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DR. LAKSHMAN

v.

THE STATE OF KARNATAKA & ORS.

(Criminal Appeal Nos. 1573-1575 of 2019)

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OCTOBER 17, 2019

[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

- Penal Code, 1860 – ss.403, 406, 417, 418, 420, 506(B), 422, 120(B) – Appellant-complainant case that respondent-accused entered into an agreement with appellant on 26.09.2012 to procure 70 acres of agricultural land in favour of appellant and received an amount of Rs. 9 crores from him, however, respondents failed to perform the contract in terms of agreement – It was alleged that thereafter, they entered into another MOU dated 08.11.2012 with a schedule indicating the survey nos., the respondent represented that they were in possession of 70 acres of land and 30 acres of converted land and promised to transfer the same to the appellant – It was alleged that respondents had already sold the land covered by the survey nos. 115 and 117 and later appellant was forced to sign the sale deed as a confirming party of the same survey nos. which were executed subsequently – Also, Respondents had issued two cheques as a security for the amount of advance paid by the appellant and when the said cheques were presented, it was alleged that account of which cheques were issued was closed – Appellant alleged cheating, fraud and criminal conspiracy in his complaints – Respondents filed petition u/s.482 Cr.P.C. to quash the complaints filed by the appellant – High Court held there was novation of contract on 08.11.2012 – High Court also disbelieved the schedule attached to the agreement on the ground that additional pages were not paginated – Further, High Court quashed the proceedings on the ground that appellant had already filed a Civil suit for recovery of sum of Rs.9 crores and complaint u/s.138 Negotiable Instruments – On appeal, held: So far as pagination of the schedule is concerned, in a petition u/s.482 Cr.P.C. it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes – Further, mere filing of the suit for recovery of money and complaint filed u/s.138 of Negotiable*

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Instruments Act by itself was no ground to quash the proceedings in the complaints filed by the appellant – When cheating and criminal conspiracy are alleged against the accused, for advancing a huge sum of Rs.9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed u/s.482 Cr.P.C. – Whether there is novation of contract or not and the effect of such entering into a contract is a matter which is required to be considered only after trial but not at the stage of considering the application u/s. 482 Cr.P.C. – High Court committed error in allowing the petitions filed u/s.482 Cr.P.C. – Accordingly, order of the High Court set aside.

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Allowing the appeals, the Court

HELD: 1. It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant and respondents have received the amount of Rs.9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are schedules mentioned to the agreements as per which respondents have agreed to procure the land covered by Survey Nos.115 and 117 apart from other lands. In a petition under Section 482, Cr.P.C. it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the Schedule, the High Court has disbelieved such Schedule to the Agreements. It is the specific case of the appellant that the lands covered by Survey Nos.115 and 117 were sold even prior to the first agreement, as such respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by respondents-accused by way of security for the amount of Rs.9 crores which is advance but the account of such cheques was closed even prior to entering into the Agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey Nos.115 and 117. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the N.I. Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal

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- A conspiracy are alleged against the accused, for advancing a huge sum of Rs.9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482, Cr.P.C. It is fairly well settled that power under Section 482 Cr.P.C. is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any Schedules were appended to the agreement or not, a finding is required to be recorded after full fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I. Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 of Cr.P.C., this Court is of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 08.11.2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482, Cr.P.C.
- [Para 9] [486-B-H; 487-A-C]

S.W. Palanitkar and Ors. v. State of Bihar and Anr.
F *(2002) 1 SCC 241 : [2001] 4 Suppl. SCR 397 ; Anil Mahajan v. Bhor Industries Ltd. and Anr. (2005) 10 SCC 228 ; Inder Mohan Goswami and Anr. v. State of Uttarakhand and Ors. 2007 (12) Scale 15 – referred to.*

| G | <u>Case Law Reference</u> | | |
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| | [2001] 4 Suppl. SCR 397 | referred to | Para 10 |
| | (2005) 10 SCC 228 | referred to | Para 10 |
| | 2007 (12) Scale 15 | referred to | Para 10 |

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
Nos. 1573-1575 of 2019.

From the Judgment and Order dated 28.04.2017 of the High Court of Karnataka at Bengaluru in Criminal Petition Nos. 2383 of 2017, 7976 of 2013 and 7161 of 2016.

Arun Joshi, Ankolekar Gurudatta, Chandan Malapur, Mukesh Kumar Singh, Mohit Kaushik, Rajendra Koushik, Advs. for the Appellant.

