
(2022) 11 TEL CK 0097

High Court For The State Of Telangana:: At Hyderabad

Case No: I.A.No. 1 Of 2022 In Criminal Petition No. 1559 Of 2020

Sukesh Gupta & Others

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: Nov. 22, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 406, 409, 420
- Code of Criminal Procedure, 1973 - Section 482
- Negotiable Instrument Act, 1881 - Section 138- Transfer of Property Act, 1882 - Section 67

Hon'ble Judges: K.Surender, J

Bench: Single Bench

Advocate: H. Rajesh Kumar, M.P.K. Aditya

Final Decision: Allowed

Judgement

1. The petitioners are A1 to A4, filed the petition to quash the complaint and investigation in FIR No.41 of 2020, dated 28. 02.2020 on the file of the

Assistant Commissioner of Police, Division-C, CCS, DD, Hyderabad. However, the investigation was completed and charge sheet was filed and

numbered as CC No.1247 of 2021 pending on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad.

2. I.A.No.1 of 2022 is filed to amend the prayer in the present Criminal Petition to quash the proceedings in CC. No.1247 of 2021 pending on the file

of XII Additional Chief Metropolitan Magistrate, Hyderabad. I.A. is allowed.

3. Briefly, the case according to the charge sheet is that one Sri E.Venugopal, Associated Vice President of SREI Equipment Finance Limited,

situated at Banjara Hills filed complaint stating that the 1st petitioner/A3, 2nd petitioner/A4 who are partners of M/s.Aashi Realtors(A1) and 3rd

petitioner/A5 and 4th petitioner/A6, who are directors of Neeharika Infrastructure Private Limited(A2), have approached the defacto complainant

company for availing loan of Rs.110.00 Crores.

4. Accordingly, two immovable properties (i) land bearing Survey No.78 admeasuring Acs.8.08 guntas situated at Hafeezpet, Sherilingampally,

Hyderabad and (ii) house property bearing H.No.4-1-1, King Koti, Hyderabad admeasuring 28106 sq.yds, were mortgaged.

5. Though the installments were to be paid on 5th day of each quarter commencing from 5th October 2018, petitioners failed to pay the installments in

spite of repeated reminders. The defacto complainant initiated proceedings under SARFAESI Act and the first asset was auctioned on 30.12.2019,

which fetched Rs.102,60,00,000/-. Then the complainant company decided to mortgage the 2nd charged asset, it was found that the 2nd asset which is

house property at King Koti was sold without notice, as such these petitioners and other accused caused wrongful loss to the company.

6. On the basis of the said complaint, FIR was registered and having investigated the offence, charge sheet was filed. It is stated in the complaint that

after availing loan from the complainant company, the petitioners and others intentionally defaulted in repaying the loan amount, for which reason,

proceedings under SARFAESI Act were initiated and the 1st mortgaged property was sold and an amount of Rs.102,60,00,000/- was recovered.

However, the balance as on the date was Rs.58.90 Crores, which includes 24.81 Crores as OD and Rs.33.81 Crores as ODC-Penalties.

7. Sri V.Ravi Kiran Rao, learned Senior Counsel appearing on behalf of Sri H.Rajesh Kumar, learned counsel appearing for the petitioners, submits

that even accepting all the transactions, it is purely of civil dispute, which has to be decided by the Civil Court. There is no allegation of either cheating

or criminal misappropriation. The defacto complainant and the petitioners in fact entered into a MOU for settlement dated 07.09.2020, which was not

considered by the Investigating Officer and without making a mention of the MOU for Settlement dated 07.09.2020, the said charge sheet is filed. In

the said MOU, there is an understanding that against the outstanding liability of Rs.42,28,69,014/-, which includes interest and other charges, 3 cheques

were issued. The three cheques were not presented by the defacto complainant. It is not the case that the amount was not in the accounts to honour

the said cheques. It was further agreed that in view of the settlement, the parties shall take steps to withdraw all the pending cases, which includes the

present Crime No.41 of 2020 initiated by the defacto complainant in pending investigation by the CCS, DD, Hyderabad. It is further argued that in

case of delay or default in making balance liability, the defacto complainant/lender, shall be entitled to enforce and execute award, which would be

before the arbitrator.

8. Learned Senior Counsel further argued that without resorting to either presenting the three cheques or enforcing the consent arbitration award, the

charge sheet is filed. In support of his contentions, he relied on the judgment of G.Sagar Suri and another v. State of U.P and others (2000) 2 Supreme

Court Cases 636, wherein their Lordships have held that in exercise of jurisdiction under Section 482 of Cr.P.C, it has to be seen if a matter, which is

essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law and

before issuing process a criminal court has to exercise great deal of caution as it is a serious matter. Further, in the said case, criminal complaint under

Section 138 of Negotiable Instrument Act was already filed and the Court found that prosecution under Section 406 and 420 of IPC is abuse of

process of law and accordingly quashed.

