

(2006) 04 JH CK 0025
In the Jharkhand High Court
Case No : Cr.M.P. No. 625 of 2004

Gouri Shankar Sahu

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(IV), 3(V), 3(VIII)

Citation : (2006) 04 JH CK 0025

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Nilesch Kumar Agrawal, for the Appellant; Assistant Public Prosecutor,
for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner has preferred this petition u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding pending in the court of Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), Ranchi arising out of Ranchi Sadar Kotwali P.S. Case No. 266 of 2004, corresponding to G.R. No. 1455 of 2004.

2. The brief fact of the case is that opposite party No. 2 Sibu Kachhap presented a written statement before the Senior Superintendent of Police, Ranchi that his ancestral raiyati land situated at Mouza Chadari, Khata No. 3, Plot Nos. 8, 9 and 10, area .75 decimal was illegally dispossessed by five accused persons including the petitioner by making forged documents. It was further alleged that though there was an order in favour of opposite party No. 2 but with the power of money and muscle men they used to restrain him from going upon his land. He had sent several petitions to the concerned officers of the different departments but the accused persons has obtained their favour against the extraneous consideration. On the basis of such written statements, a case as aforesaid was instituted for

the offence u/s 3(IV), (V) and (VIII) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 and investigation of the case was entrusted to the Deputy Superintendent of Police, City.

3. It has been submitted on behalf of the petitioner that the instant case was presented by suppressing the material facts. As a matter of fact, petitioner was in possession of the land in question since 1962 by virtue of a valid registered sale deed from one Akshay Kumar executed on 12.6.1962, whereas the vendor was in possession of the land since 1942 in accordance with the law. After purchase of the land and by approval of the map by the competent authority, a building was constructed in the year 1966 over the said land. Shops were also constructed thereon and there was no litigation till 1974. The petitioner admitted that opposite party No. 2 filed SAR case in the year 1975 which was decided in his favour and similarly the appeal and revision preferred by the petitioner and others were also decided against them in the year 1984, 1986 and 1987, vide orders dated 29.3.1984, 22.2.1986 and 24.3.1987 respectively which were challenged before the Ranchi Bench of Patna High Court in Civil Writ Jurisdiction Case No. 714 of 1987. After hearing the parties including the State, the Hon'ble Court quashed all the above impugned orders, vide order dated 24.4.1991 and remitted the matter back to decide the case No. 312 of 1982-83 afresh as per Annexure 2 to this petition. Pursuant to the above direction the SAR Case No. 11 of 1975 was adjudicated, vide T.R. No. 312 of 1982-83 and the above SAR Case No. 11 of 1975 which was brought about by the opposite party No. 2 was rejected on 12.1.2000, vide Annexure 3 of this petition.

4. It was further submitted that opposite party No. 2 did not prefer an appeal or challenged the above mentioned order dated 12.1.2000 till 2003, though he had knowledge about the order passed by the Hon'ble Court as well as the lower court.

5. Learned Counsel for the petitioner further contended that subsequently Sibu Kachhap opposite party No. 2 executed a power of attorney in favour of Sitaram Bhagat and Satya Narayan Lakra, who preferred a petition in the case instituted by Sibu Kachhap before the lower court in SAR No. 11 of 1975, corresponding to T.R. No. 312 of 1982-83 which was earlier decided on 12.1.2000 and it was dismissed by the learned court below, vide order dated 3.2.2003 being not maintainable on the ground that the order was already passed.

6. Being dissatisfied by the said order opposite party No. 2 preferred SAR Appeal No. 31(R)15 of 2003-04, corresponding to T.R. No. 96(R) 15 of 2003-04 (Sibu Kachhap v. Rajendra Prasad Sahu and Ors.) whereas the power of attorney holders preferred SAR Appeal No. 188(R)-15 of 2002-03, corresponding to T.R. No. 29(R)-15 of 2003-04 (Satya Narayan Lakra and Ors. v. Nand Kishore Sahu and Ors.) arising out of the order passed by the lower court on 12.1.2000 in SAR Case No. 11 of 1975, corresponding to TR No. 312 of 1982-83 which were heard together and by analogous order learned Deputy Commissioner held on the basis of documents produced before him that the order impugned passed by the

Special Officer in SAR Case No. 11 of 1975, corresponding to TR No. 312 of 1982-83 on 12.1.2000 was legal and did not call for interference in appeal and hence the appeal was dismissed, vide order dated 29.10.2005.

7. Finally it has been submitted that it would be evident from the order passed by the Deputy Commissioner in the appeal aforesaid on 29.10.2005 that land in question was not in possession of the opposite party No. 2-informant of the criminal case since 1942.

