

C. Subbiah @ Kadambur Jayaraj and Others

v.

The Superintendent of Police and Others

(Criminal Appeal No. 2582 of 2024)

15 May 2024

[B.R. Gavai and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter pertains to the permissibility of suing the accused for a civil wrong, in relation to the benami transactions, as a corollary, allowing criminal prosecution of the accused in relation to the same cause of action.

Headnotes[†]

Benami Transactions (Prohibition), Act 1988 – s. 4 – Benami transaction – Initiation of civil suit/criminal proceedings by the real owner of the benami property – Permissibility – Complainant-government teacher, previously doing real estate business, fraudulently allured and induced by the accused persons to invest in various land deals to earn high profits – Purchased properties not registered in complainant's name despite the investments made by him and thereafter, the accused failed to deliver the plots or profits as agreed and thereby committed fraud and criminal breach of trust – Registration of FIR and filing of chargesheet – On the same set of allegations, the complainant filed civil suit against the accused persons, which is pending – Petition by the accused seeking quashing of the FIR and the chargesheet – Dismissed by the High Court:

Held: Dispute is regarding the quantification of profits and full satisfaction of the share claimed by the complainant proportional to the investments made by him after sale of some plots – Complainant after being appointed in Government service would be conscious that indulging in land deals may land him in departmental proceedings, thus, must have agreed that the lands not be registered in his name – By virtue of s. 4(1) and 4(2), the complainant in spite of having made investments in the land deals in the names of other persons which were evidently benami transactions, was prohibited from instituting civil proceedings for recovery against

* Author

Digital Supreme Court Reports

the accused persons-appellants – As a corollary, allowing criminal prosecution of the accused in relation to the self-same cause of action would be impermissible in law – Thus, in view of the clear bar contained in s. 4, the complainant could not have sued the accused for the same set of facts and allegations which were made the foundation of the criminal proceedings – Since, if such allegations did not constitute an actionable civil wrong, allowing the prosecution of the accused for the very same set of facts, would tantamount to abuse of the process of law – Furthermore, no allegation to persuade the Court to hold that the intention of the accused was to defraud the complainant right from the inception of the transactions – Also necessary ingredients of the offences punishable u/ss. 406, 420, 294(b) and 506(ii) IPC not made out against the accused – Dispute which is purely civil in nature was given a colour of criminal prosecution alleging fraud, breach of trust and criminal intimidation by misusing the tool of criminal law – Criminal prosecution instituted against the accused in pursuance of the totally frivolous FIR tantamounts to sheer abuse of the process of law – Thus, the impugned order quashed and set aside. [Paras 36, 38, 42-48]

Benami Transactions (Prohibition), Act 1988 – s. 4 – Benami transaction – Prohibition of the right to recover property held benami:

Held: s. 4(1) makes it clear that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person, shall lie or on behalf of a person claiming to be real owner of such property – Such person cannot raise a defence based on any right in respect of any property held benami either against the person in whose name the property is held or against any other person – s. 4(2) prohibits the institution of any suit, claim or any other action by and on behalf of a person claiming to be the real owner of such property. [Para 35]

Case Law Cited

State of Haryana and Others v. Bhajan Lal and Others [\[1990 Suppl. 3 SCR 259\]](#) : 1992 Supp. 1 SCC 335; *Indian Oil Corpn. v. NEPC India Ltd. and Others* [\[2006\] Supp. 3 SCR 704](#) : (2006) 6 SCC 736; *Anand Kumar Mohatta and Another v. State(NCT of Delhi), Department of Home and Another* [\[2018\] 13 SCR](#)

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

1028 : (2019) 11 SCC 706; Union of India v. Ganpati Dealcom (P) Ltd. [2022] 12 SCR 320 : (2023) 3 SCC 315; Sarabjit Kaur v. State of Punjab and Anr., 2023 SCC OnLine SC 210; Vijay Kumar Ghai v. State of W.B. [2022] 1 SCR 884 : (2022) 7 SCC 124 – referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Prevention of Corruption Act, 1988; Benami Transactions (Prohibition), Act 1988.

