

(2018) 05 RAJ CK 0212

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 2666 of 2013, 1622, 1693 of 2009

Dharam Pal Singh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-05-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d), 13(1)(c)(d)(ii)
Indian Penal Code, 1860 — Section 120B, 420
Indian Stamp Act, 1899 — Section 22A
Code of Criminal Procedure, 1973 — Section 162

Citation : (2018) 05 RAJ CK 0212

Hon'ble Judges : G R MOOLCHANDANI, J

Bench : Single Bench

Advocate : Swadeep Singh Hora, B.N. Sandu, Meenakshi Pareek

Final Decision : Disposed Off

Judgement

These are three clubbed S.B. Criminal Misc. Petitions Â preferred respectively by petitioner/s Dharampal Singh, Brij Kishore Gupta and Manoj

Kumar Gupta with a prayer to quash FIR No.179/2009 dated 21.07.2009 registered for the offence punishable under Section 13(1)(c)(d)(ii) of the

Prevention of Corruption Act read with Sections 420 and 120B of IPC with Police Station Anti Corruption Department, Jaipur Rajasthan.

Petitioner/s have questioned and assailed validity of FIR No.179/2009 with contentions that property in question was a heritage/protected government

property notwithstanding accused Dharampal Singh acting contrary to law and to cause harm to the complainant State, being Sub-Registrar, Amer, in

collusion with vendors and vendees and others, registered a deed of conveyance on 14.02.2007 vide conveyance deed No.2007064000721. Bhikha

Lal, Director of archaeological Department under criminal league with Sub-Registrar Dharampal Singh helped alienate government heritage property

through Bhattacharya family favouring M/s Heritage City Construction Private Limited, Sanganeer through authorized signatory/vendee Brij Kishore

Gupta and Manoj Kumar Gupta.

It evinces from perusal of FIR impugned, 179/2009 dated 21.07.2009 that on the basis of News inserted in Jaipur's Newspaper of January 2008, a

primary enquiry No.30/2009 was registered in respect of News item, which was carried out by Shri Anil Sharma, Inspector of Police ACD,

Jaipur and the Enquiry Officer, after conducting preliminary enquiry, prima facie found commission of offence punishable under Section 13(1)

(c)(d) (ii) of the Prevention of Corruption Act read with Sections 420 and 120B of IPC and submitted for lodging of FIR to SHO Police Station ACD,

Jaipur, as such impugned FIR No.179/2009 came into being and it was entered in general diary vide report () No.587 at 10:00 AM.

Heard submissions of rival sides, learned counsel for the petitioners has argued that the allegations recited in the FIR are false since petitioner Dharam

Pal Singh, who registered document in the capacity of Sub-Registrar, Amer, did not violate law because Section 22A of Stamp Act having been

declared ultra vires, by Hon'ble Supreme Court by dint of Basant Nahata's case [State of Rajasthan v. Basant Nahata AIR 2005 SC 3401],

there was no occasion to enter into quest to ascertain the title of transferers and this being the position, Sub-Registrar was not required to go into the

issue of ascertaining actual title of transferer.

Learned counsel while inviting attention of the court towards a non-starred Vidhan Sabha Query No.6456 has contended that similar was the position,

which was replied by Government to the House that it was not required by SubRegistrar, it has further been contended that FIR impugned was hit by

Section 162 of CrPC since it has been lodged after an enquiry, which is disclosed by the FIR itself that application of mind was executed and made by

an authority to the rank of Superintendent of Police, Anti Corruption Bureau, hence is not sustainable under the eye of law and learned counsel has

placed reliance on following authorities :-

(i) P.S. Rajya v. State of Bihar (1996) 9 SCC 1

(ii) T.T. Antony v. State of Kerala And Ors (2001) 6 SCC 181

(iii) State of Rajasthan & Others v. Basant Nahata (supra)

- (iv) Suraj Bhan And Ors v. Financial Commissioner And Ors (2007) 6 SCC 186
- (v) A. Subair v. State of Kerala (2009) 6 SCC 587
- (vi) Mohammed Ibrahim And Ors v. State of Bihar And Anr. (2009) 8 SCC 751
- (vii) Lokesh Kumar Jain v. State of Raj. (2013) 11 SCC 130
- (viii) Lalita Kumari v. Government of Uttar Pradesh And Ors (2014) 2 SCC 1
- (ix) P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh And Anr. (2015) 10 SCC 152
- (x) Pashupati Das v. Block Land and Land Reforms Officer [W.P.L.R.T. No.130/2010 decided on 9.12.2010 by Division Bench of Calcutta High Court]
- (xi) Veer Singh Yadav v. State of Rajasthan [S.B. Cr.MP 2429/2015, decided on 6.1.2016 by Rajasthan High Court]
- (xii) Damodar Sharma v. State of Rajasthan & Others [S.B. CWP 7356/2006 decided on 4.1.2018 by Rajasthan High Court]

Besides it, main thrust of the argument is that a Departmental Enquiry was also conducted against accusedpetitioner Sub-Registrar Dharampal Singh,

and he has already been exonerated by the Enquiry Officer since has not been found guilty of alleged misdeed and on the same set of evidence,

criminal proceedings cannot be initiated against the petitioner/s, since it is nothing less than to abuse of process.

