

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 733-734 OF 2009

[ARISING OUT OF S.L.P. (CRIMINAL) NOS. 7687-7688 OF 2007]

K. ASHOKA

... APPELLANT

Versus

**N.L. CHANDRASHEKAR & ORS.
RESPONDENTS**

...

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.
2. N.G.E.F. Employees House Building Cooperative Society Limited (for short, “the society”) is a society incorporated and registered under the Karnataka Cooperative Societies Act, 1959 (for short, “the Act”). Appellant herein was a Director of the society. He filed a complaint petition alleging inter alia that the respondents herein who were the office-bearers of the society, earned a huge amount for themselves by allotting a site bearing No. 509 measuring 30’ x 40’ for a sum of Rs. 2,40,000/- to one Gopal, a name lender who in turn, sold the said site for a sum of Rs. 28,00,000/- to one Hanumanthegowda by a deed of sale

dated 3.7.2006. However, in the sale deed, the consideration amount was shown as Rs.10,20,000/-.

It was contended that the respondents in connivance with the said Gopal made illegal gain as the market value of the said property was about Rs.28 lakhs.

3. The following facts are admitted.

The land in question was acquired in the year 1985-86. The society formed a layout and sites were allotted to its members. However, few sites remained vacant. One of the persons whose lands were acquired for the society, namely, Munivenkatappa (father of Gopal) allegedly had requested the society to release one acre of land for his personal use, pursuant whereeto, the society resolved to release 337" x 132" of land in favour of his family. Another application was filed by M. Gopal, son of said Munivenkatappa, in terms whereof request was again made to the said society for allotment of the land. The said request was received on 27.3.2006 and allotment of a site bearing No. 509 measuring 30' x 40' for a sum of Rs.2,40,000/- was made and a deed of sale was executed in his favour on 7.4.2006. A possession certificate was also issued.

Within a period of three months, said Gopal sold the said property in favour of Hanumanthegowda for a sum of Rs.28,00,000/-. However, in the sale deed, the consideration amount was shown as Rs.10,20,000/-.

4. Indisputably, a complaint was filed before the Joint Registrar of Cooperative Societies to cause an investigation thereinto. On or about 29.12.2006, a report was submitted by him opining that the office bearers of the society, namely, the respondents herein in connivance with Gopal and by making him a tool in their hands, allotted the site which was sold for a sum of Rs. 27,60,000/-. A recommendation for recovery of the amount from the office bearers of the society was also made. In his report, it was furthermore stated:

“There is no site called No.509 in the approved plan of the Society. The Society has not produced any documents/records to show that the said Site No. 509 is released by BDA. The site No. 142 is existing and the same is allotted to one Smt. Shailaja Swamy and registered the same in her name by the Society as on 23/2/1995 itself. The certified copy of the Sale Deed is produced herewith and marked as “Annexure 13”.

As per the Orders of the Hon’ble High Court of Karnataka, it has come to know that the alternative/another site was given to Smt. Shailaja Swamy during the period of Special Officer. The copy of the same is marked as “Annexure 14”. It is further come to know that Smt. Shailaja Swamy had approached the Hon’ble High Court of Karnataka by filing a writ petition against the Society on the grounds that the alternative site allotted to him cannot be made Khatha in her name because the said site is a C.A. site, which has been allotted and registered to her by the Society. When this matter is going on, how can the Society allot the same i.e. No. 142 by naming it as Site No. 509 and illegally allotting to Sri Gopal and registering the same by the Society. This is an

illegal act committed by the Board of Directors.”

5. Respondents, however, contend that the said enquiry was conducted without hearing them and other office bearers of the Society; no notice had been issued to them and no opportunity of being heard or to participate in the enquiry proceedings had been provided. It is furthermore contended that the proceedings before the Joint Registrar is still pending.

