

T.Hari Prasad Rao And Anr vs The State Of Telangana And Another on 6 June, 2023

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CrI.P.No.6405 OF 2016

ORDER :

This Criminal Petition is filed to set aside the judgment in CrI.R.P.No.241 of 2015 dated 04.01.2016, on the file of Metropolitan Sessions Judge, Hyderabad as well as in S.R.No.673 of 2013 dated 06.08.2015, on the file of VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and to remand the matter to the Court below for adjudication.

2. For the sake of convenience, the parties herein are arrayed as they are arrayed in the original complaint. The petitioners are complainants.

3. As stated supra, this quash petition is filed against the judgment in CrI.R.P.No.241 of 2015 on the file of Metropolitan Sessions Judge, Hyderabad, dated 04.01.2016 and to remand the matter to the Court below for adjudication of the criminal complaint which was dismissed by the Court below under Section 203 of Cr.P.C. Initially, a private complaint was filed by the GAC, J petitioners. The brief facts culled out of the complaint are that the accused is the landlady and the complainant is the tenant of the accused. The complainant after taking premises on lease, the accused alleged to have given an advertisement for letting out the same premises, for which GHMC issued a notices both to the complainant and the accused asking them to remove the canteen set up in the said premises within 24 hours and the said notices were issued on different names. Thereafter, the Municipal authorities have demolished the canteen, due to which the business of the complainant got effected and the said demolition was done at the instance of the accused in order to close the business. Further, the accused did not allow the complainant to run business as per the agreement. The complaint alleged to have given by the accused does not show her signature and the signature on the complaint and the signature on the agreement are different, which shows that the accused masterminded the complaint using the signature of the 3rd parties.

GAC, J

4. The trial Court after considering the entire material on record has come to a conclusion that the case is civil in nature and dismissed the complaint under Section 203 of Cr.P.C. Against the same, the complainant had preferred a revision. The Revision Court after considering the entire material on record and also the rival contentions of the parties has dismissed the revision. Being aggrieved by the same, the present quash petition is filed seeking to set aside the orders in revision petition No.241/2015.

5. Heard the learned counsel for the petitioners and learned counsel for the 2nd respondent and perused the record.

6. It is urged by the learned counsel for the petitioners that the Revision Court as well as the trial Court has to consider the decisions of the Apex Court while dealing with the complaints and the lower Courts ought not have dismissed the complaint as it is civil in nature. It is further contended that after giving the premises on rent, the accused has advertised through electronic media about the sale of the property, which clearly discloses that GAC, J the landlady cheated the complainant/tenant. It is further contended by the learned counsel that the sworn statement of the accused clearly establishes that the complaint is criminal in nature which includes the offence under Section 420 Cr.P.C i.e., for cheating. Due to non- payment of water bill to the water works department for more than 20 years, the complainant/petitioner has faced lot of difficulties and electricity bills were also issued under different house numbers. All these facts shall be deemed to be cheating. Therefore, prayed to remand the matter to the trial Court for consideration.

7. In support of his contentions, he relied upon the judgment in CrI.P.No.3742 of 2021, which reads as under:-

"It is well settled law that when a complaint disclosed commission of cognizable offence, it is within the competence of the Magistrate to forward the said complaint to the police under Section 156(3) Cr.P.C to investigate and file report. No doubt, the Magistrate also is empowered to conduct enquiry under Section 202 Cr.P.C and record the sworn statement of the complainant and other witnesses if any and take cognizance of the case. But, the grievance of the petitioner is that as the case is relating to the offence of cheating, punishable under Section 420 of IPC, it would be conducive to justice if the police investigates the case. Therefore, when the GAC, J Court is empowered under Section 156(3) Cr.P.C to order for investigation before taking cognizance of the case, the trial Court ought to have forwarded the said complaint under Section 156(3) Cr.P.C to the police to investigate and submit report. This would also save the time of the trial Court.

In the judgment of the Apex Court relied by the petitioner before the trial Court, in *Madhao v. State of Maharashtra*, the Apex Court held in para 13 as follows:-

"13. When a magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself."

