
(2001) 02 KAR CK 0058
In the Karnataka High Court
Case No : Criminal Petition No. 1633 of 1998

Jayachandran

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3), 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2001) 6 KarLJ 389

Hon'ble Judges : K.R. Prasad Rao, J

Bench : Single Bench

Advocate : Gopala Hegde, for the Appellant; N.V. Prakash, Additional State Public Prosecutor and Mohd. Usman Sheik and Associates, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. This petition is filed u/s 482 of the Cr. P.C, by the accused in C.C. No. 4129 of 1998 on the file of the Court of the II Additional Chief Metropolitan Magistrate, Bangalore, seeking for quashing of the above proceeding against him, registered for the offence u/s 420 of the IPC.

2. I heard the arguments of the learned Counsel for the petitioner and the learned Counsel for respondent 2, and the Additional State Public Prosecutor appearing for the respondent 1.

3. The learned Counsel for the petitioner submitted that on the basis of the complaint filed by the second respondent, Banashankari Police investigated the case as per the orders passed by the learned Magistrate u/s 156(3) of the Cr. P.C. and submitted the charge-sheet against the present petitioner. It is pointed out by him that the complaint is filed against the petitioner and one Mr. Anil Kush who is shown as accused 1 in the said complaint and all the allegations made in the complaint are mainly against accused 1 Anil Kush as the person who made a

false representation to the second respondent that all the 750 banana plantlets delivered to him are of Robusta variety and that they would yield fruits of not less than 60 to 70 kgs. According to the averments made in the complaint, out of 750 plants supplied to the complainant, 300 plants are found to be of dwarf cavendish variety, but not of Robusta variety and the maximum yielding capacity of the said plants is 30 to 35 kgs. per plant. The learned Counsel for the petitioner there- fore submitted that the complaint disclosed sufficient grounds to proceed against the accused 1 only for the offence u/s 420 of the IPC and therefore the above charge-sheet filed by the police against the present petitioner who is accused 2 in the complaint is liable to be quashed. In reply to this submission, the learned Counsel for the second respondent submitted that in the complaint filed by the second respondent against the present petitioner who is also an employee of Indo-American Hybrid Seeds, it is alleged that he represented that the Robusta variety banana plant gives 45 to 60 kgs. of banana fruits for every yield and he took him to accused 1 and thereafter, accused 1 induced him by saying that in Doddaballapura Bolt and particularly Madurai Hobli each plant would definitely give more than 60 kgs. of fruits. It is further pointed out by him that in para 6 of the complaint, it is clearly alleged that when the complainant enquired both the accused as to whether 750 banana plants delivered to him are of Robusta variety plantlets, or whether any substitute has been made by mixing any other variety, both the accused replied that no other variety has been mixed and Robusta variety has been given. It is also pointed out by him that para 9 of the complaint, it is clearly alleged that both the accused are in charge of the activities of Banana Section of Indo-American Hybrid Seeds and all activities are being done under their supervision and direction and even while delivering the plants, both the accused clearly and categorically represented that there is no substitute of any other variety of banana plants though they had knowledge that 300 plants are of substitute variety. He therefore submitted that the above allegations in the complaint clearly disclose sufficient grounds to proceed against accused 2 who is the present petitioner for an offence u/s 420 of the IPC. It is also pointed out by him that during investigation, the police found that there is mistaken identity insofar as accused 1 is concerned and that he was not the person who made the representation and delivered the banana plantlets to the complainant and for that reason they filed the charge-sheet against only accused 2.

4. On a perusal of the complaint, I find that there are clear allegations to the effect that the present petitioner clearly represented to respondent 2 that out of 750 banana plantlets supplied to him, there is no substitute of any other variety of banana plants and that all the banana plantlets supplied to him are of Robusta variety and that he also represented that each of the said banana plants give 45 to 60 kgs. of fruits. Since according to the complainant, out of 750 banana plantlets supplied to him, 300 are not found to be of Robusta variety, petitioner has cheated him in the above said manner. I therefore find that there are sufficient grounds to proceed against the petitioner for the above offence u/s 420

of the IPC.

