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T. VENGAMA

v.

T. DORA SWAMY NAIDU AND ORS.

FEBRUARY 27, 2007

B

[P.K. BALASUBRAMANYAN AND V.S. SIRPURKAR, JJ.]

Code of Criminal Procedure, 1973:

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s.482—FIR and consequent investigation cannot be quashed unless there is no offence spelt out from the same—On facts, FIR suggesting serious allegations against accused persons—Investigation was pending—At that stage the only inquiry to be made was as to whether complaint or FIR contained allegations of any offence—Prima facie there were ingredients of offences complained of and, therefore, High Court could not have quashed

D

FIR as well as investigation—Penal Code, 1860—ss.464, 423, 420/34.

The case of appellant-complainant was that he had executed a General Power of Attorney (GPOA) in favour of first respondent in respect of his properties. However, he cancelled the GPOA on realising that the first respondent was misusing the same. In spite of cancellation of GPOA, the first respondent executed a registered sale deed in favour of second respondent. An FIR was lodged on the basis of complaint filed by appellant against the respondents, which was sent for investigation under s.156(3) Cr.P.C. to the Police whereupon a criminal case was registered for the offences punishable under ss.464, 423, 420 r.w. s.34 IPC.

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While the investigation was in progress, the respondents filed a petition under s.482 Cr.P.C. before High Court. High Court quashed the FIR holding that this was a case of civil profile and none of the ingredients that constituted the offences punishable under Sections 464, 423 and 420 read with Section 34 IPC were discernible from the said allegations.

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In appeal to this Court, appellant-Complainant contended that the investigation was yet incomplete and at that stage the respondents could not have rushed to the High Court for getting the FIR quashed.

Allowing the appeal, the Court

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HELD: 1.1. It cannot be disputed that a private complaint was filed before the Magistrate who had made over the said complaint for investigation under Section 156(3) Cr.P.C. That order of the Magistrate has not been challenged. On the basis of that order the police registered a crime probably treating the complaint as the FIR. It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The said FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of allegations. In this case, admittedly, the investigation was in progress. The police had also not reported back to the Magistrate the result of their investigation. Under such circumstances, the FIR could have been quashed only and only if there appeared to be no offence spelt out therein. [Para 7] [352-B-D]

1.2. A glance at the FIR suggests that there were serious allegations against both the accused, respondents 1 and 2 inasmuch as it was specifically alleged that inspite of the revocation of the GPOA and inspite of a specific notice to that effect by the complainant to the first respondent, the first respondent went on dishonestly to execute the sale deed in favour of his own daughter on the basis of the said revoked GPOA. It is alleged against the first respondent that he had no right over the property and yet he had executed a document in favour of the second respondent without any authority with an intention to cause loss to the complainant and to cheat him. It was alleged against the second respondent that she was well aware that the first respondent was not competent to sell the property so as to defraud and cheat the complainant and, therefore, she also was liable to be punished under Sections 464, 423, 420 read with Section 34 IPC. It was not for the judge at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those offences were made out, even *prima facie*, could not have been examined at that stage as the investigation was pending then.

[Para 7] [352-D-A]

1.3. *Prima facie* there were ingredients of offences complained of and, therefore, at that stage the High Court could not have quashed the FIR as well as the investigation. [Para 7] [353-B]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 274 of 2007.

From the Judgment and Order dated 27.4.2004 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Cri. P. No. 4625/2003.

B V. Shekhar, A.V. Rao, Sateesh Galla and Venkateshwara Rao Anumolu for the Appellant.

G. Ramakrishna Prasad, Suyodhan Byrapaneni, P. Vinay Kumar and D. Bharati Reddy for the Respondents.

C The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

D 2. An order passed by a learned Single Judge of the Andhra Pradesh High Court is in challenge in this appeal. By that order the learned Single Judge allowed the Criminal Petition filed by the respondents herein and quashed the FIR registered against them.

E 3. The appellant herein had filed a private complaint against these respondents which was sent for investigation under Section 156(3) Cr.P.C. to the Police whereupon a criminal case was registered as Crime No.22/2002 dated 13.1.2002 for the offences punishable under Sections 464, 423, 420 read with Section 34 of the Indian Penal Code. It is an admitted position that this investigation is not complete and while the investigation was in progress, the respondents filed a petition under Section 482 Cr.P.C. before the High Court for quashing the FIR, which was lodged on the basis of the complaint, as well as the investigation. Aggrieved by the order passed by the High Court, the original complainant has now come up before us.

