
(2011) 10 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 14435 of 2008

Anirudh Sharma and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 420, 467, 471

Citation : (2012) 1 PLJR 265

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Sanjay Kumar Singh, for the Appellant; Jharkhardi Upadhyay for the State and Mr. Sanjay Kumar Singh for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Kumar Mishra, J.—The petitioners have filed this application, u/s 482 of the Code of Criminal Procedure, for quashing the order dated 6.2.2004 passed by the Chief Judicial Magistrate, Chapra, in Chapra (Town) P.S. Case No. 115 of 2003, taking cognizance of the offence under Sections 420, 467 and 471 of the Indian Penal Code against the petitioners and also for quashing the order dated 20.2.2008 passed by the Additional Sessions Judge, Fast Track Court No. IV, Chapra, in Criminal Revision No. 19 of 2005. In brief, the case is that the complainant-opposite party No. 2, Mostt. Uma Pathak, filed the complaint petition, numbered as Complaint Case No. 797 of 2003, against the petitioners and one Devendra Kumar, with the contention that her husband, late Manindra Pathak, died about 25 years back and after the death of her husband, she alongwith her sole son, Krishna Pathak, used to reside at Varanasi with her brother. She was in need of money to maintain herself and her son, so she came to her Village-Phuchati Khurd and talked with petitioner No. 1, Anirudh Sharma, to sale some land of her share and also negotiated to sale 7 kathas of land of Plot No. 1004, Khesra No. 145 for the consideration of Rs. 75,000/-. Accordingly, she alongwith her son came at Chapra on 13.2.2003 and got stayed at Coffee

House Hotel by the petitioner No. 1, Anirudh Sharma, where he also got her photographs as well as her son prepared. The signature and thumb impression of the complainant-opposite party No. 2 as well as her son were also obtained on a plain and written stamp papers on 15.2.2003. Neither the contents of the deed were written in her presence as well as her son nor have the same been read over to them. It is also alleged that while they were brought to the Court of the Registrar, but no query was made by them. In the hotel, the accused persons gave Rs. 74,000/- to the complainant-opposite party No. 2 and got written the statement of the execution of the sale deed by her. The further case of the complainant-opposite party No. 2 is that she again came at Village-Phuchati Khurd and then came to know from her villagers that the petitioner nos. 1 and 2, namely, Anirudh Sharma and Raj Narayan Sharma respectively, in collusion with other accused got the sale deed executed in respect to her more land and also covering the land of others. The complainant-opposite party No. 2 has further alleged that when her dewar shown the certified copy of the sale deed, then she came to know about the forgery committed by the accused persons with her and she also came to know that the consideration money in the sale deed has been written as Rupees six lacs and seven thousand in place of Rupees seventy five thousand as paid by them. The complainant-opposite party No. 2 has also filed a civil suit in the Court of Sub-Judge-I, in which the petitioner nos. 1 and 2 have been made defendants for committing fraud for getting the sale deed executed with prayer to declare the sale deed invalid and in-operative.

2. The complaint petition filed in the Court of the Chief Judicial Magistrate, was sent u/s 156(3) of the Code of Criminal Procedure for investigation and submission of the report. Accordingly, Chapra (Town) P.S. Case No. 115 of 2003 was registered on 1.7.2003 under Sections 420, 467 and 471 of the Indian Penal Code against the petitioners and one Devendra Kumar and police on investigation submitted the final form finding the case to be civil in nature.

On perusal of the case diary, the Chief Judicial Magistrate, Chapra took the cognizance of the offence under Sections 420, 467 and 471 of the Indian Penal Code against the petitioners through the impugned order dated 6.2.1004.

Being aggrieved and dissatisfied with the aforesaid order, the petitioners preferred Criminal Revision No, 19 of 2005, which was dismissed vide order dated 20.2.2008 by the Court of Additional Sessions Judge, Fast Track Court No. IV, Chapra.

3. Learned Counsel for the petitioners submits that from the complaint petition, which is the basis of the First Information Report of Chapra (Town) P.S. Case No. 115 of 2003, it is dear that the complainant and her son put their signatures on the sale deed after affixing their photographs and also visited before the Sub-Registrar for approving the sale deed but with bad intention and to grab more money, the false complaint case has been filed by the complainant-opposite party No. 2 on false and fabricated grounds. Moreover, the complainant-opposite party No. 2 has also filed the Civil Suit, numbered as Title Suit No. 223 of 2003

in the Court of Sub-Judge-I, Chapra, for declaring the sale deed illegal, void and ineffective and also for other proper reliefs.

4. On bare perusal of the complaint petition, Annexure-"1" to this application, it appears that the complainant-opposite party No. 2 has not disputed her signature as well as her son and affixing of their photographs on the sale deed and appearance before the Sub-Registrar at the time of registration of the sale deed. She has only alleged that the contents of the sale deed have not been read over to her and her son. A copy of the plaint of Title Suit No. 223 of 2003, Annexure-"3" to this application discloses that the complainant-opposite party No. 2, Mostt. Uma Pathak and her son, Krishna Pathak, have filed the aforesaid suit against the petitioner nos. 1 and 2 for declaring the sale deed, which is said to be got executed by committing fraud ineffective and also for other proper reliefs. The dispute as disclosed in the complaint petition appears to be civil in nature, which could be decided in a Civil Court of competent jurisdiction. As such, the taking of cognizance for the offence under Sections 420 and 467 of the Indian Penal Code against the petitioners through the impugned order appears to be the abuse of the process of the court. Accordingly, the cognizance order dated 6.2.2004 passed by the Chief Judicial Magistrate, Chapra in Chapra (Town) P.S. Case No. 115 of 2003 as well as the order dated 20.2.2008 passed by the Additional Sessions Judge, Fast Track Court No. IV, Chapra, in Criminal Revision No. 19 of 2005, are hereby quashed and the application is allowed.