



REPORTABLE

**IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY CRIMINAL JURISDICTION**

SPECIAL LEAVE PETITION (CRL.) NO. 12638 OF 2022

SUDHA RAKESH

...PETITIONER

VERSUS

**THE STATE OF
KARNATAKA & ANR.**

...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The tendency of litigants to colourize civil disputes into criminal offences is an open secret in the present times. The courts have tried to put their foot down to prevent the litigants from obliterating the fine distinction between the two. We have done so to prevent the abuse of criminal process. The instant case presents a similar opportunity.

2. The facts lie within a narrow compass. One Ganesh was the owner of a piece of land bearing survey no. 115, admeasuring 4 acres 19 guntas, located in Channasandra Village, Karnataka. He died intestate and after demise, the said land was inherited by his wife and other legal heirs (“*landowners*”). The landowners entered into an agreement for sale dated 05.10.2012 purporting to sell the subject land in favour of the petitioner herein. They also executed a General Power of Attorney (“*GPA*”) dated 05.10.2012 in favour of the petitioner. Thereafter, the landowners, acting through their GPA holder/petitioner, entered into another agreement dated 19.11.2012 with respondent no. 2 and one Kalpana Sure (“*prospective buyers*”) for sale of the subject land.

3. As per this agreement, the prospective buyers were required to pay the balance sale consideration and come forward for execution of sale deed within 7 months from the date of agreement. They never turned up. The petitioner and landowners waited even beyond the period of 7 months and till the expiry of the limitation period for seeking specific performance. The prospective buyers took no action whatsoever and eventually, the petitioner and landowners sold the subject land by executing a sale deed dated 11.02.2016 in favour of one Gaffar Baig (“*ultimate buyer*”).

4. Immediately thereafter, the prospective buyers instituted a civil suit for specific performance of the agreement for sale executed on 19.11.2012. Subsequently, they also lodged a criminal complaint on 13.05.2016, which was registered as FIR No. 121/2016 under Sections 420, 423, 120-B read with Section 34 of Indian Penal Code, 1860 (“*IPC*”). The petitioner was named as an accused in the said FIR along with the landowners. After the filing of final report, the Magistrate took cognizance of the offences on 28.09.2017.

5. Against the said FIR and order of cognizance, the landowners preferred a quashing petition before the High Court of Karnataka. Vide order dated 22.11.2017 passed in Criminal Petition No. 9095/2016, the High Court quashed the FIR qua the landowners.

6. Thereafter, the petitioner also filed a quashing petition before the High Court. However, his petition was dismissed on merits vide order dated 19.09.2022 passed in Criminal Petition No. 9470/2017 (“*impugned order*”).

7. Taking exception to the impugned order, the petitioner submits that he was similarly placed with the landowners and the coordinate bench ought to have followed the earlier judgment, whereby the case against the landowners was quashed. He submits that the dispute is purely civil in nature and there is no

element of criminality to sustain the FIR in question. He further submits that he was merely a GPA holder on behalf of the landowners and the sale deed was executed by the landowners, with the petitioner only being a confirming party. Therefore, there is no reason to deprive the petitioner from similar consideration.

8. *Per contra*, Respondent no. 2 submits that the High Court has rightly distinguished the petitioner's case from the landowners. It is submitted that the petitioner was not merely a confirming party, but a principal actor. To buttress, it is submitted that the amounts were received by the petitioner herself. It is further submitted that the sale deed dated 11.02.2016 was executed on the basis of material concealment of the pre-existing agreement dated 19.11.2012 in favour of the respondent.

9. The State has also filed its objections against the prayer sought in the present petition. The submissions of the State are on similar lines and are not reproduced for brevity.

10. We have heard learned counsel for the parties and have carefully gone through the record including the written submissions.

11. The admitted position indicates that the agreement for sale dated 19.11.2012 was supposed to be acted upon within 7 months

of its execution. It is not denied that the same was not acted upon within the stipulated time and even thereafter, till the execution of sale deed on 11.02.2016. After the sale deed, respondent no. 2 woke up and instituted the suit for specific performance of the agreement dated 19.11.2012. We consciously refrain from expressing any observation regarding the merits of the said suit or the elements of readiness and willingness. The same ought to be adjudicated by the concerned civil court.

