
(2003) 07 KL CK 0019
In the High Court Of Kerala
Case No : Criminal M.C. No. 1449 of 2000

V,P. Kunhali Haji

APPELLANT

Vs

State of Kerala and Ann

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 204, 227, 228, 239
Penal Code, 1860 (IPC) — Section 420

Citation : (2004) 1 KLJ 615

Hon'ble Judges : R.Basant, J

Bench : Single Bench

Advocate : K. Ramakumar and T. Ramprasad Unni, for the Appellant; P.K. Sunesh Kumar, K.P. Sudheer and P.M. Habbed (PP), for the Respondent

Final Decision : Dismissed

Judgement

R.Basant

1. The accused is the petitioner. He prays that the criminal prosecution initiated against him by the 2nd respondent/complainant u/s 420 of the Indian Penal Code may be quashed. The complainant had initiated proceedings by filing a private complaint. The gist of the allegations raised by him in the complaint is that the accused had indulged in the offence of cheating. It was a transaction in landed property. The accused had obtained property under Ext.P3 document in the year 1973. He claims to be in possession of the remaining extent of property. He induced the petitioner to believe that the remaining extent - an extent of 91/2 centrs is available with him. Making the accused/his mother believe that he has 91/2 cents.of the 12 cents acquired by him under Ext.P3 after excluding the 21/2 cents sold by him, he induced him to pay the price thereof and take Ext.PI assignment in the name of the mother of the complainant. The mother of the complaint died and the complainant is the legal heir of his mother. The complainant has now come to realise that the accused had fraudulently suppressed the execution of Ext.P8 document prior to the execution of Ext.P 1

document. Under that document Ext.P8, the accused had transferred 3.75 cents of land to another. In short, the contention is that while entering into the sale transaction with the mother of the accused, the accused had fraudulently suppressed the fact that he had already assigned 3.75 cents of land under Ext.P8 to another and had made a false representation that the entire property acquired under Ext.P3 less 21/2 cents which he had already assigned do belong to him and was in his exclusive possession. On coming to know Ext.P8, the de facto complainant had preferred the complaint.

2. Pre-charge enquiry was conducted. After adducing evidence, the learned Magistrate considered the question whether the accused is entitled to be discharged. The court came to the conclusion that the complainant has succeeded in establishing such a case which if unrebutted would warrant of a conviction. Accordingly, the learned Magistrate did not discharge the accused; but held that the charges are liable to be framed. This order is assailed before me in this proceedings.

3. The nature and quality of the jurisdiction of this Court under Sec.482 of the Cr.p.c is well established. In fact, according to me, the accused has certainly a right of revision against the impugned order. Without invoking such right of revision the petitioner/ accused has rushed to this Court. However, since this Court has both concurrent revisional jurisdiction and jurisdiction under Sec.482 of the Cr.p.c, I do not want to dismiss this petition on the ground that the revisional jurisdiction has not been invoked.

4. The law on the point is well settled. At the stage of Sec.245(1) of the Cr.p.c. the learned Magistrate is not expected to resort to the exercise of weighing the evidence in golden scale. The learned Magistrate need only consider at that stage whether such a case has been made out which if unrebutted would warrant a conviction. If such a case has been made out.-charge has to be framed under Sec 246 of the Cr.p.c. presuming that the accused has committed the offence. If such a case has not been made out. the accused must be discharged under Sec 245(1) of the Cr.P.C.

5. The requirement under Sec.245(1) 246 of the Cr P.C. has been loosely referred to even by the legal elite/experts as the requirement of a prima facie case. A court must always remember that the precise satisfaction contemplated is not that of a "prima facie case"; but of "a case which unrebutted would warrant a conviction". The nature of satisfaction which a criminal court is to entertain at various stages of the trial does certainly vary from stage to stage. At the threshold/initial stage of Sec.203/204 of the Cr.P.C. the court has to consider whether there is sufficient ground to proceed against the accused. At the stage of Sec.245(1) Cr.P.C. the court has to consider whether such a case has been made out which if unrebutted would warrant a conviction. At any prior stage also the case can be discharged provided the court entertains a satisfaction under Sec.245(2) of the Cr.P.C. that the charge against the accused is "groundless". In proceedings under Sec.239/240 of the Cr.P.C. the court is to consider whether

the charge against the accused is groundless. If so, the accused is to be discharged. If not, it has to be presumed that the accused has committed the offence and charge has to be framed. Under Sec.227/228 of the Cr.P.C. the Court of Session before framing charge need only consider whether there are sufficient grounds to proceed against the accused. If there are such grounds, charge has to be framed. If not, it has to be presumed that the accused has committed the offences and charge must be framed under Sec.228 of the

6., I repeat that the exercise of weighing the evidence in golden scale is not to be resorted to by a court at the stage of Sec.245(1) of the Cr P.C, Certain facts appear to be very evident. The accused owned certain properties. Before Ext.P 1 assigned, he had assigned 3.75 cents under Ext.P8. The written word in Ext.P 1 shows that existence of Ext.P8 was not revealed to the vendee. The written word in Ext.P1 further indicates that there was a representation that there was no other encumbrances than what is recited in Ext.P1. If by such representation, the accused, had induced the vendee or any one who negotiated on behalf of the vendee to believe that those representations were true and to enter into Ext.P I transaction, the accused must certainly be held to satisfy the requirement of Sec.245(1) of the Cr. PC. Whether the principles of caveat emptor should apply etc, are not to be decided finally at the stage of Sec. 245(1) of the Cr. PC. In these circumstances, I find no merit in the contention that the learned Magistrate could not have entertained the requisite satisfaction under Sec.245(1) of the Cr.P.C.

7. The vendee was the mother of the complainant and not the complainant. If the complainant was so induced, certainly he can sustain the complaint filed against him. If, on the contrary, the mother of the complainant was so induced, his mother having already expired, the complainant who is the legal heir is certainly entitled to complain. It is by now well settled, that "the criminal law can set in motion in any person. The inadequacy of pleadings as to who precisely was deceived is again according to me not a sufficient ground to invoke the powers either under Sec.482 of the Cr.P.C. or as a Court of revision under Sec.401 of the Cr.P.C. Whether as the person deceived or as the only son of the person deceived, the 2nd respondent's competence to initiate proceedings cannot be doubted or questioned. In any view of the matter, I am of opinion that the impugned order does not warrant interference. The challenge fails.

8. In the result, this petition is dismissed. I make it clear that no expression of opinion in this order is intended to fetter the rights of the petitioner/accused to raise all contentions before the learned Magistrate. The learned Magistrate must consider all such contentions on merits uninfluenced by the observations made in this order.