9. In the judgment reported in the case of Inder Mohan Goswami and another v. State of Uttaranchal (2007) 12 SCC 1, the Hon'ble Supreme

Court held that when it appears that the proceedings are abuse of process of court, the High Court in exercise of its powers should not allow injustice

but promote justice and the Court also held that quashing of proceedings would serve ends of justice. More so, in business circles where purely civil

disputes are converted into criminal cases and such criminal prosecution should be deprecated and discouraged. The Court further held that intention is

the gist of offence to attract an offence under Section 420 of IPC. It has to be seen whether fraudulent or dishonest intention existed at the time of

making promise and mere failure to subsequently keep up promise, it cannot be said that such person had culpable intention to break the promise from

the beginning.

10. Learned Senior Counsel also relied upon the judgments in the cases of V.Y. Jose and another v. State of Gujarat (2009) 3 SCC 78, Devendra and

others v. State of Uttar Pradesh and A, another (2009) 7 SCC 495 and Vesa Holdings Pvt. Ltd., v. State of Kerala and others (2015) 8 SCC 293,

when pure contractual disputes of civil nature were converted to criminal proceedings, the Hon'ble Supreme Court held that the Court should not

hesitate to exercise its jurisdiction under Section 482 of Cr.P.C and consequently quashed the criminal proceedings having found that the transactions

were purely of civil nature and breach of contract would not attract criminal prosecution for the offence under Section 420 or 406 of IPC unless the

ingredients are satisfied.

11. In the said circumstances, learned Senior Counsel submits that since the transaction is one between lender and the borrower and out of the

principal amount of Rs.110.00 Crores, Rs.102.60 Crores was already recovered and for the remaining amount, when there was MOU entered into

between the parties, the question of attracting offence under Section 420 and 406 of IPC does not arise. Accordingly, prayed to quash the proceedings

against the petitioner.

12. On the other hand, Sri M.Govind Reddy, learned counsel appearing for the 2nd respondent would submit that the transactions clearly make out an

offence under Section 420 of IPC. When not even a single installment is paid as agreed, it can only be said that the petitioners had intention from the

inception to cheat. Admittedly, there was MOU dated 7.09.2020 for settlement. However, a request was made by the 1st petitioner to postpone the

presentation of cheques issued towards outstanding, as such, the intention to cheat is clear. Further, when the mortgaged property was sold, it amounts

to an offence of cheating. Though, the 2nd property was mortgaged vide agreement dated 15.07.2018, without the knowledge of the defacto

complainant, the said property was sold. The amount of loan given is entrusting the said amount, as such, the petitioners are liable for both cheating

and criminal misappropriation. In cases of a mortgage, under Section 67 of the Transfer of Property Act, the mortgagee has the right over the

property and the mortgagors, who are the accused herein are deprived of their rights to sell the property. He relied upon the judgment of Hon'ble

Supreme Court in the case of Indian Oil Corporation v. NEPC India Limited and others (2006) 6 Supreme Court Cases 736 and argued that disputes

arising from breach of contract, though civil remedy is available, the remedy under criminal law will not be barred, if the allegations in the complaint

discloses criminal offence.

13. Learned counsel further argued that when the accused knew that interest exists in the 2nd property, which was mortgaged by the accused, selling

the said property without the knowledge of the defacto complainant amounts to criminal breach of trust. He relied upon the judgment of Som Nath

Puri v. State of Rajasthan 1972 AIR (Supreme Court) 1490, wherein the Hon'ble Supreme Court held that once property was entrusted, if the

property is converted to his own use, it amounts to criminal misappropriation, which is punishable under Section 409 of IPC. Counsel argued that

admittedly the 2nd property was sold without consent. In the judgment of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur v. State of Gujarat

Criminal Appeal No.1723 of 2017, the Hon'ble Supreme Court laid down the broad principles when a Court can quash the proceedings under

Section 482 of Cr.P.C. He relied upon the judgment of the Hon'ble Supreme Court in the case of Mahadeo Prasad v. State of West Bengal 1954

CriLJ 1806, in which the Hon'ble Supreme Court upheld the conviction under Section 420 of IPC. Court held that in a business transaction, though

it was a civil liability, the transactions in the case would not eschew any criminal liability if the transactions fulfilled the ingredients of criminal provisions.

14. Admitted facts of the case are that; i) loan agreement dated 15.07.2008 was entered into in which it was agreed that there would be first and

exclusive mortgage and charge over the first property. The second charge and mortgage over the 2nd property (which was sold subsequently); ii) both

the properties were free from any encumbrances and there is no fabrication or misrepresentation; iii) first property when sold fetched an amount of

Rs.102.60 Crores on 30.12.2019; iv) MOU dated 07.09.2020 was entered into for Settlement under which, three cheques were given towards

outstanding and both the parties agreed to withdraw all the pending cases including the present case; v) failure or default in making payment covered

under three cheques, the defacto complainant is entitled to enforce and execute the award on the terms in the Arbitration consent award, which was

passed on 25.11.2020.

