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

Nischint Constructions and ors. Vs. Dr. Pasumarthi S.N. Murthy and anr.

Nischint Constructions and ors. Vs. Dr. Pasumarthi S.N. Murthy and anr.

SooperKanoon Citation : sooperkanoon.com/439532

Court : Andhra Pradesh

Decided On : Oct-08-2009

Reported in : 2010CriLJ596

Judge : B. Seshasayana Reddy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 227, 228, 239, 240, 244, 244(1), 245, 245(1), 245(2), 246, 246(1), 246(4), 246(5), 397, 401 and 482; Indian Penal Code (IPC) - Sections 34, 406, 409 and 468

Appeal No. : Cri. Revn. Case No. 611 of 2009

Appellant : Nischint Constructions and ors.

Respondent : Dr. Pasumarthi S.N. Murthy and anr.

Advocate for Def. : C. Padmanabha Reddy, Adv. for No. 1 and ;Additional Public Prosecutor for No. 2

Advocate for Pet/Ap. : T. Bali Reddy, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

B. Seshasayana Reddy, J.

1. This Criminal Revision Case has been filed against the order dated 23-3-2009 of III Additional Chief Metropolitan Magistrate, Hyderabad in M. P. No. 417 of 2009 in C. C. No. 40 of 2002.

2. Back ground facts of the case leading to filing of this revision by A1 M/s. Nischint Constructions, rep. by its Proprietrix Smt. Ch. Niveditha Reddy, A2 Smt. Ch. Niveditha Reddy, A3 Ch. Baba Prasada Reddy and A5 Ch. Rajyalakshmi are : R1 Dr. Pasumathi S.N. Murthy owns 500 square yards and whereas his wife owns 300 square yards in the premises bearing No. 8-2-322, Road No. 7, Banjara Hills, Hyderabad. Apart from 300 square yards his wife owns some other extent also in the premises. He holds GPA on behalf of his wife. Al is a proprietary concern. A2 is the proprietorix of Al proprietary concern. A3 is the GPA holder of A2. R1 entered into development agreement with A1 represented by A3 who is GPA holder on behalf of the proprietorix. Ex. P. 2 is the copy of the development agreement between the parties. As per the development agreement, A3 was to construct 3 storied building (ground + 1st floor + 2nd floor) in an area of 800 square yards. A3, as a GPA holder, has to obtain necessary permissions from the municipal authorities. The development agreement speaks of the terms and conditions between the parties. The 1st respondent has given GPA in favour of A3. A3 had shown blue print plans, which were to be submitted to municipal authorities for necessary sanction.

3. It is the contention of 1st respondent that A3 commenced the construction work contrary to the terms and conditions of the development agreement and that A3 as GPA holder of A2, who is the proprietorix of Al firm, forged his signatures on the blue print plan showing the extent under the development agreement as 1163 square yards. It is also his case that A3 executed sale deeds in favour of his brothers and sister-in-law. A5 is no other than his sister-in-law being wife of his brother-Sudheer Reddy. When the Corporation attempted to demolish the unauthorized constructions, A3 basing on the GPA issued by R1 filed a suit and obtained interim injunction. R1 on coming to know of the suit, he himself got impleaded as a party and ultimately, the suit ended in dismissal. The purchasers approached the civil Court and secured interim orders initially and subsequently, the orders came to be vacated. RI approached the State Consumer Disputes

Redressal Forum against Al to A3, which was allowed partly and granted certain reliefs.

4. R1 filed a complaint before the V Metropolitan Magistrate, Hyderabad, alleging, inter alia, that 3rd petitioner herein as GPA holder of 2nd petitioner (who is proprietorix of 1st petitioner firm) forged his signatures on the blue print submitted to municipal authorities for approval. It is also stated in the complaint that all the petitioners and Sudheer Reddy colluded together and fabricated the documents so as to cause wrongful loss to him. The complaint was taken on file by the learned Magistrate as C. C. No. 40 of 2002. Thereupon, the petitioners herein and Sudheer Reddy filed Cri. P. No. 3484 of 2002 under Section 482 of Cr. P. C. to quash the proceedings in C. C. No. 40 of 2002. The Criminal Petition came to be dismissed to the extent of the petitioners herein while allowing the petition in respect of Sudheer Reddy by an order dated 28-4-2006. The relevant portion of the order reads as under:

