

(2017) 04 KAR CK 0130

In the Karnataka High Court

Case No : 2383 of 2017 CONNECTED WITH CRIMINAL PETITION No 7976 of 2013 CONNECTED WITH CRIMINAL PETITION No 7161 of 2016

M/s Pramila Santhosh Land Developers And Builders Pvt.Ltd., APPELLANT
& Ors.

Vs

State Of Karnataka By Sanjayanagar Police, & Anr. RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 420](#),
[Section 34](#), [Section 506](#), [Section 406](#), [Section 418](#), [Section 403](#)

Citation : (2017) 04 KAR CK 0130

Hon'ble Judges : Anand Byrareddy

Bench : SINGLE BENCH

Advocate : Venkata Reddy S.K, Vijayakumar Majage, B.S. Prasad, Jaykumar S. Patil, T Sheshagiri Rao, Y.R.Sadashivareddy

Final Decision : Allowed

Judgement

1. These petitions are heard and disposed of by this common order as the same are inter-connected, involving the same parties.

2. The brief facts leading upto these petitions are as follows.

One Dr.Lakshman is said to have filed a private complaint dated 29-4-2013, before the Court of the IV Additional Chief Metropolitan Magistrate, in PCR 12317/2013, alleging that on 8-11-2012, he is said to have entered into a "Memorandum of Understanding" (MOU) with M/s Pramila Santosh Land Developers and Builders Pvt .Ltd. (Accused no.1 therein), D.T. Santosh, representing the said company (Accused no.2), D.C. Thammanna, a Director of the said company (Accused no.3), K.G. Pramila, another Director of the company (Accused no.4) and M/s Sri Sai Developers, a partnership firm, (Accused no.5) not shown to be represented by anybody. It was said to have been alleged in the

complaint that, the accused no.1 company had represented to the complainant that it was holding land measuring about 100 acres of Ballur village, Anekal Taluk, Bangalore Urban District and that it could secure absolute title to the same through Accused no.5, an associate of the company. It was said to have been alleged that on this premise, the complainant was induced to enter into the transaction.

The complainant is said to have paid a sum of Rs. 9 crore in consideration of the above said accused no.1 to 4, were to procure lands and convey the same to the complainant. But had chosen to convey the very lands which were to be sold to the complainant had been conveyed to accused no.5. Namely, an extent of 10 acres of land in land bearing survey no.115 and 117 of Ballur village which was the subject matter of the Memorandum of Understanding (MoU) had been conveyed under sale deed dated 7-6-2012. And that when the complainant questioned the accused as regards their actions, he is said to have threatened with dire harm. It was hence alleged that the accused had committed offences punishable under Sections 403, 406, 420 and 506 of the Indian Penal Code, 1860. (Hereinafter referred to as the "IPC", for brevity). This complaint is the subject matter of challenge by Accused no.2 in the petition in Crl.P.7976/2013.

The complainant is then said to have lodged a second complaint in PCR 14420/2015, against Accused no.1, 2 and 4 named above, as on 27-11-2015 alleging that the above referred MOU dated 8-11-2012 was preceded by an earlier MoU dated 26-9-2012 and followed by an Addendum dated 30-5-2013 and that the accused were required to perform their obligations within a period of six months , which they had failed to do. In that, it was alleged that even before the first MoU dated 26-9- 2012 was entered into, the accused no.1 to 4 had sold the land bearing survey no.115 and 117 of Ballur village to accused no.5 as on 7-6-2012 itself and in suppression of the same had misrepresented to the complainant that the same was in their hands and would be conveyed in his favour and thereby had defrauded the complainant. It is also said to have been claimed by the complainant that though he is shown as a "confirming party" to the subsequent sale deeds executed by accused no.5 dated 6-7-2013 in favour of M/s Mitravinda Trust, this was under pressure and on the plea that the sale was necessary to enable accused no.5 to tide over a financial crisis, and on the promise of payment of compensation to the complainant which was never paid.

The complainant has further alleged that the accused no.1 to 4 had issued two cheques for a sum of Rs.5 crore and Rs.4 crore, respectively, in refund of the advance received and on account of their failure to perform their part of the contract, the same when presented for encashment had been dishonoured as the account of the accused had been closed even prior to the issuance of the cheques and hence it was alleged that the accused had committed offences punishable under Sections 417, 418, 420, 422, 120(B) read with Section 34 of the IPC. The petition in Crl.P 7161/2016 is preferred by Accused no.2 challenging the said second complaint.

