

Chinnamma Vs. Thomas

Chinnamma Vs. Thomas

SooperKanoon Citation : sooperkanoon.com/726649

Court : Kerala

Decided On : Jul-12-2001

Reported in : 2001(2)ALT(Cri)256

Judge : Mr. M.R. Hariharan Nair, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 420; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 155(2), 156(1 and 3) and 482

Appeal No. : Cri. M.C. 2149 of 1998

Appellant : Chinnamma

Respondent : Thomas

Advocate for Def. : T.V. George, Adv.

Advocate for Pet/Ap. : S. Sreekumar, Adv.

Disposition : Appeal Dismissed

Judgement :

ORDER

M.R. Hariharan Nair, J.

1. The prayer of the petitioners, who are sisters, is to quash the proceedings pursuant to a private complaint filed by the respondent, which is registered as C.C.

No. 1285 of 1997 of the Judicial First Class Magistrate Court-I, Muvattupuzha. 1 Acre and 52 cents of land belonged to one Krishnan. On his death it was inherited by his wife as also by four of his daughters and two sons. The petitioners in the M.C. are two of the four daughters aforementioned. The petitioners executed Annexure III Power of Attorney in favour of their mother authorising her to convey the petitioners' right over the property also. Pursuant hereto the rights over the property were conveyed to the respondents as per Annexures I and II Sales Deeds dt 9.9.1985. Actually one of the daughters of Krishnan was not a party to either of the Sale Deeds. Alleging that fraud was committed in the matter of sale, the respondent filed a private complaint invoking Section 420 of IPC. It was sent for investigation under S. 156(3) of Cr. P.C. and a refer report was filed by the police in due course. It was then that the respondent filed Annexure IV protest complaint based on which C.C. No. 1285 of 1997 was registered.

2. Learned counsel for the petitioner submitted that the allegations in the complaint do not disclose any cause of action against the petitioners and that there cannot be any fraud played by the petitioners in the matter in so far as they are not parties to Annexures I and II Sales Deeds and it was their mother who represented them in Annexure III. Yet another contention is that the complaint is filed 12 years after the execution of the conveyance in question and such a belated complaint cannot end up in conviction. On the ground that continuance of the proceedings will be an abuse of process of the court the petitioners seek to get it quashed.

3. According to the learned counsel for the respondent, this is not a fit case for invoking the power under S. 482 Cr.P.C. That power is to be exercised only in the rarest of rare cases and in the present case the fraudulent intention of the petitioners can be seen even in the recitals in Annexure III Power of Attorney. They had suppressed the fact that their sister Krishna Kumari, who was abroad, was one of the successors with regard to the assets of Krishnan and it was pursuant to the said Power of Attorney that Annexures I and II conveyances were executed. As regards the delay, it was pointed out that the respondents was made to believe that only the parties to Annexures I and II were the actual successors of Krishnan and it was only when Krishna Kumari, who was abroad, filed O.S. No. 163 of 1994 of the Munsiff Court, Muvattupuzha, seeking partition of her share

over the property that the respondent became aware of the fact that she also had right over the property and that in fact a fraud had been committed on the respondent. According to him, he has filed the complaint before the Court immediately after coming to know of the exercise of fraud, which was from O.S. No. 163 of 1994.

4. As regards quashing of complaints under S. 482 Cr.P.C. the relevant guidelines are contained in *State of Haryana & Ors. v. Bhajanlal & Ors.* (JT 1990 (4) SCC 650). The principles have been summarised as follows:-

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under S. 155(2) of the Code.

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the

grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/of where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge'.

The question is whether this is one of such rare cases where the discretion of this Court can be justly invoked to quash the proceedings.

5. It is true that a civil case is pending with regard to partition. That does not by itself affect the criminal proceedings, provided a sufficiently strong case of fraud is made out in the complaint. A perusal of the complaint in question shows that the present respondent had clearly alleged that the accused in the case, including the present petitioners, had made the respondent believe that there was no other claimant to the property except the parties to the sale deed and that the property was free from encumbrances. He has also averred that but for the said representations he would not have purchased the property. The facts sufficient for invoking S. 420 of IPC are available in the pleadings in the case. It is true that the present petitioners were not parties to Annexures I or II. It is only their mother, acting upon the power conferred under Annexure III Power of Attorney, who executed the document. That however is not sufficient to conclude that the petitioners had no role to play in the matter of negotiations preceding the execution of the sale deeds. As rightly pointed out by the learned counsel for the respondent, in Annexure III Power of Attorney itself elements suggestive of fraud are contained. There is no mention therein that on the death of Krishnan, Krishna Kumari, who was one of his daughters also got right over the same. On the other hand, what is mentioned is that the executants viz., the present petitioners, also got joint right. The Power of Attorney also contained an averment that the consequences of the mother executing the document on behalf of the petitioners would be the same as though the petitioners also had signed in the document. Want of mention of the successors of Krishnan in full in Annexure III prima facie justifies the contention of the respondent that even at the time of executing the same the petitioners had the idea not to divulge the full details regarding the

successors. In the case, that is a matter on which further evidence can be let in. I am not satisfied, in the circumstances, that there is justification for quashing the proceedings on the assumption that continuance of the same would be an abuse of process of the court.

6. It is true that there has been delay of over 12 years in filing the complaint. But then the cause of action would arise only when the fraud comes to the notice of the respondent. It is his specific case, which again is subject to proof, that he became aware of the exercise of fraud only when O.S. No. 163 of 1994 was filed by Krishna Kumari. In the circumstances the complaint cannot be quashed on the ground of delay also.

7. *Elamma John v. Mercy* (2001 (1) KLT SN 78 (Page 65) relied on by the learned counsel for the petitioner is a case of different facts. That was a case of loan and there was an indemnity clause in the document itself. The fact that there was a lawyer notice issued and that a reply was sent was suppressed in the complaint. The respondent had no case that the bank had initiated any proceedings against the property. It is in those circumstances the court found that there was no prima facie case to establish the offence of cheating and that continuance of the proceedings would amount to an abuse of process of the Court. The facts in the present case being different and there being prima facie reason to find that the executants had suppressed the existence of one of the sharers, who was abroad, and instead made the purchaser believe that there was no other claimant, prima facie, justifies the filing of a complaint alleging offence under S. 420 of IPC.

8. The facts in *Haridaya Ranjan Prasad Verma v. State of Bihar* ((2000) 4 SCC 168) relied on by the counsel for the petitioners were also different. That was a case where a breach of contract was the subject matter. Fraudulent or dishonest intention was not prima facie established. The court found that on a perusal of the complaint in its 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 pleaded nor suggested indirectly. What was averred was only that the complaint has not disclosed the information that one of their brothers had filed a partition suit, which was pending. It was in

those circumstances that the court found that there was no justification for continuance of the proceedings. As already mentioned, the facts of the present case are different.

9. Tomy v. Jaffer (2000 (2) KLJ 455) relied on by the petitioners is also a case of different facts. There also allegations in the complaint did not justify a conclusion that at the time of making the alleged representations regarding the Air tickets the accused had fraudulent or dishonest intention. The Court concluded that the allegations in the complaint, even if they are taken at their face value, and accepted in their entirety, did not prima facie constitute any offence or make out a case against the petitioners therein. The said precedent also had no application in the facts of the present case as the averments in Annexure IV complaint specifically refer to deceptive representations being made by the accused inclusive of the petitioners and the recitals in Annexure III Power of Attorney prima facie justify such a conclusion.

In the circumstances, I find no merit in the CrI. M.C. It is accordingly dismissed.

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