The third accused obtained the signature of the complainant on the set of blue prints for obtaining sanction plan from the MCH showing the proposed construction would be in the 800 sq. yards., but with a dishonest intention to cause harm to the property of the complainant and to cheat him, the third accused submitted a different set of blue prints without the knowledge of the complainant by forging the latter's signature and obtained a plan from the MCH for construction of the building showing the area of the plot to be of 1163 sq. yards in violation of the development agreement. The fifth petitioner, who purchased the pent house acted according to the plan hatched by the petitioners 1 to 3 and sold the said pent house to third parties. Prima facie, the said allegations, except against the fourth petitioner, satisfy the ingredients of Sections 406, 468 r/w. Section 34 of I.P.C. In view of the same, the prosecution should be given an opportunity to prove the guilt of the accused and, therefore, I see no reason to quash the impugned proceedings at the initial stage basing on the material placed by the accused. Admittedly, there is no allegation against the fourth accused as to his participation either in the development agreement or in the transaction, and therefore, the impugned proceedings as against him are liable to be quashed.

Accordingly, the Criminal Petition is dismissed to the extent of petitioners 1 to 3 and 5. So far as petitioner No. 4 is concerned, the Criminal Petition is allowed and the impugned proceedings are quashed.

5. After the disposal of the Criminal Petition, the learned Magistrate proceeded with the enquiry in C. C. No. 40 of 2002 as provided under Section 244 of Cr. P.C. R1/complainant examined himself as P.W. 1 and marked 11 documents. The petitioners cross-examined P. W. 1. Thereafter, the petitioners filed Cri. M. P. No. 417 of 2009 under Section 245(1) of Cr. P. C. seeking discharge on the ground that the evidence of P. W. 1 does not make out a prima facie case against them for the offences alleged. R1/complainant resisted the application. The learned Magistrate, on hearing the counsel appearing for the parties and on considering the material brought on record, came to the conclusion that there is prima facie material against the petitioners herein for the alleged offences and thereby proceeded to dismiss the application filed by the petitioners herein by an order dated 23-3-2009. The relevant portion of the order needs to be noted, which reads as under:

6. The complainant through his evidence reiterates the contents of his complaint and made allegations against Al to A3 and A5 attracting the ingredients of Sections 468 and 409, I.P.C. read with Section 34, I.P.C. with the help of supporting documents Exs. P. 1 to P. 8, out of which the relevant documents are Ex. P. 1 (GPA), Ex. P. 2 agreement of development and Ex. P. 3 is plan and other certified copies of documents like sale deed, orders passed by various Courts etc.

7. It has to be seen before framing charges whether the complainant is able to place prima facie material before the Court to frame charges. But, this Court is not supposed to adjudicate on the material on merits at this stage. The Honourable High Court already made observations on this aspect in the orders referred above in Cri. P. No. 3484 of 2002. As seen from the record, including oral and documentary evidence placed by the complainant, I am of the view that the complainant is able to place prima facie material to satisfy the ingredients under Sections 468 and 409, I.P.C. read with Section 34, I.P.C. against Al to A3 and A5, the complainant should be given opportunity to prove the case on merits during full

trial. This Court cannot adjudicate at this stage with regard to the guilt of the accused since the complainant is able to place prima facie material before the Court to frame charges as laid down under Section 245, Cr. P.C. The decision as cited by the counsel for the petitioners in M. Sivaram and Ors. v. State of A.P. and Anr. : 2007 Cri LJ 1259 in support of the contention that there is no prima facie material against the accused, is not applicable to the facts and circumstances herein and in support of the arguments advanced by him. So also, the other decision cited by him in K. Srinivas v. State of A.P. 1997 Cri LJ 3997.

For the aforesaid reasons, this petition is dismissed.

Assailing the order, Al to A3 and A5 have filed this Criminal Revision Case.

6. Heard Sri. T. Bali Reddy, learned Senior Counsel appealing for the petitioners and Sri. C. Padmanabha Reddy, learned Senior Counsel appearing for the 1st respondent.

7. Sri. T. Bali Reddy, learned Senior Counsel submits that the trial Court has not considered the cross-examination of P. W. 1 and, therefore, the order impugned in the revision is liable to be set aside and the matter needs to be remanded back to the trial Court for fresh consideration. A further submission has been made that once the evidence has been adduced during the course of enquiry under Section 244 of Cr. P.C. the trial Court has to consider the evidence in toto and not the chief examination of the witnesses. Learned Senior Counsel referred to Sections 245 and 246 of Cr. P.C. extensively, apart from referring to the terms and conditions of the development agreement in support of his submissions. Much emphasis has been laid on clauses 17, 19 and 22 of the development agreement, which read as under:

17. The builder shall pay an amount of Rs. 2,50,000/- as interest fee deposit and the amount shall be refunded at the time of handing over the possession of the constructed area fallen to the share of the owner.

