

(2019) 09 PAT CK 0140

In the Patna High Court

Case No : Criminal Miscellaneous No. 20995 Of 2015

Dr. Purnendu Ojha

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 385

Code Of Criminal Procedure, 1973 — Section 313, 482

Citation : (2019) 09 PAT CK 0140

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Vikash Kumar Sharma, Jitendra Kumar, Harshvardhan, Shyam Kumar Singh

Final Decision : Disposed Of/Allowed

Judgement

1. Heard learned counsel for the parties.
2. The petitioner has sought for quashment of order of cognizance dated 19.11.2014 passed in Complaint Case No.2761(C) of 2013, whereby the learned Judicial Magistrate-1st Class, Chapra has asked the petitioner to appear to face trial for the offences under Sections 323 and 385 of the Indian Penal Code.
3. The challenge is on the ground that criminal prosecution has been launched with mala fide motive to settle a civil dispute. In fact, the case is of a civil dispute only.
4. Before considering the allegation disclosed in the complaint petition, it would be apt to mention that one Rambilash Ojha had three sons, namely, Kanhaiya Prasad Ojha, Dhruv Nath Ojha and petitioner, Dr. Purnendu Ojha. In the year, 1974, the joint family property was partitioned, wherein 1/5th share was given to each of the sons and 1/5th to Rambilash Ojha and his wife Rupvanti Devi. The self-acquired house at Kolkata in the name of Rambilash Ojha was not the subject-matter of partition and likewise, self-acquired house at Chapra of

Rupvanti Devi (the mother) was also not the subject-matter of partition. The aforesaid partition took place on 11.09.1974. Thereafter, Rambilash Ojha executed a registered deed of gift in favour of the petitioner, who was a minor that time in respect of his house at Kolkata in the year 1977. Likewise, mother Rupvanti Devi executed a registered deed of gift in the year 1986 in respect of the house at Chapra in favour of the petitioner and she further executed a deed of Will in respect of her other landed property in favour of the petitioner. Probate Case No.112 of 2012 for grant of probate in respect of aforesaid Will is pending in the court of learned Additional District Judge, Patna.

5. According to petitioner, Ajay Ojha son of Kanhaiya Prasad Ojha executed two registered sale deeds on 16.08.2013; one was in favour of the complainant, Baliram Ojha in respect of the property received by the petitioner through the Will aforesaid from the mother and another sale deed was in favour of Awadh Bihari Ojha in respect of the purchased plot of the petitioner through registered sale deed after partition of the family.

6. In the aforesaid background, allegation in the complaint petition is that on 03.09.2013 at about 8.00 AM, when the complainant was sitting at his gate, all the accused persons, including the petitioner, came there on a vehicle and started hurling abuses against the complainant saying that why the complainant had got a sale deed from Ajay Ojha and threatened not to come to take possession on the said land. The complainant asserted that since the land was in peaceful possession of Ajay Ojha, he has purchased and thereafter co-accused, Banty Kumar at the instigation of this petitioner took out a pistol and put it at the complainant and the petitioner got signature of the complainant forcefully on two blank stamp papers and they committed assault, which was witnessed by other witnesses.

7. Learned counsel for the petitioner submits that the petitioner is a respectable man and is a Doctor by profession and due to civil dispute in the family, several civil and criminal litigations are going on, just to harass the petitioner vexatiously. The law is well settled that civil dispute cannot be allowed to be resolved by adopting the way of criminal proceedings. Learned counsel has placed reliance on the judgment of this Court in Yogendra Prasad and Another versus State of Bihar and Another, reported in 2019 (3) PLJR 890, for his submission that when criminal prosecution has been instituted for oblique reasons for settling a civil dispute, this Court in exercise of power under Section 482 of the Code of Criminal Procedure can quash the proceeding.

8. Learned counsel for the complainant submits that the complainant has no concern with the family of the petitioner. The complainant purchased the property from Ajay Ojha after payment of consideration money and after verifying the prima facie title and possession of Ajay Ojha. Moreover, the offences allegedly committed by the petitioner and others have been supported by other witnesses also. Hence, once the learned Judicial Magistrate-1st Class came to the conclusion that prima facie offence is made out, this Court should

not interfere with the cognizance order in a casual manner. Moreover, the trial is at the verge of conclusion, as statement of the accused persons is to be recorded under Section 313 of the Code of Criminal Procedure and after defence evidence, if any, trial would be concluded. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in *Sau. Kamal Shivaji Pokarnekar versus The State of Maharashtra and Others* in Criminal Appeal No.255 of 2019, for his submission that defence of the accused can be looked into only at the appropriate stage of the trial and cannot be looked into for quashing the complaint at the threshold.

9. In *Anand Kumar Mohatta and Another versus State (Govt. of NCT of Delhi) Department of Home and Another*, reported in AIR 2019 SC 210, the Hon'ble Supreme Court considered the power of this Court under Section 482 of the Code of Criminal Procedure and held in para 17 of the judgment, as follows :-

"There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the F.I.R. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of the Code of Criminal Procedure even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of F.I.R. but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by F.I.R. stands aggravated if the F.I.R. has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court".

10. Thus, the only requirement of law is that there must be a case of abuse of process of the court and if a case of abuse of process of the court is made out, the criminal proceeding can be quashed and the stage of the proceeding would be immaterial.

11. In *Yogendra Prasad's case* (supra) a Bench of this Court considered the observation of the Hon'ble Supreme Court in the case of *Indian Oil Corporation versus NEPC India Limited*, reported in 2006 (6) SCC 736, wherein the Supreme Court observed as under:-

"Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged".

12. In *the State of Haryana versus Bhajan Lal*, reported in 1992 Supplementary (1) SCC 335, the Hon'ble Supreme Court laid down certain guidelines for consideration of quashment of criminal proceeding and one of the guidelines is where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

13. In the case of *Sau. Kamal Shivaji Pokarnekar versus The State of Maharashtra and Others* (supra), relied by learned counsel for the opposite party No.2, the Hon'ble Supreme Court said that the defence of accused cannot be considered at the stage of quashment of complaint at the threshold. However, the court is not denuded of the power of quashing the criminal proceeding where the complainant does not disclose any offence, or is frivolous, vexatious, or oppressive.

14. Thus, the issue to be decided is whether the civil dispute is there behind lodging of the present criminal prosecution, just to oppress and harass the petitioner.

15. The factual position disclosed above has not been controverted seriously. Whether the vendor of the complainant had title to transfer the property would be the subject-matter of a civil suit, especially in view of the assertion of the petitioner that even the purchased property of the petitioner has been transferred by Ajay Ojha to Awadh Bihari Ojha and the property bequeathed by the mother through Will has been transferred in favour of the complainant and as soon as the petitioner came to know about the aforesaid plot, the petitioner filed Complaint Case No.2753 of 2013 against Ajay Ojha and the purchasers, including the complainant of this case. However, cognizance has not been taken against the complainant of this case in the aforesaid complaint case.

16. The present case is absolutely vexatious just to wreak vengeance. The complaint case filed by the petitioner is the background of this case. The complainant has admitted in the complaint petition that complainant had purchased the referred property on 16.08.2013 and the alleged occurrence was committed on 03.09.2013, few days after the knowledge of the execution of the sale deed by Ajay Ojha in respect of the property of the petitioner sold in favour of the complainant.

17. In the background of the allegation, which is absolutely of a civil dispute, the criminal prosecution is nothing but abuse of process of the court because civil dispute cannot be allowed to be settled by a criminal proceeding. Hence, the impugned order and entire subsequent criminal proceeding stand, hereby, quashed and this application is allowed.