List of Keywords

Civil wrong; Benami transactions; Criminal prosecution; Cause of action; Fraudulently allured and induced; Fraud; Criminal breach of trust; Departmental proceedings; Quantification of profits; Criminal intimidation; Abuse of the process of law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2582 of 2024

From the Judgment and Order dated 23.04.2018 of the High Court of Judicature at Madras at Madurai in CRLOP No. 3846 of 2013

Appearances for Parties

Dama Seshadri Naidu, Sr. Adv., Pai Amit, Tushar Bakshi, Mrs. Naresh Bakshi, Abhiyudaya Vats, Ashish Jacob Mathew, Advs. for the Appellants.

D. Kumanan, Veshal Tyagi, M.P. Parthiban, Ms. Priyaranjani Nagamuthu, Ms. Shalini Mishra, R. Sudhakaran, T. Hari Hara Sudhan, Bilal Mansoor, Shreyas Kaushal, P.V.K. Deivendran, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.
2. The instant appeal by special leave is filed against the judgment dated 23rd April, 2018 passed by learned Single Judge of the Madras High Court, Madurai Bench dismissing the CRL.O.P.(MD) No. 3846 of 2013

Digital Supreme Court Reports

preferred by the appellants herein seeking quashing of proceedings of Criminal Case No. 250 of 2012 pending in the Court of learned Judicial Magistrate No. II, Kovilpatti for offences punishable under Sections 420 read with Section 120B, Section 294(b), Section 506(ii) read with Section 114 of the Indian Penal Code, 1860(hereinafter being referred to as the 'IPC').

Brief facts:-

3. Respondent No. 3(hereinafter being referred to as the 'complainant') lodged a complaint in the Court of learned Judicial Magistrate No. II, Kovilpatti alleging *inter alia* that he was having a qualification of M.Sc., MD Graduate. He was appointed as a Government teacher on 8th October, 2007. Before being appointed as a Government teacher, the complainant was doing real estate business for earning his livelihood for past 16 years.
4. The complainant was knowing Kannabiran(hereinafter being referred to as 'A-3') who was working as a Manager in the State Bank of India(SBI), Kovilpatti Branch. While being engaged in the real estate business, the complainant came into contact with Subbiah @ Kadambur Jeyaraj(hereinafter being referred to as 'A-1') and his wife A. Vijaya(hereinafter being referred to as 'A-2'). Through A-1 and A-2, the complainant came into contact with Chandrasekar(hereinafter being referred to as 'A-4'), his son Pandiyaraj(hereinafter being referred to as 'A-6'), his wife(S. Pandiyamal, hereinafter being referred as 'A-5'), and his brother (K. Shanmugiah, hereinafter being referred as 'A-8') who were also engaged in real estate business.
5. The complainant claimed that he always trusted his partners in business. Taking undue advantage of the trusting nature of the complainant, the accused persons induced him to join their real estate business claiming that they had strong political connections. The accused allured and induced the complainant to enter into land deals with the intention to defraud the complainant right at the inception of the transactions. The complainant was told that the documents need not be registered in his own name and instead the registration may be carried out in the name of his sister-in-law. An alternative option was given that if the documents were registered in the names of the accused, the plots could be sold immediately to earn higher profits. By flaunting their political connections, the accused influenced the

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

complainant to make investments into lands assuring that he would reap huge benefits out of these deals.

6. The complainant was also fraudulently induced to believe that out of the chunks of lands so purchased, smaller plots would be carved out and sold to different persons which would frequently require physical presence of the seller and since the complainant was a teacher, he would face inconvenience if the land parcels were to be registered in his name. In this manner, the complainant was not allowed to get the purchased properties registered in his name despite he making the investments. The complainant was given assurances that the plots would be sold for huge profit in a very short duration and he would be given his share. By using this mode of inducement, A-1, A-3, A-4, and A-6 infused a sense of trust in the complainant with the ulterior motive to defraud him and to commit breach of trust.
7. It was further alleged that before the complainant had come in touch with the accused, he and his brother-in-law Chandrasekar, S/o Krishnasamy Naicker had entered into an agreement for sale with A. Sairam in respect of a chunk of land at Allampatti village, admeasuring 8 acres, but the sale could not be finalized because a suit was pending in the District Court, Tuticorin in respect of the said land. In the meantime, the complainant was appointed as a teacher. The suit pending before the District Court, Tuticorin was disposed in favour of A. Sairam.
8. Having given the fraudulent allurements to the complainant, the accused got registered a sale deed in their name as Document No. 1839 of 2008 dated 27th February, 2008 on the file of Sub Registrar Office, Kovilpatti in respect of some plots of land situated in the Allampatti village of total area 7.618 acres. The complainant invested a sum of Rs. 1,01,47,800/- towards this transaction whereas, the accused invested proportionately much lesser amounts in the said land deal. A-1, A-3, A-4, and A-6 along with the complainant, purchased the said parcel of land from A. Sairam for a total consideration of Rs. 3,08,33,600/-. However, as per the complainant, the accused never gave him the plots equivalent to the investment made by him and thereby, committed fraud and breach of trust.
9. The complainant further alleged that A-2 and A-5 had conspired with A-1, A-3, A-4, and A-6 to cheat him. The accused made the complainant believe that the business of real estate is generally

