

Ganesan Vs. State

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Court : Chennai

Decided On : Oct-07-1994

Reported in : 1995CriLJ1303

Judge : Thangamani, J.

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 415 and 420; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(2), 156(1), 173(2), 432, 482 and 484; Negotiable Instruments Act - Sections 138

Appeal No. : Crl.M.P. No. 5182 of 1990

Appellant : Ganesan

Respondent : State

Advocate for Def. : A.N. Rajan, Govt. Adv.

Advocate for Pet/Ap. : M. Karnaga Vinavagam, Adv.

Judgement :

ORDER

1. Petition under section 482 Cr.P.C. to call for the records in Cr. No. 1314/89 on the file of Central Crime Branch, Egmore and quash the proceedings therein.

2. Petitioner Ganesan is doing business in electronic goods in the name and style of Sivasakti Electronics at No. 23, Narasingapuram street, Mount Road, Madras.

On 10-11-1989 he laid a complaint before the Central Crime Branch, Egmore, Madras against one Kasim, Ismail and Akbar alleging that on 7-10-1989 one Arumugam came to his shop and represented that TV picture tubes were available for sale at No. 48, Vaithianatha Mudali street, Mint, Madras. He also gave out that one Kasim, Ismail and Akbar are his partners. Pursuant to this, he proceeded to this shop along with one Srinivasan and another. He wanted to place the order for the picture tubes only on behalf of the said Srinivasan. In the house at Vaithianatha Mudali street, Arumugam introduced Kasim, Ismail and Akbar to him. He negotiated and fixed the price of 50 picture tubes at Rs. 1,15,000/-. He got Rs. 1,15,000/- from the said Srinivasan and handed it over to them. When he demanded receipt for the same, he was told that the goods as well as the receipt would be delivered at his shop within a short time. Thereafter, he came back to his shop along with Arumugam and Srinivasan. Till 9.00 p.m. they waited in vain. He grew suspicious and again went to the house at Vaithianatha Mudali street. There was nobody and Arumugam also gave a slip. On the next day morning Srinivasan gave a complaint before the Commissioner for the purpose of getting back the money. On that basis, in the presence of Inspector Raj Mohan, he settled the amount due to Srinivasan. His complaint against Kasim and others was registered as a Crime No. 1291/89 under section 420 read with Section 34 IPC. The Inspector of Police took up this for investigation and later on referred the same as mistake of fact.

3. In the meanwhile, on 14-11-1989 at 4.00 p.m. Srinivasan lodged the impugned complaint before the Central Crime Branch, Egmore, Madras which was registered as Crime No. 1314/89 under section 420 read with Section 34 IPC. In this he has stated that he is doing business in TV. and servicing the same at C. B. Puram, Bangalore. On 17-10-1989 he met Ganesan at M/s. Naidu Electronics in Mount Road and informed him that he was prepared to take 50 pieces of TV picture tubes. The price was negotiated and fixed at Rs. 1,15,000/-. Ganesan and his son-in-law as well as one Arumugam represented that the stock was ready at Thiruvottiyur and wanted that payment should be made before taking delivery. All the three took him to Vaigunda Vathiar street in Mint. There they introduced him to one Kasim. Then as desired by all the four, he paid Rs. 1,15,000/- to Ganesan. Ganesan asked him to wait outside. He saw Ganesan receiving some commission

from Kasim. He was informed that TV picture tubes would be handed over to him at 4.00 p.m. in the shop of Ganesan. Though he waited there nobody turned up. Ganesan started giving lame excuses. He grew suspicious and reported the matter before City Crime Branch Police. On the next morning of 8-10-1989 Ganesan and his son-in-law issued two post dated cheques to him for Rs. 63,000/- and paid the balance of Rs. 52,000/- in cash. On their request he informed the Police not to take any action. Later on, the two cheques dated 20-10-1989 and 21-10-1989 were dishonoured. All the four have played a calculated fraud on him.

