the purpose of joint purchase of the immovable property, but till 05.02.2004 the complainant had not seen any documents for having made joint investments/joint purchase of the said immovable property.

15. It is not in dispute that the site bearing No. 5. 1st Stage. 1st Phase, BTM Layout. Bangalore, was purchased by the petitioner herein under the registered sale deed dated 05.11.1997. According to the allegation made in the complaints, the sale consideration shown in the sale deed was Rs. 9.50,000/- However it is the specific allegation of the complainant that the real sale consideration was Rs. 24.50.000/- and she had contributed equally for acquisition of the said property. However, according to the complaint allegations, the petitioner herein in order to deceive and defeat her right in the said site and with a dishonest intention, had made a false statement with regard to the sale consideration by only showing the payments made by him through cheques to the vendor. Similarly in the other complaint, allegations have been made to the effect that in order to defeat her rights in the proceeds derived from the sale of the property, sale consideration has been falsely shown as Rs. 30.24,000/-, though the real sale consideration was Rs. 86.00.000/-. If the allegations made in the complaint are read as a whole. I am of the considered opinion that it cannot be said that the complaint allegations do not make out a prima facie case against the petitioner for the offence u/s 423 IPC. As field by the Hon"ble Supreme Court in the aforesaid decision, at this stage, this Court, cannot venture to consider the genuineness or correctness of those allegations. Those allegations will have to be taken at its face value to find out as to whether those allegations make out a prima facie case. In my considered opinion, the allegations made in the complaint if read as a whole, make out a prima facie case attracting the ingredients of Section 423 IPC. The facts as to how much amount the complainant has contributed, and the mode of such payment are all the matters of evidence during the trial. The documents produced along with the complaint namely, copy of the agreement entered into on 08.09.1994 prima facie indicates that the total sale consideration was Rs. 24.50.000/- and in the sale deed dated 05.1 1.1997 the sale consideration indicated is only Rs. 9,50,000/-. Reading of the copy of written

statement filed by the purchasers in the Civil suit filed by the respondent for partition, in O.S. No. 7278/2004, which is produced along with the complaint, prima facie indicate that the real sale consideration for the sale of property under sale deed dated 06.11.2003 was Rs. 86.00.000/-whereas. The apparent consideration in the sale deed is Rs. 30.24.000/-. If these allegations are proved during trial, it would certainly attract the offence u/s 423 IPC. Therefore at this stage, there are prima facie materials on record to attract the provisions of the offence u/s 423 IPC. Therefore, the learned Magistrate is justified in taking cognizance of the offence alleged in the complaint and issuing summons to the accused.

16. In respect of the first sale deed dated 05.11.1997, the complaint filed on 02.11.2004. may be said to be beyond the period of limitation as provided u/s 468 Cr.P.C. However as per Section 469(1)(b) of Cr.P.C., the period of limitation, in relation to an offence, would commence where the commission of the offence was not known to the person aggrieved by the offence, from the first day on which such offence comes to the knowledge of such person. It is the definite allegation made in the complaint that the complainant had no knowledge of the contents of the sale deed dated 05.11.1997 till February 2004 and it is only after she obtained the certified copy of the sale deed, she came to know about the false statement made in the sale deed regarding the sale consideration. Therefore prima facie on the basis of this allegation, it cannot, be said that, the complaint is barred by time. However, this matter can also be agitated by the accused during the trial and bring out sufficient material on record. If he succeeds in bringing out material on record to show that the complainant had knowledge of the contents of the sale deed much prior to February 2004, it is still open to the petitioner to urge the Trial Court, to dismiss the complaint, on the ground of limitation. However at this stage, the allegations made in the complaint is prima facie sufficient to hold that the complaint is in time in terms of Section 469(1)(b) of Cr.P.C.

17. No doubt in Criminal Petition No. 358/2005, this Court has quashed the criminal proceedings in C.C. No. 19835/2004 against the accused Nos.2 and 3 who are the purchasers under the sale deed dated 06.11.2003. Having regard to the allegations made in the complaint and the grounds on which proceedings are quashed against accused Nos. 2 and 3 therein. I see considerable force in the contention of the learned Counsel for the respondent that the said order quashing the proceedings against accused Nos. 2 and 3 has no effect on continuing the proceedings against the present petitioner. The case against the present petitioner stands on a different footing than the case against the accused Nos.2 and 3 therein. The allegation of dishonest intention to deceive the right of the respondent-complainant and for that purpose false statement regarding sale consideration having been made in the sale deed, are directly against the petitioner herein and not against the purchasers of the property. Therefore, in my considered opinion, the petitioner cannot take advantage of the order of this Court passed in Criminal Petition No. 358/2005. Whereunder the proceedings

have been quashed against accused Nos. 2 and 3. Therefore the proceedings will have to be continued against the petitioner herein.

18. The learned Magistrate directed issue of summons to the petitioner on 05.02.2005 in the first case and on 29.11.2004 in the second case. Upon service of summons, the petitioner has appeared before the learned Magistrate and has participated in the proceedings without any demur. It is only in the year 2006 i.e. on 15.02.2006 these petitions have been filed seeking quashing of the criminal proceedings. No doubt, no period of limitation is provided for filing criminal petition u/s 482 Cr.P.C. Nevertheless, it cannot be said that the power of the High Court u/s 482 Cr.P.C. can be invoked at any time at the sweet wish and will of the party, if according to the petitioner, the proceedings initiated against him is illegal and cannot be continued, he should have sought quashing of the proceedings in exercise of power of this Court u/s 482 Cr.P.C. within a reasonable time thereafter. In fact the Orissa and Punjab and Haryana High Courts in the decisions noted above have clearly held that the application u/s 482 Cr.P.C. has to be filed within a reasonable time and period of 90 days is a reasonable time for filing such application. This has been found to be reasonable in the light of period of limitation of 90 days for filing the revision petition u/s 397 Cr.P.C. Having regard to the fact that the petitioner herein kept, quite nearly for one year after service of summons and has presented these petitions at a belated stage, these petitions suffer from delay and laches.

In view of the above discussions, I see no ground to quash the criminal proceedings in exercise of power of this Court u/s 482 Cr.P.C. Accordingly the petitions are dismissed.