Accused no.1 and Accused no.3 have preferred the petition in CrI.P 2383/2017 challenging the above said second complaint in PCR 14420/2015, numbered as CC 54 / 2016.

3. Having heard the learned counsel for the petitioners, namely, Shri S.K.Venkata Reddy, the learned Senior Advocates Shri Jayakumar S. Patil and Y. V. Sadashiva Reddy as well as Shri B.S. Prasad appearing for the respondent, and on a perusal of the material produced, it is seen that the complainant and Accused no.2, representing his company, have initially entered into an MOU, dated 26-9-2012 whereby it was agreed that the said accused was in a position to procure 70 acres of agricultural land in Ballur village and convey the same in favour of the complainant. Though it is stated in the body of the MoU that the said lands are described in a Schedule to the deed, there is no such Schedule found. The receipt of Rs.9 crore received under the deed is not in dispute. The time prescribed for the completion of the transactions was six months.

The above MoU is seen to have been novated by an MoU dated 8-11-2012 between the same parties. It was stated that the accused was in a position to procure for the benefit of the complainant 30 acres of converted land and 70 acres of agricultural land of Ballur village, which were said to have been described in a Schedule to the deed. This aspect, namely, whether a Schedule describing the lands was indeed appended to the deed is strongly disputed by the accused. At the hearing, the counsel for the complainant has produced a copy of the MoU dated 8-11-2012, with 5 separate additional pages appended to the deed, which the counsel for the accused claim that they are seeing for the first time. The signatures of the accused appearing on the said additional sheets are dismissed as being scanned copies of his signature. The said additional sheets are not paginated and do not appear to have been originally included.

By a further deed dated 30-5-2013, styled as an Addendum, it was agreed that the actual that could be procured and transferred was 14 acres 12 guntas of converted land and 75 acres and 17 guntas of agricultural lands, which were described in Schedules to the said deed. This is not in dispute.

Incidentally, it is stated and not disputed, that the complainant has filed a civil suit for recovery of the advance paid by him in a sum of Rs.9 crore. Further, in respect of two cheques issued by the accused company purportedly for a sum of Rs.5 crore and Rs.4 crore, which were said to have been provided by the accused at the earliest point of time, endorsed in blank, as security for due performance of the contract, are said to have been presented by the complainant for encashment and which are said to have been dishonoured are subject matter of independent proceedings initiated by the complainant for offences punishable under Section 138 of the Negotiable Instruments Act, 1881.

It is thus seen that the crux of the complaints, which are no different from each other is that the accused having already sold land bearing survey no.115 & 117 of Ballur village, had misrepresented that they were possessed of the same and

that the same would be conveyed to the complainant, but had been sold to a third party. This assertion is not acceptable. The complainant is found to be a party to the said sale deeds dated 6-7-2013 and is styled as a confirming party. He is precluded from contending contrary to what is evident from the said registered document.

The conduct of the complainant is also inexplicable. In that, the first complaint is lodged on 29-4-2013, but in spite of which he has entered into a third agreement dated 13-5-2013, with the very accused, without any reservation. This would indicate that the allegations against the accused were not genuine. The second complaint is only an extension of the first with the added circumstance that two cheques issued by the accused have been dishonoured. The complainant himself has declared in his complaint that the same are not the subject matter of the complaint, but the factum that the bank account on which the cheques had been issued, was closed even prior to the issuance of the cheques is a claim in respect of cheques that may have been endorsed in blank. Those cheques may be subject matter of two proceedings admittedly instituted by the complainant, namely, a civil suit for recovery of advance amount paid by the complainant and the criminal proceedings for an offence punishable under the Negotiable Instruments Act, 1881.

It is evident that a purely contractual relationship which may be subject matter of civil litigation is given a colour of a criminal case, without cohesion or consistency. It is well settled that in order to demonstrate criminality, it ought to be shown that there was an intention to defraud from inception. The complainant by his conduct has absolved the accused of such intent, hence the criminal cases are an attempt at a clear abuse of process of law.

In the result, the petitions are allowed in terms as prayed.