(2010) 01 JH CK 0082

In the Jharkhand High Court

Avijit Ghosh and Another — APPELLANT

Vs

State of Jharkhand and Another — RESPONDENT

Date of Decision : 30-01-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 463, 464

Citation : (2010) 01 JH CK 0082

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application is directed against the order dated 1.8.2009 passed by 1st Additional Sessions Judge, Bokaro in Cr. Rev. No. 60 of 2008 whereby learned Additional Sessions Judge 1st Bokaro after holding that sufficient material is there to constitute offences under Sections 419, 467, 468, 471, 472, 420, 504 read with Section 120B of the Indian Penal Code against the accused persons set aside the order dated 16.6.2008 where under complaint case No. 291 of 2008 had been dismissed by the Chief Judicial Magistrate, Bokaro. Consequently the Additional Sessions Judge remanded the matter for further enquiry.

2. Before adverting to the submissions advanced on behalf of the parties, the case as has been made out in the complaint petition needs to be recorded which are as follows:

3. A Plot No. 371, measuring an area of 89 acres 40 decimals, appertaining to Khata No. 22 situated at village- Giridhartand, P.S. Pindrajora, District-Bokaro was subjected to partition among the five co-sharers by virtue of a decree of the court under which one of the co-sharers Rameshwar Ojha came in possession of the land measuring 10 acres 32 decimals.

4. In course of time, Rameshwar Ojha sold the said land to one Dhiru Koda grand-father of the complainant Shankar Modi @ Shankar Koda whose name was

recorded in the revenue records and the rent was being paid to the State. After the death of Dhiru Koda, his descendants came in possession over the land, bearing plot No. 371, measuring 10 acre 32 decimal.

5. Further case is that on 11.5.2008 the accused Amit Kumar came along with accused Avijit Ghose (petitioner), who happens to be a General Manager, M/s. Jindal Steel & Power Limited and told to the complainant that entire land measuring 89 acre 40 decimal has been sold to M/s. Jindal Steel & Power Limited by the accused No. 2 Amar Nath Jha through the holder of his power of Attorney Amit Kumar, accused No. 3 and as such accused No. 3 Amit Kumar and this petitioner (accused No. 4) directed the complainant to vacate the land and held out a threat of dire consequence if he does not vacate the land.

6. Thereupon the complainant obtained certified copy of the sale deed under which 89 acre 40 decimal of land had been transferred by Amar Nath Jha by impersonating himself as Manoj Jha through the holder of the power of Attorney Amit Kumar for a consideration of Rs. 1,22,36,400/- on the basis of the rent receipts and land possession certificate, though neither the land possession certificate nor the rent receipts had been issued in favour of Manoj Jha. It has been alleged that accused No. 2 Amar Nath Jha by impersonating himself as Manoj Jha by forging documents in connivance with other accused including the petitioner sold the property, though he had no title over the property and as such, committed offence under Sections 419, 467, 468, 471, 472, 420, 504 and 120B of the Indian Penal Code.

7. On filing the said complaint, it was registered as C.P. case No. 291 of 2008 which was dismissed by the Chief Judicial Magistrate, Bokaro on 16.6.2008 holding therein that none of the offence as alleged in the complaint is made out. However, that order was challenged by the complainant before the revisional court which was registered as Cr. Rev. No. 60 of 2008. The said case was allowed by 1st Additional Sessions Judge, Bokaro after holding that sufficient material is there to constitute offence under Sections 419, 420, 467, 468, 471, 472, 504 and 120B of the Indian Penal Code and the matter was remanded back to the court of Chief Judicial Magistrate, Bokaro for further enquiry.

