

N. Jayaramappa Vs. State Of Karnataka, Represented By State Public Prosecutor

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Court : Karnataka

Decided On : Oct-28-2014

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 5958 of 2014

Appellant : N. Jayaramappa

Respondent : State Of Karnataka, Represented By State Public Prosecutor

Judgement :

(Prayer: This Criminal Petition is filed Under Section 482 of Code of Criminal Procedure, praying to A) Set aside the order dated 31-07- 2014 passed by the Hon'ble Prl. Dist.and S.J., at Chikkaballapur in Cr.R.P.NO.49/2014 and order dated 10-12-2013 passed by the Hon'ble Prl. Civil Judge (Jr.Dn.) and JMFC at Chikkaballapur in C.C.No. 100/2011 (Pcr No.78/2010) against the petitioner for the offences P/U/S 463,464,465, 467,420 R/W 120 (B) of IPC. B) Consequently this Petnr/Accused No.9 and discharge him in C.C.No. 100/2011 (Pcr No.78/2010), on the file of the Hon'ble Prl. Civil Judge (Jr.Dn.) and JMFC At Chikkaballapur against the petitioner for the offences P/U/S 463, 464, 465,467, 420 R/W 120(B) of IPC.)

1. Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent - State.

2. The petitioner is a practicing Advocate at Shidlaghatta in Chikkaballapura Taluk, approached this Court challenging the order passed by the Prl. Civil Judge (Jr.Dn.) and JMFC, Chickballapur in CC No. 100/2011 dated 10.12.2013, which was affirmed by the Prl. District and Sessions Judge at Chikkaballapur in Cr.R.P.No.49/2014 dated 31.07.2014 in refusing to discharge the accused No.9/petitioner for the offences punishable under Sections 463, 464, 465, 467, 420 read with Section 120(B) of IPC.

3. I have carefully perused both the orders and also the charge sheet papers produced before this Court. The brief factual matrix of the case is as follows:

One Nazima Begum, represented by her GPA holder Naveed Mohammed, lodged a private complaint against nine accused persons. Out of them, the present petitioner is the ninth accused. The said case was registered in PCR No. 78/2010 and the learned Magistrate on the date of presentation of the complaint referred the matter to the jurisdictional police for investigation under Section 156(3) of Cr.P.C. In the complaint, it is alleged that the complainant is the resident of Bangalore and having properties at Beedaganahalli village, Kasaba Hobli, Chickballapur Taluk, bearing Sy.Nos.56/9, 56/10, 56/11, 56/12, 56/ 13, 56/ 14 and 56/ 15, totally measuring 06 acres 26 guntas. Accused Nos. 1 to 7 are the wife and children of one Gopalappa. The said Gopalappa and accused Nos. 1 to 7 have executed a sale deed in respect of the said survey numbers in favour of the husband of the complainant and it is stated that she is in possession and enjoyment of the said properties. It is further alleged that one Lakshminarasimhachar and his brothers had filed a suit and obtained an exparte decree with respect to the above said properties. The complainant immediately applied for the certified copy of the said decree and challenged the same before the Civil Judge (Jr.Dn.). Chickbailapur, in MIS. 6/2001 and an appeal was also filed before the Assistant Commissioner, Chickbailapur, seeking transfer of Katha etc. In this background, it is alleged that the accused are fully aware of the fact of alienation and the properties being sold in favour of the complainant's husband. But, in order to defeat the rights of the complainant, they have created a document with an intention to make wrongful gain and to cause unlawful loss to the complainant's husband. The very act of the accused persons is to cheat the

complainant and to harass with a mala fide and common intention with an ulterior motto, forged and concocted a document in order to deceive the complainant and again sold the said property in favour of accused No.8. On the above said grounds, a private complaint came to be filed. On perusal of the complaint averments at paragraph-5, it is omnibus statement made by the complainant that all the accused persons joined together to create a document. There is nothing to show that what document has been concocted and created; and the role of this petitioner in concocting such documents. At paragraph-7 of the complaint, it is categorically stated that accused Nos. 1 to 7 have executed the sale deed in favour of accused No.8. There is no whisper in the complaint as to what exactly the role played by accused No.9 and how he was interconnected with accused Nos. 1 to 7.

