(2015) 03 JH CK 0106

In the Jharkhand High Court

Case No : Criminal M.P. No. 3038 of 2013

Satya Binaik APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2015) 03 JH CK 0106

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Indrajit Sinha, learned counsel appearing on behalf of the petitioner and Mr. N.K. Pasari, learned counsel for the opposite party No. 2.

2. In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with Complaint Case No. 1683 of 2013 including the order dated 07.09.2013 passed by Sri S.D. Tripathi, learned Judicial Magistrate, First Class, Ranchi whereby and whereunder cognizance has been taken for the offence punishable under Sections 406, 420 of the Indian Penal Code.

3. A complaint case was initiated by the complainant-opposite party No. 2 in which it was stated that the petitioner is the owner of 15 kathas of land with double storied building situated over R.S. Khata No. 46, Plot No. 1511 at Morabadi, Ranchi. It has been alleged that the son of the petitioner induced the opposite party No. 2 to contact the petitioner for negotiating the purchase of the property and pursuant to the same it was agreed upon that the sale of the property would be on consideration amount of Rs. 2.55 crores. It has been alleged that on 07.08.2012 an agreement was executed and advance of Rs. 1

lakh was paid to the petitioner and thereafter on several occasions on various pretexts made by the petitioner a total amount of Rs. 1,81,00,000/- had been paid to the petitioner and the remaining balance consideration amount stood at Rs. 74,00,000/-. It has also been alleged that five cheques worth Rs. 45,00,000/- was given to the petitioner but the petitioner was not ready to accept the said cheques as the same will take a long time in clearance and, therefore, the petitioner had demanded bank draft in lieu of the cheques. Accordingly, as has been stated by the complainant demand drafts of different denomination of a total balance amount of Rs. 74,00,000/- was made and since the five cheques worth Rs. 45,00,000/- was no longer required the complainant had stopped payment of the said cheque. It has further been alleged that on 28.05.2013 when the complainant along with his brother Kamal Kumar Singhania went to the petitioner and offered the draft the same was flatly refused and the five cheques amounting to Rs. 45,00,000/- was also refused by the accused persons to be returned to the complainant. Thereafter, it has been alleged that a legal notice was sent to the accused persons for failure of compliance of the terms of the agreement dated 07.08.2012 and since there was no response and that the act of the accused persons deceived the complainant to enter into an agreement and the complainant having been deceived by the accused persons a Complaint Case No. 1683 of 2013 was instituted.

4. After conducting an enquiry by examining the complainant on solemn affirmation as well as his witnesses cognizance was taken by Sri S.D. Tripathi, learned Judicial Magistrate, First Class, Ranchi on 07.09.2013 for the offences punishable under Sections 406, 420 of the Indian Penal Code.

5. It has been submitted by the learned counsel for the petitioner that the complainant-opposite party No. 2 has failed to show in the complaint petition any criminal offence which is made out against the petitioner. It has further been submitted that the dispute at best can be said to be purely a civil dispute for which the opposite party No. 2 has also availed his remedy by lodging Title Suit No. 340 of 2013 with a prayer for specific performance of contract. It has also been submitted by the learned counsel for the petitioner that the complaint case was lodged on 09.07.2013 whereas the title suit was instituted by the opposite party No. 2 on 28.06.2013 and, therefore, it can be said that only with a view to pressuring the petitioner who is an old lady to negotiate and adhere to the agreement executed between both the sides the criminal case has been instituted. He has further submitted that the learned court below while taking cognizance for the offences punishable under Sections 406, 420 of the Indian Penal Code did not properly appreciate the fact that none of the ingredients of criminal breach of trust and cheating were present in the complaint petition itself and failure on the part of the complainant-opposite party No. 2 to show deception by the petitioner from the very inception renders the prosecution case as bereft of the necessary ingredients for continuing with the criminal case. To highlight the fact that even the complainant-opposite party No. 2 was only concerned at the initial stage before filing of the complaint petition to execute