It has further been contended that nothing is there to establish that misuse of Office was ever endeavoured or deception was played, no iota of

evidence is available on record to show that any alleged demand for gratification was made, so offence under the Prevention of Corruption act and

cheating, does not constitute. furthermore, recording of name of State in the revenue record does not confer any right to the State, provisions of the

Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 does not postulate that property under prescribed zone to remain unalienated

but it intends that property is to be kept in protected shape and there being no clog on conveyance.Â Drawing attention of the court towards several

conveyance deeds, copies of which are available on the record, it has been contended that several transfers have already taken place regularly in the

said heritage and protected property zone but no FIR or any criminal action has ever been launched against those conveyance deeds, even second part

of questioned property, which has been conveyed by a separate document on 20.04.2007 by Vikas Bhattacharya to the same vendee M/s Heritage

City Construction Private Limited, Sanganer through its another authorized vendee Manoj Kumar Gupta has been left scot-free and no FIR has been

lodged even against transfer of subsequent and second part of the similar property, suggesting that petitioner/s have falsely been implicated out of

vendetta in exclusion to other similar documents of alienation.Â Once Government has found no guilt of accused person, while conducting

Departmental Enquiry, then how same employee could be held liable for alleged commission or omission of crime, had there been any substance in the

allegations, then Sub-Registrar Dharampal Singh would have certainly been held guilty by Departmental Enquiry Officer, in these circumstances, filing

of alleged FIR is nothing less than to abuse of process of law and if further proceeded with, shall invariably collapse, hence the FIR impugned

deserves to be quashed after allowing the petition/s.

Per contra, learned Additional Advocate General has contended and argued that sufficient material is available on the record against the petitioners

and FIR contains serious allegations, so there is no reason to quash the same but learned Public Prosecutor has not controverted and has rather

yielded with the factum of exoneration of the petitioner Sub-Registrar Dharam Pal Singh by Enquiry Officer and when queried as to how a negative

Enquiry Report was there in exonerating the petitioner, learned Additional Advocate General has not been able to satisfy the court with the conclusion

thereto and has conceded that Sub-Registrar Dharam Pal Singh has been exonerated by the Enquiry Officer.

Heard submissions of both the sides and gave a considered look to the material available on the record.

It emanates from the contents of FIR that a News item had appeared in Dainik Bhaskar daily in the month of January 2008 in respect of alienation of

haveli-property, so to ascertain truth a preliminary quest was made as Preliminary Enquiry No.30/2009, in furtherance, Enquiry Officer made a

Preliminary Enquiry after going through the deed of conveyance and after verifying alleged misdeed and fact scenario and prima facie having been

satisfied, lodged FIR with Anti Corruption Bureau, Jaipur being FIR No.179/2009.

Supreme Court in Lalita Kumari v. Government of Uttar Pradesh (supra) has held

that:-

However, where information received does not disclose a cognizable offence a preliminary inquiry may be conducted to ascertain whether

cognizable offence is disclosed or not - Also, matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases,

or cases where there is abnormal delay/laches in initiating criminal prosecution are illustrations and not exhaustive of all cases which may warrant

preliminary inquiry

obviously, the Preliminary Enquiry was to be held against deed of conveyance relating to bygone period of more than two years, wherein allegations of

malpractices and corruptions were suspected and apprehension thereof appeared in the News item, which is evident from the text of the FIR so, a

Preliminary Enquiry was conducted for verification of prima facie case, cognizable in nature and same was the intent of said Preliminary Enquiry,

thus, contention of learned counsel that investigation was a replica of enquiry and was hit by the provisions of Section 162 of CrPC, bears no force.

It is indisputable that a Departmental Enquiry was conducted against Sub-Registrar Dharampal Singh in respect of alleged illegality, so a Committee

was constituted by Divisional Commissioner, Jaipur, and after obtaining explanation of delinquent employee, proceedings were dropped and were later

approved vide Noting Nos.222/N, 223/N and 224/N, this aspect has also been reiterated by Inspector, Anti Corruption Bureau, Jaipur Rural, Jaipur,

vide its communication/factual report No.457 dated 09.04.2018 that Sub-Registrar Shri Dharampal Singh has been exonerated by Departmental

enquiry pertaining to FIR No.179/2009.

Section 22A of Stamp Act has already been declared ultra vires by Apex Court in Basant Nahata's Case (supra) resulting Notification/s relating

thereto rescinded, this aspect is also not in dispute, so there was no reason to enter into the quest to ascertain title of vendor and such was the

situation, which was reiterated by State while dealing with the Assembly query No.6456.

