
(2013) 09 MP CK 0219

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 8345 of 2011

Kailash Narayan

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2013) 09 MP CK 0219

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : Pradeep Katare, for the Appellant; Rajiv Upadhyay, Panel Lawyer for respondent No. 1/State and None, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition has been preferred u/s 482 of Cr.P.C. for quashing the FIR Crime No. 644/2011 registered at police Station, Kotwali, Distt. Ashoknagar for the offence punishable under Sections 406 and 420 of IPC. Short facts giving rise to this petition are that respondent No. 2 has lodged a report at police Station, Kotwali, alleging that petitioner Kailash Narayan has agreed to sell his land bearing survey Nos. 20 and 21 situated at village Pachhari Tahsil and Distt. Ashoknagar for a consideration of Rs. 35,00,000/- and executed an agreement dated 6.7.2011 after receiving cash of Rs. 11,000/- and a cheque of Rs. one Lac. The agreement was signed by Manali Sharma son of Kailash Narayan who gave his consent and wife of Kailash Narayan, namely Smt. Chandra Sharma, signed the agreement as a witness. It was agreed that sale-deed will be executed within five months. Thereafter, the period of execution of the agreement was extended upto 28.2.11 and Rs. five lacs were received by petitioner Kailashnarayan. Complainant asked the petitioner on 28.2.11 to execute the sale-deed according to the agreement and appeared in the office of Registrar for execution of the sale-deed, but petitioner Kailashnarayan did not turn up. Thereafter, the complainant went to petitioner Kailashnarayan and told

that he would initiate a legal proceeding, then the petitioner extended the date of execution of agreement upto 30.6.11. But even thereafter despite insistence of the complainant, petitioner only gave assurance to him that he will execute the agreement. Thereafter, it came into the knowledge of the complainant that case No. 1255-1/2010 (Kailashnarayan Sharma Vs. Jagdish Sharma) is pending before the Revenue Board, Gwalior, in which petitioner Kailashnarayan has compromised with Jagdish Sharma on 2.9.11 and agreed to transfer the ownership of the land in favour of Jagdish Sharma which was the subject matter of agreement between complainant and petitioner. Thus, petitioner Kailashnarayan by concealing the fact that a dispute with regard to the land is pending between him and his brother, has executed the agreement with the complainant, and hence, petitioner Kailashnarayan has cheated the complainant. The complainant has also issued notice to the petitioner. On the basis of the report, Crime 644/2011 under Sections 406 and 420 of IPC has been registered against the petitioner. Being aggrieved, the petitioner has filed this petition.

2. The learned counsel for the petitioner submits that respondent No. 2/complainant never ready and willing to get the sale-deed executed in his favour. When respondent No. 2/complainant sent a notice to the petitioner, reply was given on behalf of the petitioner that respondent No. 2/complainant was fully aware that a dispute of the petitioner with his brother is going on in the Court. Brother of the petitioner had also got published a public notice in daily newspaper Dainik Bhaskar, Bhopal, dated 21.5.2008 regarding the dispute. It is further submitted that dispute is purely of a civil nature. As per respondent No. 2, the petitioner has not executed the sale-deed in his favour, therefore, a suit for specific performance ought to have been filed by respondent No. 2. No criminal liability can be fastened on the petitioner. Therefore, prosecution of the petitioner is an abuse of process of law. Hence, it is prayed that FIR be quashed.

3. Learned counsel for respondent No. 2/complainant submits that petitioner has entered into an agreement with the complainant to sell the land concealing the fact that a dispute is pending between him and his brother in the Board of Revenue regarding the said land and after receiving the amount of about 6,11,000/- did not execute the sale-deed and compromised with his brother. Thus, cheated the complainant.

4. Before proceeding further, it would be necessary to refer the offence of cheating as defined u/s 415 of the IPC, which reads thus:-

415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

5. In the light of the aforesaid, I have gone through the record.

6. Undisputedly, the petitioner entered into an agreement to sell agricultural land bearing survey Nos. 20 and 21 situated at village Pachhari for a consideration of Rs. 35,00,000/- on 3.7.2010 and respondent No. 2/complainant gave an advance of Rs. 11,000/- alongwith a cheque of Rs. one lac, as it appears from the copy of the agreement filed on record. The parties agreed that after payment of the balance amount within five months, the sale-deed will be executed. It also reveals that agreement was extended upto 28.2.11 and the petitioner received Rs. five lacs on 30.12.10. Thereafter again the agreement was extended upto 30.6.11. From the perusal of reply of notice sent through an advocate on behalf of the petitioner, it appears that petitioner has denied that he agreed to sell the land. It was never the intention of the petitioner to sell the land. In fact, the petitioner was in dire need of money as he has to pay the loan taken from his relatives and other persons, therefore, he has mortgaged the land as a guarantee for payment of loan and taken a loan from respondent No. 2. Taking undue benefit, respondent No. 2/complainant has got executed the agreement to sell instead of mortgaging the land. The market value of the land was about Rs. 80 lacs, therefore, there was no question of selling it merely on consideration of Rs. 35 lacs. It is further stated that it was made clear by the petitioner that a dispute is going on in between him and his brother Jagdish Prasad in the Board of Revenue regarding the mutation. Therefore, the petitioner did not commit any cheating. He is ready to refund the advance with interest.

