

AshwIn Kumar Vs. the State of Karnataka

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Court : Karnataka

Decided On : Dec-19-2003

Reported in : ILR2004KAR691; 2004(2)KarLJ605

Judge : K. Ramanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 239; Indian Penal Code (IPC), 160 - Sections 406 and 420

Appeal No. : Cr.R.P. No. 383/2001

Appellant : AshwIn Kumar

Respondent : The State of Karnataka

Disposition : Petition dismissed

Judgement :

ORDER

Ramanna, J.

1. An unsuccessful petitioner has filed this revision petition under Section 397 of Cr.P.C. against the order dated 20.1.2001 passed by the IV Addl. CMM, Bangalore in CC.No. 8001/98 whereby, the Trial Court dismissed the application filed by this revision petitioner/accused under Section 239 Cr.P.C. and held that there are sufficient materials to frame the charge against him for an offence under

Section 406 and 420 of I.P.C. The main ground urged by the revision petitioner/accused is that even though the complainant has not produced any material to disclose the prima facie case, dismissed his application and framed the charge against him for the aforesaid offence which is contrary to law. The complainant ought to have been proceeded against him by filing a civil suit for recovery of the amount. The transactions entered into between the revision petitioner and the complainant is purely civil in nature and therefore, the allegation made in the complaint does not constitute the ingredients of Section 407 and 420 of IPC. In fact the jurisdictional police i.e., Indiranagar Police rejected the complaint of this respondent by holding that matter is of civil in nature. Hence, this revision petition.

2. Heard the arguments of both sides and perused the records.

3. The respondent-Cubbon Park Police Station registered the case against this revision petitioner for an offence under Section 406 and 420 of IPC. Learned Counsel for the revision petitioner submitted that after refusal to register the complaint by the Indiranagar Police, respondent filed a private complaint against him for alleged offences. Accordingly, the said complaint came to be referred to the Cubbon Park Police, Bangalore, and after investigation, the Cubbon Park Police filed a charge sheet against him. Therefore, when once the jurisdiction police refused to register the case, then the question of entertaining a private complaint filed by the respondent does not arise, and investigation done by the Cubbon Park Police is not at all maintainable and the same is liable to be dismissed. The Trial Court has not properly gone through the records to find out whether there is any prima facie case made out to frame the charge. Further, it is submitted that in the instant cases, the transaction entered into between them is purely a civil in nature and therefore the order under revision is liable to be set aside.

4. In support of this contention, learned Counsel for the revision petitioner relied on a Supreme Court judgment reported in ALPIC Finance Ltd. v. P. Sadasivan And Anr., : 2001 CriLJ1246 wherein it has been held that 'quashing of criminal proceedings - merely because remedy by way of civil suit is available is not an impediment in maintaining a criminal complaint provided the complaint discloses

the ingredients of the offence alleged. In transaction involving passing of valuable properties between the parties, the aggrieved party may sue for damages and also file a complaint against the wrongdoer for criminal breach of trust or cheating. But the complaint must disclose essential ingredients of the offence. Default made by respondents in payment of installments by way of repayment of loan advanced by appellant under a lease agreement between the parties for purchase of some article - Complaint filed by appellant alleging commission of offence under Section 420 IPC by respondents. Held on facts complaint does not disclose element of deception or fraud or dishonest inducement or willful misrepresentation in the entire transaction. Hence complaint, on facts, was liable to be quashed'. In the aforesaid decision the Apex Court has come to a conclusion that remedy available to the aggrieved party to file a civil suit is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredient of the offence. Whereas, in the instant case, specific case of the respondent/complainant is that two hundies, bills, bank statement and other documents produced by the respondent/complainant clearly goes to show that there are sufficient materials to frame the charges against him. It is for the respondent/complainant to prove the allegation made in the complaint beyond reasonable doubt. When there is a prima facie case to connect this revision petitioner with a crime then he is not entitled for discharge under Section 239 of Cr.P.C. Therefore, the ratio laid down in the aforesaid decision is not at all applicable to the facts of the present case. That apart, learned Counsel for the revision petitioner also relied on another decision reported in *Sharada Properties and Ors. v. DR. Nirmal Kumar Misra and Anr.*, 2001 (2) KCCR 1018 wherein this Court has held that 'quashing the proceedings before the Magistrate held that 'on a careful perusal of the complaint filed by the respondents have nowhere alleged that at the time when they entered into agreement dated 3.5.1997 with petitioners for construction of a flat in the second floor of their site bearing No. 15 Khata 497/2, G. Palya, KR puram, Hobli, the petitioners entertained an intention to cheat them and thus induced them to enter into the said agreement. It is also not alleged in the said complaint that even at the time when the complainants paid a part of the sale consideration amount of Rs. 5,05, 001-00 the petitioners entertained an intention to cheat them and thus induced them to part with the said portion of the consideration amount.' In the

aforesaid cases, the parties have entered into an agreement with the builder for purchase of undivided 1/11th share in the land in construction of the land thereon by him. In fact, after making the payment, there was a breach of an agreement by the builder and he demanded an additional sum which was not covered by the agreement. Therefore, cognizance was taken by the learned Magistrate for an offence under Section 407 and 420 of Cr.P.C. and a private complaint was filed against the builder but the investigation agency filed a 'B' report. The complainant has challenged the 'B' report. Therefore, the ratio laid down in the aforesaid decision is not at all applicable to the facts of the case on hand. In the instant case, private complaint filed by the revision petitioner has been referred to the Cubbon Park Police and after investigation, a charge sheet has been filed against the revision petitioner therefore, it could be said that there is a prima facie cases and the ratio laid down by this Court is not at all applicable to the facts of the case on hand. Learned Counsel for the revision petitioner also relied on another decision reported in India Brewery and Distillery Limited and Ors. v. Shaw Wallace and Company Limited, 1998 CRL.L.J. 3759 wherein it has been held that 'Quashing of Criminal Proceedings - Complaint filed against petitioners accused alleging offence of cheating and Criminal breach of trust-allegations in complaint that accused misappropriated amount given by complainant for specific purpose, viz., to pay sales-tax-Evidence showing that amount paid by complainant in advance to accused a dealer to facilitate him to make payment of sales-tax. No requisite mens rea and dishonest intention to constitute alleged offence - Nor presence of essential ingredient 'entrustment' for alleged offences - Allegations in complaint not making out prima facie case of alleged offence - Criminal proceedings quashed'. Whereas, in the instant case, respondent is yet to prove the allegations made against the revision petitioner. Therefore, I do not find any good reason to interfere with the order under challenge. In fact the bank statements and hundies produced by the respondent indicates that there is a prima facie case to proceed against the revision petitioner. Therefore, I do not find any infirmities or illegal findings recorded by the trial Court and the same does not call for any interference and the revision petitioner is liable to be dismissed.

5. The revision petition is accordingly, dismissed.