8. He also relied on the judgment of the Apex Court reported in *Devender Kumar Singla v. Baldev Krishan Singla* 1, wherein it is held as under:-

"In order to appreciate the rival submissions, it would be necessary to consider on the background of the factual position as to whether offence punishable under Section 420 IPC is made out. Section 420 deals with certain specified classes of cheating. It deals with the cases whereby the deceived person is dishonestly induced to deliver any property to any person or to make, alter or destroy, the whole or any part of (2005) 9 SCC 15 GAC, J a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. Section 415 defines "cheating". The said provision requires, (i) deception of any person (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property or (iii) intentionally inducing 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.

Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to each other and this is made significantly clear by use of disjunctive conjunction 'or'. The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which no transfer occurs. Deception is the quintessence of the offence. The essential ingredients to attract Section 420 are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and the (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating under Section 420. (See Bashirbhai Mohamedbhai v. State of Bombay."

9. The above said judgments do not apply to the present facts and circumstances of the case, as essential ingredients of Section 420 Cr.P.C do not attract even after going through the contents of the complaint.

GAC, J

10. On the other hand, learned counsel for the respondents contended that the both the Courts concurrently gave findings that the matter is civil in nature and therefore, dismissed the complaint and prayed not to interfere with the orders of the Revision Court.

11. In support of his contentions, he relied on the judgment of the Apex Court reported in Mehmood Ul Rehman vs. Khazir Mohammad Tunda And Others 2, wherein it is held as under:-

" The steps taken by the Magistrate under Section 190(1)(a) of CrPC followed by Section 204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and

when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the (2015) 12 SCC 420 GAC, J order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of CrPC, the High Court under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

12. On perusal of the complaint and sworn statement of the complainant, it is evident that the complaint alleged to have been given by the accused does not bear the signature of the accused. It is GHMC, which has demolished the premises. In spite of it, the petitioner/complainant has not made GHMC as party to the complaint. The entire allegation of the complainant in the complaint is that the accused colluded with GHMC and got the premises demolished. If said contention has to be taken into consideration, loss will be occurred to the accused being a landlady but not to the tenant.

GAC, J

13. Furthermore, the rental agreement dated 01.08.2011, which is alleged to have been entered between the accused and complainant disclose as under:-

"Land lady has let out the building for residential purpose, but however if the tenants desire to run a canteen they may utilize the premises for catering purpose, but shall not open or run a kitchen inside the premises. They can raise a temporary shed in the vacant space on the northern side of the building inside the compound and run the kitchen that too with gas stoves only provided necessary Municipal Permission is obtained.

The tenants shall pay electricity & water charge for the power and water consumed every month, while the property tax shall be paid by the land lady only."

14. As per the above two clauses in the rental agreement dated 01.08.2011, it is for the complainant i.e., the petitioners to take necessary permission from the Municipal authorities prior to construction of a temporary shed in the vacant space and also to do his business of catering and in order to run a kitchen with gas stoves. Admittedly, no municipal permission has been taken by the petitioners. Furthermore, as per the clause 4 of the rental agreement, the electricity and water charges have to be paid by the tenants. Therefore, the owner cannot be GAC, J held responsible as to water and electricity bills. Notices dated 11.05.2012 and 14.05.2012 received by the petitioners clearly disclose that a temporary shed was erected using a mess within the front mandatory open space towards north side, kitchen erected within the mandatory open space towards the south-east corner and batti erected to the south side, which were asked to remove.

15. As per the above notices, it can be construed that the petitioners have not only erected a shed to open a kitchen but they have also opened a curry point, pan dabba, tea bunk on the foot path i.e., outside the premises, for which the Municipal authorities have given said notices. Even after receiving the notices, the petitioners instead of removing the shed continued business for which Municipality has demolished the entire structures. If at all, the petitioners have any grievance against the Municipal Department, they ought to have filed a complaint against the Municipality instead, they filed a complaint against the landlady, which is not tenable and sustainable under law.

GAC, J

16. The trial Court as well as the Revision Court has rightly dismissed the private complaint filed by the petitioners and the Revision Court has confirmed the judgment in CrI.R.P.No.241 of 2015. Therefore, there is no need to interfere with the findings of both the Courts below.

17. In view of the above discussion, the Criminal Petition is dismissed confirming the orders of the Revision Court.

Pending miscellaneous applications, if any, shall stand closed.

----- G.ANUPAMA CHAKRAVARTHY, J
Date:06.06.2023 dv