8. Being aggrieved with that order, this application has been filed.

9. Mr. Indrajit Sinha, learned Counsel appearing for the petitioners submits that M/s. Jindal Steel Power Limited a leading company of the country in the steel and power sector has been allowed to set up a power plant and also a steel plant by the State Government, for which it has been granted a lease deed in respect of coal mines and also iron ore mines but before its operation the Company was required under a statute to acquire land for the purpose of Afforstation. In that pursuit, the petitioner No. l came across with one Amit Kumar, accused No. 3 who informed that he is holding power of attorney on behalf of one Manoj Jha @ Amar Nath Jha who owns 89.40 acres of land situated at village-Giridhartand and is interested in selling the land. During negotiation both of them produced rent

receipts and also a land certificate relating to possession of the land issued by the revenue authority in favour of Manoj Jha @ Amar Nath Jha and asserted that there has been no defect in the title of the land and thereupon the said Manoj Jha through its constituted attorney Amit Kumar executed a deed of sale on 11.4.2008 for a consideration of Rs. 1,22,36,400/.

10. Learned Counsel submits that under this situation, the petitioner cannot be said to have committed any offence whatsoever as neither the petitioners can be said to have committed offence relating to forgery nor can be said to have cheated the complainant or committed offence u/s 504 of the Indian Penal Code, rather it is out and out a case of civil dispute and under this situation, the revisional court committed grave illegality by holding that there has been sufficient material to constitute offence alleged in the complaint petition.

11. Learned Counsel by referring to a decision rendered in a case of Md. Ibrahim and Others Vs. State of Bihar and Another, submits that almost in a similar fact, the Hon''ble Supreme Court has held that mere execution of a sale deed by a person claiming the property as his own did not amount to commission of an offence under Sections 467 and 471 even if title to property did not vest in the executants and thereby purchaser cannot be said to have committed offence either of cheating or forgery. Thus, it was submitted that the impugned order is fit to be set aside.

12. Learned Counsel further submits that though the revisional court has remanded the matter before the Chief Judicial Magistrate, Bokaro for further enquiry but the matter has been remanded after recording the finding that there has been sufficient material constituting offence alleged in the complaint and as such, it would be a mere formality on the part of the court below to take cognizance of the offence and as such, the petitioners have moved to this Court to challenge the order of the revisional court before cognizance of the offence could have been taken by the court below on holding further enquiry and that the said order has also been challenged to be bad on account of the fact that revisional court allowed the revision application without hearing the petitioners though revisional court before passing the order should have given opportunity to the petitioners of its hearing but the revisional court by violating the principle of natural justice allowed the revision application which is quite illegal and as such on this ground also, the impugned order is unsustainable in law.

13. Learned Counsel in support of his contention has referred to a decision rendered in a case of P. Sundarrajan and Ors. v. R. Vidhya Sekar (2004) 13 SCC 472.

14. As against this, learned Counsel appearing for the respondent No. 2 submits that the revisional court did not commit any illegality in disposing of the revision application without hearing the petitioner as no right had accrued upon the petitioner of being heard because of the reason that the petitioner at this stage was never the accused in the case and that, as per the case of the complainant,

the accused No. 2 Amar Nath Jha sold the land through accused No. 3 Amit Kumar holder of power of Attorney, though accused No. 2 Amar Nath Jha had had absolutely no right, title or interest over the land in question and as such, revisional court has rightly set aside the order of the learned Chief Judicial Magistrate, Bokaro who has dismissed the compaint holding therein that no offence of cheating or forgery is made out.

15. Learned Counsel further submits that in spite of the fact that the petitioner being intimated through legal notice that the accused No. 2 Amar Nath Jha had not right to transfer the land, the petitioner through his reply to the notice justifies the action of the accused persons and this clearly indicates that all the accused persons in connivance with each other got the sale deed executed in favour of the Company, though the vendor had no right to transfer the land and under this situation, the impugned order never warrants to be interfered with.

