(2015) 07 KL CK 0132

In the High Court Of Kerala

Case No : Criminal M.C. No. 1802 of 2013

Kanakam Thampi and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420

Citation : (2015) 07 KL CK 0132

Hon'ble Judges : Raja Vijayaraghavan V., J

Bench : Single Bench

Advocate : S. Rajeev and K.K. Dheerendrakrishnan, for the Appellant; N. Suresh, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raja Vijayaraghavan V., J—The instant petition under section 482 of the Code of Criminal Procedure is preferred by the petitioners who are the accused Nos. 1 to 3 in C.C. No. 13/2013 on the file of the Judicial First Class Magistrate Court - II, Kochi. The 1st petitioner is the mother of the 3rd petitioner and the 2nd petitioner is her daughter-in-law.

2. The said case arose on the basis of a complaint filed under section 200 of the Code of Criminal Procedure by the 2nd respondent herein. Based on the complaint, Crime No. 2421/2012 was registered on 22.10.2012 by the Palluruthy police station alleging commission of offence punishable under sections 406, 420, 120B read with section 34 of the Indian Penal Code. Later, investigation was conducted by the Sub Inspector of Police and Annexure II Final Report was laid before court.

3. The gist of the allegation as is revealed from the records produced is that, the 1st petitioner is the owner of a three storied building in which, the 2nd floor is occupied by the 1st petitioner. In the ground floor, a Margin Free Super Market was earlier run by the 1st petitioner and the 1st floor was leased out to the 2nd

respondent for the purpose of housing his employees. According to the 2nd respondent, the ground floor room numbered as C.C.18/2347 wherein the Margin Free Super Market is being run and the 1st floor numbered as C.C.18/2348 together with the 3 cents of properties was agreed to be sold by the petitioners to him on the strength of an oral agreement. Believing the words of the petitioners, he had agreed to purchase the property for a total consideration of Rs. 34,00,000/-. Towards the advance of sale consideration, a sum of Rs. 3,00,000/- was handed over by the 2nd respondent on 15.09.2011, a sum of Rs. 5,00,000/- on 30.09.2011 and a sum of Rs. 10,50,000/- on 02.10.2011. Thereafter, a sum of Rs. 1,52,181/- was also handed over at their request on miscellaneous heads. According to the 2nd respondent, he has advanced a total sum of Rs. 20,02,181/- out of the total sale consideration of Rs. 34,00,000/- to the petitioners, but, they did not abide with the assurance given and has therefore, cheated the 2nd respondent. It was on these lines that a complaint was preferred before the Judicial First Class Magistrate Court - II, Kochi on 20.10.2012, based on which, Annexure I Crime was registered. Thereafter, investigation was conducted and after questioning some witnesses, a Final Report was laid in which the allegation is that, the petitioners have committed offence under sections 406, 420, 120B read with section 34 of the Indian Penal Code.

4. The learned counsel appearing for the petitioners would submit that the filing of the complaint, registration of the First Information Report and consequent filing of the charge sheet are unsustainable as absolutely no offence is attracted as against the petitioners. It was pointed out by the learned counsel that the 1st petitioner is running a Super Market in the ground floor of a three storied building and the 1st floor was leased out to the 2nd respondent for the purpose of housing his employees. The 2nd respondent is a Pediatrician by profession and when the 1st petitioner wanted to join her son who was employed in Australia, the Margin Free Super Market was also leased out to the 2nd respondent. When the 2nd respondent defaulted in paying the rent arrears, Annexure V Notice under the Kerala Buildings (Lease & Rent Control) Act seeking eviction on the ground of arrears of rent was issued on 29.04.2012. Thereafter, Annexure III & Annexure IV petitions were preferred before the Rent Control Court by the 1st petitioner herein seeking eviction of the 2nd respondent. It was contented by the learned counsel for the petitioners that the averment in the complaint and also in the Final Report are bereft of truth as not even a scrap of paper was produced by the 2nd respondent to evidence the execution of an agreement for sale or the handing over of the fabulous sums of money as claimed by him in his complaint. It is the case of the learned counsel that, it was after being aggrieved by the institution of the Rent Control proceedings, that the instant complaint was preferred to somehow cling on to the premises by initiating civil action. The final report was laid by the police without appreciating that no offence as alleged is made out even if the allegations are accepted in its entirely. It is finally contented that even if the averments in the complaint as well as in the Final

Report are accepted in toto, the ingredients of the offence under section 406 or 420 are not attracted and that the proceedings as against them are nothing but in abuse of process of court and the same was liable to be quashed.

