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**(2019) 07 JH CK 0154**

**In the Jharkhand High Court**

**Case No : Criminal Miscellaneous Petition 1710 Of 2010**

Bani Kanth Ghosal And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision : 09-07-2019**

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 323, 341, 379, 406, 420, 423, 467, 468, 471, 506

**Citation : (2019) 07 JH CK 0154**

**Hon'ble Judges : Anubha Rawat Choudhary, J**

**Bench : Single Bench**

**Advocate : A.K. Sahani, P.D. Agarwal, Shashi Bhushan Gupta**

**Final Decision : Partly Allowed**

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## **Judgement**

1. Heard Mr. A.K. Sahani, counsel appearing on behalf of the petitioners.
2. Heard Mr. P.D. Agrawal, counsel appearing on behalf of the State.
3. Heard Mr. Shashi Bhushan Gupta, counsel appearing on behalf of the opposite party no. 2.
4. The relief prayed by the petitioners in this case is as under:-

"For quashing an order dated 20.08.2010 passed by Smt. Kusum Kumari, learned Judicial Magistrate, 1st Class, Bokaro in C.P. Case No. 480 of 2009 whereby cognizance has been taken under Sections 323/341/379/420 of the Indian Penal Code now pending in the same court."

5. Counsel for the petitioners submits that during pendency of this case, the petitioner nos. 1,2,3,4,9 and 13 have expired, accordingly, I.A. No. 3185 of 2019 was filed for deleting their names from cause title. This I.A. was duly allowed vide order dated 10.04.2019 and consequently the name of the petitioner nos. 1,2,3,4,9 and 13 has already been deleted.

6. In the complaint case there were altogether 18 accused persons including Sub-Registrar Chas (accused no. 18). The complaint case was filed for alleged offence under Sections 323, 341, 420, 406, 423, 467, 468, 379, 471, 506 with 34 of the Indian Penal Code. Cognizance has been taken against accused no. 1 to 17 under Sections 323, 341, 379 and 420 of the Indian Penal Code. The accused No. 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17 are petitioner no. 1 to 15 respectively. Thus accused no. 5 and 10 are not the petitioners.

7. Counsel while referring to the complaint petition submits that as per the complaint, accused nos. 1, 5 and 9 had proposed to sell certain landed property to the complainant and accordingly accused no. 1, 2, 3, 4, 5, 6, 7, 8 and 9 received a consideration amount for the sale deed and sale deed was also executed and registered. It has been alleged in the complaint petition that the accused no. 17 had written sale deed and accused no. 15 was the witness to the sale deed. The sale deed was registered on 26.03.2008. He further submits that as per the allegation made in the complaint petition, the complainant had approached the Circle Officer for the purposes of mutation and pursuant to the inspection conducted in the mutation proceedings it came to light that the property is recorded in the name of one Raghu Mahto in the record of rights and the predecessor in interest of the concerned accused have been recorded as intermediary in connection with Khewat No. 2/9. The grievance of the complainant was that Khewat No. 2/9 was not mentioned in the sale deed and nothing has been mentioned regarding Raghu Mahto. It is stated in the complaint petition that when the complainant approached the property for taking possession, Raghu Mahto and his family members did not permit the complainant to take possession. Counsel further submits that so far as this part of the allegation is concerned, the same arises out of civil dispute between the parties and there is no criminality involved in the said allegation. It is further stated that the basic ingredients for offence under Section 420 of Indian Penal Code is totally absent in this part of the allegation made in the complaint petition. Counsel further submits that so far as allegation covering the criminal liability is concerned, the same has been made in paragraph nos. 5 and 6 of the complaint petition wherein it has been stated that accused nos. 2, 9 and 12 had abused the complainant and refused to refund the amount of sale deed. The accused no. 2 held the complainant and accused no. 6 snatched Rs. 500/- from the complainant. It has been further mentioned in paragraph no. 5 that when the complainant approached accused nos. 14 and 15, they assaulted the complainant and at the end it has been mentioned that all the accused persons have cheated the complainant by taking Rs. 1,83,400/- for the sale deed executed in connection with the landed property in favour of complainant. Counsel further submits that the allegation which have been levelled in paragraph no. 5 and 6 of the complaint is with a view to give criminal colour to pure civil dispute involved in this case. Counsel has relied upon the judgment passed by the Hon'ble Supreme Court reported in (2015) 1 SCC 513 (Rajib Ranjan and Others versus R Vijay Kumar) and submits that the case is squarely covered by the said judgment

and it has been held by the Hon'ble Supreme Court that conversion of purely civil dispute into criminal proceeding is an abuse of the process of the law.

8. Counsel appearing on behalf of opposite party no. 2 while opposing the prayer of the petitioners has submitted that specific allegation have been levelled in paragraph no. 5 and 6 of the complaint petition and accordingly it cannot be said to be purely civil dispute which has been sought to be converted into criminal case. He further submits that in paragraph no. 5, specific allegation have been levelled against the accused nos. 2,9 and 12 as well as accused no. 6,14 and 15 and at least the criminal case so far as these persons are concerned, may not be quashed at this stage.

9. Counsel appearing for the State has supported the argument made by counsel for the opposite party no. 2.

10. Counsel for the petitioners submits that so far as specific allegations made in the paragraph no. 5 is concerned, same has nothing to do with the elements of cheating. He submits that there is no element of cheating in connection with execution of sale deed, therefore no case under Section 420 IPC is made out against any of the accused persons.

11. After hearing counsel for the parties and after considering the allegations levelled against the petitioners as well as the solemn affirmation of the complainant, this court finds that the allegation in the complaint petition arises out of sale transactions in connection with the landed property and grievance of the complainant is that when the complainant went on the spot to take possession, he found that one Raghu Mahto and his family members were in possession of the property and the Circle Officer did not permit the mutation in connection with the property involved in this case. This court finds that so far as allegation arising out of sale and purchase of the property is concerned, the same arises out of pure civil dispute regarding title. Moreover, as per the complaint petition it was the accused no. 1,5 and 9 who were involved in negotiation for sale of property. Accused no. 1 and 9 have expired and accused no. 5 is not the petitioner before this court in the case. In this background this court is of the considered view that the basic ingredient of Section 420 IPC against the surviving petitioners i.e. deception of the complainant by these petitioners, is totally absent. Accordingly, the criminal proceeding against the present petitioners under Section 420 of the Indian Penal Code is an abuse of the process of law and would defeat the ends of justice and as such the same is set aside.

12. Further allegation has been levelled against the accused nos. 2,9,12,6,14 ,15 in paragraph no. 5 of the complaint petition and cognizance has also been taken under Sections 323,341,379 of the Indian Penal Code. Accused 2 and 15 have expired. In the facts and circumstances of the case the order taking cognizance against surviving accused no. 9,6,12,14 and 15 (petitioner No. 8,5,10,12 and 13) under Sections 323,341 and 379 does not call for any interference at this stage.

However it will be open to the said accused to take all points as may be available to them as per law and dismissal of this petition will not prejudice the case of either parties.

13. Accordingly, the instant petition is partly allowed.

14. Interim order, if any, stands vacated.

15. Pending I.A., if any stands dismissed.