(2015) 11 KAR CK 0107

In the Karnataka High Court

Case No : Criminal Petition No. 4067/2015

Narendra P. Shah and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 405, 420, 421
Partnership Act, 1932 — Section 14, 15
Penal Code, 1860 (IPC) — Section 120B, 405, 406, 420, 421

Citation : (2015) 11 KAR CK 0107

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : B.M. Shyam Prasad, Sr. Advocate for S. Santhosh Narayan, Advocate, for the Appellant; Vijayakumar Majage, Addl. SPP, for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—The petitioners are arrayed as accused persons in a case registered by first respondent/Police in respect of the offence punishable under Sections 120B , 421 , 406 , 420 and 405 of IPC, on the complaint of second respondent. It is a private complaint filed under Section 200 of Cr.P.C. before the jurisdictional Magistrate and referred for investigation.

2. The allegation against the petitioners in nutshell is, the complainant, his son Sri. Kalpesh V. Mehta and the petitioners-1 and 2 are the partners of the partnership firm M/s. The Star Aluminum Works vide Re-constituted Deed of Partnership dated 2.9.2009. The partnership business is of 1969 with renewed conditions in the year 1992 and it is ''a partnership at will''. After the complainant''s son Kalpesh V. Mehta was inducted to the partnership, the Reconstituted Deed of Partnership was entered into w.e.f. 2.9.2009. On 19.9.2014, there was a dispute in respect of settlement of accounts between the partners and the complainant and his son issued a legal notice dated 7.12.2014 calling upon the accused Nos. 1 and 2 for appointment of an Arbitrator in

accordance with the covenant of the Reconstituted Deed of Partnership. Accused Nos. 1 and 2 replied to the notice but refuted the claim made in the legal notice. The complainant and his son invoked Section 9 of the Arbitration and Conciliation Act, 1986 (''the Act'' for short) before the District Court, Mysore. The petition was contested.

Further allegation is, the immovable property Shed No. C-49 is the property of the Partnership. Said fact is confirmed by second petitioner in a Memorandum of Declaration dated 12.3.1992. The property is brought to the accounts of the firm in the audited accounts of the firm. Accused Nos. 1 to 3 conspired together and the second respondent in whose name the property is standing, illegally transferred the property by a registered gift deed dated 27.6.2014 in favour of third petitioner, who is none other than his wife. The accused conspired to cheat the complainant to make wrongful gain at the cost of the complainant and they have committed criminal breach of trust. Though the firm is the absolute owner of the said property, they misrepresented that accused No. 2 is the owner and have illegally executed the gift deed, etc.

3. Sri. B.M. Shyamprasad, learned Senior Counsel appearing for the petitioners submits that, the industrial Shed No. C-49 is the individual property of second petitioner purchased out of his own funds. It was allotted to him by K.S.S.I.D.C. in his name in the year 1973. From then, he was in possession of the property. On 22.3.1984, property was sold to him under a registered sale deed by the Additional Director of Industries and Commerce (Industrial Estates). He has not executed any conveyance deed in favour of the firm; he has no criminal intention to cheat anybody much less the complainant. Before initiating the PCR proceedings i.e., on 30.1.2015, the complainant had filed a Civil Miscellaneous Petition on 16.1.2015 before the District Court. He invoked Section 9 of the Act and sought for appointment of Receiver to administer the partnership firm''s property shown in the schedule of the petition. The property Shed No. C-49 was one of the schedule properties of the petition. The petition was contested and vide order dated 17.3.2015, the petition came to be allowed injuncting the partners/respondent Nos. 1 and 2 therein and anybody claiming through them from alienating the properties to any third party. He is trying to set up a criminal case out of a civil dispute, with a malafide intention to harass the petitioners, thereby he is abusing the due process of law. On a reading of the complaint, it does not disclose commission of a cognizable offence; the complaint is cooked up by over twisting the facts and suppressing the material fact. As soon as legal notice was issued by the complainant and his son seeking for dissolution of the firm, the partnership is deemed to have been dissolved. Now the matter is only for rendition of the accounts. The third petitioner is an aged lady and wife of second petitioner. Gift deed was executed in her favour, since second petitioner was unable to manage the property owing to his ill health. The learned Magistrate has not applied his mind while referring the matter for investigation, which is not in accordance with the principles laid down by the Apex Court in Priyanka Srivastava and Others Vs. State of U.P. and Others .

