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Court : Rajasthan

Decided On : Feb-03-2006

Reported in : RLW2006(1)Raj814

Judge : Gopal Krishan Vyas, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438 and 482; Indian Penal Code (IPC) - Sections 120, 182, 406, 410 and 420; Contract Law

Appeal No. : S.B. Criminal Misc. Petition No. 1045 of 2004

Appellant : Mukna Ram

Respondent : State and ors.

Advocate for Def. : Sunil Mehta, Adv.

Advocate for Pet/Ap. : R.S. Choudhary, Adv.

Disposition : Petition dismissed

Judgement :

Gopal Krishan Vyas, J.

1. By way of filing present misc. petition under Section 482 Cr.P.C., the petitioner has prayed for quashing of FIR No. 120/2004 P.S. Chhaper registered against him upon the complaint filed by Prahlad Singh - non-petitioner No,2 for offence under

Sections 406 and 410 IPC.

2. It is stated by the learned Counsel for the petitioner that as per complainant, he purchased a tractor bearing No. RJ-10-R- 4825 from Mahendra Finance Company, Churu in August, 2002. It is further stated that as per allegation on 2.4.2004, his known person Shri Gopalram Swami and petitioner came to the complainant and asked for purchase of said tractor. At that time, some other villagers, Jodh Singh, Narayan Kheria and Gomadaram Nayak were present and in front of them, petitioner accepted the purchase of tractor from the complainant in consideration of Rs. 2,20,000/-. It is also stated that Rs. 10,000/- were paid in advance in connection with the consideration so accepted and the delivery of tractor was taken by the petitioner in presence of above said villagers and it was agreed by him that remaining amount will be paid within a period of three months. As per the allegation of the complainant, after completion of three months, he demanded the remaining amount in the month of July, 2004 but the petitioner refused to pay remaining amount and stated that he has sold the tractor further and you are free to take any action against him. Upon complaint, the Police Station Chhaper registered a case against the petitioner under Section 420 and 120 IPC and commenced investigation. It is contended by the learned Counsel for the petitioner that as per allegation it is a civil dispute and no case for criminal proceedings is made out against the petitioner, therefore, the FIR registered against the petitioner is required to be quashed. It is also contended by the learned Counsel for the petitioner that a concocted story has been framed by the complainant against the petitioner and he has nothing to do with the purchase of tractor, which is said to be belonging to the complainant and this FIR is politically motivated and false. It is further contended that in assembly election, the non-petitioner No. 2 and Gopal Das Swami voted for BJP's candidate and supported him but the petitioner is belonging to Congress Party, therefore, due to pressure of Gopal Das Swami and MLA - Manohar Singh, this false complaint has been filed against him. It is also contended that as per the FIR, there is no written agreement for sale between the petitioner and the complainant, which clearly shows that the complaint is false. Therefore, the FIR is liable to be quashed. As per the contention of the learned Counsel for the petitioner, this FIR has been filed by the non-petitioner No. 2 is abuse of process of the Court and to settle the political

scores and the petitioner has nothing to do with the said tractor. Therefore, the FIR is required to be quashed. He has further contended that no case is made out against him for which even any investigation is required. Learned Counsel for the petitioner has invited the attention of this Court towards certain judgments in which scope of Section 482 Cr.P.C. has been enumerated. In support of his arguments, he has cited before the judgments of Bheru Singh v. State of Rajasthan and Anr. 1985 Cr.L.R. (Raj.) 232, S.K. Kothari v. State of Rajasthan and Anr. 2004(1) Cr.L.R. (Raj.) 136 = RLW 2004 (4) Raj. 2209 Jagdish v. State of Rajasthan and Anr. 2004(1) Cr.L.R. (Raj.) 136, Jagdish v. State of Rajasthan and Anr. 2004(1) Cr.L.R. (Raj.) 225, Almi v. State of Rajasthan and Anr. 2004(1) Cr.L.R. (Raj.) 214 Devilal v. State of Rajasthan and Anr. 2004(1) Cr.L.R. (Raj.) 135. While citing the aforesaid judgments, he prayed for quashing of the FIR.

