

(2004) 05 GAU CK 0027

In the Gauhati High Court

Case No : Criminal Revision No"s. 285 and 457 of 1999

Bibek Kr. Moitra and Others

APPELLANT

Vs

Kamakhya Charan Ghose and Others

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Citation : (2005) 1 GLR 179 : (2005) GLT 532 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : D. Mazumdar, for the Appellant; N. Dhar, for the Respondent

Judgement

P.G. Agarwal, J.—Head Mr. D. Mazumdar, learned counsel for the petitioners and Mr. N. Dhar, learned counsel for the respondents.

2. This common judgment and order shall dispose of the Criminal Revision No. 285/1999 and Criminal Revision No. 457/1999 which have arisen/directed against the order issuing process in complaint case No. 2274C/99 u/s 420/468 IPC. The petitioners have filed the revisions praying for quashing of the proceeding u/s 482 Cr.P.C.

3. The respondents/complainants Shri Kamakhya Charan Ghose, Smt. Anjali Ghose and Sri Indrajit Ghose instituted the complaint case No. 2274C/99 stating inter-alia about certain land disputes between the complainants side and as may as five accused persons. Some civil suit is pending between the parties and the main allegation of the complainants is that their mother late Nivanani Ghose died in the year 1980 but a partition Case No. 219/95-96 was filed by the accused persons without disclosing the fact that Nivanani Ghose had expired and thereafter notices were issued and served by the process served on Nivanani Ghose on 15.8.1997. As stated above Nivanani Ghose was no more in this world on that date. It is, therefore, alleged that the accused persons had obtained the mutation and partition order by forging the documents in collusion with the process server. The learned Magistrate registered the said complaint and held

enquiry u/s 200 Cr.P.C. wherein two witnesses were examined and thereafter issued process against the five accused persons u/s 420/468 IPC and hence the present revisions.

4. At this stage, the death of Nivanani Ghose in the year 1980 is not in dispute in view of the categorically statements of the complainants and the two witnesses.

5. The learned counsel for the petitioner has submitted that the learned Magistrate issued process mechanically as there was no document before him to show the involvement of the accused persons in the matter of service of notice. It is also submitted by the learned counsel for the petitioner that in the pending civil litigation, the respondents complainants have falsely implicated the petitioners accused persons without pointing any accusatory finger towards the process server, as the serving of notice or process is the duty of the process server.

6. The records of the complaint case in Criminal Revision No. 285/99 were called for and perused by us and we find that the complainants have not filed any copy of the process or application of the partition case to show the involvement of the accused persons in the matter. Mr. Dhar, learned counsel for the respondents has also perused the records but no such documents are seen or found in the record. Mr. Dhar has however, produced before us a photocopy of the proceedings in the partition case No. 219/95-96 and he has also produced the copy of the order sheet passed in similar other case where, from the order dated 23.6.1993 we find mentioned about the death of Nivanani Ghose. We have also perused the copies of the documents produced before us by the learned counsel and find that the partition case No. 219/95 was filed by one Jitendra Kumar Moitra. The photocopy of the notice has also been perused and there is a report of the jarikarak (his name is illegible) to the following effect :-

"On 15.8.1997 as shown and identified by the applicant notices were served on the pattadar who has accepted the same in his own hand for the members of the house hold."

Thus, even if we consider this report in favour of the complainant it merely shows the involvement of only one person namely Jitendra Kumar Moitra in the matter of identification of notice receiver.

7. Mr. Dhar, learned counsel for the complainants/respondents has not been able to show anything in the complaint petition or from the documents as to how the other accused persons are involved.

8. The law regarding quashing of the proceedings u/s 482 Cr.P.C. was laid down initially in the case of R.P. Kapur v. State of Punjab 1960 SC 866 , wherein as many as three guidelines were laid down. Subsequently in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court has laid down seven guidelines. There is no dispute at the Bar that at this stage the court is not required to examine the truthfulness or veracity of the allegations. The decision

in R.P. Kapur and Choudhury Bajan Lal were reiterated in the case of State of Karnataka Vs. M. Devendrappa and Another, wherein the Apex Court has observed as regards inherent powers u/s 482 Cr.P.C. as follows :-

"Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts."

9. In the present case, we find that so far Shri Anil Kumar Moitra, Sri Tejendra Kumar Moitra, Sri Jnanendra Kumar Moitra and Sri Bibek Kumar Moitra are concerned, the complaint petition is altogether silent about their involvement and it does not disclose commission of any cognizable offence by them. Even the documents produced before us no way implicate them. Hence to allow the case to proceed against them will be a sheer abuse of the process of court and hence the revision filed by them is allowed and the complaint petition, so far Sri nil Kumar Moitra, Sri Tejendra Kumar Moitra, Sri Jnanendra Kumar Moitra and Sri Bibek Kumar Moitra are concerned, stands quashed. So far the petitioner Shri Jitendra Kumar Moitra is concerned, we set aside the impugned order of issuing process against him and remand the matter to the trial court for making further enquiry and giving a chance to the complainants to bring on record the documents on which they rely and thereafter pass any fresh order in accordance with law.

10. Send down the records.