

Reginald Abraham and ors. Vs. the State of A.P., Through Sub-inspector of Police, Rep. by Public Prosecutor, High Court of A.P.

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Court : Andhra Pradesh

Decided On : Apr-05-2002

Reported in : 2002(1)ALD(Cri)889; 2002(2)ALT(Cri)97

Judge : Gopala Krishna Tamada, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 239; Indian Penal Code (IPC) - Sections 406, 415, 418, 420 and 423

Appeal No. : Crl. R.C. No. 400 of 2000

Appellant : Reginald Abraham and ors.

Respondent : The State of A.P., Through Sub-inspector of Police, Rep. by Public Prosecutor, High Court of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : G. Anandam, Adv.

Disposition : Criminal revision case allowed

Judgement :

ORDER

Gopala Krishna Tamada, J.

1. In this revision, the petitioners, who are A-1 to A-3 in C.C. No.356 of 1998 on the file of the Court of the Judicial I Class Magistrate, Chilakaluripet, assail the order dated 31-1-2000 made in Crl. M.P. No.747 of 1999 in the said case, by which the learned Magistrate refused to discharge them under Section 239 Cr.P.C. of the offences punishable under Sections 406 and 420 I.P.C.
2. The factual matrix, according to the charge sheet filed by the S.H.O., Chilakaluripet (Town) P.S., is as follows:

The de facto complainant K. Subba Rao and two others are the partners of 'Kokkera Brothers' and they are engaged in the business of cotton such as pressing and supplying the lint bales etc. In their business transactions, during the year 1994 as per the understanding entered into between the then Administrator of Kamakshi Amman Co-operative Spinning Mills Ltd., Kancheepuram, Kokkera Brothers supplied 37 lots of lint bales between December 1994 and June 1995 and the entire value of the said bales was paid creating an impression that the said Kamakshi Amman Cooperative Spinning Mills Ltd., is a genuine customer. From Mr. Thangavelu, the then Administrator of Kamakshi Amman Co-operative Spinning Mills Ltd., Kancheepuram, one Mr. Ekambaram took over as Administrator and during his tenure also on account of the impression created by the said Ekambaram, Kokkera Brothers supplied 13 lots of lint bales between the period from 22-6-1995 to 4-7-1995, the cost of which is Rs.67,47,882/-. As the said amount was not paid in time, the complainant's firm stopped supplies. In the meanwhile, the said Ekambaram was transferred and T.P. Lakshmanan, who is the 2nd petitioner herein, assumed office on 31-7-1995. Immediately thereafter, it is alleged that the 2nd petitioner herein lured the de facto complainant stating that he would clear off the old dues and make prompt payment and requested him to continue the supply of cotton bales. But the de facto complainant did not supply the cotton bales, as the arrears were not paid. After a gap of about seven months, the 2nd petitioner again promised the de facto complainant stating that the payment will be made for the current supply of cotton bales and in that regard a letter in writing also was issued. Believing the said promise and also the promise

that the arrears also would be paid at the rate of Rs.50,000/- per lot, the de facto complainant started supplies and accordingly supplied 27 lots during the period from 1-2-1996 to 31-7-1996. Though the promise was to pay the entire amount on the current supply of cotton and also the arrears, there was a balance of Rs.10,78,366/- by the time the 2nd petitioner left and the 1st petitioner assumed office as an Administrator. The same was confirmed by a letter addressed by the 1st petitioner to the de facto complainant. Subsequently, the 3rd petitioner assumed office as Administrator in the place of the 1st petitioner and he also promised that entire arrears as on that date i.e., Rs.78,26,248/- would be paid and requested for supply of cotton bales. Basing on the said assurance and promise made by the 3rd petitioner, the de facto complainant deputed his clerk who went all the way to Kancheepuram where he was assured that the moment the entire yarn is disposed of to Co-optex, the amount would be paid. But, the 3rd petitioner also did not keep up the promise though they got prepared yarn in their mill with the cotton bales supplied by the de facto complainant and sold the same to Co-optex and other cotton merchants and received the amounts, they were utilized for some other purposes. Thus, it is alleged that all the petitioners herein acknowledged the debt and promised the payment of the cost of the stocks supplied but failed to pay the same and thus cheated the de facto complainant, which acts are liable to be punished under Sections 420 and 406 I.P.C.

3. The learned Magistrate took cognizance of the charge sheet against the petitioners. Thereupon, the petitioners herein filed a petition under Section 239 Cr.P.C. before the learned Magistrate pleading discharge stating that the entire transactions are based on 'Khatha' which are purely civil in nature and do not attract any of the penal provisions, much less the provisions under Sections 406 and 420 I.P.C. The learned Magistrate, however, refused to discharge them holding that prima facie, the material on record establishes that there was a promise by the petitioners and that the petitioners did not make the entire payment as per the said promise, and that it shows the dishonest intention on the part of the petitioners. Hence, this revision.

