

The Commissioner Of Police vs Devender Anand on 8 August, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3807, AIR ONLINE 2019 SC 815, (2019) 109 ALLCRIC 603, (2019) 10 SCALE 612, (2019) 202 ALLINDCAS 119, (2019) 3 ALLCRIR 2481, (2019) 3 CRILR(RAJ) 896, (2019) 3 CRIMES 244, (2019) 4 ALLCRILR 605, (2019) 4 RECCRIR 72, (2019) 76 OCR 94, 2019 CRILR(SC MAH GUJ) 896, AIR 2019 SC(CRI) 1358

Author: M. R. Shah

Bench: M. R. Shah, S. Abdul Nazeer, Arun Mishra

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 834 of 2017

The Commissioner of Police & Ors.

.. Appellants

Versus

Devender Anand & Ors.

.. Respondents

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.01.2017 passed by the High Court of Delhi in Writ Petition (Crl.) No. 299 of 2016, the original respondents – appellants – Commissioner of Police and Others have preferred the present appeal.

2. That respondent No. 1 herein – original complainant entered into an agreement to sell in respect of house situated at WZ□1179, Plot No. 11, Rani Bagh, Shakur Basti, Delhi with respondent Nos. 2 to 3 herein for a consideration of Rs.54 lakhs. That the agreement to sell, general power of attorney etc. were executed and the entire amount of consideration of Rs.54 lakhs was paid to the agreement

sellers. According to respondent No. 1 – original complainant, subsequently on 31.07.2013, he learnt that the said property had been mortgaged to Andhra Bank when a notice by the said bank was affixed on the property. According to respondent No. 1 – original complainant, thereafter he was compelled to settle the claim of Andhra Bank to the tune of Rs.16,93,059/– for release of the mortgaged documents. Respondent No. 1 – original complainant also paid the registration charges of Rs.7,81,941/– for registration of the sale deed in his favour. That, thereafter he lodged a complaint with the Karol Bagh police station against respondent Nos. 2 and 3 herein for the offence under Section 420/34 of the Indian Penal Code alleging, inter alia, that though the property was put as a mortgage with the Andhra Bank, the same was not disclosed to him and without disclosing the same the property in question was sold. Therefore, it was the case of respondent No. 1 – original complaint that he was cheated by respondent Nos. 2 and 3 herein. That a preliminary inquiry was conducted on the said complaint by the Sub-Inspector of the Police posted at the Karol Bagh police station. According to the complainant, on 20.05.2015, the Sub-Inspector submitted his report that a prima facie offence under Section 420/34 IPC is made out. He sought permission to register a case under Section 420/34 IPC for further investigation. According to the complainant, the SHO concurred with the aforesaid conclusion in his noting dated 21.05.2015 and put up the matter before the ACP concerned. According to the complainant, the ACP also concurred with the said conclusion in his noting dated 25.05.2015. According to the complainant, despite the above, the FIR was not registered and the same Sub-Inspector Yogender Kumar of Karol Bagh police station started a fresh process of preliminary inquiry on the same set of facts. He concluded that since the complainant had given his consent to the registration of the sale deed and discharge of the liability of the bank, even though the said mortgage as revealed to him on 31.07.2013, therefore, no police action is required. The said file noting was concurred by the SHO with the diametrically opposite view taken by the Sub-Inspector Yogender Kumar earlier. The ACP also concurred with the view that only a dispute of civil nature has arisen and that a complaint be filed. It appears that thereafter the matter was placed before the Additional DCP who also concurred with the subsequent view that no case is made out against the accused, vide his noting dated 07.08.2015. That the said view was carried by the DCP/C and JCP/CR as well.

2.1 As the FIR was not registered against the accused for the offence under Section 420/34 IPC as alleged, respondent No. 1 herein approached the High Court by way of writ petition and prayed for the following reliefs:

“1. Pass appropriate writ/order/direction thereby ordering appropriate action to be taken against the erring police officers, including but not limited respondents No. 2 to 5, who are responsible for non-registration of the FIR in spite of a preliminary enquiry dated 20.5.2015 clearly submitting a finding that a cognizable offence under Section 420/34 of IPC was made out against respondents no. 6 and 7.

2. Pass appropriate writ/order/direction thereby quashing and declaring to be null and void the so-called second/subsequent undated report of preliminary enquiry, and the subsequent endorsements of the SHO, PS Karol Bagh dated 16 July 2015, the undated endorsement of the ACP (Karol Bagh Sub-Division) and the endorsement of DCP (Central) dated 7 August 2015 as the same are without any legal sanctity and

have been created and brought into existence against the settled provisions of law and without following due process of law and without following due process of law and in contravention of the procedure laid down by the Hon'ble Supreme Court in its judgment 'Lalita Kumari vs. Government of U.P.

