
(2011) 12 AP CK 0004

Andhra Pradesh High Court

Case No: Criminal Petition No. 5308 of 2008

K.K. Venkata Ratnam
and 2 others

APPELLANT

Vs

The State of A.P. and
another

RESPONDENT

Date of Decision: Dec. 7, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 156(3), 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 120B, 34, 420, 463, 464

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: C. Padmanabha Reddy, for the Appellant; P. Rangaiah Naidu for the Respondent
No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar

1. The present criminal petition has predominant civil flavour. Sri C. Padmanabha Reddy, learned senior counsel for the three petitioners contends that the dispute between the petitioners and the second respondent are civil in nature and that the First Information Report (FIR, for short) in Crime No.51 of 2008 on the file of the Bhimadolu Police Station, West Godavari District, therefore, is liable to be quashed. Sri P. Rangayya Naidu, learned senior counsel for the second respondent admits that the disputes between the parties have civil law implications and that apart from the civil liability, the petitioners also bore criminal liability, so much so, the FIR cannot be quashed.

2. The second respondent is the private complaint before the II Additional Judicial Magistrate of First Class, Eluru. The petitioners are the accused. The third petitioner is said to be no more. This petition, therefore, stands abated so far the third petitioner is concerned.

3. The brief facts of the private complaint are as follows:

a) The properties admeasuring Ac.2.74 cents, which is subject matter, were owned by one Kalli Raja Rao. The properties are situate at Ac.2.34 cents in Survey No.39/2 and Ac.0.40 cents in Survey No.39/3 totalling Ac.2.74 cents at Pulla village, West Godavari District.

b) Kalli Raja Rao has five sons. The second respondent is the last son of Kalli Raja Rao. In 1970's one D.V.K. Sitarama Somayajulu entered into an agreement of sale with Kalli Raja Rao in respect of the Ac.2.74 cents of land. Later, D.V.K. Sitarama Somayajulu filed O.S.No.805 of 1973 on the file of the Principal Junior Civil Judge, Eluru seeking for specific performance of the agreement of sale. He laid the suit against Kalli Raja Rao as well as his brother Kalli Venkata Rao. On 31.12.1976, O.S.No.805 of 1973 was conditionally decreed. The suit was decreed in favour of D.V.K. Sitarama Somayajulu on the condition that the D.V.K. Sitarama Somayajulu should pay Rs. 11300/- to the defendants therein. It is the case of the second respondent that D.V.K. Sitarama Somayajulu never complied with the condition and that therefore, the decree in O.S.No.805 of 1973 became an unenforceable decree (or it should be considered that O.S.No.805 of 1973 was dismissed, as the condition was not complied with by D.V.K. Sitarama Somayajulu). Subsequently, Kalli Raja Rao entered into an agreement of sale with the third petitioner in 1980 in respect of Ac.19.96 cents of land including Ac.2.76 cents covered by O.S.No.805 of 1973.

c) Kalli Raja Rao filed O.S.No.28 of 1985 on the file of the Principal District Munsif Magistrate, Eluru seeking for the cancellation of the agreement of sale in favour of the third petitioner. The third petitioner in his turn filed O.S.No.37 of 1985 on the file of the same Court seeking for the specific performance of the agreement of sale executed by Kalli Raja Rao. After full-fledged trial of both the cases, O.S.No.28 of 1985 laid by Kalli Raja Rao was decreed. O.S.No.37 of 1985 laid by the third petitioner was dismissed. Appeals were preferred by the third petitioner in A.S.Nos.2058 and 1052 of 1996 before this Court. The appeals were dismissed in June, 2007. Special Leave Petitions were preferred before the Supreme Court. The same are pending before the Supreme Court.

d) On 15.11.1983 D.V.K. Sitarama Somayajulu transferred the decree in O.S.No.805 of 1973 dated 31.12.1976 in favour of the first petitioner. On the basis of the transferred decree, the first petitioner filed E.P.No.109 of 1984. It may be recalled that D.V.K. Sitarama Somayajulu did not comply with the condition of deposit of Rs. 11,300/- as ordered in O.S.No.805 of 1973. On 23.12.1986 E.P.No.109 of 1984 was dismissed. It is the contention of the learned senior counsel for the second respondent that in view of the

legal history, the first petitioner has no right or interest over Ac.2.74 cents in respect of which D.V.K. Sitarama Somayajulu entered into an agreement of sale with Kalli Raja Rao.

