
(2015) 03 JH CK 0061
In the Jharkhand High Court
Case No : Cr.M.P. No. 1945 of 2013

Chandramauli Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2016) 2 BC 250

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : A.K. Kashyap, Senior Advocate, for the Appellant; M.B. Lal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. A.K. Kashyap, learned senior counsel for the petitioner, Mr. P.P.N. Roy, learned senior counsel for the opposite party No. 2 and Mr. M.B. Lal, learned counsel for the State.

2. In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with Markacho P.S. Case No. 116 of 2013 which has been registered for the offence punishable under Sections 420, 406 of the Indian Penal Code and Section 138 of the N.I. Act.

3. A complaint petition was initially filed which was subsequently sent to the police for registering an F.I.R. and the allegations which has been made is that the accused had approached the informant for selling the land situated in Mouza Gharthamba in the district of Giridih and the accused had sold the land and the informant had given Rs. 40,00,000/- for the said land on the assurance that either the land will be given to the informant or the accused shall return the money to the informant. It has further been alleged that the informant came to know that the land in question is a disputed land and the accused had returned Rs. 12,00,000/- out of Rs. 40,00,000/- to the informant and assured that Rs.

3,00,000/- will be returned in cash after three months. It has also been alleged that several cheques amounting to Rs. 25,00,000/- drawn on the State Bank of India were given to the informant. On presenting two cheques to the bank the same were dishonoured with an endorsement "insufficient fund". It is alleged that when the informant met the accused, he was assured by the accused that the money will be paid and, thereafter, three separate cheques were given which on presentation to the bank also became dishonoured and when the informant met the accused, the accused threatened the informant and refused to return back the money.

4. On the basis of the aforesaid allegations Markacho P.S. Case No. 116 of 2013 corresponding to G.R. No. 861 of 2013 was registered for the offences punishable under Sections 420 and 406 of the Indian Penal Code and Section 138 of the N.I. Act.

5. The learned senior counsel for the petitioner has submitted that the allegations in the First Information Report do not constitute an offence punishable under Sections 420, 406 of the Indian Penal Code as the intention of the petitioner to commit the act of cheating is absent from the very inception. It has also been submitted that the petitioner and the informant were on friendly terms and infact the intention of the petitioner would be evident from the fact that when the informant came to know that the land in question is disputed an amount of Rs. 12,00,000/- was immediately returned by the petitioner to the informant. It has been submitted by the learned senior counsel for the petitioner that a huge amount has already been deposited in the name of the informant on various dates for which receipts were also granted.

6. It has further been submitted that infact the informant had suppressed the actual fact which has been enumerated in Paragraph - 14 of this application and which has not been denied in the counter affidavit of the opposite party No. 2. The learned senior counsel for the petitioner has relied upon the judgment in the case of Bablu Mitra vs. State of Jharkhand and Anr. reported in [2009 (4) JCR 116 (Jhr)] and in the case of Chandran Ratnaswami Vs. K.C. Palanisamy and Others, .

7. The learned senior counsel for the opposite party No. 2, on the other hand, has submitted that the present application has been filed in haste without waiting for the result of the investigation inasmuch as on 27.06.2013 the First Information Report was instituted whereas the present application has been filed on 19.07.2013. It has also been submitted by the learned senior counsel for the opposite party No. 2 that inspite of knowing the fact that the land in question was disputed, the petitioner had convinced the informant for purchasing the said land and the said concealment of fact comes within the explanation of Section 415 of the Indian Penal Code and is a deception from the very inception and in such circumstances a case is made out against the petitioner. It has also been submitted by the learned senior counsel for the petitioner that the investigation is at the nascent stage and it would not be legally permissible to interfere in the

criminal proceedings at this stage.

8. After hearing the learned counsel for the parties and after going through the records, I find that initially a complaint case was instituted in which allegation was leveled against the petitioner for selling of the land for which Rs. 40,00,000/- was also taken from the informant. Subsequently, on account of the fact that the informant came to know that the land in question is a disputed land he demanded return of Rs. 40,00,000/- and although some amounts were returned back but the rest amount were withheld by the petitioner. The allegations made by the informant do point to the fact that the petitioner was aware of the disputed status of the land but inspite of the same he convinced the informant and accepted the monetary consideration. Therefore, in such circumstances, it cannot be said that the dishonest intention of the petitioner was not in existence at the initial stage but subsequently at the time of returning back the money his intention was not that of a prudent and honest man. Section 415 of the Indian Penal Code defines cheating and in the Explanation to Section 415 it has been envisaged the dishonest concealment of facts is a deception within the meaning of this Section. The allegations levelled in the F.I.R. seem to make out a case that there was indeed a dishonest concealment of facts and in such circumstances it is a deception and as such a criminal offence under Section 420 of the Indian Penal Code is attracted.

9. The learned senior counsel for the petitioner has placed reliance in the case of Chandran Ratnaswami Vs. K.C. Palanisamy and Others, wherein with respect to the doctrine of abuse of process of Court, it was held thus:-

"33. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court.

34. Lord Morris in Connelly v. Director of Public Prosecutions, observed: (AC pp. 1301-02)

"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction..... A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice."

In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

35. In *Hui chi-ming v. R.*, the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

36. In the leading case of *R. v. Horseferry Road Magistrates' Court, ex p Bennett*, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) Where it would be impossible to give the accused a fair trial; or

(ii) Where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

37. In *R. v. Derby Crown Court, ex p Brooks*, Lord Chief Justice Ormrod Stated:

"It may be an abuse of process if either (a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which unjustifiable." 38. Neill, L.J. In *R. v. Beckford (Anthony)*, observed that:

"The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried." What is unfair and wrong will be for the court to determine on the individual facts of each case."

10. The learned senior counsel for the petitioner has also referred to the case of *Bablu Mitra v. State of Jharkhand and Anr.* reported in [2009 (4) JCR 116 (Jhr.)] wherein it was held that the criminal proceedings is not meant for using the same as an alternative forum for enforcing a civil claim.

11. By putting reliance on the aforementioned judgments the learned senior counsel for the petitioner has, therefore, tried to focus on the fact that a civil liability has been given the colour of a criminal offence and, therefore, the same being an abuse of the process of the court is liable to be quashed.

12. It is trite law that an act may constitute both a civil wrong as also criminal liability. Merely because there is an existence of civil remedy that would not preclude the aggrieved party to institute a criminal case. The real test is to determine on the face of the record if there is an existence of a criminal offence. At the cost of repetition, it can be said that the allegations which have been levelled by the informant against the petitioner are clearly made out since on the assurance of the petitioner the informant had purchased the disputed plot of land

which points to the deception and breach of trust committed by the petitioner at the initial stage and subsequently fortified by the acts of the petitioner with respect to the dishonour of the cheques and in such circumstances, this Court would not be inclined to interfere in the criminal proceedings. Moreover, on the basis of the First Information Report the investigation which has been launched is still pending and in such circumstance also no interference is warranted in the criminal proceedings.

13. Accordingly, in view of what has been discussed above, I do not find any merit in this application and the same is, hereby, dismissed.