19. The builder is permitted to construct the PENT HOUSE on the third floor below the water tank to the extent of 1,800 sq. ft. and the builder alone shall be

responsible to obtain the necessary regularization at his own cost and expenses.

22. In the event of any dispute both the parties agreed to prefer the matter to an arbitrator, to be selected by mutual consent and the decision of arbitrator shall be agreed.

Learned Senior Counsel also relied on a decision of the Supreme Court in Ajoy Kumar Ghose v. State of Jharkhand : 2009 Cri LJ 2824, wherein it has been held that the right of the accused to cross-examine the witnesses at the stage of Section 244(1) of Cr. P.C. would be completely lost, if the view is taken that even without the evidence, a charge can be framed under Section 246(1), Cr. P.C. The right of cross-examination is a very salutary right and the accused would have to be given an opportunity to cross-examine the witnesses, who have been offered at the stage of Section 244(1), Cr. P.C. The accused can show, by way of the cross-examination, that there is no justifiable ground against him for facing the trial and for that purpose, the prosecution would have to offer some evidence. While interpreting this section, the prejudice likely to be caused to the accused in his losing an opportunity to show to the Court that he is not liable to face the trial on account of there being no evidence against him, cannot be ignored.

8. The language of Section 245, Cr. P. C. outlining the procedure of a warrant case instituted on a complaint had given rise to the question whether it impliedly negatived the right of accused person to cross-examine a prosecution witness before the charge was framed or did it confer on the accused an additional right to cross-examine the prosecution witnesses a second time after the charge was framed. In this connection, it must be noted that there is no provision in Section 244, Cr. P.C. prohibiting the cross-examination of a prosecution witness before the charge is framed. The evidence of a witness includes not only his examination but also his cross-examination and re-examination, if necessary and the Magistrate has discretion to allow the accused to cross-examine a prosecution witness even before the charge is framed. In a warrant case instituted otherwise than on a police report an accused has more than one opportunity to cross-examine the prosecution witnesses, (i) under Section 244, Cr. P.C., before the charge is framed; (ii) under Section 246, Cr. P.C., after the charge is framed, and (iii) under

Sections 246(4) and (5), Cr. P. C. after the accused enters on his defence, if the Magistrate considers this necessary.

9. It is true that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material, which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

10. In State of Karnataka v. L. Muniswamy : AIR 1977 SC 1489 : 1977 Cri LJ 1125, a three judge Bench of the Supreme Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasized.

11. In State of Maharashtra and Ors. v. Som Nath Thapa and Ors. : AIR 1996 SC 1744 : 1996 Cri LJ 2448, a three Judge Bench of the Supreme Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relatable to trial of warrant cases; and (iii) Sections 245 (1) and (2) qua trial of warrant cases instituted otherwise than a police report, which dealt with the question of framing of charge or discharge, stated thus:

if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is

apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

12. In State of M.P. v. Mohanlal Soni : AIR 2000 SC 2583 : 2000 Cri LJ 3504, the Supreme Court, referring to several previous decisions held that the crystallized judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

13. It may be mentioned that the settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

14. PW 1 is the complainant, Exs. P1 to P11 have been marked through him. It is the consistent case of the complainant, who has been examined as PW1, that his signatures on the blueprint have been forged by A3, who has been acting as General Power of Attorney of A2, who is the proprietrix of Al Construction concern. The further accusation against the petitioners is that the extent covered under the development agreement is 800 sq. yards and whereas, A3 submitted plans showing the extent as 1163 sq. yards. A penthouse, which is unauthorizedly built has been purchased by A5, who is no other than sister-in-law of A3 and subsequently, the same has been sold to Mr. & Mrs. Dinesh Mishra. The learned Magistrate in para 6 of the impugned order has observed that the complainant through his evidence reiterates the contents of his complaint. At the stage of enquiry under Section 245, Cr. P. C., minute and microscopic examination of the

evidence brought on record is not required. What is required is whether the evidence produced on record makes out a ground to frame charges against the accused. Paras 6 and 7 of the impugned order, which have already been extracted above, indicate that the learned Magistrate has cautiously applied his mind to the material brought on record and proceeded to dismiss the application seeking discharge. I do not see any illegality or irregularity warranting interference of this Court in exercise of powers either under Section 397 or 401, Cr. P. C.

15. Accordingly, the Criminal Revision Case is dismissed at the admission stage.

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