

SURESH  
v.  
MAHADEVAPPA SHIVAPPA DANANNAVA AND ANR.

FEBRUARY 16, 2005

[ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

*Criminal Procedure Code, 1973—Section 190(1)—Complaint of cheating filed after 11 years of alleged transaction—Maintainability of—On facts, held, complaint not maintainable on account of inordinate delay on the part of complainant himself—Moreover, allegations as contained in complaint were of civil nature and did not disclose commission of alleged offence of cheating—Hence, Magistrate not justified in taking cognizance of offence.*

**Grievance of complainant-respondent was that appellant had agreed to sell a house to his wife against which advance was paid to him. However, appellant failed to discharge the contract and sold the house to wife of fourth accused. After eight years, complainant sent notice to appellant to execute the alleged agreement. Appellant replied to the notice denying the alleged agreement and the payment of advance. Three years thereafter, respondent filed a complaint. Police registered case against appellant under Section 420, IPC. Magistrate took cognizance of the offence and issued summons against which appellant preferred revision. High Court dismissed the same. Hence, the present appeal.**

**Allowing the appeal, the Court**

**HELD : 1. The High Court has passed the order in a mechanical way without applying its mind. A perusal of the complaint would show that the entire dispute raised by the complainant is based on the alleged agreement to sell entered into on 25.12.1988 nearly 11 years prior to the filing of the private complaint on 17.5.1999. The existence of any such agreement or any advance taken has been specifically denied by the appellant by way of his reply dated 6.7.1996 in response to the legal notice dated 11.7.1996 sent by the complainant through his lawyer. For nearly 3 years from the date of reply, the complainant kept quiet before filing his complaint before the Magistrate. It is stated that even as per the police report, no offence is made out against accused Nos. 2-4. Despite this, the**

**A** Magistrate issued process against accused Nos. 2-4 as well which clearly shows the non-application of mind by the Magistrate. A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not *prima facie* disclose commission of alleged criminal offence under Section 420 IPC. The Magistrate, has not judicially considered the report filed by the police. [135-B-D]

**B**

2. In the instant case, police has given a clean chit to accused Nos. 2-4. The Magistrate ought not to have taken cognizance of the alleged offence against the accused No. 1, the appellant herein and that the complaint has been made to harass the accused No. 1 to come to terms by resorting to criminal process. The complaint was filed after a lapse of 11½ years and, therefore, the very private complaint filed by the respondent No. 1 is not at all maintainable at this distance of time. It is the specific case of accused No. 1 that he has not executed any agreement to sell or received any advance payment. The complaint does not disclose the ingredients of Section 415 of Cr.PC and, therefore, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court, of issuance of process and proceedings itself. [135-E-G; 136-A]

**C**

**D**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 308 of 2005.

**E**

From the Judgment and Order dated 17.2.2004 of the Karnataka High Court in Crl. R.P. No. 932 of 2000.

Mohan, V. Katarki and Javed Mahmud Rao for the Appellant.

Sanjay R. Hegde, (NP) for the Respondent.

**F**

The Judgment of the Court was delivered by

**DR. AR. LAKSHMANAN, J.** Leave granted.

**G**

The present appeal was filed against the final judgment and order dated 17.02.2004 passed by the High Court of Karnataka at Bangalore in Criminal Revision Petition No. 932/2000 dismissing the said petition filed by the appellant-herein (accused No.1).

The short facts leading to the filing of the above appeal are narrated herein below :

**H**

Respondent No.1 is the complainant. According to the complaint, the appellant herein had executed an agreement to sell dated 25.12.1988 in respect of the house premises bearing No.120, K.H.B. Colony, Agrahara Dasarahalli, Bangalore in favour of the wife of the complainant Renukamma and as per the said agreement a sum of Rs.1,25,000 was paid as advance out of the total consideration of Rs.2,50,000 and the remaining amount was to be paid at the time of registration of sale deed. It is stated in the complaint that the second accused being the father of the first accused, the appellant herein was a member of the Karnataka Housing Board, who negotiated the transaction among the parties and in spite of several requests and demands made by the complainant it did not yield any fruits and that the first accused had sold the said property in favour of the wife of the fourth accused. It was further stated that the complainant approached all the accused persons several times for possession of the said premises and was ready to pay the balance sale consideration, but all the accused persons failed to discharge the obligations of the contract. Certain other averments have also been made in the complaint in regard to the receipt of Rs.5 lacs from one Uma Belagavi and Nadigar for vacating the said premises on filing civil cases with which we are not presently concerned in this appeal. A legal notice dated 11.07.1996 was also issued by the complainant calling upon the appellant herein to execute the sale deed in respect of the premises in question. The appellant herein on 18.07.1996 replied to the said legal notice. He denied the very existence of the alleged agreement to sell. He also denied that he had ever received Rs.1,25,000 as consideration amount.

According to the complainant, all the accused persons committed offences attracting penal provisions of IPC under Sections 196, 209, 386, 403, 406 and 420. The complainant requested the Chief Metropolitan Magistrate, Bangalore to take cognizance of the offence against the accused persons and punish them in accordance with law in the interest of justice and equity. This complaint was numbered as PCR No. 453/1999 dated 17.05.1999.

