

A.Jain Vs. State and anr.

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Court : Delhi

Decided On : Aug-08-2013

Judge : Sunil Gaur

Appellant : A.Jain

Respondent : State and anr.

Advocate for Pet/Ap. : Mr. Mohit Mathur, Mr. Mukesh Gupta, Mr. Aman Lekhi, Mr. Mudit Jain, Mr. Abhishek, Mr. Subadhra Shukla, Mr. Sandip Sethi, Mr. Amarjit Singh, Mr. Gurvinder Singh, Mr. Shiv Gupta, Mr. Sunil Sethi, Mr. Vikas Pahwa

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: July 29, 2013
Pronounced on: August 08, 2013 + (i) CRL.M.C. 473/2005 B.M. GUPTA Through: Petitioner Mr. Mohit Mathur, Advocate versus STATE & ANR. Through: + (ii) Respondents Mr. Mukesh Gupta, Additional Public Prosecutor for respondent No.1-State Mr. Aman Lekhi, Senior Advocate, with Mr. Mudit Jain, Mr. Abhishek & Mr. Subadhra Shukla, Advocates CRL.M.C. 586/2005 V.JAIN Through: Petitioner Mr. Sandip Sethi, Senior Advocate with Mr. Amarjit Singh, Mr. Gurvinder Singh & Mr. Shiv Gupta, Advocates versus STATE & ANR. Through: Respondents Mr. Mukesh Gupta, Additional Public Prosecutor for respondent No.1-State Mr. Aman Lekhi, Senior Advocate, with Mr. Mudit Jain, Mr. Abhishek & Mr. Subadhra Shukla, Advocates + (iii) CRL.M.C. 599/2005 VINOD Through: Petitioner Mr. Sunil Sethi, Advocate versus STATE & ANR. Through: + (iv)

Respondents Mr. Mukesh Gupta, Additional Public Prosecutor for respondent No.1-State Mr. Aman Lekhi, Senior Advocate, with Mr. Mudit Jain, Mr. Abhishek & Mr. Subadhra Shukla, Advocates CRL.M.C. 3433/2009 A. JAIN Through: Petitioner Mr. Vikas Pahwa, Senior Advocate with Mr. Mahendra Rana, Advocate versus STATE & ANR. Through: Respondents Mr. Mukesh Gupta, Additional Public Prosecutor for respondent No.1-State Mr. Aman Lekhi, Senior Advocate, with Mr. Mudit Jain, Mr. Abhishek & Mr. Subadhra Shukla, Advocates CORAM: HON'BLE MR. JUSTICE SUNIL GAUR JUDGMENT 1 Petitioners of the above captioned four petitions are the accused persons in Criminal Complaint under Sections 415/420/467/468/471 read with Section 120-B of IPC (Annexure A) preferred by complainant-M/s. Kanin (India) Pvt. Ltd. in which petitioners have been summoned as accused vide order of 15 th September, 2004. Since the aforesaid criminal complaint (Annexure A) and summoning order of 15th September, 2004 in relation to the aforesaid criminal complaint, is common in the above four petitions and the submissions advanced are also identical, therefore, with the consent of both the sides, above-mentioned four petitions were heard together and are being disposed of by this common judgment.

2. It emerges from the record that complainant-company had purchased plot not A-46, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi from accused-A.P. Chaudhary (since deceased) and in lieu thereof, complainant company had allotted to him 3840 equity shares of `100/- each at par being equivalent to the value of plot i.e. `3,84,000/-. In respect of aforesaid transaction, an Agreement to Sell of 17th November, 1985 was executed by petitioner-accused Arihant Jain in the capacity of Managing Director of the complainant-company and the said Agreement was with accused-A.P. Chaudhary (since deceased).

3. According to respondent No.2-complainant, petitioners were aware of the aforesaid transaction. On 2nd January, 1986, accused-A.P. Chaudhary (since deceased) and his wife-Ms. Vinod had resigned from complainant-company and had transferred the shares held by them in favour of Arihant Jain, Inder Jain and Vishwa Jain. Petitioner-Brij Mohan Gupta is brother of Ms. Raman Jain (since deceased), who is wife of petitioner-accused Arihant Jain and was well aware of the transaction regarding the acquiring of plot in question by the complainant-

company. Accused-A.P. Chaudhary (since deceased) had also executed indemnity bond, his affidavit, undertaking, etc. in favour of complainant-company. In February, 2003, complainant-company had received a legal notice sent by accused-Ms. Raman Jain (since deceased) asking complainant-company to vacate the subject plot as she was claiming its ownership after having obtained Letter of Administration on the basis of Will of 3rd January, 1986 purportedly executed by accused-A.P. Chaudhary (since deceased) in her favour.

4. The basic stand taken in the criminal complaint (Annexure-A) is that since accused-A.P. Chaudhary (since deceased) was no longer the owner of the plot in question, therefore, he could not have bequeathed it to accused-Ms. Raman Jain (since deceased). It is averred in the criminal complaint (Annexure-A) that after purchase of the plot in question, complainant-company had spent huge sum of money for raising construction on the plot in question and the house tax is being also paid by the complainant-company. It is also averred in the criminal complaint (Annexure-A) that accused-Ms. Vinod was fully aware that her husband accused-A.P. Chaudhary (since deceased) had sold the plot in question to complainant-company, but still petitioners-accused persons had entered into criminal conspiracy to wrongfully claim the ownership of the plot in question, which was duly sold by accused-A.P. Chaudhary (since deceased) to complainant-company. It is also averred that petitioners-accused persons had given their no objection at the time of issuance of Letter of Administration in respect of the plot in question whereas they were well aware about the plot in question having been sold by accused-A.P. Chaudhary (since deceased) to complainant-company and thus, petitioners-accused persons had conspired to issue rent receipt, which is forged.

5. According to respondent-complainant, the entire conspiracy to cheat complainant-company was hatched by petitioner-accused Arihant Jain. Impugned order notes that the averment made in the criminal complaint (Annexure-A) had been duly substantiated by the pre-summoning evidence of complainant-company and its witnesses, and the trial court has found that a prima facie case to summon the accused for the aforesaid offence is made out.

6. Quashing of aforesaid criminal complaint (Annexure-A) and the impugned order is sought by petitioners primarily on the ground that on the basis of the averments made in the criminal complaint (Annexure-A), no offence is made out.

7. Learned senior counsel Mr. Sandip Sethi and Mr. Vikas Pahwa for petitioners-accused persons had maintained that there was no fraudulent or dishonest intention on the part of petitioners-accused persons as mere Agreement to Sell does not convey any valid title in the property and so, no offence was committed by accused-A.P. Chaudhary (since deceased), who had bequeathed the plot in question to accused-Ms. Raman Jain (since deceased). To assert so, reliance was placed upon Apex Court's decision in Suraj Lamp and Industries Pvt .Ltd. v. State of Haryana and another (2009) 7 SCC 363.

8. It was strenuously contended on behalf of petitioners that there are no allegations of inducement/deception against petitioners and essential ingredients of fraudulent and dishonest misrepresentation are lacking and even if the complaint in question is taken as it is, still the dispute raised is of purely civil nature. It was pointed out that the allegations of forgery are not there in the entire complaint and there is nothing material in the complaint in question to suggest that any conspiracy was entered into by petitioners-accused persons. It was vehemently urged that the criminal complaint is malafide and is an act of vengeance to grab the property in question and no forgery was committed as the Will was duly executed by the owner of the property and that the aforesaid Agreement to Sell was never acted upon.

9. With much vehemence, it was contended on behalf of petitioners- accused persons that mere allegation of conspiracy levelled in the complaint cannot be the cogent basis for summoning a person as an accused for the charge of criminal conspiracy, as summoning of person as an accused is a serious matter and the law cannot be set into motion as a matter of course and where there are number of accused, their individual role has to be seen.

10. It was also contended by learned counsel for petitioners that the rent receipt alleged to be forged is not on record and no wrongful loss was caused to the respondent-complainant and there was no corresponding gain to petitioner-

accused persons. Thus, it was urged that none of the ingredients of the offence alleged is made out and that the allegations levelled in the complaint in question are preposterous and highly conjectural.

11. Lastly, it was urged on behalf of petitioners that till the Letter of Administration granted on the basis of Will, whose execution is not disputed, is declared as nullity by the civil court, no offence as alleged, is *prima facie* made out and thus, initiation and continuance of proceedings arising out of complaint in question is abuse of process of the court. To support the above submissions, reliance is placed upon decisions in *Som Mittal v. Govt. of Karnataka* AIR 2000 SC 1528. *Hridaya Ranjan v. State of Bihar* 2000 SCC (Cri.) 786, *Nageshwar Prasad v. Narayan Singh* (1998) 5 SCC 694. *Alpic Finance v. P. Sadasivan* (2001) 3 SCC 513. *V.Y. Jose v. State of Gujarat* (2009) 3 SCC 78. *Hira Lal Hari Lal v. CBI* (2003) 5 SCC 257. *Prakash Chander v. Dev Dutt Malik* 27(1985) DLT 23. *Pepsi Food v. Special Judicial Magistrate* (1998) 5 SCC 749. *Anil Mahajan v. Bhor Industries* (2006) 1 SCC (Cri.) 746, *Satyabrata Ghose, v. Mughneeram Bangur And Co. & Anr.* AIR 195 SC 44. *Devendra and Ors. v. State of Uttar Pradesh* (2009) 7 SCC 495. *Mohd. Ibrahim and Ors. v. State of Bihar* (2009) 8 SCC 751. *Rambaran Prasad v. Ram Mohit Hazra* AIR 196 SC 744. *Adalat Prasad v. Rooplal Jindal And Ors.* (2004) 7 SCC 338. *Bhupinder Singh v. C.S. Rekhi* 1998 VII AD (Delhi) 200, *Dalip Kaur v. Jagnar Singh* 2009 RLR 41.(SC) and *State v. Navjot Sandhu* (2005) 11 SCC 600.

12. Mr. Aman Lekhi, learned senior counsel for respondent-complainant, contended that correctness and veracity of the averments made in the complaint in question is not to be gone into at the threshold of initiation of the proceedings as the complaint in question is to be taken at its face value. It was next contended that in exercise of jurisdiction under Section 482 of Cr.P.C., the court is not justified in embarking upon an inquiry into the reliability and genuineness of the allegations made and direct evidence of conspiracy is seldom forthcoming and that criminal conspiracy has to be inferred from the circumstances of the case.

13. It was further asserted that the entire sale consideration for property in question has been already paid and thus, Agreement to Sell has been acted upon and property in question has been leased out by respondent-complainant

company and so, petitioners-accused persons cannot claim that they were not aware of complainant-company being the owner of the property in question.

14. It was also urged that merely because respondent-complainant is a lessee of the property in question by the DDA, it will not divest respondent-complainant company of its capacity of a owner of the property in question. It was strenuously urged that obtaining of Letter of Administration of a Will purportedly executed by accused-A.P.Chaudhary (since deceased) knowing that he is not the owner of the property in question, as he had already sold that property to respondent-complainant company, rendered the Will in question being a fabricated document and so it cannot be said that the essential ingredients of cheating or forgery are lacking.

15. To urge that at this initial stage, a broad view is to be taken and that summoning order need not be a detailed reasoned order, reliance was placed upon decision in *Ajay Kumar Das v. State of Jharkhand and another* (2011) 12 SCC 31. and *Nupur Talwar v. Central Bureau of Investigation and another* (2012) 11 SCC 465. Thus, it was urged that these petitions ought to be dismissed outrightly as criminal and civil proceedings can go side by side and the criminal proceedings cannot be halted to await the decision in the civil proceedings.

16. The submissions advanced by both the sides, criminal complaint (Annexure-A), impugned order, the material on record and the decisions cited have been duly considered and thereupon, it becomes amply evident that the Apex Court's decision in *Suraj Lamp (supra)* had no doubt deprecated transfer of property through sale agreement and had declared that to avoid fraud and forgery, conveyance of immovable property ought to be through registered sale deeds, but transactions through sale agreements have not been held to be void abinitio, as in the aforesaid decision, the Solicitor General was called upon to give suggestions and the extent of power of attorney transactions had to be gauged. In any case, the Agreement to Sell in respect of the property in question has been purportedly acted upon as not only the entire sale consideration for this property has been allegedly paid by the complainant company, and even the property in question is said to be in constructive possession of the complainant-company through its

tenant and so, it cannot be said at this initial stage that Agreement to Sell cannot be looked into.

17. It is the specious plea that merely because petitioner is a lessee of DDA, it would not make the complainant-company owner of the property in question. Such a view can be reasonably taken. This Court is conscious that jurisdiction under Section 482 of Cr.P.C. has to be exercised with circumspection and the allegations in the complaint have to be taken at its face value. Merely because civil proceedings are pending in respect of Letter of Administration granted pertaining to the Will in question, would not be a ground to either stall the proceedings arising out the criminal complaint in question or to quash the proceedings arising out of this complaint, as civil and criminal proceedings can simultaneously proceed.

18. Direct evidence to prove criminal conspiracy is rarely available and from the circumstances, complicity of accused persons is to be inferred. What is the essence of criminal conspiracy has been reiterated by the Apex Court in *Pratapbhai Hamirbhai Solanki v. State of Gujarat and another* (2013) 1 SCC 613. Applying the ratio of Apex Courts decision in *Pratapbhai* (supra) to the instant case, it can be certainly said that there is no basis to conclude at this initial stage that the offence of criminal conspiracy is not at all made out as the facts and circumstances of this case, as emerging from the criminal complaint in question, give rise to a strong suspicion that petitioners-accused persons are a party to the commission of the offence of cheating as they were allegedly involved in the commission of the offence in question.

19. Simply because petitioner-Arihant Jain is not a witness to the execution of the Will or has not participated in the proceedings relating to Letter of Administration sought on the basis of a Will executed by accused-A.P. Chaudhary (since deceased), it cannot be said that he has no role to play as he is said to be the kingpin, who has engineered the conspiracy leading to the commission of offence in question. It cannot be said at the threshold that he is not the beneficiary as he managed the Will in favour of his wife-accused Ms. Raman Jain, who is no longer in this world, as after her, petitioner is the beneficiary of Letter of Administration granted in respect of the property in question.

20. Apex Court in *Devendra and Ors. v. State of Uttar Pradesh* (2009) 7 SCC 49. has reiterated the settled legal position that civil and criminal proceedings can go on simultaneously. However, in *Devendra* (supra), it was found that the dispute, which was the subject matter of the criminal proceedings, was entirely of civil nature and so, criminal proceedings were quashed. It is not so in the instant case. In *Alpic Finance v. P.Sadasivan* (2001) 3 SCC 513. criminal proceedings were quashed as element of deception or fraud or dishonest inducement or wilful misrepresentation was lacking in the entire transaction. In *V.Y. Jose v. State of Gujarat* (2009) 3 SCC 78. criminal proceedings were quashed as the complaint of the said case had disclosed that the dispute raised was purely of civil nature. No doubt, unless the act of the party is culpable, it need not be subject matter of criminal trial. It is equally true that summoning order must disclose that the magistrate had applied his mind to the facts of the case and that summoning of a person as an accused in criminal case is a serious matter.

21. Aforesaid legal position needs no reiteration. There is no dispute with the proposition that a magistrate can discharge an accused at any stage of trial, if he considers the charge to be groundless, but that does not mean that an accused cannot invoke inherent jurisdiction of this Court under Section 482 of Cr.P.C. In deserving cases, jurisdiction under Section 482 of Cr.P.C. can be certainly invoked. However, there is no basis to prematurely conclude that the prosecution of petitioners-accused persons is malicious.

22. The gist of the alleged offences emerges from the criminal complaint in question and the pre-summoning evidence recorded. As to when and how the conspiracy developed and progressed, are the aspects which are to be appropriately considered at the hearing on the point of charge after the precharge evidence is recorded and during recording of pre-charge evidence, petitioners-accused persons will have opportunity to confront the respondentcomplainant and its witnesses with the pleas pre-maturely raised at this stage. This is not the stage to minutely examine the pleas meticulously raised on behalf of petitioners-accused persons as at the threshold of the criminal proceedings, the allegations levelled in the criminal complaint in question have to be taken at its face value. Upon doing so, this Court finds that not only the ingredients of the offence of cheating are

there in the complaint and presuming evidence, but even making of a Will knowing well that the testator had no authority to execute the Will, apparently brings this case within the definition of cheating provided in Indian Penal Code. This Court is conscious of the dictum of Apex Court in Mohd. Ibrahim (supra), which is as under:17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted. x x x x x 23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

23. However, at this initial stage, averment in the complaint of rent receipt being forged would suffice to summon petitioners-accused persons for the commission of offence of forgery with the aid of Section 120-B of I.P.C.

24. Nothing more is required to be said at this initial stage, lest it may prejudice petitioners-accused persons at the time of hearing on the point of charge. A broad view has been taken in this judgment so that there is scope for trial court to consider as to whether prima facie case in its true sense is made out for putting petitioners-accused persons to trial. The broad based scrutiny done by this Court is quite limited to the extent of finding out as to whether trial court is justified to summon petitioners-accused person in the complaint in question.

25. Impugned order does reflect application of mind by trial court. The settled legal position is that the detailed reasons are not to be given in the summoning order.

Similarly, even while exercising jurisdiction under Section 482 of Cr.P.C., a detailed reasoning is not required to be given, lest it may prejudice petitioners when the trial court considers as to whether this case is fit or not, for proceeding to trial. In any case, the criminal proceedings cannot be halted merely because civil proceedings are going on as ingredients of alleged criminal offence apparently exist in the criminal complaint (Annexure-A). Deeper scrutiny to gauge if prima facie case really exists is to be undertaken at the stage of hearing on the feasibility of framing charge or not.

26. In the peculiar facts and circumstances of this case, continuance of criminal proceedings and civil proceedings is justified, as it cannot be said that subject matter of instant criminal proceedings is of purely civil nature. Since the ingredients of cheating and forgery are apparent in the criminal complaint in question, therefore, continuance of proceedings arising out of the criminal complaint (Annexure-A) is well justified.

27. Resultantly, the above captioned four petitions are dismissed. Interim order of 24th March, 2005 is vacated. Let the proceedings arising out of the criminal complaint in question (Annexure-A) to continue with expedition. Needless to say that the observations made in this judgment are purely tentative and are not to be taken as an expression on merits and the trial court shall, of course, proceed further in accordance with law uninfluenced by any observation made in this judgment.

28. These four petitions and the pending applications are accordingly disposed of.
(SUNIL GAUR) Judge AUGUST 08 2013 s

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