e) The third petitioner, who is now no more, is the brother-in-law of the first petitioner. On 04.06.2004, the first petitioner executed a sale deed in favour of the second petitioner in respect of the Ac.2.74 cents of land covered by O.S.No.805 of 1973. The third petitioner acted as the attesting witness for the sale deed. On 02.07.2004, pattadar passbooks were issued in favour of the second petitioner on the basis of the sale deeds in his favour. It is the contention of the learned senior counsel for the second respondent that the petitioners managed to obtain pattadar passbooks in favour of the second petitioner by influencing the revenue authorities.

f) Considering that the second petitioner has no right or title to Ac.2.74 cents of land, the second respondent lodged complaint with the revenue officials. After due enquiry, on 22.12.2006, the revenue officials cancelled the pattadar passbooks issued on 02.07.2004 in favour of the second petitioner. These are the circumstances, which laid to the filing of the private complaint by the second respondent against the petitioner.

4. It is the contention of the learned senior counsel for the petitioners that the decree in O.S.No.805 of 1973 (passed in favour of D.V.K. Sitarama Somayajulu) against Kalli Raja Rao became final and that the first petitioner who was the transferee of the decree indeed filed E.P.No.109 of 1984. He further contended that E.P.No.109 of 1984 was not dismissed on merits but was withdrawn by the first petitioner, as the first petitioner considered that title already vested in D.V.K. Sitarama Somayajulu, so much so, there was no need to execute the decree in O.S.No.805 of 1973.

5. It is contended by the learned senior counsel for the petitioners that Kalli Raja Rao was the judgment debtor in E.P.No.109 of 1984, in view of the decree in O.S.No.805 of 1973 and that the second respondent has nothing to do with the property, as the second respondent merely represents the judgment debtor in the decree. His contention is that the second respondent has no locus standi to represent Kalli Raja Rao and the petition schedule properties. His claim is that the second petitioner is a bona fide purchaser. The Learned Counsel for the petitioners contended that the petitioners did not commit any conceivable offence and that the FIR is liable to be quashed.

6. It is the contention of the senior counsel for the petitioners that the decree holder in O.S.No.805 of 1973 came into possession of the property covered by the suit and that when the decree was transferred in favour of the first petitioner, the first petitioner could execute the decree. The learned senior counsel for the petitioners urged that the dispute between the petitioners and the second respondent are purely civil in nature and a complaint, therefore, does not lie. The base of the complaint was the private complaint lodged by the second respondent before the II Additional Judicial Magistrate of First Class, Eluru. The complaint was lodged on 15.04.2008. The learned II Additional Judicial Magistrate of First Class, Eluru referred the same to police for investigation u/s 156(3),

Criminal Procedure Code. The learned senior counsel for the second respondent indirectly pointed out that the FIR was automatically issued once the case was referred by the court to the police. Inter alia, the Learned Counsel for the petitioners contended that when the dispute is of civil nature and where various civil proceedings were initiated by both sides, it would be unjust and unfair to consider that the petitioners committed an offence and to register an FIR under Sections 120B, 420, 468 and 471 IPC r/w Sec. 34 IPC.

7. Sri P. Rangaiah Naidu, learned senior counsel for the second respondent placed reliance upon [Sri Krishna Agencies Vs. State of A.P. and Another](#), . That was a case where an allegation was made against the accused u/section 138 of the Negotiable Instruments Act. The payee invoked arbitral proceedings. Considering that already, action was initiated against the drawer of the cheque, this Court quashed the complaint lodged by the payee. The Supreme Court considered that there could be no bar to simultaneous continuation of criminal proceedings and civil proceedings when the cases arise from separate causes of action. It is the contention of the learned senior counsel for the second respondent that the cause of action for the present complaint is the execution of a sale deed by the first petitioner in favour of the second petitioner with the third petitioner acting as an identifying witness and that the cause of action for the civil cases in O.S.No.805 of 1973, O.S.No.208 of 1985 and O.S.No.37 of 1985 are not between the petitioners on the one side and the second respondent and his predecessors on the other side.

