

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 10th day of March 2005

; B E F O R E :

THE HON'BLE MR.JUSTICE : V.JAGANNATHAN

CRIMINAL PETITION No. 1286 / 2002

BETWEEN :

Sri N.P.Nagaraj,
S/o Sri Nanjundaiah,
Aged about 48 years,
R/a No.445, Koracharapete,
Chickaballapura Town,
Kolar District.

...Petitioner

(By Sri Rahamathulla Shariff, Advocate.)

A N D :

1. State of Karnataka,
Represented by
The Officer-in-charge of
Police Station, Vijayapura Police,
Devanahalli Taluk,
Bangalore District.
2. Sri P.Jayarama,
S/o B.Puttaswamy Gowda,
Aged about 50 years,
R/a Byradenahalli Village,
Devanahalli Taluk,
Bangalore Rural District.

... Respondents

(By Sri P.M.Nawaz, HCGP for R-1,
Sri B.N.Narasimha Gowda and Smt.N.V.Anitha,
Advocates for R-2.)

Criminal Petition filed under Section 482 of the Cr.P.C. praying to quash the entire proceedings and the F.I.R. in Crime No. 20/2002 of Vijayapura Police Station.

This petition coming on for hearing this day, the court made the following :

ORDER

In this petition under Section 482 of the Cr.P.C., the entire proceedings and the F.I.R. in Crime No. 20/2002 registered by Vijayapura Police under Section 420 of the I.P.C. against the petitioner, have been challenged.

2. The petitioner is engaged in the business of grapes, having been a permanent resident of Chickaballapura Town. He had business dealings with the second respondent in respect of grapes purchased from the latter, amounting to Rs.75,000/-. The petitioner had issued a cheque in favour of the second respondent dated 29.9.2001. When the second respondent presented the cheque at State Bank of Mysore, Madhavanagar Branch, Bangalore, he was informed that there was no amount in the account of the petitioner. Therefore, the second respondent filed a complaint before Vijayapura Police and they registered a case in Crime No.



20/2002 for the offence punishable under Section 420 of the I.P.C. The police, after registering the case as above mentioned, proceeded to investigate the matter. It was at this stage, that the petitioner filed this criminal petition praying for quashing the F.I.R.

3. Heard the learned counsel for petitioner, learned counsel for R-2, and the learned Government Pleader for R-1 State.

4. The main contention put forward by the petitioner's counsel is that the allegation in the complaint attracts, at the most, an offence under Section 138 of the Negotiable Instruments Act and, therefore, the remedy lies only under the N.I. Act and there is no scope for the complainant to approach the police in the matter. In support of this contention, he placed reliance on a decision of this court reported in I.L.R. 2002 Karnataka 984 (NEMICHAND SWAROOPCHAND Vs. M/S T.H. RAIBHAGI FIRM).

5. On the other hand, the learned Government Pleader submitted that there is no bar for filing a complaint for the offence punishable under Section 420 of the I.P.C. and a mere perusal of the complaint lodged by the second



respondent would go to show that his grievance is that he has been cheated by the petitioner. It was also submitted by the learned Government Pleader that the decision referred to by the petitioner's counsel is not applicable to the case on hand as the same can be distinguished on facts. In support of his submission, the learned Government Pleader placed reliance on a decision reported in All India Criminal Law Reporter, 2000(1), page 700 (INDERKUMAR MODI Vs. STATE OF HARYANA).

6. After having perused the material placed on record and in the light of the contentions urged by the respective sides, the only point for consideration is whether the petitioner has made out a case for quashing the F.I.R. registered by the Vijayapura Police under Section 420 of the I.P.C.

7. In the instant case, a bare perusal of the first information lodged by the second respondent reveals that the petitioner gave a post-dated cheque (29.9.2001) to the second respondent and took two tons of grapes. On 29th, when the cheque was presented, the Bank informed the second respondent that no amount is available in the account. On the following day, the petitioner again took



grapes from the second respondent's garden. The second respondent informed the petitioner about non-availability of funds in his account in the Bank. But, the petitioner did not react to this and thus has cheated the second respondent. It is the further case of the second respondent that this conduct of the petitioner led to decaying of the grapes, thus putting the second respondent to further loss. Based on the above complaint, the police registered a case against the petitioner for the offence of cheating punishable under Section 420 of the I.P.C. It is clear from the above that the facts and circumstances of the case, relied on by the petitioner's counsel, are entirely different from the case on hand. Hence, the decision relied on by the learned counsel ^{the} for petitioner is of no avail to him.

8. At this juncture, it may be worthwhile to mention here that in the case of RAJESH BAJAJ Vs. STATE NCT OF DELHI, reported in A.I.R. 1999 S.C. 1216, the Hon'ble Supreme Court has observed that though the facts mentioned in the complaint would reveal a commercial transaction or a money transaction, yet that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In my considered opinion, it is the



intention of the person and not the nature of the transaction that is decisive in arriving at the conclusion on the question whether an offence of cheating has been committed or not.

9. Merely because the ingredients of an offence under Section 138 of the N.I. Act is attracted, it does not prevent the complainant from lodging an F.I.R. with the police for an offence punishable under Section 420 of the I.P.C. The bar under Section 142(a) is applicable only for the offence under Section 138 of the N.I. Act and not for an offence of cheating punishable under Section 420 of the I.P.C. This is because, the ingredients of the two offences are different and further, they operate in different spheres, viz., one under the N.I. Act and the other under the I.P.C. I, therefore, see no Constitutional bar to prosecute a person for an offence punishable under Section 420 of the I.P.C., if such an offence is made out.


10. As regards the quashing of the F.I.R. is concerned, the Hon'ble Supreme Court, in the case of STATE OF HARYANA Vs. BHAJANLAL (1992 AIR SCW 237), has observed thus :

"The court will not be justified in embarking upon an enquiry as to the reliability or



genuineness or otherwise of an allegation made in the F.I.R. or complaint and that the extraordinary or inherent powers does not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. In the light of the foregoing reasons, I see no merit in this petition and the same is dismissed. It is made clear that the opinion expressed above shall not have any bearing on the merits of the case, which only the trial court can decide.

Sd/ 
Judge

ckc/-