and get the sale deed registered the learned counsel for the petitioner has also referred to the legal notice sent on behalf of the opposite party No. 2 dated 05.06.2013. The learned counsel for the petitioner has also referred to the judgments of the Hon''ble Supreme Court in a case of V.Y. Jose and Another Vs. State of Gujarat and Another, (2008) 16 SCALE 167 : (2009) 3 SCC 78 , Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 , B. Suresh Yadav Vs. Sharifa Bee and Another, AIR 2008 SC 210 : (2008) CriLJ 431 : (2008) 1 CTC 338 : (2007) 12 JT 341 : (2007) 13 SCC 107 : (2007) 12 SCR 238 : (2007) AIRSCW 6592 : (2007) 7 Supreme 297 and Rashmi Jain Vs. State of U.P. and Another, (2014) 1 SCALE 415 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 .

6. The learned counsel for the opposite party No. 2, on the other hand, has submitted that the complaint petition clearly reveals a case of criminal breach of trust and cheating inasmuch as even though part consideration amount was paid on various occasions as and when demanded by the accused persons but inspite of the same the deed of sale was not executed and the attitude of the petitioner clearly shows that there was an intention on the part of the petitioner never to execute the sale deed or to complete her part of the contract. The deception or cheating is also made out from the averments made by the petitioner in Paragraph 8 of the application under Section 482 inasmuch as it has been clearly stated that the price of the building in question was undervalued and in such circumstances the learned counsel for the opposite party No. 2 states that it was never the intention of the petitioner from very beginning to execute the sale deed and even after accepting a major portion of the consideration amount neither the sale deed has been executed nor the amount has been returned. The learned counsel for the petitioner also has referred to Paragraph 15 of the rejoinder filed by the petitioner to the counter affidavit of the opposite party No. 2 and from averments made in the said paragraph a plea has been put forward that the petitioner herself admits that the case is not purely a case of civil nature only. In support of his arguments, the learned counsel for the petitioner has referred to the judgments rendered in a case of Ghanshyam Vs. State of Rajasthan, (2014) 5 AD 201 : (2014) 1 CCR 128 : (2014) 1 Crimes 100 : (2014) 1 JT 226 : (2014) 1 RCR(Criminal) 457 : (2013) 15 SCALE 281 : (2014) 2 SCC 683 and Arun Bhandari Vs. State of U.P. and Others, (2013) 1 AD 560 : (2013) CriLJ 1020 : (2013) 1 Crimes 113 : (2013) 1 JT 467 : (2013) 2 RCR(Criminal) 261 : (2013) 1 SCALE 229 : (2013) 2 SCC 801 : (2013) AIRSCW 569 : (2013) 1 Supreme 131 .

7. After hearing the learned counsel for the parties and after going through the records, I find that on 28.06.2013 a title suit was filed by the complainant-opposite party No. 2 being Title Suit No. 340 of 2013 in which the petitioner was arrayed as a defendant and relief as claimed for is quoted hereinunder:-

"A decree for the specific performance of the agreement dated 07.08.2012 with respect to the property in suit fully described in the schedule to the plaint be passed against the defendant and the defendant be directed to execute and register the same in favour of the plaintiff on receipt of the balance consideration of Rs. 74,00,000/- (Rupees Seventy four lacs) only failing which the same may be executed and registered through the process of the court and accordingly the plaintiff be put in khass possession thereof."

8. In the said Title Suit itself it has been claimed that after the part consideration amount of Rs. 1,81,00,000/- was received the attitude of the petitioner changed as would be evident from the Paragraph 13 of the plaint and which reads thus:-

"That thus in view of the facts stated above the plaintiff has entirely complied the terms of the agreement on his part but the attitude of the defendant after receiving the said amount of Rs. 1.81 crores as advance has became malafide and she is deviating from fulfilling and complying with the terms of the agreement which she can not do under the law."

