

(2022) 02 JH CK 0051

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3425 Of 2017

Alok Kumar Singh APPELLANT @Hash State Of Jharkhand And Others

Date of Decision : 28-02-2022

Acts Referred:

Citation : (2022) 02 JH CK 0051

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Jitendra Shankar Singh, Azeemuddin, Pandey Ashok Nath

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

Heard Mr. Jitendra Shankar Singh, the learned counsel appearing on behalf of the petitioner and Mr. Pandey Ashok Nath Roy, the learned counsel appearing on behalf of the O.P.No.2.

This petition has been filed for quashing the entire criminal proceeding arising out of Kotwali (Pandra O.P.) Case No.261 of 2015, corresponding to G.R. Case No.1769 of 2015 including the order dated 05.09.2017 whereby cognizance has been taken, pending in the court of learned Judicial Magistrate, Ranchi.

The O.P.No.2 has filed the complaint stating therein that the O.P. No.2 the informant along with his two brothers and father has entered into an agreement with M/s Rajmani Properties (Pvt.) Ltd. on 05.01.2005 for development of their property situated at Piska More, Village Hesal, Ratu Road, Ranchi for construction of any apartment which shall consist maximum of G+4 having approx. area of around 22,435 sq.feet. As per the agreement the developer has agreed to deliver 38% of super built up area. It is alleged that the complainant was given possession of five flats having total area of 7,550 sq.ft and the accused has withheld about 975 sq.feet built up space. It is further alleged that the accused has provided only three car parking space in place of six car parking space with an assurance that other three parking will be provided soon. The complainant has further alleged that the accused has committed inordinate delay in handing

over said flats and parking space which has caused serious loss to the complainant and in view of under taking given by the accused, he was to pay Rs.10,000/- per day as penalty which was demanded through legal notice dated 27.09.2012 but the accused failed to comply the same. The complainant was threatened by the accused and was forcibly being taken away and was forced to sign some blank paper.

Mr. Jitendra Shankar Singh, the learned counsel appearing on behalf of the petitioner submits that as per the development agreement the constructed area will be 19,800 sq.ft. and it was agreed that 38% of the same i.e. 7524 sq.ft. will be the share of the complainant. He draws the attention of the Court to paragraph no. 6 of the said development agreement. He further submits that the petitioner has filed the complaint case before the District Consumer Forum, Ranchi wherein at paragraph no.6 of the complaint before the Consumer Forum the super built up area is disclosed 7550 sq.ft. He further submits that as the petitioner has also chosen the forum under the Consumer Protection Act, there was no requirement to file the complaint and start a criminal case against the petitioner. He further submits that the case is purely of civil in nature for which criminal case has been instituted against the petitioner. He further submits that the complaint filed by the O.P.No.2 before the concerned court was not supported with any affidavit.

Mr. Pandey Ashok Nath Roy, the learned counsel appearing on behalf of the O.P.No.2 submits that in the anticipatory bail application filed by the petitioner one mediation was taken place wherein independent architecture was appointed and the area was found by the independent architecture to the tune of super built up area 21513 sq.ft. He submits that it is well settled that if the ingredients of criminal case is made out, civil case as well as criminal case can go simultaneously. He relied in the case of "Priti Saraf and Another v. State of N.C.T. of Delhi and Another" reported in AIR 2021 SCC 1531.

In view of the above fact and the arguments advanced by the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record. It is an admitted fact that the complaint filed by the O.P.No.2 before the concerned court was not supported by any affidavit. The O.P.No.2 has already approached the District Consumer Forum for redressal of his grievance. The grievance with regard to certain area of the flat in question and for that, he has already availed the remedy under the Consumer Protection Act. It is well settled that once Forum is chosen, the parties are not allowed to choose the new forum. How the criminal case is made out against the petitioner has not been disclosed in the complaint petition. In the case relied by the learned counsel appearing on behalf of the O.P.No.2, the fact was that the property was mortgaged with State Bank of Patiala and in order to clear the said dues, 2nd respondent hatched a conspiracy with broker Ashok Kumar so as to cheat and defraud the appellant/complainants and to further misappropriate the amount paid by the complainants as part of the deal, which is lacking in the case in hand. Moreover, in paragraph

no.38 of the said judgment, the Hon'ble Supreme Court has observed that whatever has been observed therein it is only for the purpose of disposal of that appeal and this judgment is not helping the petitioner. There is no case of cheating has been made out against the petitioner. It is agreed to allot certain area of the flats which is already subject matter of Consumer Forum. The case is purely of civil in nature. A reference may be made to the case of "Indian Oil Corporation v. N.E.P.C India Limited and Others" reported in (2006) 6 SCC 736.

In view of the above reasons and the analysis, the Court comes to the conclusion that there is no criminality in the complaint petition and particularly considering that the complaint was not affidavited, the entire criminal proceeding including the order taking cognizance dated 05.09.2017 arising out of Kotwali (Pandra O.P.) Case No.261 of 2015, corresponding to G.R. Case No.1769 of 2015, pending in the court of learned Judicial Magistrate, Ranchi is hereby quashed.

Cr.M.P. No. 3425 of 2017 is allowed and disposed of.