

Roji and Others Vs. State by Police Sub Inspector North Police Station and Another

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Court : Karnataka

Decided On : Apr-06-2015

Judge : A.N. Venugopala Gowda

Appeal No. : Criminal Petition No. 1250 of 2015

Appellant : Roji and Others

Respondent : State by Police Sub Inspector North Police Station and Another

Judgement :

(Prayer: This Crl.P. Is Filed Under S.482 Cr.P.C., Praying To Quash The Fir In Crime No.21/2015 Dated 21.01.2015 At Annexure-A And Consequently Quash The Complaint Dated 21.01.2015 At Annexure-B.)

1. Challenge in this petition is to the FIR in Crime No.21/2015 submitted by the 1st respondent to the II Addl. Senior Civil Judge and CJM, D.K., Mangaluru.
2. On a complaint lodged by the 2nd respondent, case in Crime No.21/2015 was registered by the 1st respondent against the petitioners for the offences punishable under Ss. 406, 417, 420, 465, 467, 468, 471 read with S.34 of IPC.
3. The petitioners contend that they had negotiated with the owner of M/s. Paplikad Estate, situated at Suntikoppa Village, Somwarpet taluk, Kodagu District

to cut and remove silver oak trees standing therein and that they, along with the 2nd respondent visited the said Estate, for the purpose of marking silver oak trees to be cut, removed and delivered and accordingly they marked several silver oak trees, in the presence of the owner of the Estate. Petitioners state that they entered into an agreement with the 2nd respondent on 09.10.2014, to cut and deliver the marked silver oak trees standing in M/s.Paplikad Estate and that the 2nd respondent paid Rs.1,00,00,000/- and agreed to pay balance sum of Rs.50,00,000/- at the end of delivery of timber. According to the petitioners, cheque/s of petitioner No.1 was issued to the 2nd respondent, as security to the amount paid by him, with an understanding that he should not present the cheque/s without advance information. The said cheques having been presented for encashment by respondent No.2, were dishonoured by the bank, on the ground of 'insufficiency of funds'. Thereafter, 2nd respondent having filed a complaint alleging that the petitioners have forged a sale agreement and also made wrongful representation of they having paid Rs.25,00,00,000/- to the owners of M/s. Paplikad Estate and obtained Rs.1,50,00,000, without an intention of honouring cheques, case in Crime No.21/2015 was registered on 21.01.2015 by the 1st respondent and FIR was submitted to the II Addl. Senior Civil Judge and CJM, D.K., Mangaluru.

4. Sri Padmanabha Mahale, learned Senior Advocate, contended that the complaint filed by the 2nd respondent being purely civil in nature, the registration of case by the 1st respondent and submission of FIR to the Court being illegal and opposed to the settled principles of law laid down by the Apex Court in catena of decisions, to secure the ends of justice, interference is called for. He submitted that the investigation and further proceedings would only be an exercise in futility and hence, the petition may be allowed and the impugned proceedings quashed.

5. Sri P.P. Hegde, learned advocate for the 2nd respondent, on the other hand, contended that the matter is still under investigation and hence, no case for quashing the investigation / further proceedings having been made out, the investigation be allowed to be completed. He submitted that it is not permissible, at this stage, to sift any material. He submitted that the complaint and the documents produced having made out the criminal acts on the part of the petitioners, case

was registered and investigation was taken up. He submitted that the parameter for exercise of power under S.482 Cr.P.C. being limited and the petitioners having not approached the court with clean hands, the petition is liable to be dismissed in limine. He submitted that the petitioners have suppressed the fact of rejection of CrI.Misc.108/2015, filed for grant of anticipatory bail, vide order dated 02.03.2015, passed by the I Addl. District and Sessions Judge, D.K. Mangaluru. He further submitted that the petitioners are facing number of criminal cases for commission of fraudulent acts and that they are habitual offenders.

6. Smt. R. Anitha, learned HCGP, submitted that the investigation would be made in accordance with law and final report submitted to the jurisdictional Magistrate.

7. On 18.03.2015, in view of the submission made by Sri Padmanabha Mahale, learned Senior Advocate, that within two weeks' period, the petitioners would pay to the 2nd respondent, Rs.1,50,00,000/-, ad-interim order passed on 09.03.2015, staying further investigation by the 1st respondent was extended till next hearing date. On 01.04.2015, recording the submission of Sri Naveed Ahmed, learned advocate, that the petitioners would pay Rs.75,00,000/- on 06.04.2015 and further sum of Rs.75,00,000/-, by way of Demand Draft/s, on or before 25.04.2015, the case was adjourned to today.

8. Today, Sri Naveed Ahmed, submitted that the petitioners have not come forward to make the payment and hence, the undertaking given on 18.03.2015 and 01.04.2015 has not been complied with.

9. There being no dispute with regard to the petitioners having received from respondent No.2, Rs.1,50,00,000/- and the cheques issued by them having been returned dishonoured by the bank and the undertaking given before this Court, noticed supra, also having not been honoured, the petitioners' case is suspicious.

10. Power under S.482 of the Code, in a case of this nature, is an exception. Inherent jurisdiction under the Section, though wide, has to be exercised sparingly. To do real and substantial justice, in order to enable the petitioners to pay to the 2nd respondent, the undisputed amount of Rs.1,50,00,000/-, ad-interim stay granted on 09.03.2015 was extended on 18.03.2015. Despite extension of time on

01.04.2015, to pay the amount, as was undertaken, the payment was not made. The petitioners have not produced the agreement, if any, entered into with the owner of M/s. Paplikad Estate, for the purpose of cutting and removing the silver oak trees standing therein.

11. The petitioners having entered into an agreement with the 2nd respondent, have received the aforesaid sum. Hence, there is need for investigation of the case registered by the 1st respondent. This is not a case, wherein, mere reading of the complaint of the 2nd respondent, as not disclosing the commission of any offence. The allegations made in the complaint, filed against the petitioners, discloses the commission of the offences. Hence, investigation of the case by the 1st respondent would be necessary.

12. Interference with the case registered by the 1st respondent, in exercise of the inherent power, at this stage, would stifle the legitimate investigation. The 1st respondent, during the course of investigation, would be able to collect the relevant materials. Hence, at this stage it is unnecessary to appreciate the allegations made in the complaint.

In view of the above, the petition is dismissed. However, the 1st respondent shall conduct the investigation, in accordance with law and submit the final report to the jurisdictional Magistrate.

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