G 4. We have gone through the FIR ourselves. In the FIR the complainant had complained that he was the absolute owner of the vacant site in Sy.No.479/2 situated at Tirupathi in Ward No.18 of Santhi Nagar Residential area jointly along with one Dammalapati Nagulu Naid. He had executed a General Power of Attorney in favour of the first respondent. However, since the first respondent was seen misusing the General Power of Attorney, the appellant-complainant cancelled the said General Power of Attorney on 26.6.1997 by issuing a legal notice. It is alleged that the first respondent had filed a false

H complaint against the appellant herein alleging the offences punishable under

Sections 447, 506 read with Section 34 of the Indian Penal Code wherein the respondent no.2 was shown as one of the witnesses. It is alleged that inspite of cancellation of General Power of Attorney in 1997, the first respondent executed a registered sale deed dated 16.6.2000 in favour of the second respondent. The other accused, namely, respondent nos.3 to 6, who are not parties before us, were shown as the witnesses therein. It was, therefore alleged that both the accused persons were well aware that the first respondent did not own the said land and could not have executed such a document and thereby had cheated the complainant. The respondent no.1 had also dishonestly executed sale deed without any authority and had also made a false document.

5. While this FIR was under investigation by the orders of the Magistrate under Section 156(3) Cr.P.C., the only two accused, who are respondents before us, out of the original six accused had filed a petition under Section 482 Cr.P.C. for quashing of the same. The learned Single Judge of the High Court has allowed that petition by the impugned judgment. The learned Single Judge has held that this was a case of civil profile and none of the ingredients that constitute the offences punishable under Sections 464, 423 and 420 read with Section 34 IPC were discernible from the said allegations. It was held that the petitioner herein, the original complainant, was the Principal and the first respondent was his Agent and if an agent mismanages the property and fails to account for the same, the proper remedy available to the Principal was to file a suit against the agent for rendition of accounts. It was also observed that if at all the first accused had sold away the property in favour of the second respondent and if at all the offence of cheating was alleged, the aggrieved party would be the purchaser who purchases the property, i.e., the second respondent. The learned Judge observed that there was a remedy available under the common law to the complainant to get the property by filing a suit. It was on this ground that the learned Single Judge quashed the FIR and the investigation.

6. The learned counsel for the complainant firstly points out that the learned Single Judge was in complete error in allowing the petition and quashing the FIR inasmuch as the learned Judge has completely misunderstood the allegations made as also the ingredients of the offences. Secondly it was contended that the investigation was yet incomplete and at that stage the respondents could not have rushed to the High Court for getting the FIR quashed. As against this the counsel for the respondent supported the order

A suggesting that there was much to be said against the original complainant and that there were some genuine disputes amongst them. It was also urged before us that there could not be any offence alleged and none could be viewed against the second respondent who was merely a purchaser. It was urged that the complaint was filed only to harass the accused persons and the learned Judge was right in quashing the FIR as well as the complaint.

7. It cannot be disputed that a private complaint was filed before the learned Magistrate who had made over the said complaint for investigation under Section 156(3) Cr.P.C. That order of the Magistrate has not been challenged. On the basis of that order the police registered a crime probably treating the complaint as the FIR. It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The law in this respect is settled that the said FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of allegations. In this case, admittedly, the investigation was in progress. The police had also not reported back to the Magistrate the result of their investigation. Under such circumstances, the FIR could have been quashed only and only if there appeared to be no offence spelt out therein. A glance at the FIR suggests that there were serious allegations against both the accused, respondents 1 and 2 herein inasmuch as it was specifically alleged that inspite of the revocation of the General Power of Attorney and inspite of a specific notice to that effect by the complainant to the first respondent, the first respondent went on dishonestly to execute the sale deed in favour of his own daughter on the basis of the said revoked General Power of Attorney. It is alleged against the first respondent that he had no right over the property and yet he had executed a document in favour of the second respondent without any authority with an intention to cause loss to the complainant and to cheat him. It was alleged against the second respondent that she was well aware that the first respondent was not competent to sell the property so as to defraud and cheat the complainant and, therefore, she also was liable to be punished under Sections 464, 423, 420 read with Section 34 IPC. It was not for the learned Judge at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those

offences were made out, even *prima facie*, could not have been examined at that stage as the investigation was pending then. We, therefore, do not agree with the learned Single Judge that the FIR was liable to be quashed. We also do not agree with the learned Judge that there are no ingredients of the offences complained of in the FIR and this was a civil dispute. However, we do not wish to go deeper into that question. Our *prima facie* examination satisfies us that there were ingredients of offences complained of and, therefore, at that stage the High Court could not have quashed the FIR as well as the investigation. The appeal, therefore, has to be allowed, setting aside the order of the learned Single Judge.

8. This appeal is accordingly allowed and the order of the learned Single Judge is set aside.

D.G.

Appeal allowed.