7. It is pertinent to mention that no where in the agreement it is mentioned that a dispute is pending in the Board of Revenue in between petitioner and his brother with regard to the said land, contrary to it, in the agreement it is clearly mentioned that:-

8. No document has been placed on record on behalf of the petitioner that respondent No. 2 was fully aware that a dispute between petitioner and his brother regarding the aforesaid land is pending in the Board of Revenue. Had this fact been brought in the notice of the complainant before the execution of the agreement, he might not have agreed to purchase the disputed land. Thus, non-disclosure of the dispute pending in the Board of Revenue clearly shows the dishonest intention of the petitioner.

9. The reply of the notice given by the petitioner through his counsel further shows his dishonest intention because in the reply it was altogether denied by the petitioner that he has entered into an agreement to sell the disputed land with the complainant. Had the petitioner really taken a loan from respondent No. 2/complainant and in lieu of security, executed the document, then why the petitioner kept mum when respondent No. 2/complainant approached him for executing the sale-deed and instead of taking any action, the petitioner received Rs. five lacs on 30.12.10 and extended the agreement upto 28.2.11. Thereafter, again the time for execution of agreement was extended upto 30.6.11. Thus, this conduct of the petitioner falsifies his stand that he never intended to sell the land.

10. The learned counsel for the petitioner submits that respondent No. 2/ complainant was not ready and willing to get the sale-deed executed in his favour. This submission has no force because the petitioner himself has extended the time for executing the agreement. The respondent No. 2 has approached the petitioner from time to time to execute the sale-deed and also gave a notice through his counsel in reply of which the petitioner has denied that he agreed to sell the disputed land.

11. Learned counsel for the petitioner further submits that dispute is purely of a civil nature, therefore, the prosecution of the petitioner is an abuse of process of law. In support, he has placed reliance on the following decisions:-

- (i) Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others,
- (ii) Joseph Salvaraj A. Vs. State of Gujarat and Others,
- (iii) Suresh Vs. Mahadevappa Shivappa Danannava and Another, ;
- (iv) Thermax Ltd. and Others Vs. K.M. Johny and Others, and
- (v) Sharon Michael and Others Vs. State of Tamil Nadu and Another,

The facts of the present case are distinguishable from the facts of the afore-cited cases. In those case, dishonest intention was missing, however, in the instant case, as pointed out above, the essential ingredient of Section 415 of IPC, dishonest intention, is very well present. In the case of Suresh (supra) the complaint was filed after a delay of about ten and half years and in the case of Thermax Limited (supra), the complaint was filed in the year 2002 while the alleged dispute pertained to the period from 1993 to 1995. Such is not the position in the instant case. There is no delay in lodging the report and the essential ingredient of Section 415 of IPC is present, therefore, the aforesaid cases cited on behalf of the petitioner are of no help to the petitioner.

12. The Hon''ble Apex Court in Inder Mohan Goswami (supra) making reference of the following cases:-

- (i) R.P. Kapur Vs. The State of Punjab,
- (ii) State of Karnataka Vs. L. Muniswamy and Others,
- (iii) Chandrapal Singh and Others Vs. Maharaj Singh and Another,
- (iv) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others,
- (v) State of Haryana and others Vs. Ch. Bhajan Lal and others,
- (vi) Janata Dal Vs. H.S. Chowdhary and Others,
- (vii) G. Sagar Suri and Another Vs. State of U.P. and Others,
- (viii) Roy V.D. Vs. State of Kerala,

(ix) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, and

(x) Indian Oil Corporation Vs. NEPC India Ltd. and Others,

has observed in para 23 and 24 as under:-

23. This court in a number of cases has laid down the scope and ambit of courts powers u/s 482, Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power u/s 482, Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers u/s 482, Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Taking into consideration that prima facie the essential ingredients of cheating as defined u/s 415 of IPC are present in the FIR which is punishable u/s 420 of IPC, no case is made out for invoking the extraordinary powers of this Court u/s 482 of Cr.P.C. The petition is devoid of any merits and is liable to be dismissed. Consequently, the petition is dismissed.