
(2017) 09 AP CK 0028
In the Andhra Pradesh High Court
Case No : 6225 of 2011

Majji Ramasatyam and another	Vs	APPELLANT
The State of A.P and others		RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 34](#) - Cheating

Citation : (2017) 09 AP CK 0028

Hon'ble Judges : Gudiseva Shyam Prasad

Bench : SINGLE BENCH

Advocate : Venkateshwara Rao Gudapati, Saripalli Subrahmanyam

Final Decision : Disposed off

Judgement

1. This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) to quash the complaint in C.C.No.82 of 2011 on the file of the Judicial Magistrate of First Class, Gajapathinagaram, Vizianagaram District.
2. Petitioner Nos.1 and 2 are accused Nos.1 and 2 and respondent Nos.2 and 3 are the de facto complainants in the case cited supra.
3. The brief facts of the case are that respondent Nos.2 and 3 filed a private complaint before the Judicial First Class Magistrate, Gajapathinagaram, Vizianagaram District, alleging that they entered into an agreement of sale with the petitioners-accused for purchase of an agricultural land to an extent of Acs.1.71 cents situated in survey Nos.66, 67 and 71 of Mukhasa Lingalavalasa Village and paid an advance amount of Rs.1,50,000/-. An agreement of sale was executed on 02.05.2007. As per the terms of the agreement of sale, the petitioners-accused had to execute registered sale deed within a period of nine months from the date of the agreement of sale. Though respondent Nos.2 and 3

are ready to pay the balance sale consideration to the petitioners-accused, the latter did not come forward for execution of the registered sale deed and postponed the same on some pretext or the other. Respondent Nos.2 and 3 came to know that the land sought to be sold was mortgaged to a bank for obtaining a loan for purchase of a tractor by the petitioners-accused. Therefore, respondent Nos.2 and 3 filed the private complaint against the petitioners-accused under Section 420 read with Section 34 I.P.C. The learned Magistrate forwarded the complaint to the Police for investigation, the Police investigated the matter and filed charge sheet and the same has been numbered as C.C.No.82 of 2011 on the file of the Judicial First Class Magistrate, Gajapathinagam, Vizianagaram District.

4. The petitioners-accused, aggrieved by the registering of the aforesaid C.C. against them, preferred this criminal petition for quashing the complaint in the said C.C. filed under Section 420 I.P.C. read with Section 34 I.P.C.

5. Heard the arguments of the learned counsel for the petitioners- accused and the Additional Public Prosecutor.

6. Learned counsel for the petitioners contended that respondents 2 and 3 have entered into an agreement of sale on 02.05.2007 for purchase of wet and dry land to an extent of Ac.01.71 cents in Survey Nos.66, 67 and 71 in the limits of M.Lingalavalasa Village by paying an amount of Rs.1,50,000/- towards earnest money and as per the said agreement, the petitioners have to register the sale deed within nine months from the date of agreement.

7. It is further contended that as the dispute between the parties is purely civil in nature, the initiation of criminal proceedings against the petitioners are bad and that the remedy available to respondents 2 and 3 is only to file appropriate suit for specific performance of contract. Learned counsel for the petitioners also referred to a clause mentioned in the Agreement of sale as under: "VERNACULAR MATTER OMITTED"

8. Therefore, it is submitted that the criminal proceedings against the petitioners are nothing but abuse of process of law which is liable to be quashed.

9. Learned counsel for the respondents 2 and 3 contended that though the petitioners/accused have agreed to execute the sale deed in favour of the de facto complainants, mortgaged the same to the bank for obtaining loan for purchase of a tractor and failed to perform their part of contract. It is also further contended that the petitioners made respondents 2 and 3 to believe that there are no encumbrances on the property sought to be sold by them either in the bank or in any private institution or even with any private person and sold the property. As the complainant has believed them, purchased the property and they have cheated them, therefore, they filed private complaint.

