(2015) 07 RAJ CK 0124

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 4126 of 2013

Raghunath Meena and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120-B, 405, 406, 415, 420

Citation : (2015) 07 RAJ CK 0124

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Hari Narain Gupta, for the Appellant; Jitendra Shrimali, Public Prosecutor, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Prashant Kumar Agarwal, J—The accused-petitioners have filed this Criminal Misc. Petition under Section 482 Cr.P.C. with a prayer to quash and set aside the FIR No. 75/2013 registered at Police Station, Shivdaspura, Jaipur Rural for the offences under Sections 420, 406, 467, 468, 471 and 120-B IPC mainly on the ground that the dispute between the parties at the most is of civil nature to which colour of criminality has been given.

2. Brief relevant facts for the disposal of this petition, as emerged from the complaint, material filed by the petitioner alongwith the petition and the evidence so far collected during investigation which is available on case diary, may be stated as below:--

"(1) Accused-petitioner-Shri Raghunath Meena agreed to sell and respondent-complainant-Shri Kishan Kumar agreed to purchase the disputed land in lieu of sale consideration of Rs. 1,15,14,000/- and petitioner-Shri Raghunath Meena received Rs. eight lacs in cash from complainant as advance and it was agreed between them that petitioner would execute registered sale-deed in favour of complainant within a period of fifteen months after obtaining the remaining amount of sale consideration. The petitioner also executed an agreement to sell, power of attorney and receipt in favour of the complainant on 14.11.2011. It is pertinent that petitioner No. 2-Shri Sheoji Ram, being son of Shri Raghunath Meena put his signature on the agreement as a witness and transaction between petitioner No. 1 and complainant was taken place in his presence.

(2) A public notice was published on behalf of the respondent-complainant on 09.01.2013 in news paper ''Rajasthan Patrika'' to the effect that petitioner-Shri Raghunath Meena has agreed to sell the disputed land to complainant and in this respect he has executed an agreement to sell and power of attorney in his favour and the complainant is intending to get the registered sale-deed executed in his favour from the petitioner and, therefore, if any person has any objection in it, he may file his objections within a period of seven days.

(3) A public notice came to be published in a newspaper on behalf of petitioner-Shri Raghunath Meen on 15.01.2013 whereby he denied the claim of complainant that the petitioner has agreed to sell the disputed land to him. It was also denied by the petitioner that he has executed an agreement to sell and power of attorney in favour of the complainant. It was claimed by the petitioner in the public notice that the complainant has got published the public notice dated 09.01.2013 on the basis of forged and fabricated agreement to sell and power of attorney.

(4) FIR No. 49/2013 came to be registered at the instance of the petitioner on 06.02.2013 at Police Station Shivdaspura, Jaipur Rural against complainant for offences under Sections 420,467,468 and 471 IPC on the premise that the complainant on the basis of forged and fabricated agreement to sell and power of attorney is claiming that the petitioner has agreed to sell land in dispute to the complainant.

(5) The complainant filed a complaint against petitioners and some other persons on 25.02.2013 in the Court of Metropolitan Magistrate No. 32, Jaipur Metropolitan, Jaipur for offences under Sections 420,406,467,468,471 read with Section 120-B IPC alleging that petitioner-Shri Raghunath Meena agreed to sell land in dispute to him and in this regard an agreement to sell and power of attorney was also executed by petitioner in favour of the complainant and an amount of Rs. eight lacs was paid to the petitioner as advance on 14.11.2011 and on demand being made from time to time the rest of the amount of sale consideration was also paid by the complainant to the petitioner. The petitioner sold the land in dispute to one Shri Dev Narayan Meena by a registered sale-deed dated 17.01.2013.

(6) During investigation specimen thumb impressions of petitioner were obtained and they were sent for comparison and examination with the thumb impressions on agreement to sell and power of attorney allegedly executed by petitioner in favour of complainant and as per FSL report dated 9.4.2014, it was found that the agreement to sell, power of attorney and receipt bear the thumb impressions

of the petitioner.

(7) As per factual report dated 08.07.2015 as a result of investigation it has been found that petitioners have committed offences under Sections 420,406 and 120-B IPC."

