

Mr. Robert John D'Souza & Ors vs Mr. Stephen V. Gomes & Anr on 21 July, 2015

Equivalent citations: 2015 AIR SCW 4343, 2015 (9) SCC 96, AIR 2015 SC(CRI) 1585, 2015 (4) AIR KANT HCR 49, AIR 2015 SC (SUPP) 2354, (2015) 153 ALLINDCAS 142 (SC), (2015) 4 ALLCRILR 1, (2015) 3 ALLCRIR 2381, (2015) 3 CURCRIR 313, 2015 (3) SCC (CRI) 724, 2015 ALLMR(CRI) 3314, (2015) 8 SCALE 95, 2015 CRILR(SC MAH GUJ) 880, (2015) 3 CRILR(RAJ) 880, (2015) 90 ALLCRIC 969, (2015) 4 DLT(CRL) 505, (2015) 62 OCR 104, 2015 CRILR(SC&MP) 880, (2015) 3 UC 1551, (2015) 3 CRIMES 160, (2015) 3 MAD LJ(CRI) 722, (2016) 3 MH LJ (CRI) 97, (2016) 1 MADLW(CRI) 129, (2015) 3 RECCRIR 795, (2015) 3 JLJR 428, (2015) 4 PAT LJR 134, (2015) 2 ALD(CRL) 563

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Bench: Prafulla C. Pant, Dipak Misra

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.953 OF 2015
(@ Special Leave Petition (Crl.) No. 330 of 2015)

Mr. Robert John D'Souza and others ... Appellants

Versus

Mr. Stephen V. Gomes and another ... Respondents

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against order dated 9.10.2014, passed by the High Court of Karnataka at Bangalore in Criminal Petition No. 658 of 2014 whereby said court has dismissed the petition, and

declined to quash the Criminal Complaint case No. 357 of 2012, filed by respondent No. 1, against the appellants.

Brief facts of the case are that a Society named – Mukka Welfare Society was constituted on 28.3.1970 for charitable work and social service, registered under Karnataka Societies Registration Act, 1970. Appellant No. 1, appellant No. 2 and appellant No. 3 were President, Secretary and Treasurer respectively, while appellant Nos. 4 to 7 were Directors of the Society. Other appellants are their relatives. A piece of land bearing S. No. 239/10 measuring 0.50 acres in Village Suratkal, Taluk Mangalore, was purchased by the Society vide registered sale deed dated 28.1.1978 from one Smt. Kaveri Hengsu. It is alleged by the complainant (respondent No. 1) that appellant Nos. 1 to 7, being members of the Executive and Directors of Mukka Welfare Society, misusing the position, held Board Meetings on 22.9.1995 and 13.10.1995 facilitating the sale of the above mentioned land in favour of their relatives (appellant Nos. 7 to 12). The sale deeds were executed on 16.2.1996. It is further stated that the purchasers (appellant Nos. 7 to 12), executed sale deeds in the same year in favour of the Directors of the Society. It is alleged by the complainant/respondent No.1 that the appellants have fraudulently usurped the property through the sale deeds mentioned above, and thereby committed cheating.

The criminal complaint filed by respondent No. 1 was registered by the 1st Additional Senior Civil Judge and Chief Judicial Magistrate, Mangalore, DK, who, after recording the statement of the complainant under Section 200 of the Code of Criminal Procedure, 1973 (for short “CrPC”), summoned the appellants vide order dated 13.4.2012 in respect of offences punishable under Sections 406, 409, 420 read with Section 34 of Indian Penal Code (IPC). The appellants filed Criminal Revision Petition No. 58 of 2012 before the Principal Sessions & District Judge of D.K. District at Mangalore, which was dismissed vide order dated 6.2.2013. Thereafter, the appellants filed a petition under Section 482 CrPC before the High Court and the same was also dismissed. Hence this appeal through special leave.

We have heard learned counsel for the parties and perused the papers on record.

The impugned orders passed by the High Court and the other authorities below are challenged before us mainly on the following grounds: -

Respondent No. 1/complainant is not a member of the “Mukka Welfare Society” nor is he in any manner connected with the affairs of the Society, as such he has no locus to file the criminal complaint.

The sale deeds in question were executed in the year 1996, and the criminal complaint is filed malafide by respondent No. 1 after a period of fourteen years, in the year 2010, as such the courts below have erred in law in not taking note of said fact.

The courts below have erred in law in not appreciating that the complaint in question was filed to get personal vendetta by respondent No. 1 against the Directors of the Society.

The courts below further erred in not considering the fact that the complainant/respondent No. 1 had earlier filed a complaint, with same set of facts, before the Deputy Commissioner, Dakshin Kannada, Mangalore, and the same was sent to Police Station Suratkal for investigation, and the Circle Inspector, after investigation, did not find any offence to have been committed by the appellants, as the dispute was purely of civil in nature.