R. Basant, Sr. Adv., Anand Sanjay M. Nuli, Sunil Rao, Dharm Singh, Nanda Kumar K.B., Prawal Mishra, Suraj Kaushik, Manu Krishna (for M/S. Nuli & Nuli), V. N. Raghupathy, Md. Apzal Ansari, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

2. These criminal appeals are filed by the complainant, aggrieved by the judgment and order dated 28th April, 2017 passed by the High Court of Karnataka at Bengaluru in Crl.P Nos.2383 of 2017, 7976 of 2013 and 7161 of 2016. By the aforesaid order, the High Court has allowed the petitions filed by the respondents-accused under Section 482 of Cr.P.C. and quashed the complaint bearing P.C.R. No.12317 of 2013 filed before the IV ACMM, Bangalore, and complaint bearing P.C.R. No.14420 of 2015, filed before the VIII ACMM, Bengaluru, as well as the order dated 27th November, 2015 (wrongly mentioned as 27th July, 2015) passed by the VIII ACMM, Bengaluru, in P.C.R.No.14420 of 2015, directing the Sanjaya Nagar Police Station to investigate the matter.

3. The appellant herein has filed complaint on 29th April, 2013 before the Chief Metropolitan Magistrate, Bangalore, which is registered as P.C.R. No.12317 of 2013 against the accused A1 to A5, namely (1) M/s. Pramila Santhosh Land Developers and Builders Pvt. Ltd., (2) D.T. Santhosh (3) D.C. Thamanna (4) Smt. K.G. Pramila and (5) M/s. Sri Sai Developers for the alleged offences under Sections 403, 406, 420, 506(B) of the Indian Penal Code. There is also a subsequent complaint by the same complainant on 27th November, 2015 which is registered as P.C.R. No.14420 of 2015, which is subsequently numbered as CC No.54

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- A of 2016 (after filing of the chargesheet dated 22nd December, 2015) against the accused therein namely (1) M/s. Pramila Santhosh Land Developers and Builders Pvt Ltd. (2) D.T. Santhosh and (3) Smt. K.G. Pramila for the alleged offences under Sections 417, 418, 420, 422, 120(B) read with Section 34 of IPC and for offences under the Prevention of Money Laundering Act.
- B 4. The first complaint dated 29th April, 2013 was filed alleging that the respondents-accused made a representation that they are owners and are absolutely seized and possessed of land at Ballur village, Attibele Hobli, Anekal Taluk and promised to procure an extent of 70 acres of land and entered into an agreement with the appellant-complainant on 26th September, 2012 and received an amount of Rs.9 crores (Rupees Nine crores) by way of cheques and demand drafts. It is alleged that the extent and survey nos. of land mentioned in the Schedule appended to the Memorandum of Understanding (MOU) were to be procured in favour of the complainant. It was further pleaded that there were two cheques issued by the accused as security for the amount of advance paid by the appellant-complainant. It was the case of the complainant that subsequent to agreement dated 26th September, 2012, the respondents-accused having failed to perform the contract in terms of agreement, have entered into another MOU on 8th November, 2012, representing that they are in possession of 70 acres of agricultural land and 30 acres of converted land and they promised to transfer such land in favour of the appellant. To the MOU dated 8th November, 2012 M/s. Sri Sai Developers was added as a party. As per the complaint, there is also a Schedule indicating the survey nos. and extent of lands to the second MOU. In the complaint filed on 29th April, 2013 it was alleged that though the respondents have already sold the land covered by Survey Nos.115 and 117 to M/s. Sri Sai Developers on 7th June, 2012, with a dishonest intention respondents have played fraud and cheated the appellant by receiving huge sum of Rs.9 Crores (Rupees Nine crores), by including the lands covered by Survey Nos.115 and 117 also. Further alleging that when the demand was made to comply with the terms of the contract, the respondents have threatened the complainant, as such the respondents are liable to be punished for offences under Sections 403, 406, 420, 506(B) of IPC.
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- H 5. Further alleging that after filing of the first criminal complaint, the respondents have threatened and pressurised the appellant and the

second complaint was filed. In the second complaint, it was alleged that one of the accused, by name, D.C. Thamanna also gave an undertaking in writing stating that from 16th May, 2013 onwards they would start registering the sale deeds but they failed to do so. It was further alleged that instead of abiding by such undertaking, the appellant was forced to enter into an addendum dated 30th May 2013. In the second complaint, it is alleged that all the accused have told the appellant that lands bearing Survey Nos.115 and 117 are not available for sale, as such they will compensate in other lands and made a request to become confirming party to sale deed dated 6.7.2013 executed in favour of the trust. It is stated in the complaint that though the purchaser of the lands covered by Survey nos.115 and 117 was not known to the appellant, he was made to sign the sale deed as a confirming party which is also a conspiracy of all the accused to avoid performance of the contract entered into by the accused with the appellant and to retain the amount of Rs.9 crores (Rupees Nine crores) with them illegally. In the second complaint, it was further the case of the appellant that when the cheques, which were given by the accused as security, were presented, it was learnt that the account of which cheques were issued was closed even prior to entering into the agreement dated 26.9.2012. Alleging that there is a fraud, cheating and conspiracy, it is pleaded that the respondents are liable to be prosecuted for the offences under Sections 417, 418, 420, 422 and 120(B) read with Section 34, IPC and the provisions of Prevention of Money Laundering Act.

