

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1593 OF 2018

[Arising out of SLP (Crl.) No. 1960 of 2018]

Vinod Natesan

.. Appellant

Versus

State of Kerala & Ors.

.. Respondents

J U D G M E N T

M. R. Shah, J.

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.12.2016 passed by the High Court of Kerala at Ernakulam in Criminal Miscellaneous Case No.355 of 2016 by which the High Court has quashed the proceedings of CC 139 of 2015 at JFCM-III at Calicut, the original Complainant has preferred the present Appeal.

3. That the appellant herein filed a complaint against the respondent accused for the offences under Section 420, 406 read with Section 34 of the IPC alleging, *inter alia*, that after entering into the agreement by the Accused with the Complainant with regard to availing of intellectual services for marketing the products of the complainant, the accused did not pay the amount due and payable under the agreement and paid a sum of Rs.1,50,000/- only (Rupees One Lakh Fifty Thousand Only) and without paying the remaining amount backed out from the agreement and thereby the accused has committed the offence as alleged.

3.1 On the charge-sheet filed by the Investigating Officer, the complaint filed by the Appellant-original Complainant was registered as CC No.139 of 2015 on the file of the learned Judicial First Class Magistrate Court-III at Kozhikode for the offences under Sections 406 and 420 read with Section 34 of the IPC. Therefore, the original accused approached the High Court under Section 482 of the Cr.PC to quash the criminal proceedings contending, *inter alia*, that the dispute is purely a civil dispute and even the averments and allegations made in the complaint do not disclose any cognizable offence for the offences under Sections 406 and 420 read with Section 34 of the IPC. It was also submitted that even for breach of contract

and for damages etc. the complainant has already instituted a Suit. Having heard the learned counsel appearing on behalf of the original Accused and the original Complainant as a party in person, by impugned judgment and order the High Court has quashed the criminal proceedings by observing that the complaint-criminal proceeding is nothing but an abuse of the process of law as the averments and allegations made in the complaint the ingredients of Sections 406 and 420 of IPC are not satisfied. The High Court also observed that at the most the dispute can be said to be a civil nature which is tried to be converted into a criminal dispute.

3.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court quashing the criminal proceedings initiated by the original complainant, the original Complainant has preferred the present Appeal.

4. We have heard the appellant herein the original Complainant-party in person and Shri Sriram P., learned Advocate appearing on behalf of the original Accused and learned Advocate appearing on behalf of the State of the Kerala.

4.1 The appellant, party in person has vehemently submitted that, in

the facts and circumstances of the case, the High Court has committed grave error in quashing the criminal proceedings. It is vehemently submitted by the Appellant-party in person that as the accused did not act as per the agreement entered into between the parties and did not make the payment due and payable under the agreement and a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) was due and payable and, therefore, the accused committed the offence of cheating. It is submitted that after availing his intellectual services the accused did not make the full payment including one month's notice before terminating the contract/agreement.

4.2 An attempt was made by the Appellant-party in person submitting that as such initially the learned Judge dismissed the application, which is evident from P-14. It is submitted that, however, when the subsequently when the order was declared, the learned Judge allowed the petition and quashed the criminal proceeding. It is submitted that, therefore, the impugned judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

5. The present appeal is vehemently opposed by the learned counsel appearing on behalf original Accused who has supported the impugned judgment and order passed by the learned Single Judge. It

is submitted that as rightly observed by the High Court the dispute between the parties can be said to be a civil dispute and no criminality is established and the ingredients of Sections 406 and 420 of IPC are not satisfied at all and, therefore, the High Court has rightly quashed the criminal proceedings.

6. Having heard the appellant as party in person and the learned Advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the Appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the Accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month Notice before terminating the

agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC as alleged. We are in complete agreement with the view taken by the High Court.

7. In so far as the submissions made on behalf of the Appellant-party in person that initially the learned Judge dismissed the application and, thereafter when the judgment was dictated and pronounced, the learned Judge has allowed the application and, therefore, the impugned judgment and order passed by High Court is required to be quashed and set aside is concerned, the aforesaid has no substance. What is produced as P-45 is the docket of the file, which does not bear the signature of the learned Judge. Therefore, it cannot be said that initially the learned Judge dismissed the petition and, thereafter, when the judgment was pronounced the order was changed and the application was allowed. Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under Sections 482 of the Cr.PC and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above,

the present appeal fails and deserves to be dismissed and is accordingly dismissed.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(M. R. SHAH)

New Delhi,
December 11, 2018