4. Be that as it may, with regard to the facts mentioned in the complaint, after reference of the complaint u/s. 156(3) of Cr.PC to the police, the police have investigated the case and submitted the charge sheet. During the course of investigation the police have recorded the further statements of the complainant and other witnesses. As could be seen from the statement of the witnesses, the whole allegations have been made against accused Nos. 1 to 7 and nothing has been stated about the participation, intention and also the role of the present petitioner. On perusal of the contents of the charge sheet particularly, the statements of one Anjinappa, Chotu Sab and Maqbul Sab discloses that they came to know about one Gopalappa, his wife and children have created certain documents and sold the disputed lands in favour of one Lingaraju of Vijayapura (accused No.8 herein) in the said case. Thus, the name of this petitioner has not been whispered in the statement of any of the witnesses. The alleged sale deed, executed by Gopalappa and his wife and children in favour of accused No.8, is also produced. It discloses that accused No.9 (petitioner herein) is the person, who drafted the said document.

5. Looking to the contents of the entire charge sheet papers including the sale deed, absolutely there is no whisper as to how this petitioner has participated in the transaction with other accused Nos. 1 to what was his intention; whether he was anywhere interconnected with accused Nos. 1 to 7 and whether he had any

intention to cheat the complainant. Even on broad understanding of the charge sheet, there is no such allegations in the complaint, F.I.R. and statement of the witnesses and also no material to establish the intention of the petitioner, no document being produced before the Court. When such being the case, the Court cannot draw any inference on any extraneous materials to hold that the accused had any intention to cheat the complainant.

6. In this background let me consider as to what are the ingredients to be present in the complaint or charge sheet to establish the offence u/s.463 of Cr.PC. Sec 463 of I.P.C. reads as follows;

"463. Forgery.-[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

In order to constitute the offences alleged under Section 463 of IPC, the prosecution has to show to the Court that the accused No.9 (petitioner herein) was also involved in creating false documents with an intention to cause damage or injury to the public or to any person, or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with an intent to commit fraud or that fraud may be committed, then only it could be said that he has committed an act of forgery. But, no such averments are available in the charge sheet.

7. Section 464 of IPC reads thus:

"464. Making a false document. -[A person is said to make a false document or false electronic record -

Firstly -Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part, of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly -Who, without lawful, authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly -Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

In order to attract Section 464 of IPC, the prosecution has to show to the Court that there was dishonest and fraudulent intention in making, signing, sealing or executing any document or part of any document also with regard to the authenticity of the documents.

8. Section 465 of IPC is a punishment section and it shows that whoever commits forgery, is punishable with certain punishment.

9. Section 467 of IPC deals with forgery of valuable security, Will etc, which reads thus -

"467. Forgery of valuable security, will, etc.-Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquaintance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

This Section deals with forgery and whoever forges a document which purports to be a valuable security or a Will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest or dividends thereon or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquaintance or receipt acknowledging the payment of money or any acquaintance or receipt for the delivery of any movable property or valuable security. This section is dependent on the definition of the offences under Sections 463 and 464 of IPC.

10. Therefore, first, the prosecution has to show that whether there was any forgery or/and an intention on the part of the accused No.9 (petitioner herein) in deceiving the complainant. Forgery and fraud have to be adequately pleaded in the complaint specifically narrating the exact intention and consequent role of the petitioner.

11. Section 415 of IPC defines what is cheating and section 420 of IPC is punishing provision which reads thus -

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause

damage or harm to that person in body, mind, reputation or property, is said to "cheat".

420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person de-ceived 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.

In order to attract Section 420 of IPC, the prosecution has to show that the present petitioner had dishonest intention to induce another person with an intention to cheat and deceive him and induce him 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 and sealed and which is capable of being converted into a valuable security.

12. Looking to the above said provisions, it is amply clear that the intention of the person should be coupled with his act or conduct so as to attract the above said provisions. As I have already narrated, none of the documents, none of the statements of the witnesses including paragraph-5 to the private complaint, the factual aspects stated therein, do not have any symbolic manner even to indicate the role of the present petitioner as to how he was responsible in creating any forged document or he had knowledge about the alleged forgery done by the accused Nos, 1 to 7. At least there must be some allegations of collusion between the petitioner and that he intentionally joined the hands with accused Nos. 1 to 7 and 8. Merely because the petitioner being an Advocate, has drafted the sale deed executed by accused Nos. 1 to 7 in favour of accused No.8, on the sole ground that no Court can draw any inference of commission of any offence by the petitioner. If he had any intention to cheat or to support the forgery of any documents, there must be some materials in order to draw such inference. If the materials available on record even for limited purpose broadly considered, do not disclose any offences against the petitioner, then no purpose would be served, if the trial is proceeded against the petitioner. On the other hand, valuable right of

the person, not to unnecessarily go on with the trial will be defeated. In this background, Section 239 of Cr.P.C. empowers the Court to discharge the accused when such materials are not available to the Court. The said provision reads as follows:

"If upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

In order to invoke the provision under Section 239 of Cr.P.C., the Court, in its entirety, has to consider the contents of the documents sent by the prosecution and also the entire report filed by the police under Section 173 of Cr.P.C. and the Court has to make such examination of the accused, if necessary, and after evaluation of the entire materials on record for limited purpose, if the Court is of the opinion that charges against the accused should be groundless, then accused shall be discharged. This clearly indicates that there must be a ground or at least a doubtful circumstance in order to ask the accused to undergo an ordeal by framing charges.