3. Per contra, learned Public Prosecutor as well as the learned Counsel appearing on behalf of the non-petitioner No. 2 invited the attention of this Court towards Section 482 Cr.P.C. and urged that petition under Section 482 Cr.P.C. is maintainable to the extent as to secure the ends of justice and to prevent the abuse of process of courts. In the present case, the complainant is citizen of India and if any wrong has been committed against him, which is punishable under the Indian Penal Code, then, obviously, he can file complaint and that complaint is required to be investigated by the Police. So also, if his complaint is false, then, after investigation final report can be given by the police and even there is a provision in the Code of Criminal Procedure that for filing false complainant, proceedings under Section 182 of IPC can be initiated against him. During the investigation nobody can interfere in the investigation. It is always open for him to file a complaint against the petitioner, therefore, there is no ground for interference at this stage while exercising the extra ordinary jurisdiction under Section 482 Cr.P.C. for quashing of the FIR filed by the complainant.

4. Further, it is contended by the learned Counsel for the non- petitioner that both the remedies are available to the complainant by way of filing the suit for remaining payment and for cheating. Learned Counsel for the non-petitioner - Mr. Sunil Mehta has invited the attention of this Court towards certain judgments in which, it has been held by the Apex Court that inherent powers under Section 482

Cr.P.C. should be exercised sparingly and further in case of Kamaladevi Agarwal v. State of W.B. and Ors. 2002 SCC (Cri) 200, the Apex Court has held as follows:-

The High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. There is no substance in the argument that as the Civil Suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. The nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of 'beyond reasonable doubt'. The revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.

5. I have heard learned Counsel for the petitioner and the learned Public Prosecutor and the learned Counsel appearing on behalf of the complainant. At this stage, it is necessary to point out that vide order dated 26.4.2005, this Court has observed that 'Since petitioner has also been interrogated in this case, the Investigating Officer is directed to produce a report whether any offence is made out against the petitioner or not within a period of 15 days before this Court.' Having passed the aforesaid order, the case-diary was ordered to be sent back to the Investigating Officer. At the time of hearing, learned Public Prosecutor has invited the attention of this Court to the fact that in the investigation, the Investigation Officer has come to the conclusion that offence under Section 420 IPC is made out against the petitioner.

6. As per the statement of witnesses and the material on record, it is further stated that no recovery of tractor has still been made due to want of arrest of the petitioner. It is also contended by the learned Public Prosecutor that bail application under Section 438 Cr.P.C. filed on behalf of the petitioner was also dismissed by the learned District & Sessions Judge and even after that the petitioner is absconding.

7. Learned Counsel appearing on behalf of the complainant argues that even oral agreement can be arrived at in between the parties and if any party is violating the conditions, then, it is open for other party to take recourse of law for the purpose of relief. He has invited attention of this Court towards the definition of contract enumerated in contract law in which even oral contract is valid.

8. It is also contended that it is always open for the complainant to take recourse of both the remedies in civil as well as criminal side. According to the facts narrated in the FIR, prima facie offence is made out against the petitioner because after taking possession of the tractor, he has sold the same to the another party and there is evidence on record that the possession of the tractor was taken by the petitioner and as per the investigation also, the case is made out against the petitioner. Therefore, there is no question of abuse of process so also even to secure the ends of justice, the petitioner is required to cooperate with the investigation and the matter requires adjudication by the competent trial court.

9. Learned Counsel for the complainant invited attention of this Court towards the judgments of *Trisuns Chemical Industry v. Rajesh Agarwal and Ors.* : 1999 CriLJ4325 , *Kamaladevi Agarwal v. State of W.B. and Ors.* 2002 SCC (Cri) 200, *M. Narayandas v. State of Karnataka and Ors.* : 2004 CriLJ822 , *Kanhailal v. Kantilal and Ors.* , *Smt. Kamlal Beniwal v. Dhir Singh and Ors.* and urged that the petition filed by the petitioner under Section 482 Cr.P.C. for quashing of FIR deserves to be dismissed.

10. I have perused the contents of FIR. From bare perusal of the FIR, it is clear that the possession of the tractor was taken by the petitioner and it was not given back to the complainant nor the consideration was paid. Moreover, there is allegation that he has further sold the tractor to another party, therefore, the matter

requires investigation and the Police has already investigated the matter and bail application moved on behalf of the petitioner has also been dismissed by the learned District & Sessions Judge. I have also perused Section 182 IPC in which it is clearly provided that If false information is given by the complainant with an intention to cause public servant to use his lawful power to the Injury or annoyance of any person, then, it is punishable. Thus, in my opinion, when prima facie case is made out against the petitioner and also, case is made out against the petitioner in investigation, then, there is no question of interference in the investigation. If ultimately, Investigating Officer comes to conclusion that information is false, then, it is always open for the Investigating Agency to file a complaint against the complainant but at this stage, I am of the opinion that there is no ground to exercise inherent powers under Section 482 Cr.P.C. for quashing of the FIR. Therefore, the misc. petition stands dismissed.