6. Thereafter, on the basis of the report submitted by the Joint Registrar, a complaint petition under Section 200 of the Code of Criminal Procedure (for short, “the Code”) in respect of commission of an offence under Section 420 read with Section 34 of the Indian Penal Code (for short, “the IPC”) was filed by the appellant, inter alia, alleging:

“10. The Complainant further submits while allotting site No. 509 to Sri Gopal the Accused have played a big fraud on the society. They do not know that there is already a site bearing No. 142 which is existing on the same land. The Accused have shifted site No. 509 on site No. 142 and registered the same in favour of Sri Gopal. The Complainant has obtained a certified copy of site No. 142 and site No. 509 and surprised to find both the schedules one and the same. The sub registrar K R Puram Bangalore who is having the copy of approved plan of Sadananda Nagar Layout with him should

have observed this fraud and objected for registering this site. While shifting any site by the society in the approved plan the society will have to obtain permission from the commissioner TPM Bangalore Development Authority which the Accused have failed to do the same. BDA has not released this site at all.

11. The Complainant humbly submits Sri Gopal or any of his family members are not eligible for any site from the society since the society has already given 1.00 acre of land to their family way back in 1986 itself. The accused have made Sri Gopal as Benami Owner and allotted a site in his favour at Rs.200/- per square feet and sold the same through him at Rs. 2,500 per square feet which is the market value at Sadananda Nagar Layout and distributed Rs.28,00,000 which is a big booty among all. This is a clear case of misuse of their position as office bearers and directors, cheating, fraud and working against the interest of the society.”

7. The said complaint petition filed by the appellant was registered as CC No. 22069 of 2007 in the Court of Xth Additional Chief Metropolitan Magistrate, Mayohall, Bangalore. The learned Magistrate took cognizance of the offence under Section 420 read with Section 34 of the IPC and issued summons to the respondents.

8. Respondents thereafter filed an application under Section 482 of the Code being Criminal Petition Nos. 838 and 910 of 2007 in the High

Court of Karnataka at Bangalore for quashing the entire criminal proceedings initiated by appellant. By reason of the impugned judgment, the said petition has been allowed by the High Court, holding:

“12. At the very outset, it may be mentioned that according to the complainant, there is no site bearing No. 509 in the layout formed by the Society. It is also submitted that the site bearing No. 142 is already sold but the boundaries of that site is mentioned to the site bearing No. 509. The complainant has not made the said Gopal allottee either as witness or an accused. Taking into consideration the facts of the case, the first aggrieved person would be the allottee Sri Gopal, as the site already sold is allotted to him. It is stated that the site is sold by Mr. Gopal to Hanumanthe Gowda. Thus, the said purchaser Hanumanthe Gowda would have been another aggrieved party to sue the vendor Mr. Gopal. There is no material placed on record to show that said Gopal has sold the site to Mr. Gowda. There is no material placed on record to show that said Gopal has sold the site to Mr. Hanumanthe Gowda for a sum of Rs.28,00,000/- and that money was got distributed among the accused. All the averments made in the complaint are nothing but imaginary. It is crystal clear that the respondent – complainant wants to settle his score against the accused/members of the society by abuse of process of law. Learned Magistrate erred in taking cognizance for the offence alleged against the accused. It is a fit case for quashing the proceedings.”

9. Mr. G.V. Chandrashekar, learned counsel appearing on behalf of appellant would urge:-

- i. Appellant being a member of the society and having an interest in the running of the affairs thereof could maintain the aforementioned complaint petition.
- ii. The allegations made in the complaint petition disclosed a cognizable offence and, thus, the High Court committed a serious error in passing the impugned judgment.
- iii. Although Gopal or for that matter Hanumanthegowda had not been made as accused, they can be summoned at a later stage wherefor such an application can be filed in the inquiry or trial.
- iv. Section 415 of the IPC providing for commission of an act of cheating also in respect of the property, the High Court committed a serious error in opining that no case has been made out for issuance of summons against the respondents.

10. Mr. S.N. Bhat and Ms. Kiran Suri, learned counsel appearing on the behalf of the respondents, on the other hand, would contend:

- i. No deception within the meaning of Section 415 of the IPC having been committed by the respondents, the learned

Magistrate committed a serious error of law in taking cognizance of an offence under Section 420 of the IPC.

