
(2016) 01 JH CK 0101

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1413 of 2009

Gautam Kumar Gupta and others

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 160 AIC 360 : (2016) 2 ECrC 110 : (2016) 4 JLJR 343

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Rajesh Kumar, Advocate, for the Appellant; A.P.P. and Mohit Prakash Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J. - In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Sadar P.S. Case No. 1017 of 2008 which has been instituted for the offences punishable under Sections 420, 467, 468, 471, 474 and 120B of the I.P.C.

2. The prosecution story as would appear from the FIR is to the effect that the petitioners had shown their willingness to sell the land situated at Khata No. 79, Plot No. 1030, Mauza Korra to the opposite party no. 2 showing themselves as the owner of the land pursuant to Partition Suit no. 107 of 1987. Allegations have been levelled that on the basis of documents shown by the petitioners, the opposite party no. 2 has purchased 0.07 decimals of land out of 0.71 decimals for a consideration amount of Rs. 26,250/- in the name of his wife through registered deed of sale. It has further been alleged that on 25.08.2008 when the opposite party no. 2 had went to see his land, he found the pillars which had been constructed were demolished and on inquiry it came to his knowledge that the land situated at Khata No. 79, Plot No. 1030, Mauza Korra have been claimed by the son of Late Shyam Narayan Prasad Yadav. On asking the petitioner no. 1, it was informed that the partition suit and the decree are genuine and the

petitioners are the lawful owners of the land. It has also been alleged that when the opposite party no. 2 met with one Vijay Yadav, he was told that the land in question was purchased by the father of Vijay Yadav and the Title Suits being T.S. Nos. 362/21 and 363/21 have been instituted and the claim was decided against the petitioners. Further allegation has been made in the written report is that the accused persons had concealed the actual fact and had played fraud upon the Court and based on a fraudulent partition deed and decree had sold the land to the wife of the opposite party no. 2.

3. Heard Mr. Rajesh Kumar, learned counsel for the petitioners, learned A.P.P. for the State and Mr. Mohit Prakash, learned counsel for the opposite party no. 2.

4. Mr. Rajesh Kumar, learned counsel for the petitioners has submitted that a suit being Partition Suit No. 107 of 1987 was instituted by the father of the petitioners and the said suit was decreed on 09.08.1989 in favour of the plaintiff. It has also been submitted that pursuant to the decree in favour of the father of the petitioners, the land in question was mutated on 14.01.1990. Learned counsel further adds that the father of the petitioners was put in possession and the rent is being regularly paid. Even in Register II, the name of the Raiyat has been mentioned as Kishori Lal Gupta who happens to be father of the petitioners and therefore, the allegation that the land belongs to Shyam Narayan Yadav is apparently false on the face of it. Learned counsel also submits that the opposite party no. 2 has himself admitted in the written report that 0.07 decimals of land was sold by the petitioner no. 1 in favour of the wife of the opposite party no. 2 and the name of the mother of the opposite party no. 2 was entered in the Register II, Tenant's ledger pursuant to mutation case no. 527/94-95. Learned counsel thus submits that the entire dispute which appears from the recital of the written report is that the same is civil in nature and institution of a criminal case against the petitioners shows the malicious prosecution of the petitioners at the behest of the opposite party no. 2. Learned counsel for the petitioners also submits that there has been a considerable delay in instituting the FIR.

5. Mr. Mohit Prakash, learned counsel for the opposite party no. 2, on the other hand, has submitted that the petitioners had committed a fraud by inducing the opposite party no. 2 to purchase the land in question, although the said land did not belong to the petitioners. It has also been submitted that the complainant could come to know in the year 2008 with respect to the fraudulent transfer of land and immediately thereupon, the FIR was instituted. Learned counsel further submits that since in the CS records, the name of the grand father of the accused was wrongly mentioned, a Title Suit being T.S. No. 363/21 was preferred which was decided in favour of the grand father of the accused. On the basis of the judgment and decree in favour of one Ram Chandra Ram, correction in Khatiyani was applied for and accordingly, the Khatiyani was prepared in the year 1925 on the basis of the said decree. It has also been submitted that pursuant to a family arrangement, one Lochan Ram because the owner of the land which has subsequently sold out to Shyam Sundar Yadav. Learned counsel for the opposite

party no. 2 further submits that the accused persons did not have any right, title and interest over the land and knowing fully well this fact lands were sold to the opposite party no 2 and since the deception on the part of the petitioners was at the time of inception of the act itself, a case of cheating is also made out against the petitioners. It has also been submitted that after institution of the FIR, investigation is going on and it would be premature to interfere in the criminal proceeding under Section 482 of the Cr.P.C.

6. It appears that initially a complaint case was instituted against the opposite party no. 2 which was referred to the police under the provisions of Section 156(3) of Cr.P.C., pursuant to which Sadar P.S. Case No. 1017 of 2008 was instituted. The complaint petition does reveal that the petitioners had not disclosed the actual facts before selling approximately 0.07 decimals of land. The learned counsel for the petitioners has tried to raise the issue with respect to the title of the land only in order to make the case come within the ambit of a civil dispute. The counter affidavit which has been filed by the opposite party no. 2 also suggests that the father of the petitioners had obtained a collusive decree in connivance with one Bindeshwar Prasad and based on the same, the land was sold by the petitioners. Learned counsel for the petitioners has relied upon the judgment in the case of "Mohammed Ibrahim and Ors. v. State of Bihar and Anr." reported in 2009 East Cr (C) 6 (SC) : (2009) 8 SCC 751, and the relevant paragraphs which have been relied upon by the learned counsel for the petitioners is reproduced herein under:

"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 other 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 or 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."

7. Mr. Mohit Prakash, learned counsel for the opposite party no. 2 has placed his reliance in the case of "Bhaskar Lal Sharma and Anr. v. Monica and Others" reported in 2014 (2) East Cr (C) 415 (SC) : (2014) 2 SCC (Cri.) 185, as well as in the case of "Vijayander Kumar and Others v. State of Rajasthan and Another" reported in 2014 (2) East Cr (C) 334 (SC) : (2014) 2 SCC (Cri.) 190. In the case of "Bhaskar Lal Sharma" (supra) while considering the powers of this Court in a proceeding under Section 482 of Cr.P.C., it was held as follows:

"11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark

upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

8. In the case of "Vijayander Kumar and others" (supra), it was held that in a given set of fact may make out a civil wrong as also a criminal offence and only because a civil remedy is also available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegation in the complaint discloses a criminal offence or not.

9. Although the learned counsel for the petitioners has contended to veer his argument towards the factum of civil dispute, but a perusal of the written report would go to show that the petitioners were aware of the fact that they were not the owners of the land, but in spite of the same have sold it to the opposite party no. 2. As regards the delay in instituting the written report is concerned, it has been sufficiently explained and in 2008, when the complainant/informant could come to know about the dispute with respect to the title of the property, he had immediately instituted a criminal case.

10. This Court in a proceeding under Section 482 of Cr.P.C. is not empowered to conduct a roving inquiry or sift through the evidence to come to a conclusion. If a prima-facie case is made out from the perusal of the complaint petition/written report, the same would be sufficient in continuation of the criminal proceeding. Moreover, the investigation into the alleged offence is still continuing and in such circumstances, it would be premature for this Court to enter into the core of the disputes between the parties as the same is best left to the investigating agency to inquire and submit report.

11. The judgment in the case of "Md. Ibrahim" (supra) which has been cited by the learned counsel for the petitioners in the facts and circumstances of the present case is thus not applicable.

12. Considering the totality of the circumstances enumerated above, I am not inclined to entertain this application and the same is accordingly dismissed.