Digital Supreme Court Reports

carried on by word of mouth and trust. However, at a later point of time, the accused started indulging in criminal breach of trust with the ulterior motive of cheating the complainant.

10. A-1, A-3, A-4 and A-6 invested the amount provided by the complainant towards his share in the land deal and completed the sale of the suit property on 27th February, 2008 with A. Sairam. However, despite the assurances, the accused conspired and refused to give the due share of plots to the complainant thereby committing breach of trust. Therefore, a Panchayat meeting was convened on 19th July, 2010 and a settlement deed was also executed wherein, it was agreed that 52 plots admeasuring 256.51 cents would be handed over by A-1 and A-2 to the complainant towards the investment made by him.
11. Under the same settlement, A-4 and A-6 were given 45 plots to the extent of 233.50 cents for the investment made by them after deducting land to the extent of 16.50 cents towards the passages. On the very date of execution of the settlement deed, all the accused entered into an agreement with Dharamraj(hereinafter being referred to as 'A-7'), brother-in-law of A-4 and executed a General Power of Attorney(GPA) in his favour after receiving a sum of Rs. 30,00,000/- towards plots Nos. 68, 69, 70 and 71 which were a part and parcel of the settlement deed.
12. The complainant alleged that the accused failed to pay a sum of Rs. 19,00,000/- which would be the share amount due to the complainant out of the sale price of Rs. 30,00,000/. Thus, the accused persons despite being signatories to the settlement deed did not act as promised under the settlement and thereby, committed breach of trust.
13. The accused had also promised to execute the sale deeds of some plots in favour of the persons to be nominated by the complainant. The complainant provided names of three persons for these plots. Three sale deeds were got prepared on stamp papers worth Rs. 90,000/. The accused gave their photographs and ID-proofs and signed the sale deeds, but they failed to appear at the Sub-Registrar Office, Kovilpatti at the scheduled time for registration of the sale deeds. When the complainant enquired from A-1 and A-3 as to why they were indulging in such fraudulent acts, they abused the complainant and threatened to get rid of him. A-1 threatened the complainant that if the matter is reported to the police, he would shoot and kill

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

the complainant and his family members by using a revolver. While saying so, A-1 brandished a revolver and handed it over to A-3.

14. It was further alleged that A-1 further induced the complainant to pay a sum of Rs. 41,00,000/- on 14th November, 2011, whereafter, the sale deed for one of the properties forming a part of the settlement memorandum was executed. However, for some of the properties, the accused were not abiding by the terms of the memorandum and had fraudulently transferred the same to other investors. Some land brokers were also present at the time when this incident occurred.
15. Being aggrieved of these continued criminal activities of the accused, the complainant submitted a complaint dated 29th June, 2010 at the Kovilpatti West Police Station but no action was taken thereupon. Having failed to get any action on his complaint, the complainant approached the Madras High Court, Madurai Bench by filing CRL.O.P.(MD) No. 1396 of 2011 and as per the directions of the High Court, he submitted a fresh complaint to the District Superintendent of Police, Tuticorin, but still the FIR was not registered. Ultimately, the complainant was compelled to file a complaint in the Court of the Jurisdictional Magistrate with a prayer to forward the same to the police under Section 156(3) of Code of Criminal Procedure, 1973.
16. Under the direction of the learned Magistrate, the complaint was forwarded to Police Station Kovilpatti West, where FIR No. 305 of 2011 dated 6th March, 2011 came to be registered. After investigation, the Investigating Agency, proceeded to file a charge sheet against eight accused with the following conclusions: -