10. Even if the contention of the learned counsel for respondents 2 and 3 is taken into consideration, it is not brought to the notice of this Court on what date

the mortgage was created, and whether it was prior or after the agreement of sale. The criteria to decide whether the ingredients of Section 420 of I.P.C are present in this case or not depends upon the facts and circumstances of the case. Section 420 of I.P.C. reads as under: Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. The ingredients of the above Section 420 of I.P.C. clearly reveal that there should be dishonest intention. The dishonest intention should be from the very beginning, which is sine qua non to hold the accused guilty of commission of the said offence. The said proposition of law was laid down in Joseph Salvaraj A. v State of Gujarat and others . In the instant case, the date on which the mortgage was created is not available to decide the dishonest intention of the parties in this case. Unless the dishonest intention from the date of inception is proved, the accused cannot be held liable for commission of the said offence. In the instant case, it is obvious that respondents 2 and 3 have not proceeded further for execution of the agreement of sale. It is obvious that respondents 2 and 3 have got issued a notice to the petitioners for execution of registered sale deed on 13.08.2010 and the same is reflected in the complaint. Paras 3 and 4 of the complaint reads as under: 3. The complainants submits that on 13.08.2010 they got issued a registered lawyers notice to the accused demanding them to register the land in the name of the complainants, if it is not possible demanding them to return advance sale consideration of Rs.1,50,000/- together with interest @ 12% per annum, and the said notices are received by the accused and they kept quite, but they neither paid the amount nor register the land in favour of the complainants.

4. The complainants submits that both the accused deceived the complainants by suppressing the true facts that they mortgaged the said property in Bank for Tractor loan and take an advance amount of Rs.1,50,000/- from the complainants only with a view to deceive them. So both the accused are held liable for prosecution under Section 420 of I.P.C.

12. Copy of the said notice has not been filed before this Court. Prima facie, the unregistered agreement of sale is dated 02.05.2007 and that the complainant made demands by registered legal notice on 13.08.2010 and that the limitation for filing the suit for specific performance is three years. Therefore, it is contended that the suit is beyond limitation. Therefore, the complainants could not pursue their remedy in a civil Court, and proceeded against the petitioners though they have no criminal intention to deceive the complainants.

13. Learned counsel for the petitioners relied on the Judgment of the Apex Court in Thermax Ltd and others v K.M.Johny and others at paras 11 and 14, it was

held as follows: The Courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the Courts below ought to have appreciated that respondent No.1 was trying to circumvent the jurisdiction of the Civil Courts which estopped him from proceeding on account of the law of limitation.

We have already pointed out that respondent No.1 had previously filed three complaints which were concluded after exhaustive enquiry with the respective police authorities. The first complaint was on 06.05.2000 being Javak No. 974/2000 with the Crime Branch-II, Pune which registered the same in its Criminal Register No. 11/2000. Pursuant thereto, the appellants were summoned and exhaustive enquiry was conducted by the Crime Branch-II and after recording the statements and perusal of documents and after undertaking an extensive interrogation, the Crime Branch-II closed the case. The said closure of the case was informed to respondent No.1 by the police authorities by their letter dated 28.07.2000.

14. Learned counsel for the petitioners also relied on judgment of this Court in *Bheemudu Narasimha Knniyappan v State of A.P. Rep by Sub-Inspector of Police, Jangareddigudem Police Station, West Godavari District and others* at para 8, it was held as follows: Even as per the allegations made in the charge sheet, it is clear that it is just a contractual obligation between the parties. Even otherwise, if there is some delay in completing the work at the time of progress of the work and even if some demand was made for some additional amount, these are all concerned with the contractual obligations between the parties and if the de facto complainant suffered any loss in this regard, the remedy is elsewhere by filing a regular suit for damages or approach any other forum for redressal of his grievance. Even, if the allegations made in the charge sheet are to be taken on their fact value as they are, this Court is well satisfied that this is not a case where the ingredients of Section 420 of IPC are attracted. Hence, it would be a futile exercise to further permit the prosecution to be proceeded with against the petitioner.

15. In view of the law laid down in the decision cited supra, it is obvious in this case it was a contractual obligation between the parties and the respondent had remedy else when to file a regular suit for specific performance of sale. There is no material brought on record to show that due to alleged mortgage of the property his part of contract could not be performed. It is obvious that 2nd respondent has not proceeded for execution of agreement of sale by filing a suit for specific performance of contract. The respondent could not establish that the accused had dishonest intention from the implication to defraud him. The petitioner violated the terms of agreement of sale is of no consequence, in view of the fact that the 2nd respondent has to seek a civil remedy. Therefore, it can safely be concluded that the private complaint filed by respondents 2 and 3 do not attract the ingredients of Section 420 read with 34 I.P.C.

16. Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.82 of 2011 on the file of Judicial Magistrate of First Class, Gajapathinagaram, Vizianagaram District.

Miscellaneous petitions pending, if any, shall stand closed.