

[2022 LiveLaw \(SC\) 106](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UDAY UMESH LALIT; BELA M. TRIVEDI, JJ.
JANUARY 25, 2022

CRIMINAL APPEAL NO.128 OF 2022
(@ Special Leave Petition (Crl.) No.5489 of 2020)

JAYAHARI & ANR. VERSUS STATE OF KERALA

Code of Criminal Procedure, 1973 - Section 482 - When the dispute in question is purely civil in nature, the adoption of remedy in a criminal court would amount to abuse of the process of Court.

Indian Penal Code, 1860 - Section 406, 420 - A man, well versed in commerce, would certainly be expected to check the valuation of the property before entering into any transaction.

(Arising out of impugned final judgment and order dated 29-09-2020 in CRLMC No. 2976/2020 passed by the High Court Of Kerala At Ernakulam)

For Petitioner(s) Mr. Rohan Thawani, Adv Mr. V. Shyamohan, AOR, Ms. Astu Khandelwal, Adv

For Respondent(s) Mr. G. Prakash, AOR, Ms. Priyanka Prakash, Adv. Ms. Beena Prakash, Adv. Mr. Anoop R., Adv. Mr. Biju P Raman, AOR

ORDER

Leave granted.

This appeal arises out of the judgment and order dated 29.09.2020 passed by the High Court of Kerala at Ernakulam in Criminal MC No.2976 of 2020(B) by which the application filed by the present appellants under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of proceedings initiated pursuant to FIR No.1177 of 2020 lodged by respondent No.2 herein, was rejected by the High Court.

The basic allegations in the Complaint Petition made by respondent No.2 were to the following effect:

“2. The Complainant, after his studies, met 1st Accused during a School Reunion. Thereafter, the 1st and 2nd accused persons were carrying on large scale business in Dubai.

3. In 2017, 10,000 Dirham and 7,000 Dirham totalling 17,000 Dirham i.e. around three and a half lakh Indian Rupees were borrowed in two instalments, making the Complainant believe that the same is needed for business purpose. Thereafter, when the said amount was demanded back on several occasions, it was told that the business is dull and they will migrate to Canada for which they have two storied house and 50 cents land at his native place for sale and they have a loan of fourty lakh rupees in Kallambalam Co. Operative Bank. The Complainant was compelled to purchase the said property after repaying the said loan and as assured by the 1st and 2nd accused that they will arrange a loan for purchasing it. With the help of the 3rd, 4th and 5th accused, the bank fixed the value as 1 Crore 75 lakh Rupees and a loan was approved in my name for 1 crore 75 lakh rupees and a loan was approved in my name for one crore, 10 lakh and ten thousand rupees and on 24.10.2019, 22 cents of land with house and 28 cents of land were sold to me for 96 lakhs and 75,43,000 rupees respectively. After repaying the loan amount the balance amount was given by the Complainant to the 1 st and 2nd accused.

4. Thereafter, when the Complainant had made an Enquiry regarding the maintenance of the house and property and house sold to the Complainant by the 1st and 2nd Accused with the influence of the 3 rd, 4th and 5th Accused, was more than twice the amount of the value of the property in that area. The said property and house not even having a value of forty lakhs was sold to the complainant for an amount of one crore, seventy one lakhs, fourty three thousand rupees for the sole purpose of cheating, fraud and unlawful enrichment.”

The facts thus show that a transaction was entered into between the complainant and the appellants, in terms of which the property belonging to the appellants was sought to be purchased by the complainant; and in order to enable him to effectuate such purchase, certain loan was given by the Bank with the help of which, the consideration amount could be made over to the appellants. The basic submission is to the effect that the valuation of the property was inflated by the appellants and thereby the appellants committed offences punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860. The instant complaint is filed against the appellants as well as the officials of the Bank who statedly connived with the appellants.

It is accepted that as there were defaults on part of the complainant in repaying the installments in favour of the Bank, the proceedings were initiated by the Bank under SARFESI Act and possession of the property has been taken over.

As the facts on record show the complainant is a business man working in Gulf. A man, well versed in commerce, would certainly be expected to check the valuation of the property before entering into any transaction. The dispute in question being purely civil in nature, the adoption of remedy in a criminal court would amount to abuse of the process of Court.

We, therefore, allow this appeal, set aside the order passed by the High Court and quash the proceedings initiated pursuant to FIR No.1177 of 2020 lodged by the complainant.

Needless to say that the complainant will certainly be entitled to initiate such proceedings in a civil court as are available in law. As and when such proceedings are initiated, the same shall be taken to a logical conclusion without being influenced by any observations made by this Court in the instant appeal.

With these observations, this appeal is allowed.

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