The appellant denied the execution of such an agreement or received any advance from the complainant or his wife.

The IV Addl. Chief Metropolitan Magistrate directed the office to register the case as PCR and refer the same to the sub-inspector Kamakshi Palya P.S. for investigation and submit a report as per Section 156(3) of Cr.PC by 27.08.1999. This order was passed by the Magistrate on 17.05.1999 (Annexure-P2). On 04.08.2000 the IV Addl. Chief Metropolitan Magistrate passed the

A following order :

“ORDER

B Perused the record. Cognizance of the offence alleged against the accused is taken u/s. 190(i)(b) of Cr.P.C. Office to register the case in CC register and issue SS to accused by 30-9-2000.

Sd/- 4-8-2000”

C Aggrieved by the order dated 04.08.2000 passed by the IV Addl. CMM, the appellant accused preferred a criminal revision under Section 401 Cr.PC praying the High Court to set aside the said order. The said revision was dismissed by the High Court by the impugned order dated 17.02.2004.

D We have perused the entire pleadings and the order passed by the High Court in revision and heard the counsel appearing for the appellant. Though notice was served on the first-respondent, no one has entered appearance on his behalf. Mr. Sanjay R. Hegde, learned counsel for the respondent filed vakalatnama on behalf of the State but has not filed any counter affidavit on behalf of respondent No.2, State of Karnataka.

E It is pertinent to notice that the alleged agreement to sell was executed on 25.12.1988. A legal notice was issued to the appellant herein on 11.07.1996 calling upon the appellant to execute the sale deed in respect of the premises in question. Thus the complaint was submitted after 7 1/2 years of splendid silence from the date of the alleged agreement to sell i.e. 25.12.1988. It is further to be noticed that the appellant herein responded to the legal notice dated 11.07.1996 by his reply dated 18.07.1996 through his lawyer specifically denying the alleged agreement and the payment of Rs.1,25,000 as advance.

F Nothing was heard thereafter and the complainant after keeping quiet for nearly 3 years filed private complaint under Section 200 Cr.PC before the IV Addl. CMM, Bangalore on 17.05.1999. The learned Magistrate on the same date directed his office to register the case as PCR and referred the same to the local police for investigation and to submit a report as per Section 156(3)

G Cr.PC. A charge sheet was filed on 04.08.2000 by the police against the appellant/accused No.1 only for offence under Section 420 IPC. The learned Magistrate took cognizance of the alleged offence under Section 190 (1) (b) Cr.PC and issued summons to the accused/appellant herein. Aggrieved by the aforesaid process order dated 04.08.2000 passed by the Magistrate, the

H appellant accused preferred the above criminal revision which was dismissed

by the High Court for the reasons stated therein.

We have also perused the Annexures P1-P3 which are copies of the pleadings/documents which form part of the records of the case in the High Court against whose order leave to appeal was sought for in this appeal. We have carefully perused the order passed by the High Court. The High Court, in our opinion, has passed the order in a mechanical way without applying its mind. A perusal of the complaint would show that the entire dispute raised by the complainant is based on the alleged agreement to sell dated 25.12.1988 nearly 11 years prior to the filing of the private complaint on 17.05.1999. The existence of any such agreement or any advance taken has been specifically denied by the appellant by way of his reply dated 06.07.1996 in response to the legal notice dated 11.07.1996 sent by the complainant through his lawyer. For nearly 3 years from the date of reply, the complainant kept quiet before filing his complaint on 17.05.1999 before the Magistrate. It is stated that even as per the police report, no offence is made out against accused Nos. 2-4. Despite this, the Magistrate issued process against accused Nos. 2-4 as well which clearly shows the non-application of mind by the Magistrate. A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not *prima facie* disclose commission of alleged criminal offence under Section 420 IPC. The Magistrate, in our opinion, has not considered the report filed by the police under Section 156(3) Cr.PC judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance under Section 190(1) of Cr.PC. In the instant case, as could be seen from the records, that the police has given a clean chit to accused Nos. 2-4. In our opinion, the Magistrate ought not to have taken cognizance of the alleged offence against the accused No.1, the appellant herein and that the complaint has been made to harass the accused No.1 to come to terms by resorting to criminal process.

As already noticed, the complaint was filed on 17.05.1999 after a lapse of 11½ years and, therefore, the very private complaint filed by the respondent No.1 is not at all maintainable at this distance of time. It is the specific case of accused No.1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 of Cr.PC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High

**A** Court requiring the accused No. 1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself.

**B** We, therefore, set aside the impugned order of the High Court and of the Magistrate. The complaint is liable to be dismissed on the question of inordinate latches on the part of the complainant himself. Viewed from any angle, we do not find any good reasons to maintain the order passed by the learned single Judge of the High Court confirming the orders of the Magistrate. Accordingly, this appeal stands allowed and the judgment and order dated 17.02.2004 in Criminal Revision Petition No. 932/2000 of the High Court of Karnataka at Bangalore is set aside.

**C** D.G. Appeal allowed.