(2013) 09 KAR CK 0201

In the Karnataka High Court

Case No : Criminal Petition No. 2863 of 2008

Sri. K.V. Kishore APPELLANT

Vs

State of Karnataka and M/s. Rajesh Exports Ltd. RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 403, 405, 406, 418, 420

Citation : (2013) 09 KAR CK 0201

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : C.V. Nagesh, for Sri. K.R. Lankesh, for the Appellant; B. Raja Subramanya Bhat, HCGP for R-1 and Sri. Kiran S. Javali and Sri. K. Chandrashekar for R-2, for the Respondent

Final Decision : Allowed

Judgement

K.N. Keshavanarayana, J.—In this petition filed u/s 482 of Cr.P.C., the petitioner has sought for quashing the FIR registered by Cubbon Park Police in Crime No. 127/2008 for the offences punishable under Sections 403, 406, 418 and 420 of IPC on the basis of the report lodged by Respondent No. 2 herein. Respondent No. 2 lodged the report dated 23.06.2008 before the officer incharge of the Cubbon Park Police Station inter alia alleging that the petitioner herein representing M/s. Jewels De Paragon Pvt. Ltd., obtained 22 Carat gold jewellary weighing 50000 Gms. on 23.08.2000 from the complainant on loan basis to be returned back to it and in that regard, an agreement dated 23.08.2000 was also entered into between the parties setting-out all the terms and conditions agreed upon; that as per the terms of the agreement, the accused person was to return back 22 Carat gold jewellary of 50000 Gms. within 15 days on notice; that even after the repeated requests and personal pursuance, the accused person has failed to return the gold jewellary. It is further alleged in the complaint that the complainant came to know that the accused person has dishonestly misappropriated and converted for his own use the 22 carat gold jewellary of

50000 gms. in violation of agreement dated 23.08.2000 and he has either disposed of the said property or converted the said property for his own use and thereby he has committed criminal breach of trust, cheating and criminal conspiracy. With these allegations, Respondent No. 2 sought the police to investigate into the matter and to deal with the accused person in accordance with law. On the basis of the said report, case in Crime No. 127/2008 for the offences punishable under Sections 403, 406, 418 and 420 of IPC came to be registered and investigation was taken-up. On coming to know of the registration of the case by the jurisdictional police, the petitioner presented this petition. However, this court by order dated 27.06.2008 stayed the investigation. Since then, there was no investigation.

2. After service of notice of this petition, Respondent No. 2 has entered appearance through its counsel.

3. I have heard Sri. C.V. Nagesh, learned Senior Counsel appearing for the petitioner and Sri. Chandrashekar, learned counsel appearing for Respondent, No. 2.

4. Quashing of the FIR is sought inter alia on the grounds that the entire transaction between the petitioner and Respondent No. 2 is purely civil in nature and the said civil transaction is sought to be converted into a criminal liability only with a view to coerce the petitioner to come to the terms of the 2nd respondent; that reading of the terms of the agreement and subsequent transaction between the parties would indicate that the ingredients of any of the offences alleged in the FIR are not made-out, as such, the registration of the case by the police and the proposed investigation is abuse of process of law, as such, it is liable to be quashed.

5. Certain undisputed facts which emerge from the documents are that an agreement dated 23.08.2000 was entered into between the petitioner representing M/s. Jewels De Paragon Pvt. Ltd., and the 2nd respondent, whereunder Respondent No. 2 delivered 22 carat gold jewellery weighing 50000 Gms. to the petitioner as loan. As per clause (3) of the said undisputed agreement, the gold jewellary was given on loan basis to the petitioner for its business purposes and the petitioner is entitled to utilize the same for his business purposes. Under the said agreement, Respondent No. 2 had power to decide by itself as to when the loan should be terminated and 50000 gms. of 22 carat gold jewellery has to be recalled, and in such an event, the petitioner was required to return the gold jewellery within 15 days of the notice from Respondent No. 2 and in the event of the petitioner failing to return the said gold jewellery so lent, it shall be treated at that point of time as having been automatically sold by the complainant and as having been purchased by the petitioner and the value of the said 50000 gms. of gold jewellery stands automatically payable forthwith and to ensure the proper payment of the value of the gold jewellery, a cheque for Rs. 3 crores and an on demand promissory note were delivered to the complainant by M/s. Jewels De Paragon Pvt. Ltd. and

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another cheque for Rs. 3 Crore issued by petitioner, who was the signatory to the agreement, was delivered to the complainant. It is also not in serious dispute that at some point of time, the complainant recalled the loan and on the failure of return of the gold jewellary, the petitioner was treated as defaulter and the cheques delivered by him were presented for encashment by the Respondent No. 2. However, the cheques were dishonoured, based on which, two prosecutions for the offence punishable u/s 138 of the N.I. Act came to be initiated in C.C. Nos. 19781/2007 and 19782/2007 against M/s. Jewels De Paragon Pvt. Ltd. and this petitioner, respectively. It appears, during the pendency of the said prosecutions, settlement was arrived at between the parties and an agreement of sale dated 21.12.2007 was entered into between the parties, whereunder, the petitioner along with his wife, as owners of certain immovable property, agreed to sell the same to Respondent No. 2 for a total consideration of Rs. 39 crores and whatever amount said to be due from this petitioner in his individual capacity and as Director of M/s. Jewels De Paragon Pvt. Ltd. on the basis of the gold loan etc., were treated as payment of advance for the sale of that property. As per the terms of the said agreement, Respondent No. 2 agreed to unconditionally withdraw C.C. Nos. 19781/2007 and 19782/2007 and also to issue ''No Due Certificate''. However, it appears the aforesaid prosecutions, as agreed, were not withdrawn and once again some more differences cropped-up between the parties, which ultimately culminated in initiation of an Arbitral Proceedings, as per the terms of the agreement dated 21.12.2007. Before the Arbitral Tribunal, Respondent No. 2 sought for specific performance of the agreement dated 21.12.2007, whereas the petitioner contended that the said agreement was only a security document and he never intended to sell the property. It is now reported that subsequently the Arbitral Proceedings culminated in an award, wherein the prayer for specific performance of agreement of sale and for compensation came to be rejected. However, an award has been passed directing the petitioner and others jointly and severally to pay Respondent No. 2 herein a sum of Rs. 1,80,16,465/- (Rupees One Crore Eighty Lakhs Sixteen Thousand Four Hundred and Sixty Five only) towards the value of the unreturned gold and a sum of Rs. 1,25,08,313/- (Rupees One Crore Twenty Five Lakhs Eight Thousand Three Hundred and Thirteen only) towards interest accrued on the said amount upto the date of the award.

