(2013) 11 AP CK 0162

In the Andhra Pradesh High Court

Case No : Crl. P. No. 8293 of 2013

Kusuma Lokanadham APPELLANT

Vs

State of Andhra Pradesh and Another RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 620

Judgement

C. Praveen Kumar, J.—This criminal petition is filed by the sole accused u/s 482 Cr.P.C. seeking quashing or proceedings in C.C. No. 70 of 2011 on the file of I Additional Judicial First Class Magistrate at Warangal. A charge-sheet came to be filed against the accused for the offences punishable under Sections 323 and 420 of the Indian Penal Code. The allegations in the charge-sheet are as under:--

The 2nd respondent herein eking out his livelihood by running a jewellery shop in the name and style of Pashikanti Rajaiah & Sons Gold and Silver Merchant. There were three mulgies on the road side and the father of the accused and his two brothers got one mulgi each. In the year 1978, the respondent herein took a mulgi bearing No. 8-11-34/3 admeasuring 33 Sq. yards on rent of Rs. 500/- per month. Out of the said 33 Sq. yards, the accused along with late Kusuma Janardhan and Kusuma Keshavender were having their share of 11 Sq. yards each. Later Kusuma Janardhan died. The legal heirs of Kusuma Janardhan approached the 2nd respondent (LW1) and sold away their share of 11 Sq. yards under a registered Sale Deed No. 2369 of 2001 dated 29.12.2001. Another brother Kusuma Kesavanandham obtained a loan of Rs. 2,25,000/- from the wife of LW1 and failed to repay the said amount which made the wife of LW1 to file O.S. No. 277 of 2000. The said suit was decreed on 14.10.2003 and E.P. filed for execution of the said decree is pending. As LW1 purchased the share of Janardhan and also filed E.P. for share of Kesavanandham, the accused approached LWs. 1 and 2 and decided to sell his share of mulgi for a total consideration of Rs. 9,00,000/-. LW1 agreed to purchase the share of mulgi in the presence of LWs. 3 to 7 and paid Rs. 4,51,000/- as advance on 7.7.2007. An agreement of sale came to be executed on the said date. The accused promised to register the properly within a period of two months. Though the respondent was ready to pay the said amount after completion of two months, the accused was procrastinating the registration of sale deed on one pretext or the other. The averments in the charge-sheet would disclose that on 12.10.2007 the accused is alleged to have gifted the said property to his sons and also got the said property registered through his mother Kusuma Bhulakshmi. On 28.6.2010 in the afternoon the accused approached LW1, scolded him in filthy language, tried to beat him stating that he should not be pressurised to receive the balance of sale consideration and also for registration of the property in the name of LW1. Immediately thereafter LW1 went to the shop of his brother which was situated on the other side of the road and narrated about the incident to him. The accused is alleged to have come over to the shop of the brother of the respondent and not only abused the respondent in filthy language and beat him with hands indiscriminately. The said incident was witnessed by LWs. 3 to 7. Basing on these allegations, the present case came to be registered.

2. The learned Counsel for the petitioner mainly submits that even accepting the allegations in the charge-sheet to be true, no offence u/s 420 I.P.C. is made out. According to him, the matter is purely civil in nature, as O.S. No. 389 of 2010 on the file of Principal Senior Civil Judge, Warangal, filed by the 2nd respondent for specific performance of the agreement is pending before a competent Court and as such it cannot be said that failure to execute the agreement of sale amounts to cheating, within the meaning of the section. He further submits that the children of the accused in whose favour the gift deed is executed are the persons, who are actually cheated and not the petitioner. He further submits that since the time is the essence of the contract and as the respondent failed to pay the amount, the petitioner executed a sale deed in favour of his children. In view of the above, he submits that continuation of proceedings against the petitioner would be an abuse of process of law.

