(2013) 07 JH CK 0129

In the Jharkhand High Court

Case No : Criminal M.P. No. 591 of 2013

Anup Jain @ Anup Kumar Jain, Manoj Jain @ Manoj Kumar Jain, Vijay Kumar Jain and Birendra Kumar Jain alias Virendra Kumar Jain	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

- Constitution of India, 1950 — Article 226
- Criminal Procedure Code, 1973 (CrPC) — Section 482
- Penal Code, 1860 (IPC) — Section 109, 120(B), 120B, 201, 409
- Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
- Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 5(3)

Citation : (2013) 07 JH CK 0129

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : R.S. Majumdar, for the Appellant; Shailesh Kr. Singh, Vigilance, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the Vigilance. This application is directed against the order dated 29.01.2013 passed in Vigilance P.S. case No. 28 of 2000 (Special Case No. 15 of 2000) whereby and whereunder charges have been framed against the petitioners under Sections 423, 424, 467, 468, 469, 471, 477A, 201 and 409 read with Section 120B of the Indian Penal Code and also under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. In the context of the present petitioners, the case of the prosecution is that one Tulsidas Kanodia sold 10 Kattha of the land appertaining to plot No. 28 falling within the urban area of Ranchi to Kamla Devi Jain, mother of these petitioners on 02.07.1982. Subsequently, these petitioners being son of Kamla

Devi sold the land to one Dhirendra Kumar Shukla on 07.07.1990, though the land in question was the subject matter of a proceeding under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as ''the Act'').

3. Further allegation is that after the land was sold to these petitioners, the petitioners got their name mutated against the land purchased, which was in violation of the provision as contained in Section 5(3) of the Act.

4. On such accusation, a case was registered against these petitioners and others by the Vigilance which was registered as Vigilance P.S. case No. 28 of 2000 under Sections 423, 424, 467, 468, 469, 471, 477A, 409, 120(B) and 109 of the Indian Penal Code and also under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

5. After completion of investigation, charge sheet was submitted, upon which cognizance of the offences punishable under Sections 423, 424, 467, 468, 469, 471, 477A, 409, 120(B) and 109 of the Indian Penal Code and also under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act was taken against these petitioners and others, vide order dated 26.11.2009. Subsequently, charges were framed vide order dated 29.01.2013, which is under challenge.

6. Mr. R.S. Mazumdar, learned Sr. counsel appearing for the petitioners submits that accepting the entire allegation to be true and also the fact that the petitioner transferred the land under the teeth of the provision of the Ceiling Act, still they cannot be prosecuted for criminal offences though the transfer, which was made, may be held to be null and void but simply the transfer being said to be null and void, one cannot be prosecuted for criminal offence of cheating, forgery and misappropriation when those offences on the alleged act of these petitioners never get attracted.

7. So far the offence u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is concerned, allegation too never gets attracted even it is assumed that these petitioners in connivance with the other accused got the land sold to others as they have never been alleged to have abetted any public officer to adopt corrupt practices or illegal means for having pecuniary advantage/ valuable thing for themselves or for any other person. The aforesaid essential ingredients constituting offence u/s 13(1)(d) is completely lacking as nothing could be placed to show that these petitioners by transferring land put any public officer to pecuniary advantage and as such, these petitioners cannot be prosecuted u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

8. Mr. Shailesh, learned counsel appearing for the Vigilance submits that these petitioners are the persons who had purchased 1.0 Kathas of the land on 07.07.1990 from Tulsidas Kanodia and sold the same to Dhirendra Kumar Shukla, without informing the authority of the Urban Land (Ceiling and Regulation) Act, 1976.

9. Having heard learned counsel appearing for the parties and on perusal of the record, it does appear that these petitioners having purchased 10 Katthas of the land from Tulsidas Kanodia on 02.07.1982, sold the land to Dhirendra Kumar Shukla on 07.07.1990 though the land in question was the subject matter of a proceeding under the Urban Land (Ceiling and Regulation) Act, 1976. Accepting all these farts to be true, the question would be as to whether these petitioners did commit any offence as has been alleged by the Vigilance?.

10. Admittedly, these petitioners did transfer the land after the notification was issued in terms of Section 10(1) on 24.10.1986 but before declaration was made in terms of Section 10(3) on 16.9.1997. Under the provision of Section 10 if one transfers the land which was subject matter of the proceeding after the notification is issued u/s 10(3) of the Act, the said transfer would be deemed to be null and void. At the same time, the Act also does prescribe that if one who is holding land excess than ceiling limit transfers the land it becomes null and void. Since the land had been transferred, the petitioners are being prosecuted for the offences of forgery, misappropriation, cheating and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

11. The question does arise as to whether the act of these petitioners would amount to an act of forgery as defined in Section 464 of the Indian Penal Code.

12. An analysis of Section 464 of the Indian Penal Code shows that it divides false documents into three categories.

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3 The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a ''false document", if (i) he made or executed a document claiming to be someone else or authorized by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

13. Therefore, even if the transfer is under the teeth of the provision of any statute, it does not constitute any offence whatsoever under Sections 467, 468, 469, 471 and 477A of the Indian Penal Code.

14. At the same time, there does not appear to be any allegation attracting

offence under Sections 409 & 201 of the Indian Penal Code.

15. So far the offence u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is concerned, these petitioners though have been alleged to have transferred the land to other, in spite of restriction being there under the provision of the statute, but the petitioners have never been alleged to have abetted any public officer to adopt corrupt practices or illegal means for having pecuniary advantage/valuable thing for themselves or for any other person. The aforesaid essential ingredients constituting offence u/s 13(1)(d) is completely lacking as nothing could be placed to show that these petitioners, by transferring the land put any public officer to pecuniary advantage and as such, these petitioners cannot be prosecuted u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

16. Further it be recorded that though charges have been framed under Sections 423 and 424 of the Indian Penal Code but it has never been the case of the prosecution that there was dishonest and fraudulent execution of the deed of transfer containing false statement of consideration. At the same time, it has also not been the case of the prosecution that there was dishonest or fraudulent removal or concealment of property.

17. Thus, I do find that the instant case falls within category (1) and (3) laid down in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, where High Court can exercise its power either under Article 226 or under its inherent power u/s 482 of the Code of Criminal Procedure to prevent abuse of the process of any court or otherwise to secure the ends of justice and, therefore, it would be gross abuse of the process of law if the criminal proceeding is allowed to continue and the petitioner is asked to face rigour of trial when the allegations made in first information report even if are taken at their face value and are accepted to be true do not constitute any offence against these petitioners.

18. Accordingly, entire criminal proceeding of Vigilance P.S. case No. 28 of 2000 registered under Sections 423, 467, 463, 469, 471, 477A, 109 read with Section 120(B) of the Indian Penal and also u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act including the order dated 29.01.2013 under which charges were framed is, hereby, quashed so far these petitioners are Concerned. In the result, this application is allowed.