“By these Criminal Acts accused 1 to 6 have made to believe the complainant by their honey coated words have purchased lands, along with the complainant, in Alampatti Village in Survey No.218/B - 1.5 Acres, Survey No. 219 - 2.74 Acres, Survey No.218/1 - 1 Acre, Survey No.221/1 - 2.37 Acres totaling in all 7 Acres 61 cents which are valued Rs.6,18,500/- as per guideline value but paid Rs.3,08,33,600/- and registered the sale deed as Doc.No.1839/08 on the file of SRO Kovilpatti, out of the said sale consideration have paid the complainant Rs.10,00,100/- as per his proportionate share of his investment and without paying the balance

Digital Supreme Court Reports

sale consideration of Rs.91,47,700/- towards his share received from the sale consideration or by not giving the proportionate land in alternate, they indulged in cheating activities. Therefore the acts committed by the accused or criminal nature and they appear to have committed the criminal acts which are punishable under the following Sections:

The 1st accused punishable under Section 420 IPC r/w. 120(B) IPC and Section 294(b), 506(ii) of IPC.

The 2nd accused punishable under Section 420 IPC r/w Section 120(B) IPC.

The 3rd accused punishable under Section 420 IPC r/w. 120(B) IPC and Section 294(b), 506(ii) of IPC r/w 114 of IPC.

The 4th accused punishable under Section 420 IPC r/w Section 120(B) IPC.

The 5th accused punishable under Section 420 IPC r/w Section 120(B) of IPC.

The 6th accused punishable under Section 420 IPC r/w Section 120(B) of IPC.

The 7th accused punishable under Section 420 IPC r/w Section120(B) of IPC.

The 8th accused punishable under Section 420 IPC r/w Section 120(B) of IPC.”

17. It may be mentioned that for the very same set of allegations, the complainant had also filed a civil suit by impleading A-1 to A-6 as defendants which is pending on the file of District Judge, Tuticorin in O.S. No. 06 of 2012.
18. A-1, A-2, A-3, A-4, A-5, A-6, A-7, and A-8 being the appellants herein, approached the Madras High Court, Madurai Bench for assailing the FIR and the charge sheet by filing a CRL.O.P.(MD) No. 3846 of 2013. The learned Single Judge of Madras High Court proceeded to dismiss the said petition preferred by the appellants vide order dated 23rd April, 2018 which is subject matter of challenge in this appeal by special leave.

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

Submissions on behalf of appellants: -

19. Learned senior counsel, Mr. Dama Seshadri Naidu representing the appellants vehemently and fervently contended that even if the allegations set out in the FIR and the charge sheet are treated to be true on the face of record, the same do not constitute the necessary ingredients of the offences alleged. He contended that looking at the admitted facts as set out in the complaint, the dispute, if any, between the parties is purely of civil nature and thus, continuance of the proceedings pursuant to the charge sheet filed against the accused appellants would tantamount to gross abuse of process of law. The charge sheet clearly spells out that a part of the sale proceeds from the land deals were paid to the complainant, but the entire amount as per his entitlement was not paid. Thus, as per Shri Naidu, for alleged part performance of contractual obligations, the tool of criminal law has been misused by the complainant.
20. He further submitted that the complainant being a teacher serving in the Government establishment was not entitled to indulge in property transactions and thus, at his own risk, he made the investments through the accused appellants herein and when the profit sharing quotient towards the land deals did not work out to the complainant's satisfaction, the process of criminal law was misused so as to launch a purely frivolous prosecution against the accused appellants.
21. The contention of the learned senior counsel was that there is no material whatsoever on the record of the case to show that the intention of the accused appellants was to defraud the complainant right at the time of the inception of the transactions. Furthermore, since the allegation of the complainant is regarding disproportionate sharing of profits enuring from the land deals which he entered with the accused appellants with open eyes, the offence of criminal breach of trust would also not be made out against the accused appellants.
22. He urged that the essential ingredients of the offences alleged are not made out from the highest allegations levelled by the complainant as set out in the charge sheet warranting continuation of the criminal proceedings against the accused appellants. He placed reliance on the judgments of this Court in *State of Haryana and Others v.*

Digital Supreme Court Reports

Bhajan Lal and Others¹; Indian Oil Corpn. v. NEPC India Ltd. and Others² and Anand Kumar Mohatta and Another v. State(NCT of Delhi), Department of Home and Another³ in support of his contentions and buttressed that the criminal proceedings sought to be taken against the appellants as a consequence to the charge sheet are fit to be quashed as the same amount to a sheer abuse of process of Court apart from the fact that the charge sheet does not disclose the necessary ingredients of any cognizable offence.

