(2016) 03 KL CK 0066

In the High Court Of Kerala

Case No : Crl. M.C. No. 3091 of 2015

Sheela Thomas and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

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

Citation : (2016) 03 KL CK 0066

Hon'ble Judges : Raja Vijayaraghavan V., J.

Bench : Single Bench

Advocate : C.P. Peethambaran and Mini V.A., Advocates, for the Appellant; N. Suresh, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Raja Vijayaraghavan V., J.—1. The petitioners, who are wife and husband respectively, are arrayed as accused Nos. 1 and 2 in a criminal prosecution initiated by the 2nd respondent alleging offence punishable under S. 420 r/w S. 34 of the IPC.

2. The prayer in this petition filed under S. 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) is to quash the said proceedings on the ground that the basic ingredients of the offence alleged are not made out. The petitioners assert that pendency of the impugned proceedings would be nothing but an abuse of process of court.

3. Now to the facts in brief:--

The 2nd respondent/de facto complainant is an employee in the IV Battalion of the K.A.P. The 1st petitioner is the wife of the 2nd petitioner. The children of the petitioners and the 2nd respondent were studying in the same school. The 2nd respondent was befriended by the 1st petitioner claiming to be a lawyer and their friendship blossomed in course of time. The 1st petitioner was aware that the

2nd respondent was in possession of Rs. 30 Lakhs which included money awarded to her by the Motor Accidents Claims Tribunal as compensation consequent to the death of her husband in an accident. The 2nd respondent was persuaded by the 1st petitioner to invest the said money in the real estate business run by the 1st petitioner. To lure the 2nd respondent, she was told by the 1st petitioner that an item of property had already been purchased for Rs. 65 Lakhs which would yield good profit if resold, and if the 2nd respondent were to invest Rs. 25 Lakhs, a sum of Rs. 35 Lakhs which included profit of 10 Lakhs would be handed back to her in three to four months. She was also assured that even if the property could not be resold, a sum of Rs. 32 Lakhs would be repaid back on or before 5.1.2012.

4. On 8.8.2011, a sum of Rs. 26,15,000/- was handed over by the 2nd respondent to the 1st petitioner. Evidencing the same, agreement dated 19.12.2011 was executed. The execution of the agreement and the handing over of the money is accepted by the petitioners as well.

5. The amount assured was not repaid by the petitioners. On further enquiry, it was revealed that the property which was purchased by the petitioners was a barren land and was worth only Rs. 10,000/- per cent. It is specifically alleged in the complaint that the 2nd respondent was deceived to deliver the sum of Rs. 26,15,000/-; that she was induced by the petitioners to do so based on a wrong representation and by deception; that the petitioners had acted fraudulently and dishonestly at the inception itself; and that if it were not for the deception she would not have parted with the princely sum of money.

6. It is based on these allegations Annexure 1 complaint was filed by the 2nd respondent on 27.11.2004, based on which, Crime No. 1634 of 2014 was registered. The said proceeding is under challenge.

7. I have heard the learned counsel appearing for the petitioners, the learned counsel appearing for the 2nd respondent and the learned Public Prosecutor.

8. The learned counsel would submit that though necessary allegations as to guilty intent at the inception itself and inducement for the purpose of cheating are ritualistically levelled in the complaint, essentially the attempt of the complaint is to convert a purely civil matter to one of a criminal nature. It is further submitted by the learned counsel that the ingredients of a criminal offence are absent and subjecting the petitioners to the rigmarole of a criminal prosecution would entail untold hardship. It is asserted by the learned counsel for the petitioners that a sum of Rs. 16 Lakhs has already been paid and that being the case, there cannot be any dishonest intention on the part of the petitioners.

9. It is further submitted that in so far as the 2nd petitioner is concerned, he is working in the BSF and stationed out of state and there is no whisper or allegation against him in the complainant. None of the contemporaneous records contain his name and even the 2nd respondent has no case that he had any role

to play.

10. The learned counsel appearing for the 2nd respondent would controvert the contentions and submit that not even a single paise was repaid. He highlighted the fraud perpetrated by the petitioners and would submit that the assertion that it is purely a case of civil nature is not correct. According to the learned counsel, an analysis of the complaint and its allegations would disclose the deception and fraudulent inducement practiced by petitioners. The learned Public Prosecutor supported the contentions of the 2nd respondent and fairly submitted that in so far as the 2nd petitioner is concerned, averments are absent in the complaint.

11. I have heard the rival submissions and have perused the complaint and the connected records. I take note of the fact that the 2nd respondent is a widow and the fact that a sum of Rs. 26,15,000/- was handed over to the 1st petitioner is admitted. This Court, on 11.8.2015, had ordered personal appearance of the parties before Court and they were sent for mediation. Though mediation was attempted on several days, it did not turn out to be successful.

12. Though prima facie, the case may appear to be having the flavor of a civil nature, I am of the view that the 2nd respondent has levelled the necessary allegations in the complaint to bring in the ingredients of the offence alleged as against the 1st petitioner herein. The sine qua non of the offence of cheating under S. 420 of the IPC is the dishonest intention of the person concerned at the time the other person parted with the money on the inducement made to her. If at the aforesaid time, the real intention of the accused was to cheat the de facto complainant, the offence can be said to be made out. If at that time, the accused had no such intention, but at a later stage, if for one reason or the other, she went back upon the representation made by her, the offence under S. 420 of the IPC will not be attracted. Ergo, it is only in those cases, where the representation on the basis of which the money is obtained by the accused was true or genuine at the time it was made or was not false to the knowledge of the accused, and subsequently, for one reason or the other, the accused turns dishonest and fails to carry out his part of the contract, can the dispute be said to be one of a civil nature.

13. It is by now settled that for quashing the FIR at the initial stage itself, the complaint must be bereft of even the basic facts which are absolutely necessary for making out the offence. If factual foundation for the offence has been laid in the complaint, the court should not hasten to quash the criminal proceedings during the investigation stage. (See Rajesh Bajaj Vs. State NCT of Delhi and Others [, AIR 1999 SC 1216]).

14. I am of the view that in so far as the 1st petitioner is concerned, the uncontroverted allegations made in the FIR, does disclose prima facie, the ingredients of the offence under S. 420 of the IPC. This is not a fit case wherein the extraordinary powers under S. 482 of the Code can be exercised to quash the FIR at the threshold itself. There are sufficient allegations in the complaint and its

truth or genuineness is to be ascertained on the basis of an impartial investigation. In so far as the 2nd petitioner is concerned, allegations are wanting in the complaint pointing to his complicity. Admittedly, the 2nd petitioner is an officer in the BSF and is working outside the state.

15. In view of the above, this Court is of the considered view that in so far as the 1st petitioner is concerned, this petition is liable to fail. The investigation has to proceed and it has to reach its logical conclusion. In so far as the 2nd petitioner is concerned, the petition will stand allowed and all further proceedings in Crime No. 1634 of 2014 of the Payyannur Police Station in so far as it is against him shall stand quashed.

16. The Criminal Miscellaneous Case is partly allowed as above.