5. Though notice was issued to the 2nd respondent and the same was accepted, there was no representation.

6. The learned counsel for the petitioners placed reliance on Sarabjit Singh Vs. State of Punjab and Others, (2013) 7 AD 301 : (2013) 4 JCC 2777 : (2013) 14 JT 606 : (2013) 4 RCR(Criminal) 463 : (2013) 7 SCALE 571 : (2013) 6 SCC 800 , Arun Bhandari Vs. State of U.P. and Others, (2013) 1 AD 560 : (2013) CriLJ 1020 : (2013) 1 Crimes 113 : (2013) 1 JT 467 : (2013) 2 RCR(Criminal) 261 : (2013) 1 SCALE 229 : (2013) 2 SCC 801 : (2013) AIRSCW 569 : (2013) 1 Supreme 131 , Devadathan and Others Vs. State of Kerala and Another, (2012) 1 KLJ 809 and Wilson M.K. v. State of Kerala and Anr. [2014 (2)KLD 102] to advance the contention that when there is a breach of an agreement for sale, no offence under section 420 will be attracted.

7. The learned Public Prosecutor submitted that was not a fit case where exercise of powers under section 482 of the Code of Criminal Procedure to quash the pending criminal proceedings was warranted.

8. I have anxiously considered the rival contentions advanced. Annexure II Final Report would only reveal that there was an oral agreement for sale between the 2nd respondent and the 1st petitioner and that some money had changed hands. No scrap of paper was produced by the 2nd respondent before the investigating officer to show that there was any basis in raising such allegations. It is not the contention of the 2nd respondent that the petitioners were not having title over the property or that they had entertained an intention to deceive when the alleged agreement was executed. The only case is that after accepting the money, the petitioners have resiled from their promise and did not comply with the assurance given to him. It is trite that to hold the person guilty of the offence of cheating it has to be shown that his intention was dishonest at the time of making such promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfill the promise. (See State of Kerala Vs. A. Pareed Pillai and Another, AIR 1973 SC 326 : (1972) CriLJ 1243 : (1972) 3 SCC 661 : (1972) SCC(Cri) 705). Further, in order to attract the offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that the person had a fraudulent or dishonest intention at the time of making the promise to say that he committed an act of cheating. A mere failure to keep a promise subsequently cannot be presumed as an act leading to cheating. (See S.N. Palanitkar and Others Vs. State of Bihar and Another, AIR 2001 SC 2960). In Devadathan and Others Vs. State of Kerala and Another, (2012) 1 KLJ 809 , this Court has held that a breach of agreement for sale could not constitute an offence under section 420 of the Indian Penal Code.

9. In the instant case, it is evident that much prior to the registration of the First Information Report, the petitioners had issued legal notice to the 2nd respondent demanding arrears of rent. It has also come out that petitions under the Rent Control Act was preferred against the 2nd respondent before the jurisdictional court. It appears that it was as a counter blast that the complaint was preferred and the crime was got registered. The absence of any document to prove the execution of the agreement and also the transfer of money would also reveal that the allegations raised by the 2nd respondent against the petitioners are without any basis.

10. Summoning of an accused in a criminal case is not a trivial matter. It is likely to cause grave hardship and injury to the accused if he is implicated in a false case on the strength of no materials. I am of the considered opinion that the allegations in the Final Report even if it is accepted in his entirety do not make out a case against the petitioners as alleged in the charge.

In the result, the Criminal Miscellaneous Case is allowed and all further proceedings against the petitioners in C.C. No. 13/2013 on the file of the Judicial First Class Magistrate Court - II, Kochi are quashed.