

(2013) 07 AP CK 0071

Andhra Pradesh High Court

Case No: Criminal Petition No. 11834 of 2011

B. Kishan

APPELLANT

Vs

The Station House Officer,
Garladinne Police Station and C.
Adishesha Reddy

RESPONDENT

Date of Decision: July 12, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 409

Citation: (2013) 2 ALD(Cri) 541 : (2013) 3 ALT(Cri) 179

Hon'ble Judges: C. Praveen Kumar, J

Bench: Single Bench

Advocate: T. Bali Reddy, for Sri O. Udaya Kumar, for the Appellant; P. Veera Reddy for the Respondent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C. Praveen Kumar, J.

The petitioner who was a Branch Manager, working in Kallur Branch of State Bank of India, Anantapur District, filed the present Criminal Petition u/s 482 Cr.P.C., seeking quashing of investigation in Cr. No. 117/2011 of Garladinne Police Station, which was registered against him for an offence punishable u/s 409 IPC. The second respondent herein lodged a report alleging that he borrowed an amount of Rs. 6,50,000/- from State Bank of India, Kallur Branch on 4-7-2002 and purchased Ac. 19-05 cents of land in S. No. 78/1A consisting of plot Nos. 17, 18 and 19 situated in Anantapur town. After registration of the land, the second respondent mortgaged the said land with the Bank. After repaying the entire loan in the month of August 2011, the second respondent requested the accused/Branch Manager to return the

documents deposited by him. The Branch Manager promised to return the same within a period of 2 or 3 days but failed to do so stating that he has to trace the documents from his branch files. On 13-8-2011, the accused/Branch Manager sent some documents to the house of the second respondent through one of his subordinate officer by name Sai. On verification of the returned documents, the second respondent noticed that the principal document on which the mortgage is constituted and loan granted is not enlisted in the memo. The second respondent after making an endorsement to that effect, immediately contacted the Branch Manager on telephone. He promised him that he will search and trace the document and hand over the same within 2 or 3 days. In spite of repeated requests, there is no proper response from the Branch Manager. On the other hand, he is alleged to have given evasive answers, postponing return of the document. As the value of the property is worth Rs. 1.5 crore, the respondent No. 2 apprehends that the same was misappropriated by the petitioner and hence, the present report came to be lodged.

2. Heard Sri T. Bali Reddy, the learned Senior Counsel representing Sri O. Udaya Kumar, the learned counsel appearing for the petitioner; Sri P. Veera Reddy, the learned counsel for the second respondent, and the learned Public Prosecutor for the first respondent-State

3. The learned Senior Counsel would submit that there is no material placed before the court to show that the second respondent has presented the said document bearing No. 5474/2002 dt. 4-7-2002 while seeking loan. He would further submit that if really the said document is in existence, he could have secured a duplicate copy of the said document from the registration authorities and take appropriate steps to see that the same is not misused in stead of pursuing the criminal proceedings. The learned Senior Counsel vehemently submits that question of returning a document which is not in existence would not arise. In support of his plea, he took me through certain documents which are alleged to have been signed by the second respondent at the time of taking loan, which according to him do not reflect deposit of said document while obtaining loan.

4. On the other hand, the learned counsel for the second respondent opposed the petition contending that the petitioner has not come to the court with clean hands. According to him, incomplete documents are being filed before this court and as such it cannot be said that no mortgage is constituted on the said document while availing loan. He would further submit that the documents which are filed along with the petition are in respect of the car loan and personal loan taken by the second respondent in the year 1999 and no mortgage was created over the residential property situated at Aravinda Nagar, Anantapur Town, on deposit of title deed bearing No. 8726 dt. 17-11-1990. He would further submit that the petitioner was not the Branch Manager at the time of sanctioning of loan but was a Branch Manager from 19-11-2009. While taking charge, he ought to have verified all the

documents in the custody of the previous Branch Manager and thus cannot escape from the liability of returning of the document. He would further submit that in view of the allegations made in the report, continuation of investigation against the petitioner would not amount to an abuse of process of law.

