

CASE NO.:
Appeal (crl.) 811 of 1999

PETITIONER:
Nalini Shankaran and Ors

RESPONDENT:
Neelkanth Mahadeo Kamble and Ors

DATE OF JUDGMENT: 27/02/2007

BENCH:
Dr. ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment of a learned Single Judge of the Bombay High Court dismissing the petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). A prayer was made to quash the order of learned JMFC, Kalyan dated 2.12.1996 and the proceedings i.e. Criminal Case No.248 of 1991.

The criminal case No. 248 of 1991 was initiated by the Respondent No.1-Neelkanth Mahadeo Kamble alleging commission of offences punishable under Sections 418, 409, 166 read with 114 of the Indian Penal Code, 1860 (in short the 'IPC'). The complainant-respondent No.1 filed the complaint in his capacity of Chief Managing Trustee of Somvashi Arya Samaj Trust, the Trust registered under the Bombay Public Trust Act. As per the facts given in the complaint, the Trust owned and possessed certain land within the limits of Kalyan Municipal Corporation. The accused approached the trust with the proposal of development of the aforesaid land. As a consequence, an agreement came to be executed between the Trust and the accused Nos.1 and 2 on 7.7.1985. Under this agreement, accused Nos.1 and 2 agreed to construct at their own cost a multi-purpose community hall with an area of 4,500 sq. ft. as per the specifications given in the agreement. This hall was to be constructed on an area of about 13,500 sq. ft. which was to be demarcated and bounded by compound wall to be constructed by the accused. In consideration thereof, the accused Nos.1 and 2 were to get all the rights of development of the remaining land. Total land was 9952.25 sq. yards. Further, according to the complainant in this agreement no cash consideration was shown in favour of the trust and therefore as per the directions given by the Charity Commissioner, some nominal consideration of Rs.50,000/- or so was subsequently added by consent of the accused.

In short, it is the case of the complainant that even though the accused were under legal and contractual obligation to complete the construction of the community hall of the size and specifications given in the complaint, they did not do so initially, sold the construction, earned crores of rupees and ultimately constructed in place and instead of the community hall, 10 rooms which do not fulfil the requirements of the agreement and specifications of the community hall and, therefore, the accused are guilty of the offences alleged.

The complainant also alleged that right from the beginning the intention of the accused was to cheat the Trust and ultimately they succeeded in cheating the Trust. Their further contention was that there is no construction of the community hall as per the agreement and as per the specifications and the 10 rooms constructed by the accused in lieu thereof cannot be construed as a community hall. On the basis of these facts, the complaint was filed. The Magistrate ordered an enquiry under section 202 of the Code but since police report was not received in time, the Magistrate ordered issue of process against the accused Nos.1 to 14 on 25.10.1991 under sections 418, 409, 166 read with 114 of the IPC. It appears that this order for issue of process was challenged by the accused Nos. 1 to 11 before the additional Sessions Judge, Thane, by filing Criminal Revision No.206 of 1991 but the Sessions Judge rejected the same. Stand before learned Sessions Judge and High Court by the petitioners was that a compromise had been effected and, therefore, the proceedings were not to be continued.

The High Court held that the prayer to quash the proceedings was not to be entertained. The basis for coming to the said conclusion was that had the complaint not been by the Public Trust registered under the Bombay Public Trust Act but by an individual then the compromise could have certainly come in the way of prosecuting the accused for cheating; but the complaint was filed by the Trust through its Managing Trustee and in the agreement referred to between the Trust and the accused it has been repeatedly stated that the accused persons were being given the land for the purpose of constructing a community hall which will benefit the community at large. Therefore, signing of the agreement by some of the trustees of the Trust cannot come in the way of the complaint which was filed against the accused persons.

Learned counsel for the appellants submitted that this Court had occasion to consider the question of legality of the compromise and maintainability of a civil suit filed by the Trust.

In Ravi Construction Co. v. Somvanshi Arya Kshatriya Samaj and Ors. (2006 (9) SCALE 174) it was, inter alia, observed as follows:

"8. Further both the trial court and the first appellate court categorically observed that the resolution adopted by all the trustees including the chief trustee and the advocate for the trust who was himself a trustee clearly established that the earlier suit was filed with the knowledge and consent of all the trustees and on behalf of all the trustees. Significantly the trust deed was not produced. It could have shown, as rightly contended by learned counsel for the appellant, that the trust could be sued or can sue in the name of chief trustee. In any event the categorical factual finding recorded that the suit was filed with the knowledge and consent of all the trustees has not been disturbed and in fact no reference has been made in the impugned judgment to this aspect. If the trustees had no knowledge of the suit they could not have adopted a resolution for compromise in a particular mode indicating three alternatives.

They specifically authorized the chief trustee and the advocate who was also a trustee to enter into a compromise. In that view of the matter the High Court was not justified in holding that the suit was maintainable.

Looked at from any angle the High Court's judgment is indefensible and is set aside. Learned counsel for the appellant during course of hearing had stated that as a matter of genuine gesture, the appellant shall pay to the respondent no.1-trust a sum of Rs.3,00,000/-. Notwithstanding the fact that the appeal has been allowed, let the statement made by learned counsel for the appellant be translated into reality and the amount be paid within three months."

In view of what has been held in respect of the connected civil suit which was held to be not maintainable in view of the compromise arrived at by the Trust and the accused persons, the continuance of proceedings will be sheer abuse of the process of law. Accordingly, the order of the High Court is set aside and proceedings in Criminal Case No. 248 of 1991 on the file of learned JMFC, Kalyan stand quashed.

The appeal is allowed.