6. At this stage, it is to be noticed that in the second complaint, after investigation, chargesheet is also filed and C.C. is numbered.

7. The High Court has allowed the petitions filed under Section 482, Cr.P.C. by the respondents-accused mainly on the ground that in view of the agreement entered into on 08.11.2012, there is a novation of the contract between the parties. Further the High Court has disbelieved the Schedule to the MOU dated 08.11.2012 on the ground that the additional pages were not paginated. Further on the grounds that the appellant has already filed a civil suit for recovery of advance paid by him for a sum of Rs.9 crores (Rupees Nine crores) and the appellant has filed complaint for offence under Section 138 of the Negotiable Instruments Act, 1881, the appellant has joined in the sale deed for lands covered by Survey Nos.115 and 117 of Ballur Village, has allowed the petitions and quashed the proceedings.

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- A 8. Having heard Sri Arun Joshi, learned counsel for the appellant and Sri R. Basant, learned senior counsel assisted by Mr. Anand Sanjay M. Nuli, Advocate, appearing for the respondents, we have perused the impugned order passed by the High Court and other materials placed on record.
- B 9. It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant in Ballur Village, Anekal Taluk, Bangalore Urban District and respondents have received the amount of Rs.9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are schedules mentioned to the agreements as per which respondents have agreed to procure the land covered by Survey Nos.115 and 117 of Ballur Village apart from other lands. In a petition under Section 482, Cr.P.C. it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the Schedule, the High Court has disbelieved such Schedule to the Agreements. It is the specific case of the appellant that the lands covered by Survey Nos.115 and 117 of Ballur Village were sold even prior to the first agreement, as such respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by respondents-accused by way of security for the amount of Rs.9 crores which is advance but the account of such cheques was closed even prior to entering into the Agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey Nos.115 and 117 of Ballur Village. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the N.I. Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal conspiracy are alleged against the accused, for advancing a huge sum of Rs.9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482, Cr.P.C. It is fairly well settled that power under Section 482 Cr.P.C. is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any Schedules were appended to the agreement or not, a finding is required to be recorded after full
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fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I. Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 of Cr.P.C., we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 08.11.2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482, Cr.P.C.

10. Learned senior counsel Sri R. Basant appearing for the accused, in support of his case, relied on the judgment of this Court in the case of **S.W. Palanitkar and Ors. vs. State of Bihar and Anr.**¹ and submitted that every breach of contract may not result in a penal offence, but in the very same judgment, this Court has held that breach of trust with *mens rea* gives rise to a criminal prosecution as well. In a given case, whether there is any *mens rea* on the part of the accused or not is a matter which is required to be considered having regard to the facts and circumstances of the case and contents of the complaint etc. In the case on hand, it is clearly alleged that even before entering into the agreement dated 26.09.2012, lands were already sold to third party, which were agreed to be procured in favour of the appellant. Not only that, it is the specific allegation of the complainant that the cheques were issued towards security from the account which was also closed much earlier to the date of Agreement itself. Learned counsel also relied on judgment in the case of **Anil Mahajan vs. Bhor Industries Ltd. and Anr.**² but in the very same judgment it is also held that where there exists a fraudulent and dishonest intention at the time of the commission of the offence, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. In another case relied on by the learned counsel, viz., **Inder Mohan Goswami and Anr. vs. State of Uttarakhand and Ors.**³ this Court has

¹ (2002) 1 SCC 241

² (2005) 10 SCC 228

³ 2007 (12) Scale 15

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- A reiterated the scope of power of the High Court under Section 482 Cr.P.C. Having regard to the facts of the case, we are of the view that the said judgments relied on by the learned counsel would not support the case of the respondents. It is also to be noticed that in the complaint filed in P.C.R.No.14420 of 2015, investigation has been completed and chargesheet was also filed on 22nd December 2015.
- B 11. For the aforesaid reasons, we are of the view that the High Court has committed an error in allowing the petitions filed under Section 482, Cr.P.C. by the respondents-accused. Accordingly, these criminal appeals are allowed and impugned common order dated 28.4.2017 passed by the High Court of Karnataka at Bengaluru is set aside. It is made clear that the findings recorded in this judgment are confined only for these appeals and the same cannot be construed as an expression of opinion on merits of the matter and it is open for the trial court to proceed in accordance with law and decide the complaints on their own merits.
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Ankit Gyan

Appeals allowed.