16. Having heard learned Counsel appearing for the parties, the case of the complainant in nut shell appears to be that the accused No. 2 Amar Nath Jha sold the land in question through Amit Kumar holder of power of Attorney to the petitioner, though the accused No. 2 Amar Nath Jha had had no right title or interest over the suit land. Some statements have been made on behalf of the petitioner to establish that the vendor had every right to sell the land but it is not the stage to consider this aspect of the matter, rather at this stage, the only consideration would be as to whether any offence is made out by taking all the allegations made in the complaint petition to be true. At the first instance, I did not find it proper to interfere with the revisional order as by the impugned order, the matter had only been remanded for further enquiry but while remanding the matter, the revisional court had made specific finding that the allegation does constitute offences which have been alleged in the complaint petition to have been committed by the petitioner and in that event, no discretion would have been left for the court below but to pass order of taking cognizance after holding further enquiry and as such, I deem it fit and proper to go into the merit of the case.

17. The question which falls for consideration is as to whether any offence of cheating or forgery is made out by assuming case of the complainant to be true that the accused No. 2 Amar Nath Jha having no right, title or interest over the land sold it to the petitioner through holder of the power of Attorney accused No. 3 Amit Kumar.

18. In order to have its answer I need not to go far either on the point of law or facts as the similar issue fell for consideration before the Hon''ble Supreme Court in a case of Md. Ibrahim v. State of Bihar and Ors. (supra) where the accused persons, as per the case of the complainant, had transferred some pieces of the land without there being any right and title. The question arose before the Hon''ble Supreme Court as to whether the first accused in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him) can be said to have made and executed false

documents, in collusion with the other accused (purchasers)? Their Lordships after having regard to the provision as contained in Sections 470 and 463 of the Indian Penal Code defining forged document and the false document and also the provision of Section 464 have observed as follows:

13" The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof)- This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the 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 (Hi) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant clearly and obviously do not fall under the second and third categories of "false documents". It, therefore, remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant''s land(and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner''s behalf. When a person

executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that the may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of " false document ", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined u/s 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

19. Thus, it has been categorically held that when a document is executed by a person claiming a property though it is not his property but when he is not claiming that he is authorized by someone else or he is someone else, execution of such document cannot be said to be a false document in terms of Section 464 of the Indian Penal Code and if it is not a false document, then the question of committing an offence of forgery under Sections 467, 468, 471 and 472 does not arise.

20. Almost similar is the case here. The petitioner is the purchaser from Amar Nath Jha, accused No. 2 through power of Attorney holder Amit Kumar. But Amar Nath Jha has never been alleged to have sold the land claiming that he has been authorized by someone else nor he has claimed himself to be someone else, the petitioner by purchasing the land cannot be said to have committed offence of forgery in connivance with other accused and, as such, the revisional court wrongly held that offences are made out under Sections 468, 469, 471 an 472 of the Indian Penal Code.

21. So far the offence of cheating is concerned, it is not the case of the complainant that any of the accused person including the petitioner tried to deceive him either by making a false or misleading representation or by any other action or omission, nor it is his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the accused No. 2 Amar Nath Jha pretending to be the complainant while executing the sale deed. Hence, it cannot be said that the petitioner did commit offence of cheating u/s 420 or even u/s 419 of the Indian Penal Code.

22. So far the offence u/s 504 of the Indian Penal Code is concerned, the allegations made in the complaint do not make out the ingredient of an offence u/s 504 of the Indian Penal Code.

23. Section 504 refers to intentional insult with intent to provoke breach of the peace. The allegation against the petitioners is that they did ask the complainant to vacate the land, otherwise they would have to face dire consequences. This statement does not have any element of " insult" with intent to provoke breach of peace. The statement attributed to the accused was merely a statement referring to the consequences, if the land is not vacated and under this situation, no offence is made out u/s 504 of the Indian Penal Code.

24. Thus, in view of the findings arrived at hereinabove, the entire case of Complaint Case No. 291 of 2008 including the order dated 1.8.2009 passed by the 1st Additional Sessions Judge, Bokaro in Cr. Rev. No. 60 of 2008 is hereby set aside so far petitioners are concerned.

25. In the result, this application is allowed.