8. These cases are between D.V.K. Sitarama Somayajulu on the one side and the father of the second respondent and between the third petitioner and the second respondent on the other side. Inasmuch as the claims relate to the third petitioner, they relate to an agreement of sale and not in respect of the sale deed executed by the first petitioner in favour of the second petitioner. Consequently, patently, the cause of action for the complaint and the cause of action for the earlier civil lis are not one and the same. Therefore, there is no bar for the second respondent to proceed against the petitioners if the second respondent is otherwise entitled to proceed against the petitioner. Indeed, it shall be examined whether the second respondent is otherwise entitled to proceed on merits and not on the technical ground that the present petition is not maintainable.

9. That the third petitioner is aware of the litigation is patent where the third petitioner filed O.S.No.37 of 1985 on the file of the Principal District Munsif Magistrate, Eluru against Kalli Raja Rao for specific performance of the agreement of sale executed in 1980. While so, in the sale deed executed by the first petitioner in favour of the second petitioner, the third petitioner acted as a contesting witness. Prima facie, the third petitioner cannot contend that he did not know the controversy about the property and that he innocently acted as an attester of the sale deed executed by the first petitioner in favour of the second petitioner. However, the complicity of the third petitioner in the commission of the offences if any, is irrelevant enquiry where the third petitioner admittedly is no more. It, therefore, needs to be examined whether a case is made out against the petitioner for

any offence so as to continue the FIR.

10. State of Haryana v. Ch. Bhajan Lal (1991) 2 S.C.J. 35 is the leading authority on the principles of application of Section 482 Cr.P.C. The Supreme Court observed:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do no prima facie constitute any offence or make out a case against the accused.

1. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

2. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

3. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

4. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

5. Where there is an express legal bar engrafted in any of the provisions of the Code or concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

6. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. On the same lines, the Supreme Court once again considered the guidelines for a quashment of the FIR in [Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another](#). The Supreme Court considered in that case that a) when the allegations made in the FIR or the complaint, if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence; b) when the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by the police; c) when uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused; d) when the allegations in the FIR constitute only non-cognizable offences; e) when the allegations

made in the FIR or complaint are so absurd or inherently improbable on the basis of which no prudent person can proceed against the accused; f) where there is an express legal bar engrafted in any provision of the Code or the concerned Act in which the criminal proceeding is instituted, the institution and continuance of the proceeding or where there is a specific provision in the Code or the concerned Act providing, an efficacious remedy to the aggrieved party; and g) where the criminal proceedings are manifestly attended by mala fide motive and/or where proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, it would be open for the Court to quash the FIR.

12. Consequently, it is to be examined whether the complaint does not prima facie constitute any offence and whether the allegations in the complaint are manifestly absurd.

13. It is the case of the second respondent that the first petitioner executed a sale deed in favour of the second petitioner in respect of the property over which he had no title and that the second petitioner influenced the revenue authorities and obtained passbooks in his name. According to the second respondent, when the dispute was subjudice, the second petitioner obtained pattadar passbooks fraudulently. It may be noticed that the second petitioner is not a party to any litigation between the first and third petitioners on the one side and the second respondent and his father on the other side. Indeed, some effort on the part of the second petitioner would have brought it to the notice of the second petitioner that the property purchased by him was subject matter of litigation. Merely because the property was subject matter of litigation, I am afraid that the second petitioner cannot be considered to have committed any of the offences levelled against him. There is no evidence that he resorted to forgery and that he cheated the second respondent by purchasing the property. It is also not specifically averred as to how the second petitioner influenced the revenue authorities and obtained pattadar passbooks in his name. If the Revenue Divisional Officer issued pattadar passbooks in favour of the second petitioner, the second petitioner would not be guilty of cheating or conspiracy. I, therefore, agree with the contention of the learned senior counsel for the petitioners that mere purchase of property and obtaining pattadar passbooks by the second petitioner do not prima facie constitute any offence.

14. The first petitioner, however, does not stand on the same position as the second petitioner. The first petitioner is thoroughly aware of the disputes and the rival contentions. He is the transferee of the decree in O.S.No.805 of 1973. In fact, he made an attempt to execute the decree by filing E.P.No.109 of 1984. The first petitioner sold Ac.2.74 cents to the second petitioner on 04.06.2004. If he informed the second petitioner about the lis and then sold the property, the second respondent would be liable along with the first petitioner in attempting to deprive the second respondent of the title to the property. However, it is not even averred by the second respondent that the second petitioner was aware of the litigation and purchased the property with mala fide intention to defraud the second respondent. On the other hand, if the first petitioner sold the property to the second petitioner suppressing the litigation, the first petitioner would be

committing cheating against the second petitioner and not against the second respondent. The question is whether any prim facie case is made out against the first petitioner for continuing the complaint against the first petitioner.