15. In Ahmed Moosa v. Inspector of Police, Jagtial 1999 (2) ALD (Cri.) 610 (AP), this Court held as follows:

“10. In this case the property said to have been delivered by the complaint to the accused is said to be the amounts advanced as loan to the three

petitioners. Apparently, these amounts were delivered to the petitioners as loan on their request and on their offering registered mortgage deed in

respect of immovable property as security as a part of business of the complainant as Finance company. There is no hint or even a remote suggestion

that the complainant was induced to deliver these amounts as loan on account of any deception, any fraudulent or dishonest inducement practised by

the petitioners. From the tenor of the complaint it would appear that it was perfectly a normal loan transaction in which the complainant had advanced

loan, to the petitioners by taking the precaution of a registered mortgage deed as security for the loan. There is, no allegation that the petitioners

made any fraudulent representation as to their title to mortgaged property without having such title to the same. The complaint discloses that according

to the terms of the loan agreement and mortgage deed the loan was to be repaid within two years, but it was not repaid inspite of lapse of three years.

Mere failure to repay the loan within the period agreed upon cannot be construed as a piece of evidence of practising fraudulent deception on the part

of the accused.

16. In the present case, out of the amount of Rs.110.00 Crores of principal amount, nearly Rs.102.60 crores, which is 95% of the principal amount

was recovered by selling the mortgaged property. It is apparent that the transaction was a perfectly normal loan transaction and the mortgaged

property when liquidated, fetched the said amount of Rs.102.60 Crores. The learned Senior counsel appearing for the petitioners submitted that the

defacto complainant was complicit in causing loss to the petitioners in the process of selling the first property for 102.60 crores though the property

was worth nearly 165 crores and if such fraud was not played, the entire loan along with interest would have been discharged. Cheating if any that

was committed during the process of selling the first property, the petitioners ought to have agitated at the relevant time and the same cannot be

decided in the present application.

17. The main allegation is that 2nd property which was in the nature of a second charge apart from the first property, with the defacto complainant

was sold without the consent of the defacto complainant. It is not the case that there existed a fraudulent and dishonest intention at the time of

entering into loan agreement. There is no allegation that the Petitioners made any willful misrepresentation at the time of loan agreement. The second

property was sold after recovery of 102. 60 crores. The transactions between the defacto complainant and the accused at best in the present facts

and circumstances can be described as a breach of contract or violation of agreement, for which the remedy lies with the Civil Court. The

Hon'ble Supreme Court in G.Sagar Suri and another v. State of U.P and others's case (supra) and also Alpik Finance Limited v. P.Sadasivan

2001 (1) ALD (Crl.) 551 held that unless misrepresentation and deception are played at the inception, it cannot be said that it is an offence of cheating

under Section 420 of IPC. The Hon'ble Supreme Court in Alpik Finance Limited v. P.Sadasivan observed-

“When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged

may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the

parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or

compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of

trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under I.P.C. and the case of the appellant

is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is

true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and

dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even

according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge

their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and

thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent

that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt,

he does not necessarily evade the debt by deception.

18. The present complaint was filed after recovery of Rs.102.60 crores from the accused. The defacto complainant having entered into a

memorandum of understanding for settlement and having taken three cheques failed to present the said cheques. Though it is stated by the defacto

complainant that e-mail was addressed by the first petitioner to postpone the presentation of cheques, nothing stopped the defacto complainant from

presenting the cheques and prosecute them. In the initial loan agreement, which was entered into, there is no allegation of any misrepresentation or

fraud that was played upon by the petitioners. No dishonest intention can be deduced from the facts when the property mortgaged was genuine and

fetched Rs.102.00 Crores. Subsequently, MOU for settlement was entered into on 07.09.2020 and also an award was passed by the arbitrator on

25.11.2020. All the transactions are admitted by the defacto complainant and both the parties consented to all the transactions. Only for the reason of

selling the 2nd property, which was in the nature of a second charge, will not amount to an offence of cheating punishable under section 420 IPC,

since there was no deception played from the inception. Similar view was taken in Ahmed Moosa's case by this Court.

19. The second property that was sold by the Petitioners was not entrusted to them to attract an offence of criminal misappropriation either under

section 406 or 409 of IPC.

20. For the said reasons, the transactions being purely civil in nature, the criminal proceedings would be an abuse of process of the Court.

21. In the result, the Criminal Petition is allowed and the proceedings in CC No.1247 of 2021 pending on the file of XII Additional Chief Metropolitan

Magistrate, Hyderabad pending against the petitioners, are hereby quashed.