(2014) 3 ALT(Cri) 166

Andhra Pradesh High Court

Case No: Criminal Petition No. 13677 of 2013

Suchirindia Developers Pvt. Ltd.		APPELLANT
	Vs	
K. Sai Kumar		RESPONDENT

Date of Decision: April 1, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482, 483
- Penal Code, 1860 (IPC) - Section 415, 420

Citation: (2014) 3 ALT(Cri) 166

Hon'ble Judges: C. Praveen Kumar, J

Bench: Single Bench

Advocate: Raja Reddy Koneti, Advocate for the Appellant; P.S.P. Suresh Kumar, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C. Praveen Kumar, J.
The petitioners, who are accused A-1 and A-2 filed the present application under Section 482 Cr.P.C. seeking quashing of the proceedings in C.C. No. 892 of 2012 on the file of the VII Additional Chief Metropolitan Magistrate, Hyderabad. A charge-sheet came to be filed against the petitioners for an offence punishable under Section 420 IPC. The allegations in the charge-sheet are as under:

"A-1 M/s. Suchirindia Developers (P) Limited was incorporated under the Companies Act 1956 while A-2 was its Chief Executive Officer. The accused floated a scheme referred to as "Gold Coast Down Town", under which they promised to procure land, get necessary approvals from the concerned authorities, develop a residential layout by dividing land into house plots and obtain approval from the competent authority. As per the scheme, there were various modes of instalments. The respondent opted for a scheme whereby

the investor was given 10% discount on the total value of the plot on payment of lumpsum amount at one time. After availing a discount of Rs. 60,000/-, the respondent paid an amount of Rs. 5,40,500/- towards the cost of a plot admeasuring 200 sq. yards in Survey No. 676. A-2 who was the Chief Executive Officer of A-1 company assured the respondent that within six months he will register the plot in favour of the respondent. Though six months has elapsed, the second accused failed to register the said plot in favour of the respondent. Inspite of the repeated reminders, the accused was postponing the registration of the plot on one pretext or the other. Alleging that the accused has collected the amount, only with an intention to cheat, the present report has been lodged."

2. The learned counsel for the petitioners mainly submits that even accepting the allegations in the report to be true, the ingredients constituting an offence under Section 420 are not made out. According to him, the entire transaction relates only to a breach of agreement of sale and as such it cannot be said that the accused had any dishonest intention to cheat from inception. In view of the above, he submits that continuation of proceedings against the petitioners would be an abuse of process of law.

3. On the other hand, the learned counsel for the respondent opposed the application contending that having collected the entire amount for the land, the accused neither to registered the plot till date nor made any offer of returning the amount paid by the respondent. He submits that every breach of contract does not gives rise to a civil liability and that the facts in the present case do constitute an offence of cheating. He further submits that merely because the respondent/complainant has raised a dispute before the consumer forum, continuation of proceedings in the said C.C. cannot be terminated on that score.

4. Section 482 Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court namely:

"(i) to give effect to an order under the Code;

(ii) to prevent the abuse of process of court; and

(iii) to otherwise secure the ends of justice."

These inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of the court. The exercise of inherent power would normally depend on facts and circumstances of each case, but as held in Susheel Suri"s Sushil Suri Vs. C.B.I. and Another, the common thread which runs through all the decisions on the subject is that the court would be justified in involving it"s jurisdiction where the allegations made in the complaint or charge-sheet as the case may be, taken at their face value and accepted in their entirety do not constitute the offences alleged. The plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and nature of power itself demands that it"s

exercise is sparing and only in cases where the High Court, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of process of law. The said exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of process of the law. The High Court have to consider the facts and circumstances of each case to determine whether it is a fit case in which inherent power may be invoked. Shiji @ Pappu and Others Vs. Radhika and Another, .

5. In R. Kalyani Vs. Janak C. Mehta and Others, , the Apex Court laid down the power and scope of the High Court in exercise of its inherent powers under Section 482 Cr.P.C. in the following terms:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

6. Before proceeding further, it would be useful to refer to the meaning of cheating as defined in Section 415 IPC. The ingredients of an offence of cheating are as under:-

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him,

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should

be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

7. In Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, the Apex Court while dealing with the distinction between breach of contract and the offence of cheating observed as under:

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed".

(emphasis supplied)

7(a). Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent and dishonest intention is shown at the beginning of the transaction. The Apex Court found that except mentioning of the words the "deceive" and "cheat" in the complaint, there was no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU, wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. After observing that the substantial amount was paid and that a civil suit was pending inter se between the parties for the balance amount in question, the court held that the matter is purely civil in nature and ingredients constituting an offence of cheating are not made out.