4. Learned senior counsel Sri C. Malla Reddy appearing for Sri G. Anandam, learned Advocate for the petitioners, strenuously contended before this court that if

the entire allegations made in the charge sheet are taken at their face value, the said transactions are purely civil in nature, for which the de facto complainant has a remedy by approaching the competent civil court and the de facto complainant cannot prosecute the petitioners herein as if there was dishonest intention which attracts the penal provision of Section 420 I.P.C. Further, he submitted that the entire transactions even if accepted, have taken place during the regime of Ekambaram and Thangavelu, who were the then Administrators and no single transaction of supply of cotton bales by the de facto complainant to the said Kamakshi Amman Cooperative Spinning Mills Ltd., has taken place during the regime of the petitioners 1 and 3 herein and as such they cannot be held responsible for the said non- payment. Further, he submitted that mere acknowledgement of debt and promise to pay the arrears would not attract the provisions of Section 420 I.P.C. and on the other hand it establishes the bona fides on the part of the petitioners herein and as such the learned Magistrate ought to have discharged the petitioners. On the contrary, the learned Public Prosecutor opposed the said contentions stating that the petitioners are charged only with the offence punishable under Section 420 I.P.C. but not under Section 406 I.P.C.

5. He further submitted that the Government of Tamil Nadu issued G.O. Ms. No.139 dated 5-7-1995, published in Tamil Nadu Gazette Extra-ordinary on 18-7-1995, declaring some of the Co-operative Spinning Mills in the State, including the Kancheepuram Kamakshi Amman Co-operative Spinning Mills Ltd., Kancheepuram, as 'Relief Undertakings' and further directed that all contracts, assurances of property, agreements, assignments, standing orders or other instruments, to which the said Relief Undertakings are a party shall be suspended in operation and that all the rights, privileges, obligations and liabilities accruing or arising thereunder before the date of the G.O. shall remain suspended. It is submitted that the said G.O. is within the knowledge of the petitioners herein and as such they ought not to have entered into any transactions with the de facto complainant. He further contended that though the entire transactions have taken place during the tenure of Thangavelu and Ekambaram, the petitioners made false promises promising to pay the arrears with a request to supply stocks which clearly establishes their dishonest intention and as such the learned Magistrate is justified in refusing to discharge the petitioners of the offences for which they were

chargesheeted. He summed up his contentions stating that the material on record prima facie establishes the dishonest intention on the part of the petitioners and creates a suspicion and as such prayed this court to dismiss the revision.

6. In the light of the rival submissions made by both the counsel, this court has given its anxious consideration and looked into the provisions of Section 415 I.P.C. and the entire record placed before the trial court.

7. Section 415 of the Indian Penal code defines 'Cheating', 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'.

Explanation: A dishonest concealment of facts is a deception within the meaning of this section. '

8. The requirements to come within the meaning of the word 'cheating', insofar as the facts of the case on hand are concerned, are as follows: (i) Dishonest intention; and (ii) On account of the said dishonest intention, the person should have delivered the property. If these two requirements are fulfilled, it can safely be inferred that the petitioners herein have committed the offence punishable under Section 420 I.P.C.

9. Now coming to the allegations made in the charge sheet, it is alleged therein that -

(a) During the regime of Thangavelu, the then Administrator, from December 1994 to June 1995, 37 lots were supplied and the entire amount was paid.

(b) Ekambaram took charge from Thangavelu and during his regime from 22-6-1995 to 4-7-1995, 13 lots worth of Rs.67,47,882/- were supplied.

(c) The amount of the said stock was not paid.

(d) The 2nd petitioner assumed office on 31-7-1995.

(e) During the regime of the 2nd petitioner i.e., from 1-2-1996 to 31-7-1996, 27 lots were supplied.

(f) The entire amount of 27 lots, excepting an amount of Rs.10,78,366/-, was paid.

(g) The 1st petitioner who took office from the 2nd petitioner confirmed the same and promised to pay the entire arrears i.e., Rs.67,47,882/- plus Rs.10,78,366/- (total Rs.78,26,248/-).

(h) The entire yarn made from out of the cotton bales supplied was sold to Co-optex and other cloth merchants but did not pay the amounts.

10. From the above allegations, it cannot be said that the petitioners 1 and 3 have anything to do with the entire transactions. During their regime as Administrators of the Kancheepuram Kamakshi Amman Co-operative Spinning Mills Limited, the de facto complainant did not supply any cotton bales. When once it is not the case of the complainant that he parted with the property in favour of the petitioners herein basing on the promise made by them, it cannot be said that they come within the ambit of Section 415 I.P.C. It appears that merely because the petitioners happened to be the Administrators of the said Kancheepuram Kamakshi Amman Co-operative Spinning Mills Ltd., the complainant is trying to rope in those persons also as if they had the dishonest intention, on account of which the complainant delivered the cotton bales.