In State of Rajasthan & Others v. Basant Nahata (supra), Supreme Court has held that Section 22-A of the Registration Act 1908 being subordinate

legislation cannot control the transactions which fall out of the scope thereof and has held Section 22-A unconstitutional and consequently the

notifications issued thereunder also liable to be quashed.

Admittedly no action has been taken or was proposed against Sub-Registrar, who registered second part of conveyance of the same property to the

same vendee through Attorney Manoj Kumar Gupta, which was registered on 20.04.2007, whereas FIR impugned has been lodged in respect of first

part of conveyance of same property dated 14.02.2007 belatedly with a gross delay of more than two years on 21.07.2009 without any satisfactory

explanation.

It also emerges from the record that several conveyance deeds have been made prior and after impugned conveyance, copies of which are available

on the record, but no FIR has been lodged against the vendor and vendees of the said sale deeds of same locality having same nature of the properties

situated in proximity since no such material is available on the record.

Tax Demand notices have also been issued to various property holders under the provisions of Section 149 Nagar Palika Act 1959 by Executive

Officer, Notified Area Committee, Amer and same are issued also in the name of Vikas Bhattyacharya, substantiating factum of property being held

in the name of transferer/s.Â Annexure-G description of buildings situated in buffer zone of Amer Kasba, does also reveal that according to City

Survey of 1946-47, private buildings were existing in buffer zone apart from government buildings, temples, mosques and open land and individuals

holding possession thereon.

Communications prior to registration of the conveyance deed between Sub-Registrar and Archaeological Department, are also vital since Annexure-C

sent by Director, Archaeological Department is a letter sent to Sub-Registrar, Amer vide letter No.1285 dated 13.02.2007 informing that questioned

haveli was situated within the Controlled Area and the Controlled Area was having government as well as private owned properties and it was opined

that on the basis of City Survey of 1946 said property probably was not a government property and further suggested to proceed for the registration

accordingly.

Doctrine of law postulates that nobody can transfer a better title and whatever inherent deficiencies or defects are there with the vendor, would

invariably pass to vendee, apart from it, recourse to sue for cancellation of unacceptable sale-deed always exists inherently with an aggrieved party.

Lodging of FIR after a lapse of more than two years from the date of registration of the impugned conveyance deed, more so against Sub-Registrar

and vendees of first part of the property registered on 14.02.2007 and extending immunity to second part of its transfer to the same vendee and

another SubRegistrar, who verified the deed dated 20.04.2007 and nonregistration of any FIR pertaining to the same vicinity properties and

conveyance document verifying Sub-Registrar, vendor and vendees, are suggestive that discriminatory modus tantamounting abuse of process has

been mooted by the prosecution.Â Moreso, when accused petitioner Dharampal Singh was exonerated by Departmental enquiry officer, so its nothing

less than to gross abuse of process.Â Vital ingredients of "Deception", "Demand of bribe" or conveyancing property "without

consideration", also lacks.Â It is also an admitted position that the impugned property/ies have also not been acquired by the Government.

In A. Subair v. State of Kerala (supra), Apex Court has held that there being no substantive evidence to prove factum of demand, which being

essential ingredient for offence under Section 13(1)(d) read with Section 13(2) and Section 7 of the Prevention of Corruption Act "accused liable to

be acquitted.

This view has further been reiterated by Apex Court in P. Satyanarayana Murthy's case (supra), Â This court through a co-ordinate Bench had

earlier stayed further investigation in FIR No.179/2009 on 21.08.2009, while hearing S.B. Criminal Misc. Petition No.1622/2009.

The Supreme Court in P.S. Rajya v. State of Bihar (supra) has held that exoneration in departmental proceedings shatters the criminal prosecution and

it has been observed:-

"At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to

establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also

accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute

the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty

in accepting the case of the appellant.Â For if the charge which is identical could

not be established in a departmental proceedings.â??

Likewise in Lokesh Kumar Jain v. State of Rajasthan (supra), in a case pertaining to exoneration in departmental proceedings, the Supreme Court has

quashed the FIR.Â A co-ordinate Bench of this court in Damodar Sharma v. State of Rajasthan & Others (supra) has quashed FIR taking view of

the exoneration of accused in departmental enquiry.

Upon, evaluating and considering entire material available on the record and to deter continuity of abuse of process, it appears just and reasonable to

quash FIR No.179/2009 in aforesaid fact scenario.

In the result, FIR No.179/2009 registered with Police Station Anti Corruption Bureau, Jaipur, District Jaipur, for the offences, punishable under Section

13(1)(c)(d)(ii) of the Prevention of Corruption Act read with Sections 420 and 120B of IPC and proceedings in furtherance thereto, are quashed and

set aside.

All the three clubbed S.B. Criminal Misc. Petitions are disposed of in aforesaid terms.