3. The learned Counsel for the 2nd respondent submits that the petitioner has not come to the Court with clean hands and as such the said petition is liable to be dismissed on the said ground alone. According to him on 20.8.2008 a representation was made before this Court that charges were not framed till that date and in view of the said representation, this Court granted stay of all further proceedings. The Counsel for the respondent submits that the said representation made before this Court is absolutely false as charges were framed on 28.5.2012 itself and as such the present application has to be rejected on the said ground alone. He would further contend that time cannot be the essence of contract insofar as the filing of a suit for specific performance of the agreement of sale. Further, the suit for specific performance is being filed making averments which are necessary for the relief in the said suit and it is not necessary for the petitioner to make averments constituting the offences punishable under Sections 420 or 323 of I.P.C. He submits that mere pendency of the suit cannot be a ground to quash the proceedings.

In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers u/s 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The broad guidelines laid down by the Supreme Court in this regard are:

(1) Where the allegations made in the First Information Report or 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 against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

4. In G. Sagar Suri and Another Vs. State of U.P. and Others, , the apex Court observed that jurisdiction u/s 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court

has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

5. Keeping in view the principles of law laid down by the apex Court with regard to inherent power of the High Court u/s 482 Cr.P.C. I proceed to deal with the matter.

6. Section 415 of I.P.C. which defines cheating reads as under:

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''.

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

The ingredients of Section 420 of the Penal Code are:

(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

7. Section 323 of I.P.C. reads as under:

323. Punishment for voluntarily causing hurt.--Whoever, except in the case provided for by Section 334, voluntarily caused hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8. Before going into the merits of the case, it would be appropriate to deal with the issue raised by the Counsel for the respondent as to "Whether the petitioner has approached this Court with clean hands?".

9. A perusal of the docket order dated 20.8.2013 would indicate that on the said date this Court issued notice before admission and also directed the petitioner to take out personal notice. On the basis of representation made by the Counsel for the petitioner that charges are not yet framed, this Court granted interim stay of all further proceedings for a period of six weeks which was extended from time to time thereafter. The Counsel for the respondent produced before this Court the proceedings in C.C. No. 70 of 2011 on the file of I Additional Judicial First Class Magistrate, Warangal, which clearly disclose that the charges were framed on

28.5.2012 itself and summons were issued to LWs.1 to 3. From 11.7.2012 till 5.2.2013, the accused was absent. Thereafter from 15.6.2013 though the accused and LW1 were present before this Court, the matter adjourned. Ultimately, on 31.8.2013 the accused produced the copy of the stay order passed by this Court. From the above, it is clear that on 20.8.2013 a false representation was made before this Court stating that charges were not framed till that date. The Counsel for the petitioner further submits that on the basis of instructions given by his Counsel he made such representation and it is neither willful nor wanton. But he did not dispute the fact of charges being framed on 28.5.2012.

10. In Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, , the apex Court while dealing with an issue of this nature, held as under:

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely Courts of law, but also Courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the Courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction u/s 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

(emphasis supplied)

11. From the above, it is clear that the High Court shall refuse to exercise the discretionary power u/s 482 Cr.P.C. if the party has approached the Court with unclean hands. In view of the representation made by the Counsel for the petitioner, on the basis of instructions given by his party, it can be safely said that the party has not approached this Court with clean hands. In fact, the petition filed in support of the present application is also silent with regard to said aspect. In view of the judgment of the apex Court, I am of the view that the said ground alone is sufficient to dismiss the present application.

12. Further, the averments in the charge-sheet would disclose that the petitioner decided to sell his share in the mulgi for a total sale consideration of Rs. 9,00,000/-. On 7.7.2007 he accepted a sum of Rs. 4,51,000/- from the respondent and executed an agreement of sale promising to register the property within a period of two months. Though two months period have elapsed, the petitioner was postponing the registration of the mulgi on one pretext or the other and on 28.6.2010 he has alleged to have threatened and beat the informant with dire consequences if he approaches him for registration of the property. On verification it came to light that the petitioner has executed a gift settlement deed in the name of his sons and got registered the said property

in their names on 12.10.2007. It is clear that therefore having accepted a sum of Rs. 4,51,000/- the petitioner instead of registering the property in the name of the petitioner, got a gift deed executed in the name of his sons thereby causing wrongful loss to the respondent and wrongful gain to the petitioner.