15. It may be noticed that the allegations against the petitioners are under Sections 120B, 420, 468 and 471 IPC. Section 120B IPC defines conspiracy and provides punishment for the same. Section 420 IPC provides punishment for cheating. Section 468 IPC envisages that committing forgery with a view to cheat shall be punishable. While Section 471 IPC punishes fraudulent or dishonest use of any forged document as genuine. I may examine whether forgery prima facie made out against the first or the second petitioners herein.

16. The first petitioner filed an execution petition and withdrew the same. The execution petition was filed way back in 1984. About 20 years thereafter, he sold the property, which was the scheduled property in O.S.No.805 of 1973 and E.P.No.109 of 1984, to the second petitioner. I am afraid that when the second respondent himself alleged that the first petitioner sold the property to the second petitioner, it could not constitute forgery. The offences under Sections 468 and 471 IPC, therefore, are prima facie not made out from the allegations in this petition.

17. The learned senior counsel for the second respondent contended that in the process of executing the sale deed, the first petitioner made false recitals in the sale deed as if the first petitioner is the owner of the property and that the first petitioner thus resorted to cheating punishable u/section 420 IPC.

18. It may be noticed that making an incorrect entry per se is not forgery. Forgery is making a false document with an intention to cause damage or injury to any person or to support any claim with intention to commit fraud, as defined u/section 463 IPC. The Code defined the making of a false document u/section 464 Cr.P.C. In [Dr. Vimla Vs. Delhi Administration](#), the essential ingredients of Section 464 IPC were defined as i) fraudulent signing of a document or a part of document with an intention of causing it to be believed that such document or part of the document was signed by another person or under the authority of such another person; and ii) making of such a document with an intention to commit fraud. Thus, the necessary ingredient of forgery is signing a document making another to believe that the document was signed by a third person or under the authority of such a person. While so, it is not the case of the second respondent that the first petitioner executed the sale deed in favour of the second petitioner as if he was executing the sale deed on behalf of a third party. Prima facie, the offences under Sections 468 and 471 IPC are not made out against the first petitioner in this background. Section 420 IPC reads:

420. Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

19. The dishonest intention envisaged u/s 420 IPC is to induce the deceived person to deliver any property or to perform such other functions as mentioned under the Act. As already pointed out by me, the person effected by the false recitals in the sale deed is the second petitioner. I am afraid that the second respondent cannot contend that the first petitioner made false recitals in the sale deed executed in favour of the second petitioner and that the first petitioner consequently is liable for punishment u/section 420 IPC, unless the second petitioner joins the cause. Where the second petitioner has not complained about the recitals in the sale deed, if the recitals are incorrect, the recourse open to the second respondent is to proceed for a declaration that the recitals in the sale deed are false or for a cancellation of the sale deed or for both. He, however, cannot contend that the first petitioner committed the offence u/section 420 IPC. Consequently, the allegation that the first petitioner executed a sale deed in favour of the second petitioner with incorrect recitals is not tantamount to cheating the second respondent within the meaning of Section 420 IPC. The first petitioner prima facie is not liable for the offence u/section 420 IPC as against the second respondent. The other allegation against the first petitioner is u/section 120B IPC for conspiracy with petitioners 2 and 3 to defraud and cheat the second respondent. When the offences under Sections 420, 468 and 471 IPC are prima facie not made out, the offence u/section 120B IPC automatically is not made out. The first petitioner consequently cannot be prosecuted for any of the offences levelled against him.

20. In that view of the matter, where no offence is made out either against the first petitioner or against the second petitioner, out of the offences alleged against them under Sections 120B, 420, 468 and 471 IPC, I agree with the learned senior counsel for the petitioners that the FIR in Crime No.51 of 2008 on the file of the Bhimadolu Police Station, West Godavari District is liable to be quashed.

21. The Criminal Petition, accordingly, is allowed. The FIR in Crime No.51 of 2008 on the file of Bhimadolu Police Station is hereby quashed.