

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.10576 of 2017

ORDER:

This petition is filed by the petitioner-A1 under Section 482 Cr.P.C. to quash the proceedings in Crime No.259 of 2017 on the file of Sadashivapet Police Station, Sangareddy District.

2. The case of the petitioner in brief was that the 2nd respondent-de facto complainant filed a report against him before the Sadashivpet police on 03.09.2017 at 2.00 PM alleging that he was the Managing Director of M/s. Agastya Agro Limited and was engaged in the business of manufacturing pesticides and was distributing the same through dealers, agents and merchants. The petitioner and his son were the partners of M/s. Shiva Seeds and Pesticides and was their dealer who would purchase the pesticides from his company and used to sell the same and pay back the amount. Since 2002, their business relation was going on and since 2011 the petitioner failed to remit the amount. Whenever he contacted him, he was postponing the same on some pretext or the other and was avoiding them. Basing on the said report, the police registered a case in Crime No.259 of 2017 for the offences under Sections 409, 406, 418, 420 read with 34 IPC against the petitioner.

3. Heard the learned counsel for the petitioner, the learned Assistant Public Prosecutor and the learned counsel for the 2nd respondent.

4. Learned counsel for the petitioner submitted that the allegations in the FIR even if taken as true, would not constitute the alleged offences. The allegations would only show that they defaulted in payment of value of the pesticides purchased from the complainant company, but there was no entrustment of property or dishonest or fraudulent intention on the part of the petitioner since inception of the business transaction to attract the offences under Sections 418 or 420 IPC. The allegations would disclose that the amount became due five or six years back, but the present FIR was filed with a *malafide* intention to harass the petitioner for taking up dealership of rival business concerns like Gharda Chemicals and Rhyme Organics and Chemicals Ltd. The petitioner was aged about 61 years and was under surgical management by Omega Hospitals, Hyderabad. He was not in a position to move. Subjecting him to trial was an abuse of process of law and prayed to quash the proceedings against the petitioner.

5. Learned counsel for the 2nd respondent, on the other hand, contended that the pesticides were entrusted to the petitioner with a belief that he would pay the money. The sale would be completed only when the

money was paid. But, the petitioner failed to make the payments. The allegations in the FIR would make out a *prima facie* case against the petitioner. The police examined LWs.1 to 4. The investigation was also completed and only filing of charge sheet was pending and prayed to dismiss the petition.

6. Learned Assistant Public Prosecutor also opposed the petition and prayed to allow the investigation to be completed to file the charge sheet.

7. Perused the record. The allegations in the FIR would disclose that the petitioner took the agency from the 2nd respondent company for selling the pesticides belonging to the 2nd respondent and they were having business relations since the year 2002. But, he was not paying the amounts regularly since 2011 and was due an amount of Rs.42,21,369/- and was avoiding to pay the said balance amount. Sections 406 and 409 IPC are pertaining to criminal breach of trust and breach of trust by public servant, or by banker, merchant or agent and Sections 418 IPC is pertaining cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect and Section 420 IPC is pertaining to cheating and dishonestly inducing delivery of property. The ingredients of

an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm .to the person induced in body, mind, reputation or property.

The ingredients to constitute the offence under criminal breach of trust are: (1) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust.

8. The Hon'ble Apex Court in **Hridaya Ranjan Prasad Verma v. State of Bihar**¹ held that:

¹ (2000) 4 SCC 168

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

9. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **S.W. Palanitkar v. State of Bihar**² on the aspect that:

"Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well."

He also relied upon the judgment of the Hon'ble Apex Court in **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others v. Nimra Cerglass Technics Private Limited and another**³, wherein it was held that:

² (2002) 1 SCC 241

³ (2016) 1 SCC 348

“The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.”

He also relied upon the judgment of the Hon’ble Apex Court in **Archana Rana v. State of Uttar Pradesh and another**⁴ wherein the ingredients that are necessary to constitute the offences under Sections 419 and 420 IPC are reiterated by the Hon’ble Apex Court.

10. Considering the judgments of the Hon’ble Apex Court in the above cases the intention to deceit should be in existence at the time when the inducement was made. But, if a representation was made and subsequently it was not been kept, criminal liability cannot be foisted and the only remedy which the complainant acquires is the remedy for breach of contract in a civil court. In the present case, the petitioner after taking the agency from the 2nd respondent remitted back the amounts due to the

⁴ (2021) 3 SCC 751

2nd respondent from 2002 to 2011, hence it cannot be said that he had an intention to cheat the 2nd respondent from the inception itself. As per the contention of the 2nd respondent in the complaint, the petitioner was due payment of amounts since the year 2011. Hence, the remedy for recovery of the amount due would be by filing a case in the civil court. Mere breach of contract cannot give rise to a criminal prosecution for cheating or criminal breach of trust as reiterated by the Hon'ble Apex Court in the above cases.

11. As the foundational facts to attract the offences alleged against the petitioner under Sections 409, 406, 418 and 420 IPC are lacking, it is considered fit to allow the petition quashing the proceedings against the petitioner in Crime No.259 of 2017 on the file of Sadashivpet Police Station, Sangareddy District.

12. In the result, the Criminal Petition is allowed quashing the proceedings in Crime No.259 of 2017 on the file of Sadashivpet Police Station, Sangareddy District against the petitioner – A1.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

March 17, 2022
KTL