Ingredients of the offences punishable under Sections 406, 409 and 420 IPC are not made out.

None of the transactions of sale in question is against any bye-law or clause of Memorandum of Association of the Society.

In the counter affidavit filed on behalf of respondent No.1, it has been stated that the complainant came to know of the transactions of sale, only in the year 2009, whereafter he complained before the Deputy Commissioner, D.K., as such the issue raised as to delay in filing the complaint is unfounded. It is further stated that the Mukka Welfare Society receives donations from various institutions and general public. The allegation of personal vendetta, pleaded in the appeal by the appellants, has been denied in the counter affidavit. Lastly, defending the orders passed by the courts below, it is stated that the courts below have committed no error of law.

Arguments were advanced by learned counsel for the parties on the above lines pleaded before us. Having considered the submissions of the learned counsel for the parties what is apparent in the present case is that the complainant is not the member of Mukka Welfare Society. It is also not disputed that the sale deeds in question were executed way back in the year 1996 and the complainant, who is not even member of the Society, raises the issue that the sale deeds were executed for the benefit of the Directors of the Society, after a long gap of more than twelve years. Sale deeds in question are registered, and not declared null and void by any court of law. It is also relevant to mention here that admittedly earlier a complaint was made by the complainant to the Deputy Commissioner in the year 2009, which was got investigated by the police and the result of the investigation was that no offence was found committed by the appellants on the ground that the dispute is of civil in nature.

In view of the above facts, apparent on the record, we are of the view that the High Court and the courts below have committed grave error of law in ignoring the same. Needless to say that to constitute an offence punishable under Section 406 IPC, the essential ingredient is the "entrustment" of the property. The complaint filed by the complainant nowhere discloses that the land in question purchased in the year 1978 was entrusted to the Society for the benefit of others. It is only after entrustment is shown, it can be said that there was criminal breach of trust.

In *Ram Narayan Popli v. Central Bureau of Investigation*[1], this Court, per majority, has explained “entrustment” in paragraph 363 as under: -

“The term “entrustment” is not necessarily a term of law. It may have different implications in different contexts. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all.” In *State of Gujarat v. Jaswantlal Nathalal*[2], this Court in paragraph 8 has observed that a mere transaction of sale cannot amount to an entrustment.

At this stage we also think it proper to observe that in the present case, even if the allegations made in the complaint are taken to be true, the ingredients of the offence punishable under Section 409 IPC for which appellants are summoned, are also not made out. To constitute an offence punishable under Section 409 IPC, apart from entrustment, it is also essential requirement that it should be shown that the accused has acted in the capacity of a public servant, banker, merchant, factor, broker, attorney or agent. It is nowhere shown in the complaint that the appellants have acted in any of the above capacities.

As far as offence of cheating is concerned, the same is defined in Section 415 IPC, for which the punishment is provided under Section 420 IPC.

Section 415 reads as under:-

“415. Cheating. – Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations” From the above language of the Section, one of the essential ingredients for the offence of cheating is deception, but in the present case, from the contents of the complaint it nowhere reflects that the complainant was deceived or he or anyone else was induced to deliver the property by deception. What was done, was so reflected in the resolutions, and sale deeds.

In *Mathavrao Jiwajirao Scindia and others v. Sambhajirao Chandrojirao Angre and others*[3], a three-Judge Bench of this Court has laid down the law as to quashment of proceedings under Section 482 CrPC as follows:-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.” In *Suresh v. Mahadevappa Shivappa Danannava and another*[4], criminal prosecution was quashed by the Court in respect offence of cheating noticing that the complaint was filed after a lapse of ten years.

In *Inder Mohan Goswami and another v. State of Uttaranchal and others*[5], this Court in paragraphs 25 and 46 has observed as under: -

“25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP* (1964 AC 1254) Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* (1977 AC 1) stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court’s power to prevent such abuse is of great constitutional importance and should be jealously preserved.

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.” In view of the above discussion and facts and circumstances of the case, we are of the view that none of the offences for which the appellants are summoned, is made out from the complaint and material on record. We further find that it is nothing but abuse of process of law on the part of the

complainant to implicate the appellants in a criminal case after a period of twelve years of execution of registered sale deeds in question, who is neither party to the sale deeds nor a member of the Society.

Therefore, we allow the appeal and set aside the orders passed by the High Court and that of the courts below. Accordingly, the order passed by the Magistrate summoning the appellants in the criminal complaint filed by respondent No. 1, in respect of offences punishable under Sections 406, 409 and 420 IPC, also stands quashed.

.....J. [Dipak Misra]J. [Prafulla C. Pant] New Delhi;

July 21, 2015.

- [1] (2003) 3 SCC 641
- [2] AIR 1968 SC 700
- [3] (1988) 1 SCC 692
- [4] (2005) 3 SCC 670
- [5] (2007) 12 SCC 1