5. The learned Counsel for the petitioner submits that the dispute is purely civil in nature and the civil proceedings are pending for recovery of the amount of Rs. 2,00,000/- for the loss suffered by second respondent, and therefore the facts alleged do not attract the offence u/s 420 of the IPC. In support of this submission, he relied upon a decision in Bal Kishan Das Vs. P.C. Nayar, , wherein it was held that "the proceedings against the petitioner for shortage of paddy and rice procured by him for FCI-Arbitration agreement between petitioner and respondent permitting shortage upto certain limit and for payment of penalty beyond that at rates prescribed in the agreement - Matter referred to and pending arbitration - Meanwhile criminal proceedings u/s 406 of the IPC initiated and cognizance taken by Magistrate - In appeal against High Court's refusal to quash the criminal proceedings, held that the matter being purely of a civil nature, the proceedings must be quashed".

6. The above decision is not applicable to the facts of the present case. In the instant case, according to the complainant, a false representation has been made to him that all the 750 banana plantlets supplied to him are of Robusta variety which are capable of yielding 45 to 60 kgs. of banana fruits per plant for each crop and ultimately it is found that 300 out of them are not of Robusta variety and thus he was cheated by the petitioner and A-1. It is not the case of the petitioner that there is any arbitration agreement executed by the parties in respect of above transaction.

7. In reply to the above submission, the learned Counsel for the second respondent has relied upon a recent decision of Hon"ble Supreme Court in M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, , wherein it was held that "availability of civil remedy does not completely bar criminal prosecution - Whatever appears on face of complaint shall be taken into consideration without any critical examination of same - Allegation that respondent accused persons caused loss to complainant by intentional false assurance and misrepresentation, in that they failed to supply agreed materials necessary for manufacture of medicine - Quashing of the above proceeding by the High Court cannot be sustained - Ingredients of offence under Sections 415, 418 and 420 of the IPC cannot be said to be totally absent on the basis of allegation in complaint". In the instant case the facts are quite similar to the facts of the above case. The above decision, in my view applies to the facts of the present case on all fours. I am therefore unable to accept the above contentions of the learned Counsel for the petitioner.

8. The learned Counsel for the petitioner further submitted that since the petitioner is only an employee of Indo-American Hybrid Seeds and since the banana plantlets supplied are of the said company and the sale proceeds of the plantlets are credited to the account of the company, the proceedings for the offence u/s 420 of the IPC against the present petitioner are liable to be quashed, when company itself is not made a party. In support of this contention,

he relied upon a decision of the Supreme Court in *State of Madras Vs. C.V. Parekh and Another*, wherein it was held that where the company itself was not charge-sheeted for contravention of Iron and Steel Control Order, 1956, Manager and Managing Director of the said company are prosecuted for the said contravention, the conviction of them is untenable in law as the person contravening the order must be the company itself as laid down in Section 10 of the Act. When the company was not charged at all the liability of those in charge of the company cannot arise". In reply to the above submission, the learned Counsel for the second respondent has submitted that it has been clarified by the Hon"ble Supreme Court in subsequent decision in *Sheoratan Agarwal and Another Vs. State of Madhya Pradesh*, that "Section 10 of the E.C. Act, does not state that if the person contravening the order made under the E.C. Act is a company, the prosecution of the Directors, the officers, and servants of the company or other persons is precluded unless the company itself is prosecuted. There is no statutory compulsion that the person in charge or any officer of the company may not be prosecuted unless he be ranged along with the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person in charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company". In view of the above clarification made in the later decision of the Supreme Court, I am unable to accept the contention of the learned Counsel for the petitioner that in the absence of the company being made a party to the above proceedings, the prosecution of the present petitioner for the alleged offence u/s 420 of the IPC is not permissible.

9. The merits of contentions raised by the learned Counsel for the petitioner that the dispute is purely of civil in nature and that the petitioner being an employee of the above company has no dishonest intention and the further contention of the learned Counsel for the petitioner that since the sale proceeds are credited to the account of the company, the petitioner is no way benefited in the above transaction and therefore cannot be attributed any dishonest intention in supplying the above banana plants etc., are to be considered by the Trial Court at the appropriate stage. In my view, the said questions cannot be gone into at this stage when the case of the complainant is to be proved by adducing evidence in the Trial Court at the time of trial. Hence, all the said contentions left open to be decided by the Trial Court.

For the above reasons, this petition is dismissed reserving liberty to the petitioner to urge all the contentions raised at an appropriate stage, before the Trial Court.

10. The learned Magistrate is directed to issue fresh summons to the petitioner in the case, for his appearance by fixing a date.