13. Before advertent to examine the Orders of the Revisional Court and the Trial Court, I feel it is just and necessary to quote some of the guidelines passed by the Hon'ble Apex Court in several decisions as to under what circumstances, this court can quash the proceedings. In a decision reported in 1992 AIR SC 604 between State of Haryana Vs. Bajanlal wherein the Hon'ble Apex Court has guided certain principles. The relevant portion of the principles are thus -

(1) Where the allegations made in the FIR or in the complaint even if they are taken at their face value and accepted in their entirety, do not disclose a prima facie case constituting any offence or make out a case against the accused.

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

(3) Where the criminal proceedings initiated against the petitioner is manifestly attended with malafide and the proceedings are maliciously instituted with an ulterior motive for to wreck vengeance on the accused with a view to spite him due to private and personal grudge.

In another ruling reported in AIR 1988 SC 709 between Madhavrao Jiwaji Rao Scindia and Another Vs. Sambhajirao Chandrojirao Angre and Others, wherein, the Hon'ble Apex Court has held that -

" Where in the opinion of the court chances of an ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also to quash the proceedings even though it may be at a preliminary stage."

14. Therefore, now let me consider whether there are any materials available on record and whether those are considered by the Trial Court and the revisional court at the time of framing of charges.

15. In the above said backdrop, let me consider the Orders passed by the Trial Court as well as the appellate Court. The Trial Court, without even taking into consideration the entire charge sheet papers, the statement of tire witnesses and also the alleged sale deed and the facts narrated in the private complaint, has simply stated that -

"At this stage the Court has to look into only fact that whether there is any ground for presuming the accused has committed an offence under chapter 14 of Cr. P. C. or not. The prosecution papers at this stage prima facie reveals that there are sufficient grounds to presume that Accused No. 1 to 9 have committed an offence alleged against them."

Except the above causal words, the trial Court has not made any efforts to ascertain as to what exactly the materials available on record in order to come to the conclusion whether those materials are sufficient to draw an inference against the petitioner, that there are sufficient ground to proceed against the petitioner.

What is meant by 'sufficient grounds' is nowhere discussed by the trial Court. Mere findings 'sufficient grounds' and 'prima facie case' do not substitute the weighing of the materials available on record even for a limited purpose.

16. Learned Sessions Judge, in my opinion, has also committed serious error in following the same procedure adopted by the learned Magistrate. One more thing which bites the conscience of this Court is that what is not there in the charge sheet papers has been read into by the Sessions Judge. It is observed at paragraph-12 of the order, that the accused No.9 has drafted the sale deed and it is further observed by the learned Sessions Judge that a professional Advocate normally should see all the records before drafting a sale deed and ascertain the truth or veracity of the documents produced by the parties to the sale deed and then he has to prepare the document and he should not prepare the documents mechanically. This is the only circumstance relied upon by the Sessions Judge, which is not even available in the charge sheet and it has been read into by the learned Sessions Judge to confirm the orders of learned Trial Judge. Section 239 of Cr.P.C. only encompasses within its boundaries, the papers which are submitted by the police under Section 173 of Cr.P.C. What is not available in the charge sheet cannot be read into as if it is in the charge sheet, particularly, in criminal proceedings are concerned, it will have its own impact on the right of the accused persons. Therefore, when there are no such materials available in the charge sheet, the learned Sessions Judge ought not to have read into these factual aspects into the charge sheet for the purpose of holding that the charges should be framed against the accused persons.

17. Looking to the above said facts and circumstances of the case, I am of the firm opinion that both trial Court and as well as the Sessions Court have committed serious error in not properly considering the materials available on record submitted by the police under Section 173 of the Cr.P.C. Therefore, both the orders are liable to be set aside. Consequently, accused No.9 (petitioner herein) is entitled to be discharged.

Accordingly, the petition is allowed. The order passed by the learned Magistrate in C.C.No. 100/2011 (PCR No.78/2010) dated 10.12.2013 which is confirmed by the

Principal District and Sessions Judge, Chikkaballpur in Cr.R.P.No.49/2014, dated 31.07.2014, in refusing to discharge accused No.9, are hereby set aside. Consequently, the accused No.9 (petitioner herein) is discharged in the said case (C.C.No. 100/2011) for the offences punishable under Sections 463, 464, 465, 467, 420 read with Section 120(B) of IPC.

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