4. In reply, Sri. M.S. Bhagwat, learned Counsel appearing for second respondent/ complainant submits that, the complainant has executed a declaration dated 12.3.1992 asserting that the property is a firm property. Since it is an unregistered partnership firm, as per Sections 14 and 15 of the Partnership Act, it was not required for execution of a registered conveyance deed. The property is shown as the property of the firm in the books of accounts of the firm. It is only when the complainant received the reply notice dated 9.1.2015 from petitioners-1 and 2, asserting the transfer of property in favour of third petitioner/accused, complaint is filed. Though civil remedy is available, there is no bar for criminal action if the allegation in the complaint discloses a criminal offence in the light of the judgments of the Apex Court in Vijayander Kumar and Others Vs. State of Rajasthan and Another, and Arun Bhandari Vs. State of U.P. and Others, . At the stage of investigation, it is too premature to quash the proceedings on hyper technical grounds and to declare that the matter has to be worked out under civil form in the light of the judgment in Mosiruddin Munshi Vs. Md. Siraj and Another, .

5. In the light of the above submission, there is no dispute to the fact that second petitioner has conveyed the industrial shed No. C-49 under a registered gift deed in favour of his wife/third petitioner. But the matter for concern is, the complainant having voluntarily invoked Section 9 of the Act, as early as in December 2012, in respect of the assets and properties of the firm, which included the property in question also, subsequently invokes criminal law into motion. Had if the learned Magistrate spared his time to peruse the complaint, he could have gathered that complaint allegation is predominantly civil in nature. It is not the allegation of the complainant that, second petitioner has forged or fabricated any document. The property was transferred much before the dispute arose between the parties. Conspiracy, criminal intention to commit an offence, misappropriation, etc., are all the inferences that have to be drawn from the tangible materials placed on record. Here is the case where the transfer of property from second petitioner in favour of third petitioner is not in dispute and a legal right is asserted by the transferor for the said transfer. The petitioners had already pressed into service Section 9 of the Act and is granted injunction order in his favour against other Directors of the Company and anybody acting through them. The petitioners in their petition have placed their statement that there is no intention to sell the property. First petitioner is not a party to the conveyance deed under which the property is transferred to third petitioner. The third petitioner, who is an outsider to the transaction and business of the firm, cannot be roped with the allegations of cheating, misappropriation, criminal breach of trust, etc.

It is evident from the order of Magistrate while referring the matter for investigation that he has not applied his mind to the substance of the complaint. An omnibus order is passed without specifying in reference to which of the offences under penal law the investigation has to be conducted. The importance of application of mind by the Magistrate before exercising jurisdiction under

Section 156(3) or Section 200 of Cr.P.C. has been fell for consideration in Priyanka Srivastava''s case (supra). After a survey of earlier judgments it was observed that Magistrate has to remain vigilant with regard to the allegations made and the nature of allegation and not to issue directions without proper application of mind; he also has to bear in mind that sending the matter would be conducive to justice and then he may pass requisite order.

6. Case is registered on the allegations of offences under Section 405 - Criminal breach of trust, Section 420 - Cheating and dishonestly inducing delivery of property and Section 421 - Dishonest and fraudulent removal or concealment of property to prevent distribution among creditors. As per the complaint averments itself, civil remedy before arbitration forum already invoked and claim is made by the complainant in respect of the property in question, unless title to the property is adjudicated in accordance with the mode known to law, no offence as alleged can be inferred.

7. When the dispute is essentially of civil nature given the cloak of criminal offence, it is a fit case to exercise the jurisdiction of this Court to quash the complaint thereby to prevent abuse of process of Court (Reliance placed on G. Sagar Suri and Another Vs. State of U.P. and Others, .

The Petition is allowed. The complaint and FIR in Crime No. 19/2015 registered by first respondent/Police are hereby quashed.

