
(2008) 04 JH CK 0090

In the Jharkhand High Court

Case No : Criminal M. P. No. 90 of 2008

Ashok Kumar Agrawal, Pradeep Kumar Agrawal and Bidya
Devi Agrawal

APPELLANT

Vs

The State of Jharkhand and Dilip Kumar Agrawal

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1), 304(1), 482
Penal Code, 1860 (IPC) — Section 120B, 465, 471

Citation : (2008) 56 BLJR 2190 : (2008) CriLJ 3785

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

**Advocate : S.K. Murthy, for the Appellant; Assistant Public Prosecutor and
Deepak Kumar, for O.P. No. 2, for the Respondent**

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the petitioners, learned Counsel appearing for the opposite party No. 2 and learned A.P.P. appearing for the State.

2. This application has been filed u/s 482 Cr.P.C. for quashing the order dated 4.6.2007 passed by the Judicial Magistrate, 1st Class, Giridih in Complainant Case No. 1212 of 2006 (T.R. No. 618 of 2007/404 of 2008) whereby and whereunder, the court took cognizance of the offences under Sections 465/471/120B of Indian Penal Code against these petitioners and others.

3. The facts giving rise to this application are that the complainant-opposite party No. 2 filed a complaint before learned Chief judicial Magistrate, Giridih stating therein that one Bishwanath Agrawal died in the year 1994 leaving behind the complainant and petitioner Nos. 1 and 2 and also one Anil Kumar Agrawal as his sons as well as his widow (petitioner No. 3) and three married daughters as co-owners of the movable and immovable property situated at Giridih.

4. The further case is that in the year 1997, the petitioners filed a title partition suit on a false plea that the opposite party No. 2 - complainant has already been given his share in the property situated at Dhanbad, but in fact the property at Dhanbad was never the part of the joint family property. However, in the said partition suit, though the opposite party No. 2-complainant was made party but no summon was ever issued and it happened so that in the year 1998, a joint compromise petition was tiled on the basis of which decree was passed to which the opposite party No. 2 was kept in dark and in the year 2006 when the opposite party No. 2 asked his other brothers-petitioner Nos. 1 and 2 for partition of the property, they disclosed to him that the property has already been partitioned by the decree passed in Title Partition Suit No. 47 of 1997.

5. Upon it, when the inquiry was made, it was detected that one Vakalatnama in the name of the opposite party No. 2 had been filed and his signature was also there over the compromise petition, wherein it has been stated that the opposite party No. 2 has got no right, title and interest over the immovable property situated at Giridih but in fact he had no occasion to put his signature over the compromise petition and as such it appears that somebody by impersonating the complainant-the opposite party No. 2 put his signature on the Vakalatnama its well as on the compromise petition, which was identified by one Digamber Mohan Sinha and were produced before the court below on the basis of which decree was passed and thereby the complainant was denied his due share in the joint family property.

6. Thereafter the court below upon recording the statement of opposite party No. 2 complainant on solemn affirmation passed the impugned order under which cognizance of the offences, as stated above, was taken against the accused persons including these petitioners.

Being aggrieved with that, the petitioners have preferred this application whereby the impugned order has been sought to be quashed.

7. Learned Counsel appearing on behalf of the petitioners submits that the complainant has also filed a partition suit bearing Title Suit No. 85 of 2006 in the year 2006 before learned Sub-Judge-I, Giridih for annulling the decree passed in the earlier partition suit, which was decreed on the basis of the compromise arrived at in between the parties and in the said partition suit, the plea has been taken that by forging the signatures of the complainant on the Vakalatnama as well as on the compromise petition the petitioners got the decree passed and as such the entire matter of controversies are in issues in the civil suit which are to be adjudicated upon by the competent civil court and, therefore, any continuation of the criminal proceedings on the same fact would be unwarranted.

8. Learned Counsel further submits that if one gets a decree passed by playing fraud upon the court then the proper remedy would be to file another suit, which has in fact been filed by the opposite party No. 2. Learned Counsel in support of his contention has referred to a decision of Hamza Haji Vs. State of Kerala and

Another, and also a case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, . Thus, it was submitted that the entire criminal proceedings is bad in law and hence it is fit to be set aside.

9. As against this, learned Counsel appearing for the opposite party No. 2 submits that in view of the allegation made in the complaint that the petitioners and other accused got the signature of the opposite Party No. 2 forged over the compromise petition and produced it before the court below and on the basis of that a decree was passed, the court below is absolutely justified in taking cognizance of the offences and hence the order taking cognizance needs not to be interfered with by this Court.

10. Learned Counsel further submits that in the facts and circumstances, there would be no bar in terms of Section 195(1)(b)(ii) Cr.P.C. in bringing the private complaint, as according to the case of the complainant, the forgery was made first outside of the court and then it was produced before the court below and on the basis of forged document decree was passed. Learned Counsel in support of his submission has referred to a decision rendered in the case of Sachida Nand Singh v. State of Bihar 1998 (1) ECC 894 and also a case of Iqbal Singh Marwa and Anr. v. Minakshi Marwa and Anr. 2005 (2) ECC 268, whereby the principle laid down in the aforesaid case was affirmed by the Larger Bench of Hon"ble the Supreme Court.

11. Having heard learned Counsel appearing for the parties, I may record that the contention of learned Counsel for the petitioners mainly is that when the civil court is in seison of the matter to examine as to whether any forgery has been made or not, the Criminal Court would never be the right forum to decide the same issue, but it has been settled principle that if similar fact gives rise to civil liability as also the criminal liability, one can choose both the forums for undoing injustice, which was rendered on the basis of fraud played by one of the parties and other for punishing the guilty for committing offence of forgery. However, in course of argument, the question also arose as to whether in the facts and circumstances, bar as has been put forth under the provision of Section 195(1)(b) (ii) Cr.P.C. would be applicable. I may indicate that the matter relating to the applicability and inapplicability of the said provision was dealt with by Hon"ble the Supreme Court in the case of Sachida Nand Singh (supra), wherein the court came to the conclusion in paragraphs-11, 12 and 23 which are being reproduced below:

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document it committed far outside the precincts of the Court and along before its

production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court.

12. The view taken by his Lordship in the aforesaid case was subsequently affirmed by the Larger Bench of Hon"ble the Supreme Court in the case of Iqbal Singh Marwa and another (supra). Thus, there remains no controversy that the bar as enshrined under the provision of Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offence, mentioned in the aforesaid provision, is committed during the time when the document was in custodia legis.

13. Coming to the instant case, there appears to be allegation that the document having been forged was produced in the Court and, therefore, it never gets hit by the provision as contained in Section 195(1)(b)(ii) Cr.P.C. Moreover the Court, having been found the prima facie case to be true, does not seem to have committed any illegality in taking cognizance of the offence as has been mentioned in the impugned order.

14. So far the decisions referred to on behalf of the petitioners are concerned, those are never applicable in the facts and circumstances of the case, as the issues which are involved in this case, were never involved in the aforesaid two decisions referred to on behalf of the petitioners. In the aforesaid two decisions, a proposition laid down earlier, has been reiterated that a judgment/decree obtained by playing fraud in the court is a nullity and non est in the eye of law. Such a judgment/decree by the first court or by the higher court has to be treated as a nullity by every court whether superior or inferior, which can be challenged in any court even in collateral proceedings.

15. In that view of the matter, I do not find any illegality in the impugned order. Hence, I do not find any merit in this application which is accordingly, dismissed.