
(2012) 10 AP CK 0095

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 10714 of 2009

Sri Angishetty Chandra Shekar

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202(1), 482
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2013) 1 ALD(Cri) 8 : (2013) 2 ALT(Cri) 332

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : A.H. Chakravarthy, for the Appellant; S. Ashok Anand Kumar for R-2
Asst. Public Prosecutor for R-1, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar

1. This Criminal Petition is laid u/s 482 of the Criminal Procedure Code (Cr.P.C.). The two petitioners seek for the quashing of C.C. No. 176 of 2009 on the file of the XI Metropolitan Magistrate, Cyberabad. The charge sheet was laid by the police alleging that the two petitioners are the accused and that they committed the offence u/s. 420 of the Indian Penal Code (IPC). The case of the second respondent-de facto complainant is:

a) The petitioners herein approached the second respondent and others through an intermediary by name Manchukonda Raghu and offer to sell Ac. 2.15 guntas of agricultural land situate at Mohobatnagar, Maheshwaram Mandal, Ranga Reddy District at Rs. 1 crore per acre. On 28.04.2006 the petitioners went to the house of the second respondent and received an advance of Rs. 60 lakhs from the second respondent and executed an agreement of sale.

b) The second respondent later came to know that there was a dispute regarding the title of the land. The second respondent consequently requested the

petitioners to resolve the dispute. The petitioners, however, failed to settle the title dispute about the property. Consequently, on 22.09.2008, the second respondent issued a legal notice to the petitioners demanding the return of the advance paid by the second respondent and others and also to pay damages. On 14.10.2008 the petitioners replied denying their liability to return the advance and damages.

c) The second respondent later came to know that the petitioners were aware about the land dispute, that they suppressed the same and made the second respondent believe that the petitioners had clear title of the property and that the petitioners thus committed the offence u/s. 420 IPC. This complaint was presented by the second respondent to Saroornagar Police Station on 18.11.2008. After due investigation, police laid charge sheet. The learned XI Metropolitan Magistrate, Cyberabad took the case on file u/s. 420 IPC as C.C. No. 176 of 2009.

2. The agreement between the petitioners on the one side and the second respondent and others on the other side was dated 28.04.2006. It would appear that some third parties filed O.S. No. 1546 of 2006 on the file of the VII Additional Senior Civil Judge, Ranga Reddy District, Hyderabad on 28.06.2006 in respect of several properties including the property which was offered by the petitioners to the second respondent for sale. In that suit, the first petitioner was arrayed as defendant No. 9. Be it noted that the second petitioner was not a party to O.S. No. 1546 of 2006. The second respondent in his turn filed a suit in O.S. No. 27 of 2009 on the file of the Principal District Judge, Ranga Reddy District against the petitioners for recovery of the monies received by the petitioners together with damages. O.S. No. 1546 of 2006 as well as O.S. No. 27 of 2009 would appear to be pending disposal.

3. Sri A.H. Chakravarthy, learned counsel for the petitioners contended that there was no element of criminal intention on the part of the petitioners, more so, at the time of the agreement of sale and that events subsequent to the date of agreement of sale cannot constitute criminal intention and cheating on the part of the petitioners. He also contended that the very fact that the second respondent lodged the complaint about 21/2 years after the agreement shows that there was no element of cheating on the part of the petitioners and that consequently, the criminal prosecution against the petitioners is not sustainable.

4. Sri S. Ashok Anand Kumar, learned counsel for the second respondent on the other hand contended that the charge sheet clearly makes out a case u/s. 420 IPC and that the charge sheet cannot be quashed at this stage. He placed reliance upon *Sunkari Sathaiah v. State of Andhra Pradesh* 2010 (2) ALD (Crl.) 363 (AP). In that case, in a petition u/s. 482 Cr.P.C., the accused filed documents. A learned single Judge of this Court held that documents filed by the accused could not be looked into at the stage of the petition u/s. 482 Cr.P.C. and that the Court was not expected to appreciate the evidence in a petition u/s. 482 Cr.P.C. It is the contention of the learned counsel for the second respondent that

at present, prima facie case is made out against the petitioners and that it is not proper to appreciate the finer aspects of evidence at this stage.

I shall examine the prima facie evidence that is available on record a little later.

5. In *Manda Krupakar Rao v. State of Andhra Pradesh* 2010 (2) ALD (Crl.) 373 (AP) relied upon by the learned counsel for the second respondent, the question was whether the statements of the complainant and other witnesses should be accepted at their face value in an enquiry u/s. 202(1) Cr.P.C. I am afraid that this decision relied upon by the learned counsel for the second respondent has no relevance. It was observed in that case that the Magistrate was expected to apply his mind while taking cognizance of the offences against the accused and issuing summons to the accused and that the statements of the complainant and his witnesses cannot be taken for granted at their face value, but the intrinsic quality of the statements is the criterion but not the face value of the statements. I, therefore, place no reliance upon this decision referred to by the learned counsel for the second respondent.