5. In R.S. Raghunath Vs. State of Karnataka and another, while reiterating the earlier norms laid down by the Apex Court for quashing the FIR or complaint, it was further explained that such power has to be exercised 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.

6. In Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, the Apex Court held that at the stage of quashing of an FIR or complaint the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegations made therein.

7. The Apex Court in Indian Oil Corporation Vs. NEPC India Ltd. and Others, after referring to various authorities on the subject observed as under:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry, nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a

contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not

8. In [Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd.](#), the Apex Court held that "while entertaining a petition u/s 482 Cr.P.C., the material furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when prima facie material is available, a petition for quashing the criminal proceedings cannot be entertained. The Court held that the investigating agency should have had the freedom to go into the whole gamut of the allegations and reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.

9. Keeping in view the principles of law enunciated by the Apex Court, I proceed to deal with the issue on hand.

10. The allegations made in the report would disclose that the second respondent has availed a loan of Rs. 6,50,000/- from State Bank of India, Kallur Branch on 4-7-2002 for purchasing land to an extent of Ac. 19-05 cents in S. No. 78-1A situated in Anantapur town. The land which was purchased by the second respondent was registered vide document No. 5474/2002 and the same was mortgaged with the Bank by depositing the title deed along with link documents. The amount was repaid in the month of August, 2011. Thereafter, some documents are sent to the house of the second respondent along with a memo but the principal document on the basis of which the bank sanctioned loan was missing. The learned counsel for the petitioner placed reliance on the documents filed along with present petition to substantiate his plea. In view of the judgment of the Apex Court in [Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd.](#), the material furnished by the defence cannot be looked into at this stage and the same can be entertained at the time of trial.

11. However, a perusal of the same would disclose that on 30-4-1999 the second respondent took medium term loan of Rs. 3 lakhs by depositing title deed No. 8726 dt. 7-11-1990. Similarly, a letter said to have been written by the second respondent to the Bank in Form-A would disclose depositing of title deed bearing No. 2628 dt. 27-3-1999 in the month of April, 2002. The rubber stamp of the bank, which is on the said document, is not clear. The documents which are filed before the Court in defence appear to be incomplete. In fact, all the documents which are filed contain the endorsement made by the Branch Manager himself to the effect that the documents were verified with original and found to be correct. No document

relating to the loan taken in the month of July, 2002 is placed before the court. The second respondent by filing counter-affidavit submitted that document No. 8726 dt. 7-11-1990, which is referred to in all the papers filed by the petitioner, refers to personal hand loan and car loan taken in the month of April, 1999. It is specifically stated that the petitioner produced the documents relating to house loan and also letter of deposit of title deeds relating to that house property but no documents relating to the loan sanctioned on 4-7-2002 are produced before the Court. It is his contention that document No. 5747/2002 was deposited with the Bank for the purpose of taking housing loan. The learned counsel for the second respondent submits that equitable mortgage would be created primarily with the document of title on which loan is given. If the documents of some other properties are also received then those properties would only become collateral securities.

12. The contention of the learned counsel for the petitioner that no such document is in existence and if such a document is in existence, nothing prevented the second respondent from obtaining a copy from the concerned authorities, cannot be a ground to quash the investigation. The police will definitely collect the material and find out the truth or otherwise of the allegations made in the report. As held by the Apex Court, this Court cannot look into the material furnished by the defence and interdict the investigation at the inception.

13. Taking into consideration the facts of the case, I am of the view that the present case is not one of those extreme cases where the criminal prosecution can be quashed at the very threshold. It cannot be said that the report is bereft of even basic facts which are necessary to make out an offence. The defence plea based on documents produced before this court can be considered only during the course of trial and it is always open to the petitioner to place all the material before the investigating agency and plead his innocence.

14. In that view of the matter, this court is of the opinion that the investigation against the petitioner cannot be terminated at the threshold. Accordingly, the Criminal Petition filed for quashing of the investigation in Cr. No. 117 of 2011 of Garladinne Police Station, is hereby dismissed.