12. What is relevant for our consideration is that after the institution of civil suit, respondent no. 2 also lodged an FIR for the commission of offences mentioned above. While quashing the said FIR qua the landowners in Crl. Petition No. 9095/2016, the High Court observed thus:

“4.... Therefore, when the complainant has already approached the civil court and in view of the long delay in moving for getting the sale deed executed, in my opinion, it is purely a civil transaction between the parties which has been given a criminal colour by the complainant (respondent herein) for such type for proceedings, when the factual aspects clearly disclose there is not even a tinge of criminal attitude on the part of the petitioners.”

13. Evidently, the petitioner's petition for quashing of the same FIR was listed before a different bench. While denying similar relief to the petitioner, the coordinate bench distinguished

the petitioner's case from that of the landowners by observing that – the amounts were received by the petitioner; agreement dated 19.11.2012 was signed by the petitioner as PoA holder; petitioner was confirming party to the sale deed; land was sold at a lesser value to the ultimate buyer; and existence of triable issue whether the consideration received by the petitioner was eventually transmitted to the landowners or not.

14. On a consideration of the distinguishing features noted in the impugned judgment, we are of the clear view that the High Court has fallen into error, and a grave one. The FIR alleges the commission of offence by the landowners as well as the petitioner. The allegation is based on the execution of sale deed, and the sale deed was executed by the landowners themselves. The petitioner was only a confirming party. If no criminality could be attributed to the landowners by virtue of the execution of sale deed, it cannot be sustained against the petitioner as well. For, there is nothing to attribute any aggravated role to the petitioner. The consideration was also received collectively by the landowners and petitioner. Merely because it was physically received by the petitioner on behalf of all of them, it does not place him at a different pedestal. The agreement dated 19.11.2012 was, no doubt, executed by the petitioner only, however, it was executed on behalf of the landowners and there is no allegation that the petitioner executed the same in violation

of the authority conferred upon him by the landowners or by keeping them in the dark.

15. The fact that the property was eventually sold at a lesser price should not have weighed with the High Court. It is purely a speculative line of reasoning and cannot be treated as an incriminating circumstance. Moreover, even if it is incriminating, the same ought to have incriminated the landowners as well. For, the property was sold by all the accused persons and not by the petitioner alone. If the said fact has not weighed against the landowners, it could not have been of any consequence against the petitioner.

16. The High Court further erred in posing to itself a hypothetical question i.e. *whether the sale consideration was transmitted by the petitioner to the landowners or not*. The High Court observed that it is a triable question, without regard to the fact that the said question does not even fall within the ambit of the allegations. The landowners have not raised any allegation against the petitioner regarding misappropriation of sale consideration meant for them. In order to distinguish the petitioner's case, the High Court has traversed beyond the scope of the allegations.

17. Notably, the offence of cheating requires a deceptive act which leads to inducement for delivery of property/money. Even

on bare perusal of the allegations, it becomes clear that the property (that is the amount transferred by respondent no. 2 at the time of agreement for sale dated 19.11.2012) was not transferred on the basis of any deception. At that time, the property could have legitimately been transferred in favour of respondent no. 2 and there was no deception. The subsequent sale took place in 2016, almost 4 years after the alleged delivery of money by respondent no. 2. Thus, the foundational ingredient of cheating is missing. Section 423 IPC is also mis-invoked in the FIR. It requires a false statement as to consideration in an instrument of transfer. There is no such false statement in the agreement dated 19.11.2012 or in the sale deed. Even if there is any false averment in the sale deed, it ought to have created a right in favour of the ultimate buyer Mr. Gaffar Baig and not respondent no. 2 herein. It is a classic case of casting the shadow of criminality on a pure civil dispute.

18. In view of the above, we are of the considered opinion that the FIR was rightly quashed by the High Court against the landowners and there was absolutely no reason for the coordinate bench to deprive the petitioner from the same relief. His culpability could not have been stretched beyond that of the landowners. The High Court, in the peculiar facts of the case, ought to have adhered to the principle of judicial consistency and propriety.

19. Accordingly, the instant petition is allowed. The impugned judgment dated 19.09.2022 passed by the High Court of Karnataka in Criminal Petition No. 9470/2017 is set aside. Consequently, the proceedings in FIR/Crime No. 121/2016 PS Kadugodi, along with all consequential proceedings, stand quashed.

20. The petition stands disposed of along with pending application(s), if any.

..... J.
[SATISH CHANDRA SHARMA]

..... J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI
October 05, 2026.