13. The apex Court in Indian Oil Corporation Vs. NEPC India Ltd. and Others, , has held that a given set of facts may make but: (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.

14. In Kamaladevi Agarwal v. State of W.B. and others, 2001 (2) ALD (Crl.) 765 (SC) : 2002 S.C.C. (Cri) 200, the apex Court held that criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. The Court held that criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. The nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. The apex Court held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the F.I.R, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence." The judgment of B. Suresh Yadav Vs. Sharifa Bee and Another, , relied upon by the Counsel for the petitioner will not apply to the facts of the present case as no contrary stand is taken by the party in the civil and criminal Courts.

15. The contention of the learned Counsel for the petitioner that only the children of the petitioner are cheated, as the property which was already sold to the petitioner was registered in their names, cannot be accepted.

16. The averments in the charge-sheet will disclose that the petitioner after receipt of a sum of Rs. 4,51,000/- on 7.7.2007, he was postponing the registration of said property on one pretext or the other. Within few months thereafter, he executed a gift deed in respect of the very same property in favour of his sons and got the same registered in the month of October, 2007 even after executing the gift deed, the petitioner never disclosed the said fact to the complainant but was postponing the registration on one reason or the other. If really he had no intention to deceive the respondent, he should not have executed a gift deed in favour of his sons. If he has executed the gift deed under compelling circumstances, he should have at least informed the same to the respondent immediately after execution of the gift deed and show his bona fides by returning the amount received from the respondent. The conduct of the petitioner prima facie indicates that he had an dishonest intention to deceive from inception. Whether the dishonest intention was there from inception or developed after a period of time is a matter, has to be gone into during the

course of trial.

17. The apex Court in S.P. Gupta Vs. Ashutosh Gupta, , while dealing with Section 415 illustration (g) held as under:

It is true, as pointed out by Mr. Lekhi, that Section 415 IPC, which defines the offence of cheating, provides in illustration (g) as follows:

415.(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

However, the aforesaid provision clearly indicates that if at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial.

18. Therefore, it cannot be said that the charge-sheet is bereft of basic facts constituting an offence punishable u/s 420 I.P.C. It is true that the respondent filed a suit for specific performance of agreement of sale dated 7.7.2007 seeking a direction against the defendants for registration of the sale deed in favour of the plaintiff in respect of suit schedule property by receiving the balance sale consideration. Mere pendency of civil case does not bar initiation of criminal proceedings as the cause of action for civil remedy also contain ingredients constituting a criminal offence.

19. Further, the contention of the learned Counsel for the petitioner that the proceedings are barred by limitation, cannot be accepted. Since the offence alleged against the petitioner is one u/s 420 I.P.C. which is punishable with seven years of imprisonment, the question of limitation for lodging the report and filing of charge-sheet, does not arise. Further, the charge-sheet discloses that on 28.6.2010 at about 12.00 p.m., the accused approached the respondent, scolded in filthy language and beat the respondent by stating that he should not pressurize him to receive the balance of sale consideration and register the property in his name. A complaint about the said incident came to be filed as the police failed to take the report. The respondent lodged a private complaint on 1.7.2010 before the I Additional Judicial First Class Magistrate at Warangal. The said case was referred to police u/s 156(3) Cr.P.C. on 1.7.2010. The police registered the same as Cr. No. 247 of 2010 on 21.12.2010 and after completing the investigation filed the charge-sheet. Truth or otherwise with regard to the allegations made in the charge-sheet have to be investigated by the police. In view of the allegations made in the charge-sheet, which prima facie disclose ingredients constituting the offences punishable under Sections 420 and 323 of I.P.C. this Court cannot but is of the view that the present petition sans merit and the same is liable to be dismissed.

20. Accordingly, the criminal petition is dismissed. As sequel to it, miscellaneous petitions pending if any, shall stand dismissed.

