
(2007) 03 JH CK 0054
In the Jharkhand High Court
Case No : Criminal Misc No. 963 of 2002

Birbal Ram Arya and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182
Penal Code, 1860 (IPC) — Section 120B, 415, 418, 420, 468

Citation : (2007) 2 BLJR 1620

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Add. P.P., for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The petitioner in this application has prayed for quashing the entire criminal proceedings pending against them in the court of Sri P.K. Shukla, Judicial Magistrate, Hazaribagh, and also order of cognizance dated 4.3.2002 whereby cognizance of offences u/s 468/420/120B IPC has been taken against the petitioners in complaint case No. 901 of 2001.

Primary grounds advanced on behalf of the petitioner is that dispute relating to the joint ancestral properties between the petitioners and the complainant No. 2, who are cousins, is purely of civil nature and even on reading the entire allegations in the complaint petition filed by complainant, no criminal offence whatsoever is made out against the petitioners and therefore the continuance of the proceedings against them is misuse of the process of the court.

2. Facts of the case constituting the background may be mentioned briefly as follows:

3. The case against the petitioners was registered on the basis of a complaint filed by the opposite party No. 2 on the allegation that the land under khata No. 24, plot No. 2541 comprising of 1.86 acres of land situate at Village Hardari, P.S.

Ichak, Dist. Hazaribagh, was ancestral property of the complainant and the accused petitioners. A title suit, being T.S. No. 773 of 1965 was decreed in favour of the complainant and in which his share in the ancestral property was apportioned. Appeal preferred by the defendants namely the petitioners herein, against the decree passed in Title Suit No. 773 of 1965 was dismissed. It is stated that the complainant had come into occupation and possession of the land apportioned to him and likewise the accused persons had also come into possession of their respective shares in the aforesaid ancestral property. Later, the accused petitioners executed a sale deed in favour of the complainant in respect of a portion of the same land by representing that they are owners of the land and had authority to sell the same. The complainant had paid consideration amount of Rs. 15,000/- to the petitioners. Subsequently, the complainant received a legal notice issued by the petitioners declaring that the sale deed was cancelled by them and calling upon the complainant to receive back the consideration amount. It is further contended that the complainant had verified from the registry office that the petitioners had executed similar sale deeds in favour of other persons in respect of different portions of land under khata No. 24, plot No. 2541 without any legal authority and by making false representation before the purchasers of being owners and of having authority to sell the lands. The complainant has claimed that the petitioners had executed a fraudulent deed of sale in his favour and by false representation and dishonest intention, they have induced the complainant to deliver the sum of rupees fifteen thousand to them.

3. Learned Counsel appearing on behalf of the petitioners points out that the aforesaid assertion of the complainant even if accepted, amply bears out that there was no dishonest intention whatsoever on the part of the petitioners to cheat the complainant and the statements contained in the complaint petition suggests that the petitioners were under bona fide belief that they were legal owners of the land in respect of which sale deed was executed in favour of the complainant, but when they realized their mistake, they promptly cancelled the sale deed calling upon the complainant to receive back the consideration amount paid by him.

Learned Counsel submits that in such view of the matter, no criminal offence whatsoever is made out against the petitioners. Learned Counsel for the opposite party No. 2 as also the counsel for the State submits that the very fact that the petitioners had executed the sale deed despite the fact that they were not legal owners of the land in question and, therefore they had no legal authority to execute such document and to receive any money from the purchaser as the consideration for the same, completes the offence both under Sections 468 and 420 of the Indian Penal Code and therefore, there appears no impropriety in the order of cognizance taken by the learned court below against the petitioners for the aforementioned offences.

4. Inherent powers u/s 182 of the Code of Criminal Procedure though reserved in

this Court and is meant to prevent injustice and abuse of process of law, but the power is to be exercised with restraint and only where it is the demand of justice. Normally, where an order of cognizance is challenged and called upon to be quashed, this Court in exercise of its power needs to adopt a cautious approach. In the case of *Medchi Chemicals and Pharma (P) Ltd v. Biological E Limited* reported in 2000 (2) ECC 524, it has been held that the complaint has to be examined as a whole without going into the merits of the allegations made therein and if a prima facie case is made out disclosing ingredients of offences alleged against the accused, the court should not quash the complaint, but if the allegations do not constitute any offence as alleged and appear to be patently absurd and improper, the court should not hesitate to quash the complaint. It has further been held that in a case where allegations are under Sections 415, 418 and 420 of the Indian penal Code, mens rea is an essential ingredient of the offence. The intention of the accused persons therefore needs to be examined from the allegations made in the complaint.

5. In the present case, the grievance of the complainant appears to be that the accused persons had executed sale deed in respect of certain lands representing themselves to be owners of the land and had also obtained consideration amount of Rs. 15,000/- from him. The allegations continue to add that subsequently the accused petitioners had cancelled the sale deed and had called upon the complainant to receive back his consideration amount as because the accused persons had learnt subsequently that the land demised under the deed of sale did not actually belong to them.

6. It is manifest from the contents of the complaint petition read with the supporting statement of the complainant and his witness recorded on solemn affirmation, that the execution of the sale deed by the petitioners in favour of the complainant was on account of a bona fide belief that they were owners of the land and on being informed subsequently about their lack of title, they had promptly cancelled the sale deed calling upon the complainant to take back his money. The essential ingredient of mens rea or dishonest intention appears to be lacking in the transaction which the accused persons had with the complainant. It is not the complainant's case that it was he who had detected the purported fraud practiced by the accused persons and on such detection, had challenged their authority for executing sale deed in his favour. Rather, the admitted case of the complainant is that it was the accused petitioners who had themselves realised their mistake and cancelled the sale deed having learnt that they were not authorized to execute the sale deed and furthermore, the accused petitioners had called upon the complainant to take back his money. This indicates that there was no mala fide intention on the part of the accused petitioners to make wrongful gain for themselves or cause wrongful loss to the complainant at the time of executing the sale deed since they were themselves labouring under a mistaken belief of their authority.

7. In my opinion, the essential ingredient of the offence for which cognizance

was taken by the learned court below being not attracted, even prima facie, the impugned order of cognizance and the continuance of the proceedings pursuant to the impugned order would be an abuse of the process of the court.

8. For the foregoing reasons, I find merit in this application. Accordingly, this application is allowed. The entire criminal proceedings in complaint case No. 901 of 2001 as well as the order of cognizance dated 4.3.2002 passed by the learned court below in the said proceeding is hereby quashed.