11. In *G. Sagar Suri v. State of U.P.*, 2000 SCC (Cri.) 513 the learned Judges of the apex court in identical circumstances, after discussing the provisions of law and the case law, have held that -

' We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd., in the instant criminal case without regard to their role or participation in the alleged

offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 I.P.C. and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do. '

12. Similarly, in another decision in *Alpic Finance Ltd. v. P. Sadasivan*, 2000 (1) ALD (Crl.) 551 (SC) again the apex court held that -

'10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellants, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law

and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. '

13. In another case in *Hridaya Ranjan Prasad Verma v. State of Bihar*, 2000 SCC (Cri.) 786 their Lordships held -

'15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 Indian Penal Code and its allied offences under Sections 418 and 423 has not been made out.

... .. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No. 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No. 2 part with property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of

dishonest intention in order to deceive the complainant - respondent No. 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be in our considered view an abuse of process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.'

14. From the above narration of facts coupled with the judgments cited supra, I am of the firm view that the entire transactions are purely civil in nature. The alleged letters addressed by the petitioners 1 and 3 acknowledging the debt and promising to pay the same would not attract the provisions of Section 415 I.P.C., as these two petitioners never had the dishonest intention at the inception and on account of the said dishonest intention the de facto complainant delivered the property as, for that matter, no property was in fact delivered.

15. It is alleged in the charge sheet that by the time the 2nd petitioner took over charge as Administrator, an amount of Rs.67,47,882/- was outstanding and on account of the promise made by the 2nd petitioner the de facto complainant supplied 27 lots between 1-2-1996 and 31-7-1996. But, at the same time, it is also stated in the charge sheet that the entire sale consideration of the 27 lots was paid, excepting a balance amount of Rs.10,78,366/-. From the above narration of events, I am of the view that the above transaction also does not fasten the 2nd petitioner with any criminal liability. As an administrator of the firm, it is his duty to see that the business is carried on and in that regard he might have promised the de facto complainant that he would see that the arrears are paid and requested for supplies. The said act on the part of the 2nd petitioner would not amount to dishonest intention on account of which the complainant was forced to deliver the cotton bales.

16. Of course, it is true that G.O. Ms. No.139 dated 5-7-1995 declared some of the Co-operative Spinning Mills in the State, including the Kancheepuram Kamakshi Amman Co-operative Spinning Mills Ltd., Kancheepuram, as 'Relief Undertakings' and further directed that all contracts, assurances of property, agreements, assignments, standing orders or other instruments, to which the said Relief

Undertakings are a party shall be suspended in operation and that all the rights, privileges, obligations and liabilities accruing or arising thereunder before the date of the G.O. shall remain suspended. It is also true that the 2nd petitioner assumed office on 31-7-1995 i.e., after the advent of the said G.O. and in view of the prohibition contained in the said G.O., in the normal course, he should not have entered into any transaction. But, at the same time, it is to be noticed that the de facto complainant was equally aware of the said G.O. and in spite of it, he supplied 27 lots contrary to the terms of the said G.O. In spite of the prohibition which was enforced by the Government through the said G.O., the 2nd petitioner had not evaded payment and on the other hand he had taken prompt steps to pay the value of the entire 27 lots which were supplied after the said G.O., leaving a balance of only Rs.10,78,366/-. In fact, the said conduct on the part of the 2nd petitioner establishes his bona fide intention to clear off the arrears. Thus, from the conduct of both the parties, it cannot be said that the 2nd petitioner had any dishonest intention at the inception in requesting the de facto complainant to supply the stocks.

17. As already observed, on a consideration of the facts culled out from the charge sheet, I am of the firm view that it is purely of civil nature, for which the remedy lies elsewhere and it does not satisfy the ingredients of Section 415 I.P.C. Therefore, the petitioners are entitled to be discharged under Section 239 Cr.P.C.

18. The judgments cited by the learned Public Prosecutor reported in State of Bihar v. Ramesh Singh, AIR 1977 SC 2018 and Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar, 1979 Cri. L.J. 1390 deal with 'suspicion' and in that context the learned Judges of the apex court have taken the view that if there is strong suspicion at the initial stage which leads the court to think that there is ground for presuming that the accused have committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. There cannot be any doubt with the said proposition laid down in the above judgments. However, the facts of the case on hand do not give rise to any such strong suspicion which leads the court to hold that the accused has committed any offence as alleged. Therefore, the cases cited by the learned Public Prosecutor are not of much relevance to the facts of the case on hand.

19. Of course, this court makes it amply clear that simply because a particular transaction is purely civil in nature, it cannot be said that it does not attract the provisions of criminal law. Criminal law and civil law are parallel and run side-by-side. Simply because a civil law remedy is available, it cannot be said that the remedy under criminal law is barred as they are co-extensive. The object of civil law is that the effected party shall always have the right to sue for recovery of the amounts, damages or compensation and the object of the criminal law is to punish the offender who commits an offence against a person, property or the State.

20. In the result, this criminal revision case is allowed setting aside the order dated 31-1-2000 made in CrI. M.P. No.747 of 1999 by the learned Magistrate and the petitioners are hereby discharged of the offence under Section 420 I.P.C.

21. However, it is needless to observe that it is open for the de facto complainant to approach competent civil court for realization of the amounts due to him on account of the business transactions.

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