6. In *State of Andhra Pradesh v. Gourishetty Mahesh* 2010 (2) ALD (Crl.) 584 (SC), the Supreme Court exhaustively considered the parameters to be applied in a petition u/s. 482 Cr.P.C. The Supreme Court held that Section 482 Cr.P.C. is not made to short-circuit prosecution and bring about its closure without full-fledged enquiry and that the inherent powers cannot be exercised to stifle a legitimate prosecution. The Court observed that unless the allegations in the complaint did not constitute an offence of which cognizance has been taken by Magistrate, it is not open to the High Court to quash the same. It is contended by the learned counsel for the second respondent that the allegations in the charge sheet made out a prima facie case so much so taking cognizance of the same by the trial Court was perfectly justified. I shall examine the facts of the case keeping the ratio of the Supreme Court in mind. In *E. Sudheer Reddy v. Manda Kondanna* 2010 (2) ALD (Crl.) 262, the ratio in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, was quoted and was acted upon.

7. The learned counsel for the petitioners on the other hand placed reliance upon *G. Anugrahan v. D. Bhaskar Rao* (Crl. Appeal No. 217 of 1975, dated 12.11.1996). In that case, the complainant submitted an application in response to an advertisement.

The complainant was appointed by the firm. Salary was paid for a couple of months. The firm, however, failed to pay the salary thereafter on account of its financial constraints. The complainant sought for arrears of salary and refund of security deposit. As the firm did not comply with the demand, he lodged a complaint u/s. 420 IPC. This Court held that where the party aggrieved has an alternative remedy of a civil suit, the party should not be allowed to fight criminal litigation. In *M/s. Sri Revensa Siddeshwara Traders v. the State of A.P.* 2006 (2) APLJ 26 (SN), a criminal complaint under Sections 420 and 409 IPC was laid in respect of a commercial transaction. The case was referred as civil in

nature by the police when the complaint was forwarded to police u/s. 156(3) Cr.P.C. On protest petition by the complainant, the Judicial Magistrate of First Class took the case on file under Sections 409 and 420 IPC. He dismissed the discharge petition filed by the accused. This Court considered that the invocation of criminal law instead of filing a suit for loss sustained by the complainant was tantamount to abuse of process of law and that such abuse deserves to be prevented by exercising the powers u/s. 482 Cr.P.C. On the basis of this decision, it is contended by the learned counsel for the petitioners that prima facie case is not made out.

8. The charge sheet laid after due investigation may be examined to determine whether prima facie case was made out against the two petitioners herein. The charge sheet disclosed that the prosecution examined several witnesses. The facts as narrated have been prima facie found to be true. The police, however, stated in the charge sheet as follows:

... subsequently, the complainant came to know A.1 and A.2 got knowledge about the land dispute and suppressed it and made the complainant purchase the said disputed land and pay them huge amount of Rs. 60 lakhs....

Barring for the allegation that the petitioners were aware about the civil litigation and deliberately suppressed the same when they entered into an agreement of sale with the second respondent, the dispute per se would not be of criminal legal consequences. In respect of immovable property, if one claims it to be belonging to one, if the property subsequently is found to be belonging to some another person, it would not constitute cheating within Section 420 IPC. if one was aware that the title of the property was in dispute and deliberately represents to another that there was clear title to the property and induces such others to purchase the same, it would certainly be an offence u/s. 420 IPC.

9. While so, there is no prima facie evidence that the petitioners were aware that there was litigation and dispute regarding the title of the property before they entered into an agreement with the second respondent.

The agreement of sale between the petitioners and the second respondent was on 28.04.2006 whereas O.S. No. 1546 of 2006 was laid on 28.06.2006. Thus, by the date of agreement of sale, the suit was not instituted. It is not permissible to assume that there were disputes regarding the title of the property by 28.04.2006 itself and that the petitioners were aware of the same but deliberately entered into an agreement of sale with the second respondent. The allegation in the charge sheet that the second respondent later came to know that the petitioners had knowledge about the land dispute and that he deliberately suppressed the same is without any source of such information. How did the second respondent come to know that the petitioners did not have title to the property? Where is prima facie evidence to show that the petitioners deliberately suppressed information from the second respondent? I am afraid that in the absence of these material particulars the charge sheet allegations do

not prima facie constitute an offence u/s. 482 Cr.P.C.

10. In Bhajanlal's case, the first parameter was whether the allegations in the FIR would constitute an offence if the allegations are taken at the face value.

The Supreme Court also held in that case that where the allegations made in the FIR so absurd and inherently improbable on the basis of which no prudent person could reach a just conclusion that there was sufficient ground to proceed against the accused, it should be considered to be a fit case to stop prosecution.

11. I am afraid that a sweeping general statement that the de facto complainant later came to know that the petitioners were aware about the land dispute is not sufficient to constitute the offence u/s. 420 IPC. This is all the more so where it is not even stated as to the source of information of the second respondent that the petitioners were aware about the land dispute. Where admittedly there is land dispute and admittedly when the land dispute arose after the agreement of sale, it cannot be inferred that the dispute existed even by the date of agreement of sale, much less considering that the petitioners were aware of the same and deliberately suppressed the same before the second respondent. Barring for the land dispute, the claim of the second respondent becomes unsustainable. Where source of information of the second respondent is not spelt out, the criminal complaint against the petitioners deserves to be quashed, as the case squarely falls under guidelines 1 and 5 of Bhajanlal's case. I consider that no prima facie case is made out against the petitioners. Consequently, C.C. No. 176 of 2009 deserves to be quashed as against the petitioners and is accordingly quashed. The Criminal Petition No. 10714 of 2009 is, accordingly, allowed.