

**K. Narayanaswami and anr. Vs. P.N. Viswanathan and anr.**

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**Court :** Chennai

**Decided On :** Aug-02-1973

**Reported in :** 1974CriLJ1524

**Judge :** K.N. Mudaliyar, J.

**Appellant :** K. Narayanaswami and anr.

**Respondent :** P.N. Viswanathan and anr.

**Judgement** :

ORDER

K.N. Mudaliyar, J.

1. The two petitioners (A.3 and A-4) seek to quash this proceeding principally on the ground that the averments found in the complaint do not make out or constitute the offence under Section 420 I.P.C. against A-3 and Section 109 read with Section 420, 1. P.C. against A.4. In brief outline the complainant's case is that the first accused is the President of Ghetti. kurioh Panchayat and he is also a dealer in Pump sets being the proprietor of Essarkey Agendas at Maunaohanallur. Both A-1 and A.2 are close friends.

2. A.3 (the first petitioner) was formally the Branch Manager at Tiruchirappalli of the State Bank of Travancore. At the time of the alleged commission of the crime in the instant case he was on leave. A. 4 (the second petitioner) is the present Branch Manager of the State Bank of Travanoore Tiruchi. They live in rent free bank quarters.

3. A.1 and A.2 are said to be on terms of intimacy with A.3.

4. The complainant is the Branch Manager of the Best and Co. Private Limited Tiruchi.

5. A-1 and A-2 (who are not before this court) approached the complainant in the company of A-3, a close acquaintance of the complainant on 14-9.1971 for a business deal. A-1 told that he required 25 pump lets urgently on credit to be delivered to various ryots in his area. He promised a cash deposit of Rs.- 3000/- and he undertook to pay a sum of Rs. 10, 000/- towards the gale price before 30-9-71 and remit the balance after collection from ryots within 30 days. A-2 and A-3 also sponsored and recommended the case of the first accused. The complainant had no ready stocks. There is the general allegation that the accused kept approaching the complainant from 15.9.1971 till 19-9-1971.

6. On 17-9-71 and 18-9-71 the complainant received 33 pump sets from Madras and Bangalore. Document No. 1 filed along with the complaint contains the serial number of the said 25 pump sets. The monetary value of the said 25 pump sets is Rs. 34, 301.63. On 20-9-71 A-1 to A-3 were staying at Hotel Jayanthi and they spoke to the complainant on phone. A-2 and A-3 commended that A-1 could be trusted since he was helping in the collection of loans granted to the ryots. A-2 was having money dealings with the Tiruchi Branch of the State Bank of Travancore. Acting on the representations of the accused 1 to 3, the complainant agreed to sell 25 pump sets to A-1. A-1 paid a sum of Ra. 3000/- as deposit as early on 15.9.71. A-1 gave a letter of undertaking and a promissory note for Ra. 34, 301.63. Document Nos. 6, 7 and 8 would indicate the receipt of Rs. 3000/- on 15-9-71, the letter of undertaking dated 20-9-71 and the promise Dry note dated 20-9-71 for a sum of Rs. 34, 301.63. The complainant delivered 25 pump tests to A-1 in the presence of A-2 and A-3. But document No 1 would indicate the delivery only to Valmiki (i-1) personally. All the accused told the complainant that the pump seta had to be taken to Valmiki's place for delivery to various ryots and they said they were taking the said pump sets to Gandhi Market for being transported in local lorries. A.1 to A-3 took the pump sets in two or three big bullock carts. In token of his having taken delivery the first accused has signed an acknowledgment on the reverse of document No. 1.

7. A.1 did not keep his word and therefore he did not pay any amount.

8. According to the complainant. A-3 had advanced fairly huge Sum to A-2 and could not collect the same for a long time. The head office was threatening action suspecting the bona fides of A.3. In a desperate bid to find some money to enable the 2nd accused to pay the dues to the bank, A-3 seems to have suggested A.2 to secure the services of A.1 and make an approach to the complainant and buy 25 pump sets on credit and then pledge the same to Tiruohi Branch of the State Bank of Travanoore and obtain money and use the same to pay the arrears to the Bank. According to the complainant, this fact was disclosed by A-4 subsequently.

9. The twenty. five pump sets were pledged on the same day by A-1 with the Tiruohi branch of the State Bank of Travancore and obtained a sum of Rs. 45, 000/-. A.1 had suppressed the fact of his purchase from the complainant and produced as document of title a bogus cash bill No. 108 purporting to be one issued by National Agricultural Industry, No. 12. Errabalu Chetty St. Madras-1 dated 17.9-71. Undoubtedly, the cash bill appears to be a bogus one and a forged one. The farther averment in the complaint is that A-1 to A-3 have forged and produced a bogus cash bill with inflated value for satisfying the rules governing the policy of the Bank in the matter of advancing loans against pledge of goods. The complainant went to the extent of stating that A-4 has been privy to this conspiracy and the same is clear by his conduct and bis admission to the complainant that he had to be a party to the whole matter just to collect the dues from A.2 and under the pressure of A-3. The fraudulent nature of the whole transaction is clear from the fact that all the monies due to the bank from A- 2 are mentioned as having been cleared in the books of the bank on 20.9-71, the very date on which the pump sets were taken delivery by A.I, The complainant mentions about an oral-confession said to have been made to him by A-i, A. 2 and A-4 on 6-10.1971.

