(2015) 03 JH CK 0111

In the Jharkhand High Court

Case No : Criminal M.P. No. 1636 of 2012

Dinesh Chandra Gupta and Others	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 415, 417, 418, 419

Citation : (2015) 3 JLJR 1

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Sanjay Kumar Tiwari, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J—Heard learned counsel for the parties. In this application the petitioners has prayed for quashing the entire criminal proceeding in connection with Manjhiaon P.S. Case No. 133 of 2011 corresponding to G.R. No. 1821 of 2011 including the order dated 7.7.2012 passed by the learned Civil Judge (Jr. Division)-VII, Garhwa, whereby and whereunder cognizance has been taken for the offence punishable under Sections 406 & 420 of the Indian Penal Code.

2. The prosecution story as would arise from the written report on behalf of informant is that the informant and other co-sharers owned and possessed the ancestral property in Village-Bidanda, which was managed and controlled by his elder brother i.e. the petitioner No. 1. It has also been alleged that the petitioner No. 1 transferred 40-50 acres land of Village Bedanda being the joint family property to several villagers on consideration of Rs. 60-70 lacs claiming the same to be his own, and thereby causing loss to the other co-sharers. It has further been alleged that through one of the Sale Deed No. 5143 of 2006, the petitioner No. 1 transferred the joint property to the purchaser and on being queried upon, the petitioner No. 1 became infuriated.

3. After investigation, police has submitted charge-sheet against the petitioners on 30th June, 2012 and thereafter learned Civil Judge (Jr. Division)-VII, Garhwa, by order dated 7th July, 2012 was pleased to take cognizance for the offence punishable under Sections 406 & 420 of the Indian Penal Code.

4. Learned counsel for the petitioners has submitted that the allegations made in the First Information Report does not constitute any offence punishable under Sections 406 & 420 of the Indian Penal Code as ingredients necessary for constituting such offence is deception from the very inception. It has also been submitted that even assuming the allegations made in the F.I.R. to be true even then no case under Sections 406 and 420 of the Indian Penal Code is made out as there is no allegations of deception, or dishonest inducement to the informant.

5. Learned counsel for the petitioners has also relied upon judgments in the case of Devendra and Others Vs. State of U.P. and Another, (2009) CLT 1207 : (2009) 8 JT 120 : (2009) 7 SCALE 613 : (2009) 7 SCC 495 : (2009) 7 SCR 872 and Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 .

6. Learned counsel for the State while relying on the counter affidavit filed by the State has submitted that from para-110 of the case diary it revealed that the petitioners had prepared fake documents and on the basis of forged power of attorney, they used to sell the landed property.

7. It has further been submitted by the learned counsel for the State that since the allegations made in the first information report has been found to be true, charge-sheet was submitted against the petitioners pursuant to which cognizance was taken and in absence of any illegality, in the order taking cognizance, no interference is warranted by this Court in the criminal proceeding instituted against the petitioners.

8. Learned counsel for the informant has submitted that the property in question was the joint family property belonging to joint family and the petitioners being co-sharers were precluded from selling off part of the property without informing the other co-sharers and the entire case on the part of petitioners revealed a criminal conspiracy in order to cheat the other co-sharers. It has also been submitted that the investigation has revealed about the forged and fake documents used by the petitioners while entering into the realm of selling of the property and in such circumstances also a criminal offence is clearly made out against the petitioners.

9. After hearing the learned counsel for the parties and after going through the entire records I find that in the written report the allegations against the petitioners who happens to be elder brother of the informant is that by keeping the other co-sharers in dark a part of the joint family property has been sold to other persons and only on coming to know of the aforesaid fact the first information report was instituted.

10. The grievance of the petitioners seem to be that the property was the joint family property and there was no partition effected and therefore the petitioner No. 1 does not have any legal right to sell the said property to the purchasers.

11. In the case of Mohammed Ibrahim and Others (supra) it has been held as follows--

"20. When a sale is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do not omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

12. In the case of Devendra & Another (supra), in similar circumstances where the co-sharers in the joint family property had lodged first information report against the other co-sharers by making allegations of execution of deed of sale in favour of third party it was held as follows--

"20. The appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, it would be the vendees and not the co-sharers. The appellants have not been alleged to be guilty of creating any false documents."

13. In the present case admittedly there is nothing on record to show that the alleged purchaser of part of the joint family property has initiated any criminal proceeding against the petitioners. It is admittedly the informant in his capacity as co-sharer has lodged a criminal prosecution against the petitioners of having sold a part of joint family property. The decision rendered by the Hon''ble Supreme Court in the judgments referred to above clearly held that it is the person defrauded i.e. the purchaser who can claim that the seller has defrauded him and thereby committed an act of cheating. The initiation of the criminal case on such facts is not within the domain of the co-sharers. Even otherwise the allegations made in the written report do not reveal that there was an act of deception and cheating on the part of the petitioners from their very inception.

14. So far as exercise of inherent powers under Section 482 of the Code of Criminal Procedure is concerned, if in the course of investigation the ingredients of the offences are satisfied, in such circumstances it would not be in the interest of justice to quash the criminal proceedings. The dispute entirely revolves around the sale of joint family property for which the co-sharers are at loggerheads and since no criminal offence is made out against the petitioners the same would necessitate interference in the criminal proceeding by this Court. Accordingly there being merit in this application the same is allowed and the entire criminal proceeding in connection with Manjhiaon P.S. Case No. 133 of 2011 corresponding to G.R. No. 1821 of 2011 including the order dated 7.7.2012 passed by the learned Civil Judge (Jr. Division)-VII, Garhwa, is hereby quashed.