4. In this application Ganesan the accused in Crime No. 1314/89 seeks to quash the proceedings therein by invoking the interest jurisdiction of this court under section 482 Cr.P.C. Thiru Karpagavinayam, learned counsel for the quash petitioner submits that the entire narration of events would reveal that it is Ganesan who was the victim in this episode. Even as per the complaint in Cr. No. 1314/89 Ganesan had settled the amount due to Srinivasan by paying Rs. 52,000/- in cash and issuing two post dated cheques on 8-10-1989. This he has done the moment he came to know that on 7-10-1989 he had been cheated by Kasim. And so the impugned complaint which is the second one on the same transaction is not maintainable. The only grievance of present complainant Srinivasan is that cheques were not honoured. And dishonour of cheques by themselves do not constitute an offence under Sec. 420 IPC. Besides he had stopped payment of cheques by giving telegram only in view of the complaint given by him on 10-11-1989 against Kasim, Ismail and Akbar to whom he had handed over the money. Learned counsel for the petitioner proceeded to argue that the impugned complaint dated 14-11-1989 should not be viewed in isolation. It must be read along with the earlier complaint in FIR 1291/89 preferred by the quash petitioner. The chain of events from 7-10-89 to 14-11-1989 would reveal that no offence under section 420 IPC is made out on the allegations contained in the impugned complaint dated 14-11-1989. The dishonour of cheques could only invite action under section 138 of the Negotiable Instruments Act. The impugned complaint is sought to be quashed also on the ground of mala fide.

5. Whereas learned Additional Public Prosecutor resists this claim by contending that the impugned complaint alone should be looked into in order to find out

whether it discloses any offence. At this stage, for quashing the complaint no extraneous materials could be considered. However, in *State of W.B. v. Swapan Kumar* : 1982 CriLJ819 relied on by learned counsel for the petitioner the Apex Court has observed in para 65 of the judgment that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the court has mainly to take into consideration the complaint or the FIR and the court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual. In *Ashok Kumar v. State, . Arunachalam J.*, has pointed out that (at p. 1974 of Cri LJ).

'the observation of the Supreme Court in the *State of West Bengal v. Swapan Kumar Goha* : 1982 CriLJ819 certainly permits this court in appropriate cases to take into consideration the relevant facts and circumstances, after mainly taking into consideration the complaint or the FIR. The Patna High Court in *Subhasha Agarwal v. State of Bihar* has observed that the materials subsequently collected in the course of investigation, could also be taken note of, apart from the contents of the FIR to arrive at a conclusion whether the continuation of the investigation would amount to an abuse of power by the police, necessitating interference to secure the ends of justice.'

So there is no impediment in looking into the materials apart from the First Information Report, subsequently collected in the course of an investigation to ascertain whether the facts and circumstances of the case disclose a cognizable offence for the purpose of invoking Section 432 Cr.P.C.

6. Learned Additional Public Prosecutor contended that even if both the complaints are considered as forming part of one single transaction, it would disclose a design or scheme on the part of Ganesan, Kasim and others to make Srinivasan to part with a cash of Rs. 1,15,000/- on a false promise to deliver 50 TV Picture tubes. However, we find from the records that after paying cash and issuing two post dated cheques to Srinivasan on 8-10-1989 the quash petitioner has sent a telegram to him on 18-10-1989 requesting him not to deposit the post dated cheques for the reason that he was expecting funds from Kasim and he has filed a complaint before the Commissioner of Police against them. Perhaps finding that the said complaint did not yield any result he has lodged the complaint under section 420 read with Section 34 IPC. against those three on 10-11-1989 in Crime No. 1291/89. If the impugned complaint is read along with this complaint dated 10-11-1989 and the telegram dated 18-10-1989, it would be evident that there could not have been any dishonest intention on the part of the quash petitioner either at the time of receiving Rs. 1,15,000/- from Srinivasan on 7-10-1989 or issuing two post dated cheques on the next morning.

7. Learned Additional Public Prosecutor next argued that once investigation commences, on the disclosure of a cognizable offence, it is rather very well settled that it is the exclusive prerogative of the police to proceed with the investigation and gather the requisite materials for forming an opinion to be reflected in the final report to be filed under section 173(2) of the Code and such an investigation cannot at all be directed to be done in a particular way by the court. Nor is it permissible for the court to stop such an investigation and if at all there is any exception to such a rule, such an exception is found traceable to a situation, where the first information launched did not at all prima facie disclose any cognizable offence having been committed. The power of the court commences at a point when the power of the police to investigate ends in the filing of a final report. After the filing of the final report, it is for the court to accept such final report or reject it. In support of this plea he placed reliance on the decision of Janarthanam J. in Paul Durai v. Commissioner of Police (1992) Mad LW (Cri) 178. It is true that the power of the police to investigate into a report, which discloses commission of cognizable offence is unfettered and cannot be interfered with by the High Court in the exercise of its inherent powers under section 482 of the Code.

8. However, as the Supreme Court has held in *State of Karnataka v. Muniswamy* : 1977 CriLJ1125 in the exercise of the wholesome power under section 482, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice requires that the proceeding ought to be quashed. *Dhanalakshmi v. Prasanna Kumar* : 1990 CriLJ320 lays down that in proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under section 484. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the, allegations, in the light of the statement on oath of the complaint that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interferences by the High Court. Again the Apex court states in *Madhavarao v. Sambhajirao* : 1988 CriLJ853 that the test to be applied by the court in such a situation is as to whether the uncontroverted allegations as made prima facie establish the offence. In *State of Haryana v. Bhajan Lal*, : 1992 CriLJ527 the Supreme Court has enumerated the categories of cases in which the High Court may in exercise of powers under Article 226 or under Section 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice in this manner with the caution that this power should be exercised sparingly and that too in the rarest of rare cases :

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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Sec. 155(2) of the Code;

3) Where the uncontraverted 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 a Magistrate as contemplated under section 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/or 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. So the power of this court to interfere under section 482 Cr.P.C. in a case where the FIR as well as the materials already collected during investigation prima facie do not disclose a cognizable offence cannot be disputed.

9. It is the argument of Thiru Karpagavinayagam, learned counsel for the petitioner that admittedly the petition presented by Srinivasan on 8-10-1989 to the Crime Branch Police and enquired on the same day and the quash petitioner has settled the claim immediately. As such further action on that petition was dropped. While so, the impugned complaint dated 14-11-1989 is the second one on the very same transaction and as such it is not maintainable in law. We find, from the complaint

dated 14-11-1989 of Srinivasan that having waited in vain on the night of 7-10-1989 for the delivery of picture tubes he came to City Crime Branch and gave a petition in the midnight. On the next morning knowing that he would settle the law in motion Ganesan issued two post dated cheques for Rs. 63,000/- paid the balance of Rs. 52,000/- in cash and requested him not to proceed with the complaint. Hence he informed the police not to take any action. This would indicate that the act attributed to the quash petitioner in the first part of the impugned complaint had already been given a quietus and the complainant himself had instructed the police to drop action. While so, it is not open to him to make the quash petitioner liable for the allegations stated in that part of the present complaint.

10. Learned counsel for the petitioner next submits that the second part of the complaint relates to the failure of the petitioner to honour the two post dated cheques issued in favour of the complainant for Rs. 63,000/-. And mere dishonour of the cheques will not constitute an offence under section 420 IPC. In *Samuel Raj v. Inspector of Police*, 1991 Mad LW (Cri) 358 this court has held that the receipt of the cheque for an existing debt will not form the basis for an offence punishable under section 420 IPC in the event of the cheque bouncing back for want of funds. Receiving useless security for an existing debt cannot form the basis for an offence punishable under Section 420 IPC. The cheque was given to discharge an existing debt. By receiving the cheque, the complainant has not parted with any valuable security.

11. In *Gopu Seshasayee v. State*, 1977 TLNJ 510, a charge-sheet was filed against the petitioner on the allegation that he dishonestly induced the complainant before the police to refrain from attaching his moveables ordered in a civil litigation by issuing certain cheques. These cheques were dishonoured when presented in Bank. Held assuming that all the allegations in the charge-sheet are true, no offence can be deemed to have been committed by the petitioner. By issuing the cheques, the complainant had not been induced by the petitioner to part with any money on the dates of the issue of the cheques. The cheques were issued for a pre-existing debt and not for monies received on the dates of the issue of the cheques. The Bombay High Court has also held in *Daungarshi v. M/s.*

Deviprasad Omprakash Bajoria that merely because cheque given a month later was not honoured was not sufficient by itself to infer dishonest intention at the initial stage by giving retrospective effect. The proper forum to get a dispute resolved in such a case was a civil court where the complainant could plead and prove his claim.

12. In *Eswari Reddy v. State of A.P.* 1986 Cri LJ 207 the buyer obtained possession of the vehicle by paying 10% of the consideration. The cheque for further sum as given by the accused was dishonoured. In a complaint against the accused under section 420 IPC. Held that the dishonour of a cheque for an antecedent debt did not amount to cheating. On the ratio laid down in these cases, it is seen that no offence under section 415 or Section 420 IPC could be said to be made out. The mere issue of the cheques for amounts he had received on the previous day by the petitioner herein will not amount to cheating simply because cheques were dishonoured later on. We find from the records that he had in fact given a telegram on 18-10-1989 to the complainant herein to stop depositing the post dated cheques for Rs. 23,000/- and 40,000/- stating that he was expecting funds from Kasim. The telegram also reads that he has filed a complaint against the said Kasim and it is pending investigation. He would meet the complainant in person with a Demand Draft immediately on receipt of funds from Kasim party. So by no stretch of imagination it could be held that he had no intention of honouring the cheques even at the time of their issuance.

13. In *Chidambaram Chettiar v. Shanmugam Pillai*, AIR 1938 Madras 129 : (1938) Cri LJ 261 Newsam, J. has succinctly stated the ingredients of Section 415 PC in this manner :

'In the offence of cheating (Section 415 IPC) there are two elements deception and dishonest inducement to do or omit to do something. Let it be assumed that the petitioner deceived and was dishonest. Mere deception is not a criminal offence. Mere dishonesty is not a criminal offence. The crux of the question is whether the complainants were induced by petitioner's dishonest deception not to file a suit at once against him.' This judgment also lays down that a post dated cheque in payment of goods already received is a mere promise to pay on a future date. And

a broken promise is not a criminal offence, though it may amount in certain business relations discreditable behaviour. In *State of Kerala v. A. P. Pillai* : 1972 CriLJ1243 the Supreme Court has laid down that to hold a person guilty of the offence of cheating under Section 420 IPC it has to be shown that his intention was dishonest at the time of making a promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.

14. In the circumstances, there could be no doubt that the impugned complaint either by itself or read along with FIR in Crime No. 1291/89 and the telegram dated 18-10-1989 does not disclose any offence under Section 420 IPC. Facts necessary to satisfy the ingredients so constitute an offence under section 420 IPC are absent in the said complaint. In the absence of any material to hold that there was intention to deceive on the part of the quash petitioner when he had received the sum of Rs. 1,15,000/- from the complainant, proceeding further with the investigation of the case would not serve any purpose. Evidently there is nothing in the complaint to show that the petitioner had either dishonest or fraudulent intention at the time the complainant parted with the money. So, this is a fit case where the proceedings are to be quashed by invoking the inherent powers of this court under section 482 Cr.P.C.

15. In the result, the Petition is allowed and proceedings in Crime No. 1314/99 on the file of Central Crime Branch, Egmore, are hereby quashed.

16. Petition allowed.