

(2014) 06 KAR CK 0007
In the Karnataka High Court
Case No : Criminal Petition No. 5521 of 2012

Vakil Housing Development Corporation

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2014) 4 AKR 794 : (2014) ILR 6564 : (2014) 4 KCCR 3852

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : Ganapathi Hegde, Advocate for DUA Associates, Advocate for the Appellant; Keshava Murthy, Addl. S.P.P. and S. Kalyan Basavaraj, Advocate for the Respondent

Judgement

S.N. Satyanarayana, J.—Accused Nos. 1 to 5 in PCR No. 24421/2011 pending on the file of IV ACMM Court, Bangalore, have come up in this petition seeking quashing of the said proceedings.

2. Admittedly the PCR is filed by the second respondent herein. The transaction between the petitioners and second respondent, which has led to filing of this petition, is as under:

A construction agreement is entered into between the first petitioner - Company and second respondent - Company with reference to property belonging to second respondent. In the said transaction, it is stated that certain cheques were deposited with the first petitioner towards performance guarantee amount. It is not in dispute that the project, which was taken up between the first petitioner and second respondent did not take off for various reasons, which is subject matter of a litigation pending in arbitration case initiated by them. It is also stated that the construction agreement, which was entered into in the year 2008 was rescinded by the second respondent herein unilaterally on 01.05.1999 by

issuing a notice. It is seen that the cheques, which were in the custody of the first petitioner sought to be encashed on 10.06.2009. Since the said cheques were dishonoured at the instance of the second respondent, a proceeding was initiated against the second respondent by the first petitioner under the provisions of 138 of N.I. Act, which is pending consideration on the file of XIV ACMM Court, Bangalore, in three separate criminal complaints bearing Numbers, C.C. Nos. 31830/2009, 97905/2009 and 109155/2009. It is also not in dispute that filing of the said complaints was the subject matter of three criminal petitions, which were ultimately taken up to Apex Court in S.L.P., by the second respondent and all the petitions came to be dismissed and the proceedings in the aforesaid three criminal complaints are continued against the second respondent as initiated by the first petitioner. When the matter stood thus, it is seen that another complaint is filed by the second respondent herein, which is pending consideration in PCR No. 24421/2011 for the offence punishable under Section 420 of IPC, on the premise that there is element of cheating by petitioner Nos. 1 to 5 in tendering cheques that were deposited with the first petitioner - company in terms of performance guarantee agreement. Therefore the first petitioner and its Directors should be tried for the offence punishable under Section 420 of IPC.

3. It is seen that in the said PCR, an order was passed by the learned Magistrate directing investigation into the matter by the jurisdictional police under Section 156(3) of Cr.P.C., which is challenged by the accused Nos. 1 to 5 in the said proceedings on the ground that filing of private complaint in PCR No. 24421/2011 is counterblast to the proceedings initiated by them for the offence punishable under Section 138 of N.I. Act, therefore the same is required to be quashed at the threshold. Another contention, which is urged in the present petition is to the effect that the co-ordinate Bench of this Court while deciding Crl. P. Nos. 5898/2011 C/w 5899/2011 & and 3679/2011 by its order dated 07.03.2012 has already held that an attempt on the part of the first petitioner herein in trying to encash the cheques cannot be found fault with and the proceedings initiated under Section 138 of N.I. Act, also cannot be challenged. While dismissing the said Criminal Petitions filed by the first petitioner and its Directors challenging the proceedings under Section 138 of N.I. Act, on the file of XIV ACMM Court, Bangalore. In addition to that, petitioners rely upon the Judgment of the Apex Court in the matter of Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, , wherein the petitions filed by the accused therein was allowed relying upon the Judgment rendered in the matter of State of Haryana vs. Bhajan Lal, wherein the guidelines are issued regarding how criminal petition should be dealt. The petitioners mainly rely upon the seventh condition and tried to substantiate that the present petition is counterblast to the complaint, which is filed by them under Section 138 of N.I. Act. Therefore the same would amount to retaliation to the criminal cases and directly covered by the Judgment rendered by the Apex Court in the matter of State of Haryana vs. Bhajan Lal, which is followed in the aforesaid Judgment.

4. Heard the learned counsel for the petitioners, learned Additional SPP for

respondent No. 1 and learned counsel for respondent No. 2. Perused the material available on record. On going through the same, this Court find that the transaction between the first petitioner and second respondent with reference to construction agreement is not in dispute. It is also not in dispute that certain cheques were issued by the second respondent to the first petitioner under the performance guarantee agreement as guarantee amount. It is also not in dispute that the construction work has not taken off and the terms of construction agreement is subject matter of proceedings before an arbitrator. It is stated that the matter has reached the stage of final arguments in the said proceedings. In this background, it is stated that much earlier to all this, a notice was issued on 01.05.2009 by the second respondent in rescinding the agreement for the reasons stated therein. It is subsequent to that notice the cheques which were in the custody of petitioners are presented for realisation and on getting the said cheques bounced, three criminal proceedings are initiated by the first petitioner herein against the 2nd respondent and its directors. It is also not in dispute that the proceedings, which were initiated seeking quashing of the proceedings under Section 138 of N.I. Act, by the second respondent, has resulted in his petition being dismissed with a clear understanding that all the grounds which were urged are required to be decided on the basis of evidence to be recorded. Since they are all matters touching appreciation of the fact, the same cannot be decided in a criminal petition, which observation is upheld by the Apex Court in SLP (Crl.) Nos. 4503-4505/2013. When the matter stood thus, the correctness or otherwise of the initiation of proceedings in PCR No. 24421/2011 is the subject matter of challenge in this petition.

5. After hearing the counsel for both the parties, this Court is of the opinion that filing of a private complaint by second respondent in itself would not amount to accepting as an offence is said to have committed by the first petitioner or its Directors. Certain allegations are there in the private complaint regarding the manner in which the cheques of 2nd respondent are sought to be encashed, which were tendered, in terms of performance guarantee agreement. The allegation is when contract for construction is rescinded, cheques issued towards performance guarantee could not have been presented for encashment, such act amounts to cheating, the correctness or otherwise of the same cannot be gone into by this Court by holding a rowing enquiry as observed by the Apex Court. To decide whether a petition at this juncture will have to be entertained and the complaint, which is pending consideration should be quashed would be pre-judging the issue. When certain allegations are made against the first petitioner and its directors trying to scuttle the same even before the investigation into the same is completed would be premature. In view of the fact that the investigation is still in progress, question of quashing the complaint does not arise. Instead of urging for quashing of the proceedings before this Court, liberty is reserved to the petitioners to place all these materials before the investigating agency to look into the matter and file its report. The correctness or otherwise of the report could be the subject matter of either a petition under Section 482 of Cr.P.C., or

for discharge before the learned Magistrate depending on the outcome of the report. Until the report is filed and a decision is taken by the learned Magistrate, question of interfering with the same at this juncture would be premature.

6. The judgments which are referred to supra would not enure to the benefits of the petitioners for the reason that admittedly the transaction between the first petitioner and second respondent is a commercial transaction based on agreement. Therefore, the element of enmity or personal grudge would not come in the way to presume that the present PCR is a counterblast to the criminal complaint, which is filed under Section 138 of the N.I. Act, by the petitioners herein. At this juncture, it would be a far fetched presumption on the part of this Court to believe the same and to quash the complaint. In that view of the matter, this Court feel that until the investigation is complete, question of either staying the complaint or quashing the same does not arise. Accordingly the present petition is dismissed.

While doing so, the investigating agency is put on guard to complete the investigation within three months from today without causing harassment or embarrassment to both the parties in the guise of investigation.