Submissions on behalf of respondents-complainant and State:-

23. *Per contra*, learned counsel for the respondent complainant as well as the learned Standing Counsel representing the State vehemently and fervently opposed the submissions advanced by the learned counsel for the appellants. It was contended that, the accused appellants won over the trust of the complainant by using honey quoted language, and thereby, fraudulently induced him to make huge investments in land deals. The complainant was assured time and again by the accused that he would be given his due share of profits or the plots from the lands, as the case may be, which would be purchased in the name of the accused because the complainant being a Government teacher could not indulge into such transactions. The complainant fell for the allurements given by the accused appellants and invested huge sums of money for land deals placing blind faith on the assurances given by accused. However, the accused appellants resiled from their promises and defrauded the complainant by failing to give him the requisite number of plots which would fall in his share commensurate with the investment made by him. The complainant was also deprived of his rightful share in the profits reaped after some of the plots had been sold.
24. They submitted that merely because the complainant has also availed civil remedy for the same grievances, that by itself cannot disentitle him from invoking jurisdiction of the criminal Court to prosecute the accused appellants for their fraudulent acts because the allegations set out in the complaint constitute both the civil wrong as well as criminal offences and thus parallel proceedings can continue. On these grounds,

1 [1990] Supp. 3 SCR 259 : 1992 Supp(1) SCC 335

2 [2006] Supp. 3 SCR 704 : (2006) 6 SCC 736

3 [2018] 13 SCR 1028 : (2019) 11 SCC 706

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

learned counsel for the complainant and the learned Standing Counsel for the State implored the Court to dismiss the appeal.

Consideration of submissions and material on record: -

25. Heard the learned counsel for the parties at length and perused the impugned order as well as the complaint and the charge sheet filed against the accused appellants.
26. The arguments were heard, and the judgment was reserved on 16th February, 2024. Thereafter, we thought it fit to seek a clarification from the learned counsel for the parties because on going through the material available on record, we were *prima facie* of the opinion that the case presents sufficient material to direct inquiry under the provisions of Section 13(1)(b) and Section 13(2) of the Prevention of Corruption Act, 1988(hereinafter being referred to as 'PC Act') because, manifestly, the complainant being a public servant had indulged in large scale benami land transactions without disclosing the same to his employer. Accordingly, learned counsel for the complainant was put to notice and he has submitted a short clarificatory note mentioning therein that the complainant is an Income Tax assessee from the year 2000. It is also submitted in the note that the complainant started the business of real estate from the year 2004 onwards and had acquired significant wealth during the course of this business. The complainant was appointed as a teacher in the Government School only in the year 2007 when he was nearly 45 years of age. He has superannuated in the year 2022 without any pensionary benefits. Thus, it was submitted that whatever money the complainant invested in the disputed land deals entered into with the accused, were genuine investments made by using his valid and declared sources of income and savings. A chart was also set out along with this explanation regarding the sources from where the complainant received various amounts which he claims to have invested in the disputed land deals.
27. Being satisfied with the explanation so offered, we do not find any justifiable cause so as to direct an enquiry against the complainant for the offences under the PC Act.
28. Now, we proceed to appreciate the merits of the present appeal.
29. At the outset, we may note that the complainant has come out with a clear case that he was already involved in real estate business before being selected as a Government teacher in the year 2007.

Digital Supreme Court Reports

Hence, it can safely be assumed that he was well versed with the nitty gritties of such business and the innocence and ignorance feigned by him in the complaint *qua pros* and *cons* of fallouts of property dealings cannot *ex facie* be countenanced.

30. The complainant has alleged in the FIR, that the accused fraudulently allured him into buying the lands by using honey quoted words and that they also took advantage of the fact that the complainant was a teacher serving in a Government institution and hence he was persuaded to get the lands registered in the name of the accused. However, these allegations are one sided and do not present the true picture. The complainant after having been appointed in Government service would be conscious that indulging in land deals may land him in departmental proceedings. It was precisely for that reason, the complainant must have agreed that the lands to be purchased may not be registered in his name. On the face of the record, the property deals allegedly made in the names of other persons by using the funds partially provided by the complainant were benami transactions.
31. We may, at this stage, refer to the relevant provisions of the Benami Transactions (Prohibition), Act 1988(hereinafter being referred to as the ‘Benami Act’)(applicable at the time of the alleged transactions), and particularly Section 2(a), Section 2(c) and Section 4 thereof: -

“2. Definitions- In this Act, unless the context otherwise requires,--

- (a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;
- (b)
- (c) property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property

“4. Prohibition of the right to recover property held benami-

- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

person shall lie by or on behalf of a person claiming to be the real owner of such property.

