
(1998) 12 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 14329 of 1993

Gafur Mian and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Consolidation Act, 1948 — Section 10(2)
Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1)
Penal Code, 1860 (IPC) — Section 120B, 143, 193, 201, 419

Citation : (1999) 1 PLJR 603

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : Vindhya Keshri Kumar, Vijay Anand Singh and Rajesh Kumar Singh,
for the Appellant; S.N. Jha Rani, for State, for the Respondent

Final Decision : Allowed

Judgement

P.K. Sarkar, J.—This application has been filed for quashing the prosecution case against the Petitioner and the impugned order of cognizance dated the 6th/8th March, 1988 passed by the Sub divisional Judicial Magistrate, Muzaffarpur in G.R. No. 754/86 (T.R. No. 109/93).

2. The brief facts leading to this application are that a complaint was filed by Ishwar Chandra Mishra (opposite party No. 2) before the Sub divisional Judicial Magistrate, Muzaffarpur alleging inter alia that the Petitioner-accused persons produced three registered sale deed No. 7206 dated 30.12.1983 and sale deed Nos. 14 and 15 dated 2.1.1984 executed by Most. Bateshwar Kuar in favour of accused-Petitioner Nos. 2 to 8 on 30.12.1983 and 2.1.1984 before the Consolidation Officer in a case filed by the complainant-informant bearing Case No. 553/85 u/s 10(2) of the Consolidation Act. They also produced the death certificate dated 5.8.1984 of Most. Bateshwar Kuar. The complaint alleged that the aforesaid sale-deeds were forged and fabricated registered sale deeds and the accused-Petitioners want to grab the property of the complainant-informant

through the aforesaid sale deeds. The complainant therefore filed this complaint petition for prosecution of the accused-Petitioners under Sections 193, 419, 420, 423, 465, 466, 467, 468, 471, 201 and 120-B of the Indian Penal Code. The said complaint petition was sent to the police of Paru Police Station by the Sub divisional Judicial Magistrate, Muzaffarpur for registering a case and Paroo P.S. Case No. 94/86 was accordingly registered.

3. The police took up investigation of the case and submitted charge-sheet under Sections 143, 419, 420, 467, 468, 423, 471 and 120-B of the Indian Penal Code. The learned S.D.J.M. Muzaffarpur took cognizance accordingly and transferred the case to the court of Shri B.K. Srivastava, Judicial Magistrate for disposal. Being aggrieved and dissatisfied with the said impugned order dated 8.3.1988 the present application has been filed for quashing the same.

4. The learned Counsel for the Petitioner has submitted that the allegations of the complainant against the Petitioners are false and not correct. It is further submitted that the Consolidation officer has found all the three sale deed, as genuine which will be apparent from the order of the Director of Consolidation (Annexure-3). It is further submitted that once the documents are found to be genuine by the Court there cannot be any prosecution against the Petitioners. The learned Counsel for the Petitioners has further submitted that opposite party No. 2 has also filed an affidavit before the Investigating officer stating that the criminal case in question which was pending for investigation has been compromised. The complainant has already registered a deed of Ladabi (relinquishment) dated 29.12.1986 and also accepted that Most Bateshar Kuar died on 29.12.1983 as per the death certificate dated 5.1.1984 and said that the case was filed in confusion by some enemy.

5. The learned Counsel for the Petitioners also placed reliance on the decision of this Court in the case of Mahendra Rai and Ors. v. State of Bihar and Ors. reported in 1998 BBCJ 474, where in a similar case also the Petitioners had obtained favorable order from the Assistant Consolidation Officer by producing some documents alleged to be forged and fabricated. In that case also the order of cognizance under Sections 120-B, 420, 421, 465 and 468 I.P.C. was quashed. The Court was of the opinion that since the Consolidation Officer while acting under the Act, acts as a Court, as contemplated u/s 195(1)(b) Code of Criminal Procedure the documents found valid can be considered only by the said court before whom the documents have been produced and a private party cannot make complaint. Thus Section 195 Code of Criminal Procedure creates a bar and so the cognizance was not found legal. In the aforesaid decision a case reported in 1986 PLJR 442 (Md. Illias v. Md. Zulfakar) was also relied.

6. The learned Counsel for opposite Party No. 2 did not appear to contest this case nor submitted any thing before this Court. The learned A.P.P. is however present on behalf of the State. In the instant case, therefore, it appears that opposite party No. 2 could not have filed the complaint and the learned Magistrate could not have taken cognizance in respect of the forged documents

produced before the consolidation authority in view of the bar created by Section 195(1)(b) of the Code of Criminal Procedure Moreover it also appears that the complainant filed an affidavit before the Investigating officer and does not want to press this case which also supports the submissions made on behalf of the Petitioners.

7. In the fact and circumstances of the case, the impugned order passed for issuance of process against the Petitioners cannot be sustained and is liable to be quashed. Accordingly, this application is allowed and the impugned order dated the 6th/8th March, 1988 passed in G.R. No. 754/86 (T.R. No. 109/93) is hereby quashed.