6. As could be seen from the aforesaid undisputed documents, it is clear that the 22 carat gold jewellery weighing 50000 gms. was given to the petitioner representing M/s. Jewels De Paragon Pvt. Ltd., as loan for being utilized by the petitioner for his business purposes. The terms and conditions agreed upon in that regard, between the parties have been reduced into writing and the parties duly signed the said document. The consequences of not returning the gold jewellery upon issuance of notice has also been set-out in the terms of the agreement. As per the said terms, as noticed supra, in the event of petitioner''s failure to return 50000 gms. of gold jewellery, he would be liable to pay the value thereof. Subsequently, value of the unreturned gold was treated as

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consideration for the sale of immovable property owned by the petitioner and his wife, in respect of which an agreement came into existence between the parties. In the background of these admitted facts, the question to be considered is, as to whether the ingredients of any of the offences alleged have been prima facie made-out.

7. Section 403 of IPC deals with punishment for dishonest misappropriation of property. To attract the offence u/s 403 of IPC, there should be dishonest misappropriation or conversion of the property for his own use. As noticed supra, 50000 gms. of gold jewellery was given to the petitioner as loan and he was permitted to utilize the same for his business purposes. In case of non-return of gold jewellery, the petitioner was required to pay the value thereof. Under these circumstances, there is no dishonest misappropriation or conversion of the property to his own use by the petitioner. He was permitted to use gold jewellery for his business purposes and therefore, in my considered opinion, the ingredients of Section 403 of IPC are not made-out, in the facts and circumstances of the ''case.

8. Section 406 of IPC is the penal section for the offence of ''criminal breach of trust''. Section 405 of IPC defines ''criminal breach of trust'', which reads as under:-

Section 405-Criminal Breach of trust,-

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 wilfully suffers any other person so to do, commit "criminal breach of trust.

Explanation: xxx

9. In the light of the discussion made above, the ingredients of Section 405 of IPC also are not made-out for the reason that there is no dishonest misappropriation or conversion of the property.

10. Having regard to the facts and circumstances of the case, the ingredients of Section 418 of IPC which deals with ''cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect, are not attracted.

11. Section 415 of IPC defined ''Cheating'', which is punishable u/s 420 of IPC. To attract the offence of cheating, one must deceive another and fraudulently or dishonestly induce another to deliver any property or to consent that any person shall retain any property, or intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived. Here, in the case on hand, from the admitted facts, there is no fraudulent or

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dishonest inducement by the petitioner. Respondent No. 2, even according to the terms of the agreement, delivered gold jewellery as loan and the petitioner was required to return the gold or the value thereof. As noticed supra, by subsequent agreement, the value of the unreturned gold was treated as advance for sale of the property. Having regard to the above factors, the ingredients of none of the offences alleged in the FIR gets attracted. The entire transaction between the parties is purely civil in nature and the same is sought to be converted into a criminal act, obviously, as an arm-twisting tactic. A copy of the Arbitral Award dated 03.10.2010 is made available for the perusal of this court. As per the award, prayer for specific performance made by Respondent No. 2 in terms of the agreement dated 21.12.2007 has been rejected and the petitioner along with others have been directed to pay the value of the unreturned gold along with interest accrued thereon. Of course, it is the submission of the learned counsel for Respondent No. 2 that, the petitioner and others have not complied with the award passed by the Arbitral Tribunal. If according to the 2nd respondent, award of the Arbitral Tribunal has not been satisfied, it is open for it to enforce the same in accordance with law. However, that by itself would not make the non satisfaction of the said award a criminal liability.

12. Reliance placed by the learned counsel for Respondent No. 2 on two decisions of the Apex Court in the cases of Trisuns Chemical Industry Vs. Rajesh Agarwal and others, and Sri Krishna Agencies Vs. State of A.P. and Another, has no relevance to the facts of this case. In these decisions, the Apex Court has held that Existence of an arbitration clause in the contract would not be sufficient ground for quashing the complaint. This court is not quashing the FIR on the sole ground that the terms of the agreement provides for an Arbitration. However, this court has found that the transaction between the parties is purely civil in nature and that the ingredients of any of the offences alleged are not attracted. Therefore, no sustenance can be drawn from the aforesaid decisions.

13. In view of the above discussions, I am of the considered opinion that the FIR registered by the police is abuse of the process of law, as such., the same is liable to be quashed. In the result, the petition is allowed. The FIR registered by Cubbon Park Police in Crime No. 127/2008, is hereby quashed.

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