

Peter Vs. S. Yesudhas

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Court : Chennai

Decided On : Sep-20-1991

Reported in : 1992CriLJ3123

Judge : Pratap Singh, J.

Appeal No. : Crl. M.P. No. 9251 of 1989

Appellant : Peter

Respondent : S. Yesudhas

Advocate for Def. : N. Karpagavinayagam, Adv.

Advocate for Pet/Ap. : V. Sairam, Adv.

Judgement :

ORDER

1. The 1st accused in C.C. No. 944 of 1987 on the file of the Judicial First Class Magistrate, Padmanabhapuram has filed this petition under section 482 of the Code of Criminal Procedure to call for the records in the abovesaid calendar case and quash the same.

2. The respondent has filed a private complaint against four accused and the petitioner herein is the 1st accused. The allegations in it are briefly as follows :

On 12-9-1986, the 1st accused entered into an agreement with the complainant for sale of St. Peters R. C. Primary School and the appurtenant site and that agreement was reduced into writing. On that day, a sum of Rs. 50,000/- was paid as advance and the sale price was agreed as Rs. 2,60,000/- and the balance of sale price was agreed to be paid within three months from the date of the agreement. On 28-10-1986, the 1st accused sent a telegram to the complainant, asking him to meet him on 10-11-1986. On 3-11-1986, the complainant sent a telegram to the 1st accused stating that the sale price is ready and asking him to execute the sale deed on 10-11-1986. The complainant went to the house of the 1st accused and waited for him; but he was not available. On 4-11-1986, the 1st accused sold the said St. Peters R. C. Primary School and the appurtenant site to accused 2 to 4 by executing a sale deed in the Sub Registrar's Office. Kunjathukal in Kerala. On 14-11-1986, the 1st accused sent word through Soman to the complainant to pay the remaining sale price amount and complete the sale. Thus he has committed the offence punishable under section 420, I.P.C. and the other accused are liable to be punished under section 420 read with Section 34, I.P.C.

3. Mr. V. Sai Ram, learned counsel appearing for the petitioner states that the prosecution regarding the other accused persons were quashed already. So, we are concerned only with the 1st accused.

4. Mr. Sai Ram learned counsel would contend that the date of complaint was 18-11-1987, that the complainant had filed a civil suit a 16-11-1986 against accused 1 to arraying them as defendants 1 to 4 along with some other defendants in O.S. No. 67 of 1986 on the file of the Subordinate Judge, Padmanabhapuram for specific performance of the agreement of sale and in that plaint, he has not made any whisper about the cheating, dishonest representation or dishonest intention at the inception. He would further contend that this dispute is purely of a civil nature and the petitioner has given a criminal colour for the same, just to fasten criminal liability and the question is who had failed to perform their part of the contract and that matter can be decided only in a civil suit.

5. Per contra, Mr. M. Karpagavinayagam, learned counsel appearing for the respondent would contend for the purpose of this proceeding, we have to confine

ourselves to the allegations made in the complaint and that the allegations made therein do make out an offence punishable under section 420, I.P.C. In *Delhi Municipality v. Ramkishan*, : 1983 CriLJ159 , the apex court has held that the proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out, then the High Court will be justified in quashing the proceedings in exercise of the powers under section 482, Cr.P.C. In the complaint, it is alleged that on 12-9-1986, the agreement was entered into by the 1st accused with the complainant as per which the 1st accused agreed to sell St. Peter R. C. Primary School and the appurtenant site for a sum of Rs. 2,60,000/- and had received a sum of Rs. 50,000/- as advance. Then on 28-10-1986, he sent a telegram to the complainant to come on 10-11-1986. On 3-11-1986, the complainant sent a telegram to accused No. 1 informing him that he would come with the required remaining amount and the sale should be completed. It is alleged that on 10-11-1986, the date on which 1st accused asked the complainant to come, the complainant went to the house of the 1st accused and waited. But the 1st accused made himself scarce. In the meanwhile, the 1st accused had sold the very same school and the appurtenant site to the other accused on 4-11-1986 by executing a sale deed in the Sub Registrar's office in Kerala. It is alleged that on 14-11-1986, the accused No. 1 had sent word through a person to the complainant asking him to come with cash and complete the sale. Learned counsel for the complainant rightly pointed out that the subsequent acts of the 1st accused in selling the very same property on 4-11-1986 after asking the complainant come on 10-11-1986 and making himself scarce on 10-11-1986 and the subsequent sending of a person on 14-11-1986 to the complainant asking him to come with money as if there was no sale in favour of the other accused would all lead to the inference that even at the inception, he must have had the dishonest intention. Thus, on the allegations made in the complaint, the ingredients of an offence punishable under Section 420, I.P.C. are there. Hence at the threshold itself, it cannot be quashed. It has to be seen at the time of trial whether those allegations are substantiated in evidence or not.

6. With regard to the contention of Mr. Sai Ram that no allegations are made in the plaint with regard to the cheating, dishonest representation and dishonest intention at the inception. I am only to say they are totally unnecessary in a suit for specific performance of an agreement of sale. The omission to mention the same in the complaint is totally immaterial. Hence that cannot be taken into account at this stage. His further contention is that only in the civil suit, a decision can be arrived at as to who failed to perform the contract is correct. But, on the same set of facts, an action in a civil court as well criminal prosecution are available in some cases. One does not preclude the other. Both are co-extensive. So, simply because a suit has been filed in which the question is as to who failed to perform the contract is a relevant issue, a criminal prosecution on specific allegations making out an offence under section 420, I.P.C. cannot be quashed.

7. In view of the above, this petition fails and is dismissed. The trial court shall proceed with the dispose of the case uninfluenced by any of the observations made in the course of this order.

8. Petition dismissed.