- (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.
 - (3) Nothing in this section shall apply,--
 - (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or
 - (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”
32. As per Section 2(a), any transaction in which property is transferred to one person for a consideration paid or provided by another person would be a “benami transaction”.
33. As per Section 2(c), “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.
34. Sections 3 of the Benami Act have been declared unconstitutional by this Court in the case of *Union of India v. Ganpati Dealcom (P) Ltd*⁴. A review petition is, however, pending against the said judgment.
35. Section 4(1) of the Benami Act makes it clear that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person, shall lie or on behalf of a person claiming to be real owner of such property. Such person cannot raise a defence

Digital Supreme Court Reports

based on any right in respect of any property held benami either against the person in whose name the property is held or against any other person. Section 4(2) prohibits the institution of any suit, claim or any other action by and on behalf of a person claiming to be the real owner of such property.

(emphasis supplied)

36. It is, thus, clear that the complainant in spite of having made investments in the land deals which were evidently benami transactions, could not have instituted any civil proceedings for recovery against the person(s) in whose name, the properties were held which would be the accused appellants herein. Since by virtue of the provisions contained in Sections 4(1) and 4(2) of the Benami Act, the complainant is prohibited from suing the accused for a civil wrong, in relation to these benami transactions, as a corollary, allowing criminal prosecution of the accused in relation to the self-same cause of action would be impermissible in law.
37. Going by the allegations as set out in the FIR and the charge sheet, it is apparent that it is the admitted case of the complainant that the accused appellants made over a part of the purchased lands/plots to the complainant and also paid a part of the profits to him. However, when the exact share of the investment on pro-rata basis was not being given to the complainant, he was compelled to convene a Panchayat meeting wherein a Memorandum of Settlement was arrived at. Even despite the settlement, the actual share of the lands and profits enuring to the complainant was not paid to him. The relevant extract from the complaint is reproduced hereinbelow: -

“10. As per the Memorandum of Settlement it has been ensured that a Plot measuring 169 cents in the Property Item No.5 should be given to the complainant for his investment. It is also been assured that 32 cents to the 3rd accused Kannabiran and 55.50 cents to the 1st accused Subbiah @ Kadambur Jeyaraj. Upon the continuous insistence of the complainant to register the sale on 169 cents in his favour, the 1st and 3rd accused and all other accused informed the complainant that they will come on 9.9.2010 to register the complainant’s share. But on 9.9.2010 the 3rd accused Kannabiran only came to the Sub - Registrar Office, Kovilpatti. The complainant asked the 3rd accused

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

about the other accused, he replied that he did not know about them and he said the complainant pays the entire amount for 32 cents he is ready to execute the sale deed and therefore the complainant paid the entire amount for 32 cents and after receiving the same on 09.09.2010 the 3rd accused executed a sale deed in respect of his 1/4th undivided share and the same was registered as Doc. No.8124 of 2010 then he left. For the investment amount made by the complainant, he has to get 169 cents, adding the plots to the extent of 32 cents settled by the 3rd accused Kannabiran the complainant has to get in total 201 cents. Out of this Kannabiran has got right to sell his 1/4th undivided share which is equivalent to 103 cents only. The 1st accused C.Subbiah @ Kadambur Jeyaraj can execute the Plots only to an extent of 100 cents to the complainant. But having committed the breach of trust and cheating the complainant without coming to the Sub Registrar Office on 9.9.2010 and keeping the 1 acre without executing in favour of the complainant, he is not only committing a breach of trust but also intimidating the complainant by threatening the complainant continuously with dire consequences that he is having political influence and no one can do anything.

11. Since the 1st Accused expressed his willingness to execute a sale deed in respect of the Property Item No.2 in the Memorandum of Settlement dated 19.10.2010 which is plots situate in Nehru Maha College Road, Malumichampatti Village, Kovai Corporation, if the complainant pays a sum of Rs.41,00,000/- to the 1st Accused. Believing his words the complainant on 14.1.2011 paid a sum of Rs.41,00,000/- to the 1st Accused and completed the sale. And also gave an assurance that they will act in accordance with the Settlement and on the very same date executed an Agreement of Execution. But they have been cheating the complainant without transferring the complainant's share in the Property Item No.5 as per the settlement dated 19.07.2010. Also it is found in the Memorandum of Settlement dated 19.7.2010 that as for as the Item No.1 concern only the 1st accused has to get the release after paying Rs.31,52,000/- to the Complainant. The 1st accused is cheating even without executing the same. And as per

Digital Supreme Court Reports

the Memorandum of Settlement dated 19.7.2010 as for as the 3rd Item is concern they have to divide the property in proportionate to their respective investments. Item No.4 has already been sold by the investors.”