9. After the title suit was lodged on 09.07.2013 the complainant filed the complaint case in which averments have been made with respect to the sale of the property belonging to the petitioner for total consideration amount of Rs. 2.55 crores and on various occasions amounts were paid to the petitioner and at the time of institution of the complaint case the complainant claims to have paid Rs. 1,81,00,000/- to the petitioner as part consideration amount. As per the allegation made by the complaint-opposite party No. 2 on 28.05.2013 when the petitioner was approached with the bank draft totaling an amount of Rs. 75,00,000/- the petitioner is alleged to have refused to accept the said amount and, therefore, even as per the version of the complainant-opposite party No. 2 the deception started from 28.05.2013 itself. The complaint petition nowhere reveals prior to 28.05.2013 that there was indeed a deception on the part of the petitioner from the very inception which means from the time it was agreed to sale the property at a consideration amount of Rs. 2.55 crores. The complaint petition was preceded by a legal notice issued on behalf of the complainant-opposite party No. 2 to the petitioner and in the said legal notice also the petitioner was called upon to execute and get the sale deed registered in favour of the complainant-opposite party No. 2. Therefore, prior to lodgment of the complaint case the entire issue revolved around non-performance of the contract on the part of the petitioner which can be clearly deduced from the title suit as well as from the legal notice issued on behalf of the complainant-opposite party No. 2.

10. In the case of V.Y. Jose and Another Vs. State of Gujarat and Another, (2008) 16 SCALE 167 : (2009) 3 SCC 78 while considering the powers of the High Court to exercise its jurisdiction under Section 482 of the Cr.P.C. it was held as follows:-

"21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a salutary purpose viz. A person should not undergo harassment of litigation for a number of years although no case has been made out against him.

24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

31. Before parting, however, we may notice a decision of this Court in State of M.P. v. Awadh Kishore Gupta whereupon strong reliance has been placed by Mr. Jain. This Court, therein upon referring to Bhajan Lal opined as under: (Kishore Gupta case, SCC pp. 700-01, para 11)

"11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (see Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr.) v. State of Bihar.) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be secondary importance. It is the material collected during the investigation and evidence led in the court which decide the date of the accused person. The allegations of mala fides against the information are of no consequence and cannot be itself be the basis for quashing the proceedings.

(emphasis supplied)

No exception can be taken to the aforementioned principles of law, as therein also it has categorically been held that exercise of inherent power under Section 482 is permissible where allegations set out in the complaint do not constitute the offence for which cognizance has been taken by the Magistrate. It is evidently a case of that nature.

11. In the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 it was held as follows:-

"22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and Respondent 3 has already instituted a civil suit in the Court of the Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.

Scope and ambit of court''s powers under Section 482 Cr.P.C.

23. This Court in a number of cases has laid down the scope and ambit of courts'' powers under Section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised

sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

While considering the ingredients of Section 415 of the Indian Penal Code which is punishable under Section 420 IPC it was held thus:-

40. Firstly, we shall deal with Section 420 IPC. Cheating is defined in Section 415 IPC and is punishable under Section 420 IPC. Section 415 is set out below:

"415. Cheating-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''.

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section."

41. Section 415 IPC thus requires-

1. Deception of any person.

2. (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person 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.

42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all

along had a culpable intention to break the promise from the beginning.

12. In the case of B. Suresh Yadav Vs. Sharifa Bee and Another, AIR 2008 SC 210 : (2008) CriLJ 431 : (2008) 1 CTC 338 : (2007) 12 JT 341 : (2007) 13 SCC 107 : (2007) 12 SCR 238 : (2007) AIRSCW 6592 : (2007) 7 Supreme 297 while considering the varied stance taken in the complaint petition as well as in the civil dispute it was held as follows:-

13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before us that the appellant herein got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30.09.2005 and the purported demolition took place on 29.09.2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so.

13. In the case of Rashmi Jain Vs. State of U.P. and Another, (2014) 1 SCALE 415 on the question of resorting to a criminal proceeding when the case is purely of a civil dispute as well as when the allegation are absurd on the face of it was held as follows:-

"6. To take the complaint out of the realm of a purely civil dispute, it is maliciously alleged in the complaint that when Respondent 2 approached the appellant for payment, the appellant stated as follows:

"On 22-3-2009, the applicant met the accused in the market of Bazarganj Saraitareen and asked for his balance amount, but the accused in the presence of two other persons flatly refused to pay the same and threatened the applicant that if he ever asked for the payment again he will be killed and stated that you don''t know me. I have not paid to the high and mighty people, who are you. I had to usurp your money and I had done so. Thereafter she went in a car."

In our opinion, the aforesaid averment has been made only to foist criminal liability on the appellant by converting a purely civil dispute into criminal act, alleged to have been committed by the appellant. The allegations are absurd and outlandish on the face of it; firstly, the appellant is a lady, a widow, who was not accompanied by anybody else at the time of the alleged occurrence; secondly, she, though being a resident of Delhi, misbehaved with number of high and mighty parties with whom she had earlier transacted business at Moradabad. In our opinion, these are allegations which on the fact of it, cannot be taken seriously be any reasonable person. The High Court, in our opinion, has committed jurisdictional error in dismissing the criminal petition filed by the appellant on the ground that it involves disputed questions of fact, which can only be gone into by the trial court."

14. The learned counsel for the opposite party No. 2 has placed much reliance in the case of Ghanshyam Vs. State of Rajasthan, (2014) 5 AD 201 : (2014) 1 CCR 128 : (2014) 1 Crimes 100 : (2014) 1 JT 226 : (2014) 1 RCR(Criminal) 457 : (2013) 15 SCALE 281 : (2014) 2 SCC 683 wherein at Paragraph 9 it has been held as follows:-

"9. It has been held in Onkar Nath Mishra v. State (NCT of Delhi) that in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created."

15. Similarly, in the case of Arun Bhandari Vs. State of U.P. and Others, (2013) 1 AD 560 : (2013) CriLJ 1020 : (2013) 1 Crimes 113 : (2013) 1 JT 467 : (2013) 2 RCR(Criminal) 261 : (2013) 1 SCALE 229 : (2013) 2 SCC 801 : (2013) AIRSCW 569 : (2013) 1 Supreme 131 it was held that the concurrent civil and criminal liability is not barred to criminal proceedings it was held as follows:-

"16. After laying down the principle the Bench in Hridaya Ranjan case referred to the complaint and opined that: (SCC p. 177, para 16)

"16. ... Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 had alleged against the appellants [was] that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property [was] not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 [was] not made out even accepting all the averments in the complaint on their face value [and, accordingly, ruled that] in such a situation continuing the criminal proceeding against the accused [would] be ..... an abuse of the process of the court."

17. From the aforesaid decision in Hridaya Ranjan case it is quite clear that this Court recorded a finding that there was no averment in the complaint that intention to deceive on the part of the accused was absent right from the beginning of the negotiation of the transaction as the said allegation had neither been expressly made nor indirectly suggested in the complaint. This Court took note of the fact that the only non-disclosure was that one of their brothers had

filed a partition suit which was pending and the allegation that such a disclosure was not made intentionally to deceive the complainant was absent. It is worthy to note that this Court referred to certain averments in the complaint petition and scrutinised the allegations and recorded the aforesaid finding.

16. Thus what would falls from the judicial pronouncement quoted above is that there has to be dishonest intention from the very inception or in other words that an intention to deceive from the very beginning of the transaction would be a pre-requisite in launching a criminal prosecution. As has been indicated above the averments made in the complaint petition coupled with surrounding circumstances as well as those enumerated in the plaint as well as the legal notice issued on behalf of the opposite party No. 2 can only lead to a conclusion that the absence of deception from the very inception is stark on the face of it and furthermore even if the entire allegations are taken to be true no criminal liability can be fastened upon the petitioner. For the same fact and same allegation the ingredients of a civil wrong and a criminal offence can be present and both proceedings can continue. But the true test is to determine as to whether the complaint petition discloses an element of cheating or breach of trust or for that matter any offence for which the accused can be criminally prosecuted. The absence of any criminal intent in the complaint petition is palpable on the face of it and heaping a criminal liability without making out a criminal offence is not permissible in the eye of law. The complainant-opposite party No. 2 has already initiated a title suit for specific performance of contract and the allegation in the complaint petition also reveals that the complainant-opposite party No. 2 has rightly opted for the only forum available to him in the face of the allegations for redressal of his grievance.

17. Since no criminal offence is made out in the entire complaint petition this Court has no option but to interfere in the criminal prosecution. Accordingly, this application is allowed and the entire criminal proceedings in connection with Complaint Case No. 1683 of 2013 including the order dated 07.09.2013 is, hereby, quashed.

