

M. Krishna Vs. State of Karnataka and Another

M. Krishna Vs. State of Karnataka and Another

SooperKanoon Citation : sooperkanoon.com/1185354

Court : Karnataka

Decided On : Feb-21-2017

Judge : John Michael Cunha

Appeal No. : Criminal Petition No. 5640 of 2015

Appellant : M. Krishna

Respondent : State of Karnataka and Another

Judgement :

(This CrI.P is filed U/s.482 Cr.P.C praying to A) Set Aside the Order dated 5.9.2014 in the court of the 6th A.C.M.M., Bangalore dismissing his Application filed U/S 239 of the Code Of Criminal Procedure, 1908. B) Set Aside the Order Dated 8.4.2015 made by the LVI Addl. City Civil And S.J., Bangalore - CCH No.57 in CrI.R.P.No.666/2014 on its file. C) Quash the Proceedings in C.C.No.20426/2012 on the file of the VI A.C.M.M. Bengaluru.)

1. The petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. challenging the order passed by the LVI Addl. City Civil and Sessions Judge, Bengaluru City in CrI.R.P.No.666/2014 dated 8th April 2015, whereunder the learned Sessions Judge has confirmed the order passed by the learned Magistrate under Section 239 Cr.P.C..

2. The undisputed facts are that the petitioner herein entered into an Agreement of Sale with respondent No.2 on 16.3.2009 whereunder the petitioner agreed to sell

the properties covered therein for total consideration of Rs.84.00 lakhs. At the time of agreement, Rs.39.00 lakhs was paid as 3part of the sale consideration. However, as the petitioner himself filed a complaint before the Varthur Police Station alleging that the original documents were kept in the school premises in his chamber and he found them missing since ten days. This complaint is dated 17th March 2009.

3. The petitioner having failed to perform his part of the contract, the respondent No.2 enforced the arbitration clause and it is stated that the Arbitrator passed an award ordering for specific performance of the agreement or in the alternative for refund of the entire sale consideration. The Arbitral award is challenged by the petitioner herein before the Sessions Court under Section 34 IPC. In the meanwhile, the respondent No.2 having come to know that much prior to the execution of the sale agreement, petitioner had mortgaged the properties, filed a complaint before the first respondent alleging commission of offences punishable under sections 418, 120-B, 201, 465, 468, 471 and 420 Indian Penal Code. After investigation, charge-sheet came to be laid for the above offences against the petitioner. The petitioner appears to have moved an application under section 239 Cr.P.C. However, the learned Magistrate taking into consideration the prima-facie 4material collected by the investigating agency, thought it fit to reject the said application. Even the revisional Court referred to interfere with the said order, apparently for the reason that the allegations made against the petitioner not only make out the offences, but also were supported by the documents collected by investigating agency.

4. The only contention urged by the petitioner before this Court is that the ingredients of the offences alleged against the petitioner are not made out by the prosecution. In support of his contention, the learned counsel has placed reliance on the decision rendered by the Hon'ble Supreme Court of India in the case of International Advanced Research Centre for Powder Metallurgy and New Materials(Arci) and others -vs- Nimra Cerglass Technics(P) Ltd., and Another reported in CDJ 2015 SC 741 and has laid emphasis on the following portion:-

"Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established 5 that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction."

5. The above proposition in my view does not advance the case of the petitioner, on the other hand, it completely demolishes the contention of the petitioner as the documents relied on by the prosecution on the face of it establishes that inspite of knowing that the property which is the subject matter of the agreement was already mortgaged to the bank, the petitioner induced the second respondent to enter into the Agreement of sale . Therefore on facts as well as on law, I do not find any justifiable reason to exercise the jurisdiction under Section 482 Cr.P.C. Accordingly, petition fails and the same is hereby dismissed. In view of dismissal of the main matter, I.A.1/2017 for vacating stay does not survive for consideration. Accordingly, it is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com