

Kunti vs The State Of Uttar Pradesh on 3 May, 2023

Author: Sanjay Karol

Bench: B.R. Gavai, Vikram Nath, Sanjay Karol

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1380 OF 2023
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.11673/2019)

KUNTI AND ANR.

...APPELLANTS

V.

STATE OF UTTAR PRADESH AND ANR.

...RESPONDENTS

JUDGMENT

SANJAY KAROL, J.

Leave Granted.

1. The present appeal arising out of special leave petition is directed against the judgement and order dated 18.10.2019 passed by the High Court of Judicature at Allahabad (hereinafter referred to as “the High Court”) in Application u/s 482, Code of Criminal Procedure, 1908, (hereafter “CrPC”) No. 32337 of 2013, filed by the Appellants praying for quashing the order dated 22.11.2012 passed by the Chief Judicial Magistrate, Bulandshahr, in Case No. 6695 of 2012 arising out of Case Crime No. 421 of 2012 under Sections 406, 420, 467, 468, 417 and 418 of the Indian Penal Code, 1860. By the said judgement, the Hon’ble High Court dismissed the Application filed by the Appellant(s) and held that no grounds to interfere are found.

2. Brief facts necessary for the judgement in this appeal are as under:

3. The Appellant(s) in this case are Bhumidars of the agricultural land being Khasra No. 561/1 measuring 0.0550 and 0.1140 hectares in village Akbarpur, Bulandshahr, Uttar Pradesh (hereinafter referred to as the “property in dispute”). Allegedly, an agreement to sell in respect of the property in dispute, dated 11.07.2008 was executed by the Appellants in favour of the Respondent No 2. (Mr Ajay Kumar Bansal) for a consideration of Rs. 10,80,000/-. As it appears from the agreement, from the total amount, Rs. 6,30,000/- was transferred in favour of the Appellant by Respondent No. 2 as advance. The remaining amount of Rs. 4,50,000/- was agreed to be paid at the time of the execution of the sale deed. This agreement to sell was registered in the office of Deputy Registrar, First, Office at Bulandshahr, in Bahi No. 1, Zild No. 3910, Page 1-20, Item No. 4083.

4. The execution of the sale deed was extended from 11.07.2008 to 31.12.2008, by mutual consent, however, on the said date, despite Respondent No 2 herein being present, along with the amount remaining to be paid, the appellant was absent, in spite of having received information about the same.

5. It has been recorded in the Impugned order that, a notice was sent by Respondent No 2 on 01.01.2009, for execution of the agreement, after which, both parties met and an oral request to the same effect was also made. On various dates subsequent thereto, Respondent No 2 has extended the time in favour of the Appellant(s) herein for executing the sale deed, however, that was not done. Upon discovering that the appellant herein planned to sell the property in dispute to somebody other than the Appellant(s), the FIR, subject of the quashing proceedings was lodged at Police Station Kotwali, District Bulandshahr.

6. Vide the Impugned judgement dated 18.10.2019, the Ld. Single Judge dismissed the application under Section 482, CrPC, not accepting the argument on part of the Appellant, that the present Respondent No. 2 had an alternative remedy in the nature of a civil suit for the execution of the sale agreement. Relying on, in V. Ravi Kumar v. State 2018 SCC OnLine SC 2811, the prayer for quashing has been refused.

7. It has been urged by way of this appeal arising out of SLP, that the agreement to sell was void ab initio, in light of Sec. 157(A), Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, whereby a person belonging to a Schedule Caste cannot transfer property to any person not of a schedule caste without prior permission of the concerned Collector or District Magistrate. Further it has been urged, that the instant FIR has been lodged four years after the slated date of the execution of the sale deed. It is also submitted that the present agreement to sell is forged and in respect thereof, a report to the Senior Superintendent of the Police stands filed.

8. We notice that the agreement to sell had been duly registered at the office Deputy Registrar, 1 st, Office at Bulandshahr, and the complaint filed by the appellant, purporting that the same was forged, was filed on 11.05.2012, which is, incidentally, the same as the date of the reply to the legal notice sent by Respondent No 2 herein, dated 08.05.2012, and is also four years from the date of the agreement.

9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in *Sarabjit Kaur v. State of Punjab and Anr.* 1, observed that “A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.”

10. A two-Judge bench of this Court in *ARCI v. Nimra Cerglass Technics (P) Ltd.* 2, while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In *Vijay Kumar Ghai v. State of W.B.* (2022) 7 SCC 124, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:

“24. This Court in *G. Sagar Suri v. State of U.P.* [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in *Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that :

(*Indian Oil Corpn. Case* [*Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13) “13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

12. Having regard to the above well-established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue.

13. In view of the above, the impugned judgment and order dated 18.10.2019 passed by the High Court of Judicature at Allahabad, refusing to quash the FIR in question and the Case No. 6695 of 2012 arising out of Case Crime No. 421 of 2012 under Sections 406, 420, 467, 468, 417 and 418 of the Indian Penal Code, 1860, bearing number No. 32337 of 2013 is set aside. The appeal is allowed.

14. It is however clarified that observations made herein shall have no bearing on any remedies of civil nature that may be available to Respondent No.2, within law.

15. Interlocutory Applications, if any, are disposed of.

.....J. (KRISHNA MURARI)J. (SANJAY KAROL)

Dated : 3rd May, 2023;

Place : New Delhi.