

(2002) 03 KAR CK 0042
In the Karnataka High Court
Case No : Criminal Petition No. 612 of 2002

Nandakishore and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2 (d), 200, 482
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2002) CriLJ 2746 : (2002) 4 KarLJ 490

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant; B.C. Muddappa, Additional State Public Prosecutor for Respondent-1 and C.V. Nagesh, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chinnappa, J.—Heard Sri Ravi B. Naik, learned Counsel appearing for the petitioners and Sri C.V. Nagesh, learned Counsel appearing for the respondent.

2. The respondent herein being a reputed agriculturist had entered into an agreement with the petitioners who are the directors of M/s. Nath Seeds situated at Aurangabad for supply of tomato seeds on the representation that tomato seeds supplied by them are of good variety and yield good crop to the farmers, etc. On the basis of the representation, the respondent purchased seeds and entered into an agreement with the petitioners. As per the request of the petitioners, the respondent identified the lands and negotiated with the farmers for the purpose of growing the tomato seeds to the extent of 171 acres of land. Accordingly, the petitioners supplied the seeds to the respondent and in turn, the respondent supplied those seeds to the growers. Though the plants came up very well to the satisfaction of the concerned, that there was no yield from those plants, as a result of which the farmers suffered heavy loss in their crop. Therefore, the respondent approached the petitioners demanding a sum of Rs.

15,00,000/- towards damage caused to the fanners. However, ultimately the matter was settled for Rs. 8,00,000/- which the petitioners agreed to pay but failed to honour their commitment. Therefore, the farmers forcibly entered the house of the respondent and demanded compensation of Rs. 15 lakhs. However, the petitioners have not settled the matter till this date. The farmers are now demanding compensation of Rs. 10,000/- per acre from the complainant which amounts to Rs. 17,40,000/-. Therefore, the complainant had brought this fact to the notice of the petitioners. On request of the petitioners, the complainant also by Fax dated 1-12-2000 sent a detailed statement of account, according to which the petitioners are liable to pay a total sum of Rs. 28,52,464/-. In spite of all these, the petitioners have failed to settle the matter, as a result of which the respondent claims that they have committed the offence punishable under Sections 406 and 420 read with Section 34 of the IPC. Therefore, the respondent filed a complaint u/s 200 of the Criminal Procedure Code before the IV Additional Chief Metropolitan Magistrate at Bangalore which came to be registered as PCR No. 799 of 2001. The operative portion of the prayer read thus:

"Wherefore, the complainant prays that this Hon"ble Court may be pleased to refer the above case u/s 156(3) of the Cr. P.C. to the Assistant Commissioner, Ulsoorgate Police Station, Bangalore, for investigation of the offence punishable under Sections 406 and 420 read with Section 34 of the IPC against the accused persons in the interest of justice and equity".

3. On receipt of this complaint, the Court on 24-12-2000 passed the following order:

"Perused the complaint and documents. The matter involves serious question to be investigated upon. Hence, register the case as PCR. Refer it to SHO, Ashoknagar Police Station for investigation and submit their report".

This order is questioned in this petition u/s 482 of the Cr. P.C. by the accused persons.

4. The learned Counsel for the petitioner at the very outset submitted that the learned Magistrate has not applied his mind before referring the matter to the police u/s 156(3) of the Cr. P.C. as required as per the decision of the Division Bench of this Court in the case of Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others, , wherein it is held that order of Magistrate directing investigation u/s 156(3) without applying his mind to allegations made in the complaint is without jurisdiction. The High Court either u/s 482 or under Article 226 of the Constitution is empowered to quash the investigation.

5. The learned Counsel for the petitioner further argued that the entire allegations made in the complaint would not constitute any offence, much less the offence under Sections 405 and 420 read with Section 34 of the IPC. At this juncture, it may be mentioned that the allegations made in the complaint to the effect that the petitioner used to purchase seeds and in that connection agreements were entered into and the petitioners have also supplied the seeds

to the respondents and in turn, the respondent supplied those seeds to the farmers as per the covenants of the agreement. From this, it is clear that the transaction had taken place as per the agreement entered into between the parties.

6. The learned Counsel also argued in detail the nature of transaction that the petitioner and respondent entered into. Under the circumstance, he submits that the requirement of Section 420 is not satisfied. To substantiate this argument, he submitted that the main ingredient of Section 405 is that there must be an intention to deceive at the time when inducement was made. Mere failure to keep up promise subsequently cannot be presumed as leading to cheating. In this case, as stated above, the petitioners supplied the seeds as per the agreement. Those seeds were re-supplied to the farmers. The farmers also had grown the plants and crop did come up very well. But unfortunately, there was no yield of tomato in the fields. Thereby, it cannot be said that the petitioners had any intention to cheat the respondent. They also made representation, even accepting it to be true that these seeds would yield good crop, but if crop had not yielded up as expected, it cannot be construed as that the petitioners had any intention to deceive this respondent. It is also relevant to mention that it is not the first time, the respondent had entered into an agreement with the petitioners; on the other hand on previous occasion also, the petitioners supplied seeds according to the terms of the agreement and the respondent also in turn supplied it to the growers which yielded very good crop. Therefore, it is not safe to hold that these petitioners had any mala fids intention to deceive the respondent.