- ii. The allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety would merely disclose a case of misuse of power making allotment in favour of Gopal at a lower price, which being an offence within the meaning of the Act, only a complainant in terms of the provisions thereof was maintainable.
- iii. No reliance could be placed on the report of the Joint Registrar by the learned Magistrate as the matter is sub judice before the High Court.
- iv. The complaint petition filed by the appellant is an abuse of the process of the court inasmuch as he filed the complaint petition after he lost the election.

11. It is now a well settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety does not disclose commission of a cognizable offence.

12. Some of the principles which would be attracted for invoking the said jurisdiction have been laid down in Indian Oil Corpn. vs. NEPC India Ltd. & ors. [(2006) 6 SCC 736], are:

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with maladies/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail,

the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

13. The primary allegation against the respondents in the complaint petition does not make out an offence only under the provisions of Section 109 of the Act as contended by Mr. Bhat but also other offences. A legal embargo in filing a complaint is contained in Section 109(6) of the Act, which reads as under:-

- “**109. (6).** If any person—
- (i) not eligible to become a member under Section 17 applies to a co-operative society for admission as a member, or becomes a member, or after ceasing to be a member under sub-section (2) of that section acts as or exercises any rights or privileges of a member of any such co-operative society;

- (ii) exercise the rights of a member in contravention of the provisions of Section 19;
- (iii) willfully fails to furnish the information or document in contravention of the provisions of sub-section (3) of Section 87;
- (iv) grants a lease of the mortgaged property in contravention of sub-section (1) of Section 95,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three thousand rupees.”

14. The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also allotted plot was assigned in favour of a third party for a huge sum.

15. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. The High Court in its impugned judgment proceeded inter alia on the premise that the appellant has no locus standi. It may be true that Gopal and Hanumanthegowda had not been impleaded as accused but that by itself may not be a ground for quashing the order of cognizance taken against the respondents. If the role played by them in regard to that part of the conspiracy is only to

make Gopal a member and got the land allotted in his name by way of camouflage, appellant as a member of the society had a locus standi to file a complaint.

16. The High Court furthermore, in our opinion, is not correct to opine that no document has been produced by the appellant to show that Gopal made an assignment of the land in favour of Hanumanthegowda. Evidently, no document can be produced for the purpose of showing that the actual amount of consideration for the said transaction amounted to Rs.28,00,000/- although ostensibly the amount of Rs.10,20,000/- has been shown to be amount of consideration in the registered document. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative society to make unlawful gain for themselves and causing unlawful loss to the society.

In Indian Oil Corpn. (supra) whereupon Ms. Suri has placed strong reliance, this Court in the facts and circumstances of the case therein

although opined that no case of “criminal breach of trust” as defined under Section 405 of the IPC has been made out, holding:

“32. The essential ingredients of the offence of ‘cheating’ are: (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.”

Noticing some earlier decisions, it was opined:

“36. In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud the IOC, had induced IOC to resume supply of aircraft fuel on cash and carry basis, by entering into a further agreement dated 20.9.1997 and undertaking to clear the outstanding amount of Rs. 18 crores approximately within the time stipulated in the Hypothecation Agreements. The sum and substance of the said allegation read with other averments extracted above, is that NEPC India, having committed default in Page 3170 paying the sum of Rs. 18 crores, entered into a fresh agreement dated 20.9.1997 agreeing to clear the outstanding as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after 20.9.1997 were on cash and carry basis,

the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415. We are clearly of the view that the allegations in the complaint constitute such an offence. We are not concerned with the proof of such allegations or ultimate outcome of trial at this stage.”

17. The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar.

18. Section 109 of the Act provides for commission of offences under the said Act. Therein, no statutory embargo has been placed for a court to take cognizance of an offence under the provisions of IPC. If the allegations made in the complaint petition or in the first information report make out a case under the IPC, Section 111 of the Act, to which our attention has been drawn, would constitute no bar for maintenance thereof being applicable only in respect of offences committed under the

said Act. The said statutory interdict therefore cannot be extended in regard to commission of an offence under any other Act.

19. For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The appeals are allowed. It is made clear that we have not entered into the merit of the matter and, thus, all contentions of the parties shall remain open.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

New Delhi;
APRIL 15, 2009