

B. Suresh Yadav vs Sharifa Bee & Anr on 12 October, 2007

Equivalent citations: AIR 2008 SUPREME COURT 210, 2007 (13) SCC 107, 2007 AIR SCW 6592, 2007 (12) SCALE 364, 2007 ALL MR(CRI) 3285, 2008 (1) MADLJ(CRI) 1427, (2008) 1 CRILR(RAJ) 37, 2008 (1) ORISSALR 67, (2008) 1 CTC 338 (SC), 2008 (1) GUJLH 401, 2008 (1) CTC 338, 2008 CRILR(SC&MP) 37, 2009 (1) SCC(CRI) 282, 2008 CRILR(SC MAH GUJ) 37, (2008) 62 ALLCRIC 93, (2007) 38 OCR 765, (2007) 7 SUPREME 297, (2007) 12 SCALE 364, (2007) 4 CRIMES 148, (2007) 4 CURCRIR 297, 2007 (3) ANDHLT(CRI) 281 SC

Author: S.B. Sinha

Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:

Appeal (crl.) 1444 of 2007

PETITIONER:

B. Suresh Yadav

RESPONDENT:

Sharifa Bee & Anr

DATE OF JUDGMENT: 12/10/2007

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T (Arising out of SLP (Crl.) No.705 of 2007) S.B. Sinha, J.

1. Leave granted.

2. An application for quashing the complaint being CC No.216 of 2006 filed in the Court of the Metropolitan Magistrate, Cyberabad at Malkagiri filed the petitioner under Section 482 of the Code of Criminal Procedure, has been dismissed by the High Court of Andhra Pradesh by reason of the impugned judgment.

3. Basic fact of the matter is not in dispute.

4. First respondent herein filed a complaint petition. The parties hereto entered into an agreement for sale in respect of a house admeasuring 350 square yards for a consideration of Rs.23,80,000/-. A sum of Rs.5,00,000/- was paid by way of advance. A sale deed was executed on 30.9.2005 by the

appellant herein on receipt of the balance sum of Rs.18,79,000/-.

5. Indisputably on or about 29.9.2005, two rooms, allegedly, constructed on the said lands were demolished. A suit was filed in relation thereto. Respondent No.1 was also defendant in the said suit. In the written statement, she stated :

Whereas it is the Plaintiffs who by demolishing existing structure when the defendant No.2 and her family members are away and even the electricity connection meter was thrown away and in that regard this defendant No.2 herein has reported the matter to the concerned police and this Plaintiffs herein have also filed a caveat application having got signed the same in the affidavit. And whereas before this Hon ble Court, the same Plaintiffs herein has put his thumb impression and the Plaintiff herein by taking advantage of ad interim orders, are trying to forcibly encroach upon the suit schedule property.

6. Respondent herein, in the said suit, inter alia, contended that the suit properties are different from the subject matter of the deed of sale. Although the aforementioned written statement was filed only in March, 2006, first respondent herein filed a complaint in the court of Metropolitan Magistrate, Cyberabad at Neredmet alleging commission of an offence by the appellant purported to be under Section 420 of the Indian Penal Code.

7. Submission of Mr. M.N. Rao, learned Senior Counsel appearing on behalf of the appellant, is that the allegations contained in the complaint petition, even if given face value and taken to be correct in their entirety, do not disclose any offence. Learned counsel would contend that from a perusal of the written statement filed by the first respondent, it would appear that they she at all material times was aware of the purported demolition of the said rooms.

8. Section 415 of the Indian Penal Code reads thus :

Section 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. Section 415 of the Indian Penal Code is required to be read with the definition of the expression dishonestly as contained in Section 24 thereof in terms whereof something must be done with an intention of causing wrongful gain to one person or wrongful loss to another.

9. There exists a dispute as to whether the property whereupon the said two rooms were allegedly situated was the same property forming the subject matter of the deed of sale or not. A civil suit has

already been filed in relation thereto. Respondent No.1 herein was aware of the fact that the said two rooms stood demolished. It is furthermore not in dispute that the demolition was not caused by the appellant herein. In her written statement filed in the said suit, the first respondent did not make any allegation against the appellant herein. The High Court, in its judgment, inter alia, opined that, prima facie, the appellant concealed the fact of demolition of the premises from the first respondent before execution of the aforementioned deed of sale.

10. The short question which arises for consideration is as to whether a case of cheating within the meaning of Section 415 of the Indian Penal Code has been made out or not.

11. Ingredients of cheating are :

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person 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.

12. While executing the sale deed, the appellant herein did not make any false or misleading representation. There had also not been any dishonest act of inducement on his part to do or omit to do anything which he could not have done or omitted to have done if he were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, the dispute between the parties is a civil dispute.

13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before us that the appellant herein got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30.9.2005 and the purported demolition took place on 29.9.2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so.

14. In this view of the matter, we are of the opinion that in the facts and circumstances obtaining herein, no case has been made out for proceeding with the criminal case.

15. In *G. Sagar Suri & Anr. v. State of U.P. & Ors.* [(2000) 2 SCC 636], this Court opined :

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Therein, having regard to the fact that a criminal complaint under Section 138 of the Negotiable Instruments Act had already been pending, the criminal complaint under Section 406/420 found to be an abuse of the due process of law.

16. In *Anil Mahajan v. Bhor Industries Ltd. & Anr.* [(2005) 10 SCC 228], this Court held :

8. The substance of the complaint is to be seen.

Mere use of the expression cheating in the complaint is of no consequence. Except mention of the words deceive and cheat in the complaint filed before the Magistrate and cheating in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086 out of the total amount of Rs.3,38,62,860 was paid leaving balance of Rs.33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

17. In *Hira Lal Hari Lal Bhagwati v. CBI, New Delhi* [(2003) 5 SCC 257], this Court opined :

It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly

indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption . As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. {See also Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2005) 3 SCC 670] and Indian Oil Corporation v. NEPC India Ltd. & Ors. [(2006) 6 SCC 736]}.

18. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed. No costs.