(2012) 03 MP CK 0010

In the Madhya Pradesh High Court

Case No : M. Cr. C. No. 8882 of 2011

Namrata Chopra (Mrs.) and Another — APPELLANT

Vs

Mr. Ashfaq Ahmed Qureshi and Others — RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 420, 482
Madhya Pradesh Land Revenue Code, 1959 — Section 44(1)

Citation : (2012) ILR (MP) 1766

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant; M.S. Bhatti for the Non-applicants No. 1 and 2 and Vivekanand Awasthy for the Non-applicants No. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.—This is a petition, u/s 482 of the Code of Criminal Procedure, for having the proceedings, pending as R.T. No. 13567/10, so far as it relates to the petitioners, before Shri Manoj Tiwari, JMFC, Bhopal, quashed. In that case, cognizance of the offence, u/s 420 of the IPC, has been taken upon the complaint made on 26.8.2010 by respondent nos. 1 and 2 (hereinafter referred to as ''R1'' and ''R2'' respectively) against the petitioners as well as respondent nos. 3 and 4 (for short ''R3'' and ''R4''), who are respectively father and brother of the petitioners. Allegations, as contained in the complaint, are that the petitioners had been able to cheat R1 and R2, who are builders and property developers, by deceiving into a belief that the land forming subject matter of the agreement to sell executed by them was free from all encumbrances and to induce them to part with a sum of Rs. 50 lacs as advance, knowing fully well that the land, being earmarked as parking space for the country club constructed by R3 and R4, could not be used for the purpose of construction.

2. According to the petitioners, their prosecution for the offence is an abuse of

the process of the Court in view of the fact that at the time of entering into agreement to sell, they had no knowledge about the building permission obtained by R3 and R4 with whom their relations were strained in view of R4''s bid to grab entire share of their mother Late Smt. Kamlesh Kapoor in the joint property under a so-called Will, that was apparently a forgery. They have further alleged that their decline to meet the unreasonable demands made by R1 and R2 had led to criminal proceedings in relation to a civil dispute. In support of these submissions, attention has been invited to the following facts-

(i) Lands situated at Village Koh-e-Fiza, bearing Khasra Nos. 18/2/1/6/3 and 18/2/1/6/4, admeasuring a total area of 2.20 acres stood entered in revenue records in the following manner-

(ii) After the death of Kamlesh Kapoor, R4 made an attempt to get the land, bearing Khasra No. 18/2/1/6/3, mutated in his favour on the basis of a Will purported to have been executed by her. They raised objection to the corresponding application made by R4 before Tahsildar (Nazul), Bairagarh characterizing the Will as a false and fabricated document. However, even without entering into merits of the objection, the Tahsildar, vide order dated 28.4.2007, allowed the mutation application.

(iii) Being aggrieved, they preferred an appeal, u/s 44(1) of the M.P. Land Revenue Code, 1959, before the Sub Divisional Officer. It was allowed, by way of order-dated 10.4.2008, in the light of compromise arrived at between the parties to the effect that each one of the petitioners and R3 and R4 shall be entitled to an equal share in the lands, each comprising an area of 0.55 acres and mutation case was remanded to the Tahsildar, for deciding the same afresh upon the compromise.

(iv) During the pendency of the proceedings for mutation and partition of lands before the Revenue Court, the petitioners, on 26.11.2009, entered into an agreement to sell their shares having a total area of 1.10 acres in the aforesaid lands for a sum of Rs. 1,50,93,540/- in favour of a partnership firm viz. M/s Super Builders and Developers through its partners viz. R1 and R2 and also obtained a sum of Rs. 50,00,000/- as earnest money. Remaining amount of consideration i.e. Rs. 1,00,93,540/- was to be paid at different stages specified in the schedule.

(v) Somewhere in March 2010, the Tahsildar passed the order directing mutation of acquisition of rights by petitioners, R3 and R4 in respect of the respective parts of the lands marked as A, B, C & D, in the map forming part of the compromise application.

(vi) As per the agreement, R1 and R2 had undertaken to pay an amount of Rs. 72,12,046/- for 0.89 out of 1.10 acres of land by 19.12.2009 to the petitioners, who, in turn, were required to hand over possession of that piece of land after executing a power of attorney in favour of the proposed purchasers. Thereafter, a sum of Rs. 5,00,000/- was to be paid by R1 and R2 on 19.12.2009 whereas the balance consideration of Rs. 23,81,484/- was to be paid at the time of handing over of possession of the remaining 0.21 acres of land along with a corresponding power of attorney within a period of 7 days from the date of receipt of separate Revenue Books by the petitioners.