10. The complainant bases his case mainly on the averment that A.I to A-3 did not take the pump sets to the ryots as represented and that they have pleaged the identical pump sets with the Tirucby Branch of the State Bank of Travanoore. A sum

of as. 45, 000 in the name of A.I was raised and the money due to the bank from A-2 was repaid. Another averment is that A-1 to A-3 produced a forged and inflated cash bill as documents of title for pledging the 25 pump sets. The representations made by A-1 to A-3 were false to their knowledge. A-1, A-2 and A-4 admitted their guilt to the complainant. The pump sets are stored in premises No. 37, West Chintamani, Karur Road the premises taken on lease by A 1. Lastly averment made is that A-4 has not scrutinised the documents of title and therefore he was privy to the evil designs of A.I to A.3. In the sworn statement the complainant states that 25 pump sets are pledged with the State Bank of Travancore by A-1 on 20-9-71. He further says that A.4 has acted on the forged bogus cash bill produced by A.I to A.3.

11. The Supreme Court in R. P. Kapur v. State of Punjab (1961) 1 S O J 59 : : 1960CriLJ1239 held that

the inherent jurisdiction of the High Court can be exercised to quash the proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court will be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings may be indicated. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abase of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If it manifestly appears that there is a legal bar against the institution or continuance of the said proceedings the High Court would be justified in quashing the proceeding on that ground. cases may also arise where the allegation in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

In the light of this ratio found in the Supreme-Court decision the only question that falls for determination is whether even after accepting the averments at their face value is there any material for holding that these averments constitute the offence (Section 420 IPO) alleged against A-3 and (Section 109 read with Section 420) against A.4. The crucial point of time for evaluating the worth of the averments in the complaint is the day of 20.9.71. All that one finds is that A.I had paid a sum of Bs. 3003/- on 15-9.71 and document No. 6, 7 and 8 would indicate the letter of undertaking and the promissory note. It is only after these documents were executed the complainant delivered 25 pump sets to A.I in the presence of A-2 and A-3 as described in document No. 1. In my view other subsequent circumstances may give room for suspicion against A-3 particularly. But even according to the complainant A.I told that he required 25 pump sets urgently on credit to be delivered to various ryota in his area. He promised a cash deposit of R3. 3000/- which he actually paid on 15.9-71 and then makes farther promises to pay another sum of Bs. 10, 000/- before 30-9-71 and also the remainder before a certain time. It is true that A-2 and A-3 also sponsored and recommended the case of the 1st accused. But the commendation of A-l's worthiness is not tantamount to false representation which induced the complainant to deliver the property in question. The subsequent facts relating to the

25 pump sets leading to the collection transportation and eventual pledge with the State Bank of Travancore should not be permitted to colour the question whether A-3 made a false representation in order to induce the complainant to deliver the property in question. Even in the sworn statement the complainant state that he delivered 25 pump sets to A-1 valued at Bs. 34, 301.63. He further stated that he understood that the 25 pump sets were pledged with the Travancore Bank by A-1 on 20-9.71, and that A-4 acted on the forged bogus cash bills produced by A-1 to A.3. I am afraid these averments are tantamount to surmises founded on suspicion entertained by the complainant. Therefore the allegations or averments made by the complainant even if accepted at their face value and in their entirety do not constitute an offence under Section 420, 1, P. 0.. against A-3. There is absolutely not even a particle of an averment either in the complaint petition or in the sworn statement that A-4 either instigated A-1 to A-3 or engaged with anyone of them in any conspiracy or intentionally aided either A-1 or A-2 or A-3 in the act of Cheating the complainant. On the contrary the averments would be tantamount to A-1 cheating A-4 in his capacity of the Manager of the State Bank of Travanoore by A-1 making false representation to deceive A-4 and induce him into delivering Rs. 45, 000/. on the pledge of the said 25 pump sets. There is absolutely no averment in support of the abet-meat on the part of A.4 to commit the offence of cheating against the complainant. The Criminal Miscellaneous Petition is allowed. The further proceedings is C. C. No. 664 of 1971 against A.3 and A.4 are quashed. The AFCM Tiruohi, is directed to proofed with the trial of A-1 and A-2 expeditiously. It is open t) A-4 to tike such action either criminal or civil as advised against A-1 or A-2 of against both A-1 and A-2.

12. The case papers must be despatched to the Court below within three days.

13. The criminal revision petition is dismissed as not pressed.

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