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4. Pass appropriate writ/order/direction thereby calling upon the office of the Commissioner of Police, New Delhi, to submit a report with respect to the relevant provisions of law under which his office has empowered the area ACP and DCP to approve registration of FIR, and upon submission of such a report, the vires and legality of the same be scrutinised as the same is in violation of the provisions of the Code of Criminal Procedure and the procedural guidelines laid down by the Hon'ble Supreme Court in the case 'Lalita Kumar vs. Government of U.P.

5. Pass appropriate writ/order/direction thereby directing the respondent no. 1 to hold an appropriate enquiry/investigation into the said circumstances under which the illegal and uncalled for second line of preliminary enquiry was initiated and carried out by the same officers, on the same facts and he may further be directed to submit a report of the said enquiry before this Hon'ble Court and take appropriate action by way of registration of cases, if required, and take all other necessary and proper actions in the matter against the officials found guilty in the matter." 2.2 That the aforesaid prayers/reliefs were opposed by the appellants herein and respondent Nos. 2 and 3 herein. It was submitted that the original complainant had earlier preferred an application under Section 156(3) of the Cr.P.C. which came to be rejected by the learned Magistrate, vide order dated 27.03.2015 and that the said order was not assailed by the complainant and thereafter a fresh private complaint under Section 200 Cr.P.C.

has been preferred which is pending before the learned Magistrate. It was also submitted on behalf of the original accused that the dispute is of a civil nature which is tried to be converted into criminal, which is nothing but an abuse of the process of law. It was submitted that despite having the knowledge of the mortgage of the property with the Andhra Bank, thereafter the complainant himself had paid the mortgage money to the Andhra Bank and even got the sale deed executed in his favour. It was submitted that if the complainant was aggrieved, in that case, he would not have got the sale deed executed in his favour.

2.3 That, by the impugned judgment and order, the High Court has allowed the said writ petition and has directed that the case be placed before the Commissioner of Police for taking an action against respondent Nos. 3 to 5 therein (who are appellant Nos. 3 to 5 herein) for taking a diametrically opposite view. The High Court has also directed that the Commissioner of Police would be well advised to resort to course correction by directing that the earlier preliminary inquiry be taken to its logical conclusion and the steps in that regard be taken within two weeks. The High Court has also observed that the complainant shall also be entitled to costs quantified at

Rs.25,000/- to be paid by the State.

3. We have heard the learned counsel appearing on behalf of the parties at length. We have also considered the material on record.

4. Having heard the learned counsel appearing on behalf of the parties at length and considering the material on record, we are of the opinion that the criminal proceedings initiated by respondent No. 1 – original complainant is nothing but an abuse of the process of law for settling a civil dispute. 4.1 Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint has been filed, which is nothing but an abuse of the process of law.

4.2 It is required to be noted that after having come to know that the property was mortgaged with the Andhra Bank, the original complainant himself paid the mortgage money and got the mortgage redeemed. Not only that, thereafter, he got the sale deed executed in his name. Thereafter also, he filed the complaint with the learned Magistrate, being an application under Section 156(3) of the Cr.P.C., which came to be rejected by the learned Magistrate, vide order dated 27.03.2015. The said order was not assailed by the complainant. It appears that thereafter he filed a private complaint under Section 200 Cr.P.C. which was pending before the learned Magistrate. Despite the above, he filed a writ petition before the High Court, which is nothing but an abuse of the process of law. The criminal proceedings have been initiated by the original complainant to settle the civil dispute. Therefore, in the facts and circumstances of the case, the Investigating Officer and other police officers were justified in not registering the FIR and in coming to the conclusion that the complaint be filed. The earlier opinion on preliminary inquiry was never placed before the DCP. Thereafter, on thorough investigation/inquiry and considering the facts and circumstances of the case narrated hereinabove, when it was opined that the dispute between the parties is of a civil nature, the High Court ought not to have issued further directions. The High Court ought to have closed the proceedings. Not only the High Court has issued further directions, but even has imposed costs and an action against the appellants 3 to 5 herein which, in the facts and circumstances of the case, is not sustainable. 4.3 In view of the above and for the reasons stated above and as observed hereinabove, the initiation of the criminal proceedings by the original complainant is nothing but an abuse of the process of law, we not only quash and set aside the impugned judgment and order, but also quash the criminal proceedings pending before the learned Magistrate in respect of the transaction in question. Consequently, the present appeal is allowed, the impugned judgment and order dated 13.01.2017 passed by the High Court is hereby quashed and set aside. Even the criminal proceedings initiated by the original complainant pending before the learned Magistrate in respect of the transaction in question are hereby quashed and set aside.

.....J. (ARUN MISHRA)J. (S. ABDUL NAZEER) New Delhi
.....J. August 08, 2019 (M. R. SHAH)