(vii) As R1 and R2 failed to pay the remaining amount of consideration as per the schedule, the petitioners issued notice (Annex.P-8), on 11.5.2010, expressing their intention to cancel the agreement and also to forfeit the advance money.

(viii) In reply-dated 14.5.2010, alleging that along with R3 and R4, the petitioners were also involved in a conspiracy to cheat them, R1 and R2 called upon the petitioners not only to return the earnest money but also to pay a sum of Rs. 50,00,000/- as compensation together with interest @ 24% per annum with a threat that in case of failure to pay the aforesaid amount, appropriate legal action would be taken against the petitioners.

3. Learned Counsel for the petitioners has contended that while residing in their matrimonial homes located in Mumbai and Pune respectively, they were not expected to be aware of the fact that while obtaining permission from Municipal Corporation, R3 and R4 had proposed earmarking of the parcel of lands falling in their shares for the purpose of parking. Contents of paragraph 5 of the complaint have also been highlighted to buttress the contention that even after knowing much prior to 19.12.2009 that the land forming subject matter of the agreement to sell was to be left open as a parking place for country club, R1 and R2 had expressed intention to purchase the same by publishing a notice inviting objections to the proposed sale in a daily newspaper ''Dainik Bhaskar'' on 22.4.2010 (Annex.P-7).

4. In response, learned Counsel for R1 and R2 has submitted that the notice was published to fulfill relevant condition of the agreement to sell. Making reference to the corresponding contents of the application for obtaining building permission, corresponding note-sheet, the site inspection report and the sanctioned map, he has further argued that in any case, the petitioners were expected to know about the construction and status of respective parts of the land falling in their shares in terms of the compromise. According to him, apparently, R1 and R2 are the victims of cheating committed by all members of the family including the petitioners.

5. Learned Counsel for R3 and R4 has come forward to contend that they have been unnecessarily dragged into the proceedings.

6. Same transaction or same set of facts may give rise to both, a civil liability and criminal offence but mens rea is an essential ingredient of offence of cheating. To establish a charge of cheating, it is necessary to show that the intention to deceive was in existence at the time of making the promise. For this, reference may be made to the principles of law laid down by the Apex Court in State of Kerala Vs. A. Pareed Pillai and Another, and reiterated in series of decisions including the one in S.W. Palanitkar and others Vs. State of Bihar and

another,

7. As further explained in Rajesh Bajaj Vs. State NCT of Delhi and Others, , the offence of cheating may be committed in a commercial or in a money transaction yet, the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

8. In Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, the Apex Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "may examine the questions of fact" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

9. The core question, therefore, is as to whether a guilty intention at the inception of the transaction inducing R1 and R2 to part with the advance money was evident from the record ?

10. In the complaint itself, the petitioners have been shown as ordinarily residents of Bandra (Mumbai) and Sopan Bagh (Pune) respectively. Contents of the memo of appeal preferred by them before Sub Divisional Officer clearly reflected the nature and extent of bitterness of relationship between them and their brother viz. R4, who, according to them, had even forged a Will, said to have been executed on 25.10.1996 by their mother Smt. Kamlesh Kapoor (since expired on 24.11.1996). The compromise application was filed before the Sub Divisional Officer on 10.4.2008 whereas the application for grant of permission to construct a Country Club was made on 18.11.2005. It was, therefore, obvious that at the time when application for the building permission was sought, relations between the petitioners and their brother were not cordial. As rightly pointed out by learned Counsel for the petitioners, their purported signatures on the application for grant of permission to erect the country club do not tally with their signatures on the agreement to sell. All these facts are sufficient to exclude the element of mens rea. In such a situation, in absence of cogent evidence to infer knowledge that the land proposed to be sold had already been reserved for parking purpose, it was not possible to hold that the petitioners had the intention to deceive R1 and R2 at the time of executing the agreement to sell.

11. Further, as pointed out by a three-judge Bench of the Supreme Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , dispute about cancellation of agreement to sell property is a civil dispute and the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendentta or with an ulterior motive to pressurise the proposed vendor.

12. This apart, possibility of discharge would not be sufficient to prevent an accused to approach this Court u/s 482 of the Code to have the proceeding

quashed against him (Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, Before that, the Apex Court in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , had already re-affirmed the following guideline for exercising inherent powers to quash the proceedings at the pre-charge stage-

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

13. In the light of the factual scenario as highlighted above and the well-settled position of law on the subject, even if the allegations are taken up at their face value and accepted in its entirety, no offence of cheating would be made out against the petitioners. Their case clearly falls within category nos.(1) and (7) of the cases, attracting interference under inherent powers, as summarized by the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, and re-stated in Zandu Pharmaceutical''s case (supra). Consequently, the petition is allowed and the proceedings in R.T. No. 13567/10 (above), so far as they relate to petitioners, are hereby quashed.