7. The respondent further alleged that the petitioners committed an offence punishable u/s 406 of the IPC. To constitute the offence u/s 406, the main ingredient of the offence is that property was entrusted to any of the petitioners and that the petitioners had dominion over the properties of the complainant which they dishonestly converted to their own use so as to satisfy the ingredient of Section 405. (See S.W. Palanitkar and others Vs. State of Bihar and another, , wherein their Lordships have discussed the relevant ingredients of Sections 405 and 420 of the IPC)

8. As stated above, the petitioners have entrusted the seeds to the respondent. In addition to that they also used to advance money to the respondent so as to facilitate supply of seeds to the farmers and also to encourage them to grow seeds in their lands and in turn the petitioner used to buy the seeds from the respondent. Therefore, the petitioners have given their seeds and also money to the respondent; on the other hand there is no entrustment of seeds by the respondent or entrustment of money into the hands of petitioners to claim that they have committed breach of trust. From the perusal of the complaint, the respondent wanted the Court to believe that the promise made by the petitioners that seeds supplied by them would yield good crop is only a misrepresentation which the respondent as well as the farmers were made to believe and thereby

they have sustained heavy loss. The fact remains that the farmers have sustained heavy loss and they have demanded the respondent to compensate them. This fact was brought to the notice of the petitioners and according to the allegations in the complaint, they agreed to pay compensation in a sum of Rs. 8 lakhs which they did not pay. Subsequently, at the compulsion of the growers, the respondent approached the petitioners to pay a sum of Rs. 17 lakhs which also they did not agree to pay. Ultimately, the respondent has sent Fax message with all the statement of accounts to the petitioners demanding a sum of Rs. 27,52,464/-. According to the respondent though the accused persons promised to pay the amount, they did not pay the amount. Therefore, it is clear that at the time of entering into contract there was no dishonest intention on the part of the petitioners to cheat the respondent. There was no entrustment of properties or that they had dominion over the same to hold that they committed an offence punishable either u/s 406 or 420 of the IPC. Ultimately, from the overall reading of the complaint, it can easily be measured that if at all there is anything, it is only a breach of agreement which would lead to civil litigation and not criminal case. If the Magistrate has applied his mind to these allegations, he could have easily come to the conclusion that no criminal offence is made out from the allegations made in the complaint. On the other hand, the learned Magistrate was swayed away by the fact that all allegations made in the complaint that prima facie, is a matter to be investigated by the police. Even from the reading of the prayer, it is seen that the respondent has requested the Court to refer it to the police u/s 156(3) of the Cr. P.C. and there is no prayer to take action against the petitioners.

9. In *Chhedi and Others Vs. State of Uttar Pradesh and Another*, , the Allahabad High Court has held "where the applicant moves an application before the Magistrate with a simple prayer that the police officer concerned may be directed to register a case under a particular section and prayer for further direction was made that the police officer concerned may also proceed in accordance with law, cannot be termed as complaint as defined u/s 2(d) of the Code. The Magistrate has no power to proceed to examine the applicant and the witnesses u/s 200 in the absence of any formal complaint in this regard".

10. It is true that the Magistrate has not referred the case as sought for by the respondent to the Assistant Commissioner of Police but has sent it to SHO of Ashoknagar Police Station. That part of the complaint may be correct but he has not applied his mind to find out as to whether it is the complaint as defined u/s 2(d) of the Cr. P.C. and the allegations do constitute any offence prima facie to refer it to the police.

11. The learned Counsel for the respondent, however submitted placing reliance on a judgment of this Court in *Jayachandran Vs. State of Karnataka and Another*, , wherein this Court has held in regard to Section 420 to the effect that sale of banana plantlets by making false representation that plantlets were of Robusta variety capable of yielding 45 to 60 kgs. of banana per plant, while in

fact they were not of that variety, quashing of criminal proceedings initiated on such complaint cannot be quashed solely on the ground that civil remedy is available.

In that case, after the investigation u/s 156(3) of the Cr. P.C. the police submitted charge-sheet against the petitioners therein and all the allegations made in the complaint is against the first accused and there were materials to show that the seeds supplied were not of best variety; on the other hand, it was Robusta variety. The maximum yielding capacity of those plants is only 30 to 35 kgs. and not 60 to 70 kgs. as represented. Under the peculiar circumstances of that case, the representation was that it would yield good crop and for that matter even plantlets have come up very well but failed to give yields which depends on so many factors. It is not the case that the seeds supplied did not germinate and did not grow properly or that the seeds had any inherent defect and for the reasons stated above, it cannot be said that the petitioners had any intention of cheating the respondent; on the other hand, they came forward to settle the matter and also they agreed to compensate the respondent and the farmers. Therefore, it is a clear case where the respondent is entitled to proceed against the petitioners in a Civil Court for necessary reliefs.

12. In the case referred to above, there is no specific agreement by the accused persons undertaking to compensate the farmers. But in this case, as admitted by the respondent, petitioners have agreed to pay compensation amount which was accepted by the respondent as alleged in the complaint. The dispute ultimately would be only quantum of compensation payable by the petitioners which can be agitated only before the Civil Court. That itself would not amount to any criminal offence.

13. Their Lordships of the Supreme Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, , held that the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal case. The principles enunciated by their Lordships are clearly applicable to this case as indicated above.

14. Having given my thoughtful consideration on all these aspects, I am of the firm view that if the learned Magistrate had applied his mind before referring the case u/s 156(3) of the Cr. P.C., there was no need for him to refer the same to the police in view of the judgment of the Division Bench referred to above. I hold that he has acted without jurisdiction and that order calls for interference.

For the foregoing reasons, the petition is allowed and the order passed by the Court impugned in this petition is quashed.