3. It was submitted by the learned counsel for the petitioners that even if for the sake of arguments allegations made in the FIR are accepted on their face value and are taken to be true and correct in its entirety, even then at the most it is a case of breach of contract on the part of the petitioners, but only by that reason criminal liability of any kind cannot be fastened upon them. According to learned counsel for the petitioners for an offence to be made out under Section 420 IPC, well settled legal position is that fraudulent and dishonest intention to deceive some person on the part of accused is to be disclosed at the time when promise or representation was made and offence under this provision cannot be made out merely because the accused failed to keep his promise or representation later on. According to him, it is a pure and simple case of breach of contract of sale which does not constitute offence of criminal breach of trust or cheating. According to him for an offence to be made out under Section 406 IPC, it is essential to show that some property was entrusted to the accused and he converted it for his own use, but in the present case no such allegation has been made even by the complainant himself. It was contended that merely because the petitioners obtained a part of sale consideration from the complainant and failed to execute registered sale-deed in his favour, rather executed a registered sale-deed in favour of a third party, it cannot be said that they have deceived the complainant or committed offence of criminal breach of trust. It was also submitted that although a written receipt dated 14.11.2011 is alleged to have been executed by the petitioner in respect of advance amount of sale consideration of Rs. eight lacs, but for remaining amount no such written document was executed by petitioner even according to complainant himself and, therefore, even at this stage of the proceedings it cannot be believed that the complainant paid rest of the amount to the petitioner without obtaining any written receipt. It was further submitted that as per the terms and conditions of the agreement to sell the complainant was obliged to pay remaining amount of sale consideration to petitioner within a period of fifteen months and when he failed to do so, the petitioner was entitled to cancel the agreement and to sell land in dispute to any other person. It was also submitted that it is not the case of complainant himself that the petitioner had no title in land in dispute or he entered into agreement to sell with complainant by concealing some material fact.

4. In support of his submissions, learned counsel for the petitioners relied upon the cases of Murari Lal Gupta v. Gopi Singh reported in (2005) 13 SCC 699 , George Thomas v. State of Kerala reported in 2012 (2) Criminal Court Cases 639 (Kerala) , Ganesh Dan v. State of Rajasthan & Anr. reported in 2012 (4) WLC (Raj.) 710 , V.P. Shrivastava Vs. Indian Explosives Ltd. and Others, (2010) 4 BC 436 : (2010) 159 CompCas 529 : (2010) 10 JT 479 : (2010) 10 SCALE 177 :

(2010) 10 SCC 361 : (2011) 105 SCL 234 and Dalip Kaur and Others Vs. Jagnar Singh and Another, AIR 2009 SC 3191 : (2009) 9 JT 184 : (2009) 9 SCALE 255 : (2009) 14 SCC 696 : (2009) 10 SCR 264 : (2009) 7 UJ 3292 : (2009) AIRSCW 5117 : (2009) 5 Supreme 368 .

5. On the other hand, learned Public Prosecutor assisted by the learned counsel for the complainant submitted that the present case is not a simple and pure case of breach of contract giving rise to civil liability only on the part of the petitioners, but the overall conduct of the petitioners clearly show that from the very beginning they were having fraudulent and dishonest intention to deceive the complainant as petitioner-Shri Raghunath Meena by way of a public notice dated 15.01.2013 not only denied the fact of sale of land in dispute to complainant, but also claimed that the agreement to sell and power of attorney on the basis of which the complainant is claiming his right in the land in dispute are forged and fabricated and with the same allegations he also lodged FIR No. 49/2013 against complainant on 06.02.2013, whereas on the basis of evidence collected during investigation and more particularly on the basis of FSL report it is revealed that both these documents were executed by petitioner-Shri Raghunath Meena in favour of the complainant. It was further submitted that although the rest of the amount of sale consideration was agreed to be paid by the complainant to the petitioners at the time of execution of registered sale-deed, but the petitioners on one or other pretext obtained from time to time part of the sale consideration and the entire amount was paid by the complainant to the petitioners by 28.12.2012 and immediately thereafter petitioner executed a registered sale-deed dated 17.01.2013 in favour of one Shri Dev Narayan Meena. It was submitted that this subsequent conduct on the part of the petitioners is clear indication of criminality on their part amounting to offences under Sections 420 and 406 IPC. It was also submitted that it is well settled legal position that at the time of considering the question of quashing of FIR/complaint only prima facie has to be seen whether allegations made in it disclose essential ingredients of an offence or not and at this stage of the proceedings analysis of the allegations is not required to be made. It is also well settled legal position that for the same act of an accused civil and criminal proceedings can run simultaneously and, therefore, even if the complainant had some civil remedy available to him, it cannot be said that criminal proceedings arising from the present FIR cannot be continued.

6. I have considered the submissions made on behalf of the respective parties and the material made available on record as well as the relevant legal provisions and the case law.

7. In the facts and circumstances of the case and the material made available on record and in the light of the well settled legal position, it is to be considered whether the offences under Sections 406, 420 and 120-B IPC or any of them is made out or disclosed against the petitioners or not.

Offence under Section 406 IPC

8. For an offence to be made out under Section 406 IPC, first of all it is to be seen whether there was any criminal breach of trust as defined under Section 405 IPC on the part of the accused. As per Section 405 IPC, whoever, being in any manner entrusted with property, or with any dominion over property dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust. Thus, the first and paramount ingredient for an offence of criminal breach of trust to be made out it is required to be shown that some property was entrusted to the accused or he having dominion over such property dishonestly misappropriated or converted for his own use that property. In the present case, it cannot be said that the amount of sale consideration paid by the complainant to the petitioners was in entrustment or the petitioners had dominion over it in any manner on behalf of the complainant. It is the case of the complainant himself that the parties entered into agreement to sell and against the sale price the aforesaid amount was paid by him to the petitioner. Thus, when the essential ingredient to make an act of an accused to be criminal breach of trust within the meaning of Section 405 IPC is absent, the offence under Section 406 IPC cannot be said to be made out even prima facie against the petitioners and, therefore, the FIR to that extent is liable to be quashed.

Offence under Section 420 IPC

9. Section 420 IPC provides that, 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 also liable to fine. It is thus, clear that for an offence to be made out under Section 420 IPC, it is to be shown that the accused cheats a person. The word "cheating" has been defined under Section 415 IPC, which provides that, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". It is now well settled legal position that in order to constitute an offence of cheating the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act of committing cheating, but at the same time it is also well settled legal position that subsequent conduct of the

accused is also a relevant factor to infer whether he had fraudulent or dishonest intention at the inception i.e. when the offence was committed. In the present case, the subsequent conduct of the petitioners as pointed out by the learned counsel for the complainant and which have already been referred above, in my opinion is sufficient to infer prima facie that the petitioners from the very beginning were having a fraudulent or dishonest intention to deceive the complainant and to obtain from him money on the pretext of sale consideration against the sell of the land in dispute without any intention to sell it to him. Although, cheating on the part of the petitioners cannot be inferred merely because they obtained Rs. eight lacs as advance from the complainant, but denial on the part of petitioner-Shri Raghunath Meena by way of aforesaid public notice of the sale transaction as entered between them and his further claim that the agreement to sell and power of attorney are forged and fabricated documents and registration of FIR on the same allegations at the instance of petitioner against the complainant are prima facie indication of criminality on the part of the petitioners. From the allegations made in the FIR which are to be taken true and correct at this stage of the proceedings, it is further clear that the petitioner obtained entire sale consideration from the complainant and even then he executed a registered sale-deed on 17.01.2013 in favour of a third party. From all this conduct on the part of petitioners it can prima facie be inferred that they were having a criminal intention from the very beginning. Therefore, so far offence under Section 420 IPC is concerned, it cannot be said that it is not even prima facie made out from the allegations made in the FIR and the material made available on record.

Office under Section 120-B IPC

10. So far as offence under Section 120-B IPC is concerned, it is well settled that direct evidence for such an offence is hardly available and offence under this provision can be inferred even on the basis of circumstantial evidence made available on record. In the present case, petitioner-Shri Raghunath Meena entered into agreement to sell with complainant and executed a document on 14.11.2011 in his favour and his son petitioner-Shri Sheoji Ram put his signature on agreement to sell as a witness and the transaction took place in his presence and, therefore, at this stage of the proceedings, it can prima facie be said that this offence is also disclosed against them.

11. So far as the dispute between the parties is essentially a dispute of civil nature is concerned, it is well settled legal position that if prima facie there are ingredients for an offence as disclosed from the complaint/FIR, the same cannot be quashed on the ground that civil proceedings can also be filed against the accused on the basis of same facts. It is now well settled legal position that both the proceedings can run simultaneously, if essential ingredients of the offence are also made out.

12. Consequently, the criminal misc. petition is partly allowed and FIR No. 75/2013 registered at Police Station Shivdaspura, Jaipur Rural to the extent of

offence under Section 406 IPC is quashed, but to the extent of offences under Sections 420 and 120-B IPC, the petition is dismissed. The stay application also stands dismissed.

