
(2008) 07 MP CK 0052
In the Madhya Pradesh High Court

Tej Singh and Others

APPELLANT

Vs

Rewa Ram and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2008) CriLJ 4652 : (2008) ILR (MP) 2145 : (2009) 1 MPLJ 172

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Judgement

P.K. Jaiswal, J.

Heard.

By taking aid of inherent jurisdiction u/s 482 of Cr.P.C., petitioners had filed this petition for quashing the criminal proceedings initiated against them for an offence punishable under Sections 406, 420 and 120B of I.P.C. and consequential order passed by the Chief Judicial Magistrate, Vidisha on 23.08.2007 by which he directed the Supdt. of Police, Vidisha to investigate the same u/s 156(3) of Criminal Procedure Code.

Brief facts of the case are that the petitioner No.1 entered into an agreement to sell over an area of 9.95 hectares of Survey No.171/2/2 situated at Village Khemkheda, Tehsil and District Vidisha in favour of respondents No.1 and 2 for a consideration of Rs.9 lakhs on the ground that he is exclusive owner and title holder of the said land and he need money for his personal necessity. On 29.07.2003, he executed an 2 M.Cr.C. No.3165/2008 agreement with the respondents No.1 and 2 vide Annexure P/3. As per agreement, on 29.07.2003 he received Rs.4 lakhs through draft and cheque from the respondents No.1 and 2. The balance amount of Rs.5 lakhs was to be paid on or before 28.07.2004, with a condition that he will execute the sale deed on or before 28.07.2004 and possession of the said land will be delivered to them. It is also averred that in case the petitioner No.1 failed to execute the sale deed, then respondents No.1

and 2 get it executed through Court at the risk and cost of the petitioner No.1. Petitioners No.2 and 3 are sons of petitioner No.1.

On 23.08.2007 (Annexure P/1), the respondents No.1 and 2- complainants filed a private complaint u/s 190 of Cr.P.C. against the petitioners for the offence punishable under Sections 406, 420 and 120B of I.P.C. on the ground that petitioners executed an agreement to sell vide agreement dated 29.07.2003 in respect of the above mentioned area for a consideration of Rs.9 lakhs and Rs.4 lakhs was paid through draft and cheque at the time of execution of the agreement and rest of the amount was to be paid on or before 28.07.2004. The respondents No.1 and 2 time and again asked the petitioner No.1 to execute the sale deed in their favour but no sale deed was executed. In the month of December 2004, the petitioner No.1 and petitioners No.2 and 3, who are sons of petitioner No.1 jointly filed an application u/s 178 of M.P. Land Revenue Code 1959 for partition of the said land. The Naib Tehsildar vide order dated 24.01.2005 (Annexure P/4) allowed the application and partitioned the land in question between them. It is averred that this partition was effected just to defeat the agreement to sell executed by the petitioner No.1 in favour of respondents No.1 and 2. In para-5 of the complaint, it is averred that at the time of execution of agreement to sell, petitioners No.2 and 3 were also present and in their presence, part of consideration was paid. Thereafter, the petitioner No.1 did not honour the agreement in spite of the fact that complainant visited him on 31.01.2005 and 30.04.2007 and requested him for execution of sale deed but no sale deed was executed. According to the complainants, the petitioners thus have cheated them. On the basis of the above fact, the Chief Judicial Magistrate directed for investigation u/s 156(3) of Cr.P.C. 3 M.Cr.C. No.3165/2008

Learned Counsel for the petitioners at the outset made statement at bar that he does not want to press this application on behalf of the petitioner No.1-Tej Singh and, therefore, the application for quashing the investigation and private complaint against the petitioner No.1-Tej Singh is dismissed, as not pressed.

In respect of the petitioners No.2 and 3, he submits that they were not party to the agreement to sell dated 29.07.2003 nor they were present at the time of execution of the agreement nor in the agreement, it is averred that they agreed for execution of the agreement to sell in favour of complainants and, therefore, no proceeding can be drawn against them.

His next submission is that it was a pure and simple case of breach of agreement to sell creating civil liability between the parties and appropriate remedy for the complainant was to file a civil suit for specific performance of agreement and not to file a criminal complaint. The arguments of the learned Counsel for the petitioners No.2 and 3 is that in absence of any agreement with the petitioners No.2 and 3, on the basis of paras-4 and 5 of the complaint, no case for prosecution u/s 406, 420 and 120B of I.P.C. is made out against them.

A series of cases were cited by the learned Counsel for the petitioners No.2 and

3, in which it is laid down that the condition on which prosecution of criminal complaint/proceeding can be quashed by the Court. Learned Counsel for the petitioners No.2 and 3 placed reliance on the following citations which are as follows:

1. Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and Another, .

G. Sagar Suri and Another Vs. State of U.P. and Others, .

S.W. Palanitkar and others Vs. State of Bihar and another, .

Anil Mahajan v. Bhore Industries Ltd. and Anr. 2005 (10) SCC 228.

Uma Shankar Gopalika v. State of Bihar and Anr. 2005 (10) SCC 336.

Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors. AIR 2007 SCW 6679.4 M.Cr.C. No.3165/2008

On the other hand, learned Counsel for the complainant's drew my attention to paras-4, 5 and 6 of the complaint and submits that at the time of execution of the agreement, petitioners No.2 and 3 were present and in their presence, agreement was executed and it is not the case of the petitioners No.2 and 3 that in the complaint, there is no averments against them so as to infer fraudulent or dishonest intention having been made by them. Paras-4 and 5 of the complaint (Annexure P/1) reads as under:

4 ;g fd fodz;h frfFk vkus ds iwoZ vfHk;ksxh dzeKad 1 us vkjksih dzeKad 1 ls fodz; vuqca/ki= ds eqrkfd fodz; dh xbZ Hkwfe;ksa dk fodz;i= laikfnr djus o "ks" k :i; k izkIr djus dk dgk rks vfHk;qDr dzeKad 1 us csbekuhiwoZd vfHk;ksxh ls fy, x, pkj yk[k :i; k gM+ius ds mn~ns"; ls vuqcaf/kr Hkwfe dk caVokjk vius iq=ks ds uke ls vFkZkr vfHk;qDr dzeKad 2 o 3 ds lkFk "kM+;a= djds dj fy;k rFkk vuqcaf/kr Hkwfe dks xzke iVokjh ds ek;/e ls vius vius uke ukekarj.k dj fy;k rkfd vfHk;ksxh ds lkFk tks vuqca/k fd;k Fkk mls fMQhV fd;k tk lds ,oa vuqca/k i= dks csvlj fd;k tk lds A

5- ;g fd ftl le; vuqcaf/kr Hkwfedk vuqca/k i= laikfnr fd;k x;k Fkk ml le; mlds yM+ds vfHk;qDr dzeKad 2 o 3 Hkh ekStwn Fks rFkk vfHk;qDrx.k dh mifLFkfr esa vuqcaf/kr Hkwfe dk fodz; dk r; fd;k x;k Fkk ,oa fodz;/ku pkj yk[k vadu 4]00]000@& ,Mokal mlds yM+dks ds le{k izkIr fd;k x;k Fkk A pwaFd IHkh vkjksihx.k ds eu esa on;fUr Fkh bl dkj.k mUgksus vfHk;skxh ds lkFk Ny djds ds mn~ns"; ls mijksDr Hkwfedk fodz; djus dk vuqca/k dj pkj yk[k vadu 4]00]000@& :i; k izkIr djus ds fy, vfHk;ksxh.k dks mRizsfjr dj izkIr dj fy,] mlds ckn cVokjk dj Hkwfe vfHk;qDr dzeKad 2 o 3 ds uke dj nh xbZ A

I have heard the arguments of the learned Counsel for the parties at length and perused the pleadings of the parties, complaint and the order passed by the learned Magistrate. 5 M.Cr.C. No.3165/2008

Having taken into consideration all the materials made available on record by the parties and after hearing the learned Counsel for the parties, I am satisfied that

the criminal proceedings initiated by the respondents No.1 and 2 against the petitioners No.2 and 3 are wholly unwarranted. The complaint is an abuse of the process of Court and proceedings are there, therefore, liable to be quashed.

In the complaint, it is nowhere stated that respondents No.1 and 2 were ready to pay the balance amount of Rs.5 lakhs to the petitioner No.1. When the petitioners failed to honour the agreement to sell, no legal notice was issued to them nor complainants filed any document to prove that they were ready to pay balance amount on or before 28.07.2004 or sent a Cheque/Draft for the balance amount of Rs.5 lakhs which was part of the consideration and petitioners, in spite of that, did not honour the agreement to sell dated 29.07.2003. Merely because an agreement to sell was entered into which agreement the petitioner No.1 failed to honour, it cannot be said that the petitioners No.2 and 3 have cheated the respondents No.1 and 2.

Under Section 420 of I.P.C. to hold a person guilty of cheating, it is necessary to show that he had 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. Section 406 of I.P.C. will be attracted in case of criminal breach of trust. From the averments of the agreement to sell and complaint, it cannot be said that the breach of trust has been committed by the petitioners No.2 and 3. No agreement was executed by the petitioners No.2 and 3 and, therefore, at this stage, on the basis of the agreement and complaint, it cannot be said that petitioners No.2 and 3 have misappropriated or converted the property in question to their own use. From the averments made in the plaint and the agreement executed by the petitioner No.1 with the complainant, it cannot be said that petitioners are party to criminal conspiracy to commit an offence punishable u/s 120B of I.P.C.

The basic ingredients of offence under Sections 406, 420 and 120B of I.P.C. are altogether missing in the private complaint filed by the respondents No.1 and 2 against the petitioners No.2 and 3. Therefore, by no stretch of imagination, the petitioners No.2 and 3 can 6 M.Cr.C. No.3165/2008 be prosecuted for offences under Sections 406, 420 and 120B of I.P.C.

The Apex Court in the case of Inder Mohan Goswami and another (supra) has observed that the powers possessed by the High Court u/s 482 of the Criminal Procedure Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. Para-45 is relevant which reads as under:

45. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that

would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Court u/s 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases.

For the reasons aforementioned, this petition is partly allowed. The complaint filed by the respondents No.1 and 2 in the Court of Chief Judicial Magistrate, Vidisha on 23.08.2007 is directed to be quashed only against the petitioners No.2 and 3. Needless to say, the respondents No.1 and 2 are at liberty to pursue such other remedy under the civil law, as may be available to them.