8. In G.V. Rao Vs. L.H.V. Prasad and Others, the Apex Court observed as under:-

"As mentioned above, Section 415 has two parts. While in the first part, the person must, "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney Vs. The State of Bombay, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for an offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad Vs. State of West Bengal, that in order to

constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

(emphasis supplied)

9. The Apex Court in S.P. Gupta Vs. Ashutosh Gupta, while dealing with Section 415 illustration (g) held as under:-

"It is true, as pointed out by Mr. Lekhi, that Section 415 IPC, which defines the offence of cheating, provides in illustration (g) as follows:

"415.(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

However, the aforesaid provision clearly indicates that if at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial."

10. Keeping in view the strict interpretation given to Section 415 IPC, I shall now proceed to deal with the matter.

11. There is no doubt with regard to the proposition of law that in order to constitute an offence of cheating, the intention to deceive should be at the time when the inducement was made. The averments should show that a person had fraudulent or dishonest intention at the time of making the promise. A mere failure to keep up the promise subsequently, cannot be presumed an act leading to cheating. But whether the accused had any dishonest intention to cheat at inception depends upon the facts and circumstances of each case. As held in S.P. Gupta"s case such a conclusion would depend upon the evidence led at the time of trial.

12. The question in the instant case is whether the act of the accused in inducing the respondent and others to part with their money with an assurance of developing the land into plots and also obtain permission from the authorities within six months from the date of payment, would fall within the meaning of cheating. At first blush, the said act appeared to be a case of simple breach of contract, but a close scrutiny of the statements made by the witnesses and the averments in the charge-sheet proved to be otherwise. The averments in the charge-sheet and 161 Cr.P.C. statements of the witnesses show that on seeing the advertisement made by the accused with regard to the housing plot under Gold Coast Down Town scheme, the informant along with others went to the said firm, paid Rs. 500/- as admission amount and joined as member in the scheme by booking a

plot admeasuring 200 sq. yards in Survey Nos. 676 (P), 677(P), 678(P), 680(P), 685, 686, 689(P) & 690(P) of Malakpur village, Choutuppal Mandal, Nalgonda District. An amount of Rs. 5,000/- was paid for registration on 28.10.2007 and thereafter paid an amount of Rs. 5,41,000/- in lumpsum.

13. A reading of the charge-sheet and the statements of the witnesses further discloses that A-2 assured registration of the plot within a period of six months, by which time he promised to get necessary approvals from the concerned authorities and develop a residential lay out by dividing the land into house plots duly approved by the competent authority. Though six months have elapsed the accused failed to register the plot and it is said that till today the accused has not-obtained necessary permissions from the concerned. Things would have been different, had the plot been registered in the name of the petitioner and thereafter failed to develop the same. It would have been a case of breach of contract had the accused after registering the plot failed to develop the same. Situation on hand is different. The act of the accused made the informant and others believe that the lay out would be approved before the completion of the scheme and the plots would be registered immediately thereafter, which induced the informant and others to join the scheme. Therefore, the issue as to whether the accused has intentionally indulged in not registering the plots after collecting the entire sale consideration from the respondent or whether it was beyond his control in getting the land registered in favour of the respondent is a matter which has to be decided only during the course of trial. The subsequent conduct of the accused in evading registration of the plot after collecting huge amount assumes importance in a case of this nature. As held by the Apex Court, subsequent conduct may not be the sole test but definitely one of the circumstances which can be looked into at this stage to find out whether prima facie the accused had any intention to cheat from inception. Merely because the respondent has initiated proceedings before the Consumer Forum does not mean that respondent is debarred from initiating criminal prosecution. As held by the Apex Court in the case referred to above, pendency of civil proceedings is no bar for initiating the criminal proceedings and if the ingredients constituting the alleged offence are prima facie made out in the complaint inherent power under Section 482 Cr.P.C. cannot be invoked to quash the proceedings. The Apex Court in Amit Kapoor Vs. Ramesh Chander and Another, observed that "where the allegations give rise a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained".

14. Therefore, at this stage, it cannot be said that ingredients constituting an offence of cheating are not made out against the petitioners. For the aforesaid reasons, this Court is of the view that the present petition lacks merit and the same is liable to be dismissed. Accordingly, the criminal petition filed for quashing of the proceedings in C.C. No. 892 of 2012 on the file of the VII Additional Chief Metropolitan Magistrate, Hyderabad, is hereby dismissed.

As a sequel to it, miscellaneous petitions pending if any in this criminal petition, shall stand dismissed.