38. It is thus clear that from the complaint, there is no such allegation therein which can persuade the Court to hold that the intention of the accused appellants was to defraud the complainant right from the inception of the transactions. The accused appellants have unquestionably, passed on some plots as well as part profits from the land deals to the complainant but the dispute is regarding the quantification of profits and full satisfaction of the share claimed by the complainant proportional to the investments made by him.
39. These allegations can at best give a cause to the complainant to sue the accused appellants in a civil Court. However, as discussed above, such remedy is barred by Section 4 of the Benami Act.
40. The complainant has clearly alleged that the accused caused him monetary loss because the appropriate share of profits was not passed on to him after some plots from the entire chunk had been sold. This Court in the case of ***Sarabjit Kaur v. State of Punjab and Anr***⁵ 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 the promise will not be enough to initiate criminal proceedings”.

41. Similarly, in the case of ***Vijay Kumar Ghai v. State of W.B.***⁶, this Court while tracing the earlier decisions on the subject observed 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***] 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.

5 2023 SCC OnLine SC 201

6 [2022] 1 SCR 884 : (2022) 7 SCC 124

**C. Subbiah @ Kadambur Jayaraj and Others v.
The Superintendent of Police and Others**

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. (*Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC 736] 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)

“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.”

42. Thus, we are of the firm view that the necessary ingredients of the offences punishable under Section 406 and Section 420 IPC are not made out against the accused appellants from the admitted allegations set out in the complaint and the charge sheet. It cannot be doubted that a dispute which is purely civil in nature has been given a colour of criminal prosecution alleging fraud and criminal breach of trust by misusing the tool of criminal law.
43. The Investigating Officer has also applied offences under Section 294(b) and Section 506(ii) read with Section 114 IPC in the charge sheet. On going through the entire charge sheet, we do not find any such material therein which can justify invocation of the offence under Section 294(b) IPC which reads as below: -

“294. Obscene acts and songs.—Whoever, to the annoyance of others,

- (a)
- (b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

44. The complainant alleged that the accused abused him by using profane language. Section 294(b) IPC would clearly not apply to such an act. Apart from a bald allegation made by the complainant that A-1 abused him and intimidated him on 28th July, 2010, there is

Digital Supreme Court Reports

no material which can show that the accused indulged in criminal intimidation of the complainant so as to justify invocation of the offence punishable under Section 506(ii) IPC.

45. We have to be conscious of the fact that the complainant has tried to misuse the tool of criminal law by filing the patently frivolous FIR dated 6th March, 2011, wherein the allegation is levelled regarding the so-called incident of criminal intimidation dated 28th July, 2010. The said allegation otherwise is also belied for the reason that in the FIR, the complainant states that he filed a complaint dated 29th July, 2010 in Kovilpatti West Police Station, but the RTI reply from the said police station clearly states that no such complaint was ever received.
46. Thus, we are persuaded to accept the contention of learned counsel for the accused appellants to hold that the criminal prosecution instituted against the accused appellants in pursuance of the totally frivolous FIR tantamounts to sheer abuse of the process of law.
47. At the cost of repetition, it may be reiterated that in view of the clear bar contained in Section 4 of the Benami Act, the complainant could not have sued the accused appellants for the same set of facts and allegations which are made the foundation of the criminal proceedings. Since, if such allegations do not constitute an actionable civil wrong, in such circumstances, allowing the prosecution of the accused appellants for the very same set of facts, would tantamount to abuse of the process of law.
48. Consequently, the impugned order whereby the petition filed by the appellants seeking quashing of the Criminal Case No. 250 of 2012 and FIR No. 305 of 2011 was dismissed, does not stand to scrutiny, thus, the same is hereby quashed and set aside.
49. As a result, all proceedings sought to be taken against the appellants in pursuance of the charge sheet dated 10th August, 2011 are also quashed.
50. The appeal is allowed accordingly.
51. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain