
(2009) 12 MAD CK 0155

In the Madras High Court

Case No : Criminal Original Petition No. 25166 of 2002 and Criminal M.P. No. 10554 of 2002

S. Sivakumar and S. Subburaj

APPELLANT

Vs

Chandra Kala Mehta Proprietor, Besant Raj Mehta

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 415, 418, 420

Citation : (2009) 12 MAD CK 0155

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; T.S. Kanmani, Amicus Curiae, for the Respondent

Judgement

K. Mohan Ram, J.—The petitioners who are accused 1 and 2 in C.C. No. 7878 of 2002 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, wherein they are facing trial for the alleged offence u/s 420 read with 34 IPC have filed the above quash petition seeking to quash all further proceedings therein.

2. The brief facts which are necessary for the disposal of the above Criminal Original Petition and as culled out from the complaint filed by the respondent against the petitioners herein are set out below:

It is alleged that the accused approached the complainant to grant hire purchase facility in respect of a vehicle bearing Registration No. TN-60-1047, make M & M Cab, Model 1993 and thereby promising to repay the amount under the hire purchase agreement. Believing the representation of the accused to be true and genuine, the complainant on good faith and belief, sanctioned the hire purchase loan amount of Rs. 1,71,000/- payable in thirty monthly instalments. The second accused stood as a guarantor. After paying some instalments, the hirer committed default on the payment of the monthly instalments and a sum of Rs. 98,200/- was due under the hire purchase agreement. It is alleged that the

accused have sold the vehicle by fabricating the false document to a third party while the hire purchase agreement is in force. Thus, according to the complainant, the accused have committed an offence u/s 420 read with 34 IPC.

3. When the above Criminal Original Petition was taken up for final disposal, the learned Counsel for the petitioners was absent and the learned Amicus Curiae for the respondent was present.

4. Learned Amicus Curiae for the respondent submitted that having committed default in paying the monthly instalments, the accused have fabricated the documents and sold the vehicle, which is a subject matter of the hire purchase agreement to a third party and thereby have cheated the complainant. She further submitted that in paragraph 6 of the complaint it is stated that the accused with dishonest intention to cheat the complainant induced him to sanction the hire purchase facility in respect of the vehicle to accused 1 and 2 and executed the hire purchase agreement and subsequently failed to repay the amount to the tune of Rs. 98,200/- due under the hire purchase payment, but contrary to that, the first and second accused sold the vehicle by fabricating the documents to the third party and cheated the complainant; according to the learned Counsel, the said averments do constitute the ingredients of the offence of cheating. She further submitted that simply because a civil remedy is available to the complainant, it does not mean that he should pursue only the civil remedy, but if a criminal offence is committed, it is always open to the complainant to file a criminal action as well as a civil case. In support of the said contention, the learned Counsel based reliance on a decision of the Apex Court reported in M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, . In the said decision, in paragraph 17, it is laid down as under:

17. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact "they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and impact".

5. I have considered the said submissions made by the learned Amicus Curiae

and perused the materials available on record.

6. In the quash petition it is contended that the amounts due under the hire purchase agreement have been paid to a broker at Kovilpatti for which bills have been issued by them and the vehicle in question has not been sold to the third party but it is in the custody of the petitioners; it is always open to the complainant to file a civil suit and seize the vehicle; but instead of doing so, he has converted a pure civil dispute into a criminal action. It is also contended that the ingredients of the offence u/s 420 IPC is not made out.

7. Before considering the averments contained in the complaint it will be useful to refer to a decision of the Apex Court reported in 2001 Scc (Cri) 565 *Alpic Finance LTD. v. P. Sadasivan*. In the said decision, in paragraphs 10, 11 and 12, the Apex Court has laid down as under:

10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust and cheating. Here the main offence alleged by the appellant is that the respondents committed the offence u/s 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. We are told that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration.

12. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings.

8. If in the light of the aforesaid legal principles laid down by the Apex Court, the averments contained in the complaint are considered, this Court is of the considered view that the ingredients of the offence of cheating are not made out. In the complaint there is no allegation that the petitioners made any wilful misrepresentation. Even according to the complainant, the parties entered into a valid hire purchase agreement and the grievance of the complainant is that the petitioners failed to discharge the contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the petitioners and thereby the petitioners parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. It is also seen from the averments contained in the complaint that out of the total loan amount of Rs. 1,71,000/- certain instalments have been paid by the accused and only a sum of Rs. 98,200/- was due. The averments contained in paragraph 6 does not state that at the inception the accused had dishonest intention to cheat the complainant. A mere default to pay the monthly instalments payable under the hire purchase agreement will not lead to the inference that the accused had dishonest intention to cheat the complainant at the inception itself. The allegations contained in paragraph 6 of the complaint is only an inference drawn by the complainant on the basis of the default committed by the accused in the payment of the monthly instalments due under the hire purchase agreement. Therefore, this Court is unable to countenance the contentions put forth by the learned Amicus Curiae for the respondent.

9. In the considered view of this Court, the legal principles laid down in 2001 Supreme Court Cases (Cri) 565 (referred to supra) squarely applies to the facts of this case. Therefore, all further proceedings in C.C. No. 7878 of 2002 on the file of the II Metropolitan Magistrate, Egmore, Chennai are hereby quashed and the above Criminal Original Petition is allowed. Consequently, the connected CrI.M.P is closed.