8. Advancing his argument learned Counsel submitted that the present Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as "the Act") came into force on 30.1.1990, vide S.O.106 E dated 29.1.1990 with the prospective effect and, therefore, the offence under the said Act is not at all applicable under the facts and circumstances of the present case. Pursuant to the institution of the present case on 25.5.2004, one of the accused persons, namely, N.K. Sahu was arrested, The Superintendent of Police, Ranchi supervised the investigation and he mentioned in his supervision note that opposite party No. 2 and his witnesses admitted that they had preferred SAR case before the court below in the year 1975 and, therefore, the opposite party No. 2 Sibu Kachhap was not in possession of the land in question on or prior to 1975 and for that the petitioner cannot be prosecuted under the same Act. The petitioner and the other accused have constructed a large building over the land in question with the approval of the RRDA, but opposite party No. 2 with malafide intention brought the present case to extort money and that till the filing of the present petition u/s 482 of the Code of Criminal Procedure the order of the court below pursuant to the direction made by the Ranchi Bench of Patna High Court on 12.1.2001 in C.W.J.C. No. 714 of 1987 has not been disturbed by any competent authority and, therefore, the present case is not maintainable against the petitioner and others either on fact or in law. The prayer for bail of one of the co-accused, Nand Kishore Sahu was allowed by the Special Judge-cum-1st Additional Judicial Commissioner, Ranchi on 8.6.2004 after examining all the material aspects of the case as contained in Annexure 5.

9. Finally it has been submitted that a decree was prepared in Title Suit No. 27 of 1962 on the basis of the compromise between Abhay Kumar Sahu and Etwa Oraon in favour of the Abhay Kumar Sahu (plaintiff) in which Etwa Oraon (defendant) had given an undertaking that he would not disturb the possession of the plaintiff over the suit land and would not challenge his title in the suit with respect to the properties as given in the schedule of the plaint. The opposite party No. 2 is the son of Etwa Oraon and no document was produced to the effect that the said compromise decree prepared in Title Suit No. 27 of 1962 by the Subordinate Judge, Ranchi on 23.5.1962 was set aside by any court.

10. The main allegation is that the informant/opposite party No. 2 has been dispossessed by as many as five persons including the petitioner which prima facie attracts offence u/s 3 (IV), (V) and (VII!) of the Act punishable with imprisonment for a term which shall not be less than six months but which may

extend to five years or fine. Further allegation is that the informant has been dispossessed by the accused persons including the petitioner by creating forged documents of his raiyati land and that he was restrained from going upon his land but the documents which have been produced on behalf of the petitioner speaks otherwise. The First Information Report indicates that the father's name of the informant Sibu Kachhap was late Etwa Oraon. It appears from the Xerox copy of the certified copy of the decree prepared in Title suit No. 27 of 1962 in which Abhay Kumar Sahu was plaintiff and father of the informant Etwa Oraon was the defendant that it was based upon the joint compromise petition as given in scheduled of the suit property in which it was admitted that the suit land was sold to Abhay Kumar Sahu for a consideration of Rs. 99/- in September, 1940 by Sukre Uraon, i.e, husband of the defendant No. 2 and Sonoo Uraon, husband of defendant No. 3 as well as Etwa Oraon the father of the informant orally and since then plaintiff was coming in absolute and uninterrupted possession of the suit land and that the plaintiff acquired full and perfect title by the adverse possession over the suit property for more than 20 years since 1940. It was further undertaken which was a part of decree that defendant would not disturb the possession of the plaintiff over the suit land and would not challenge his title in the suit land hereafter. Subsequently, the said land was transferred by registered sale deed in the name of Gouri Shankar Sahu in the year 1962 and since then there was no litigation over the suit land in question until the filing of SAR Case No. 11 of 1975 by the informant Sibu Kachhap in which it was admitted that he was not in possession of the land since 1962, though it was decided in favour of the informant Sibu Kachhap and the appeal as well as revision were also decided in his favour against which a writ, vide C.W.J.C.No. 714 of 1987(R) was preferred in which the informant/opposite party No. 2 appeared and the case was remanded back, vide order dated 24.4.1991. Pursuant to the direction made in C.W.J.C.No. 714 of 1987 (R) the lower court decided the issues in favour of the accused persons, vide order dated 12.1.2000 as discussed herein above as contained in the argument of the learned Counsel for the petitioner.

11. From the facts and the annexures of the present petition and the supplementary petition filed on affidavit there appears substance in the argument advanced on behalf of the petitioner that the present case was brought about by the opposite party No. 2 suppressing material facts of his alleged dispossession. On the contrary the annexures of the petitions speak otherwise in favour of the petitioner as discussed above. The allegation that the informant-opposite party No. 2 has been dispossessed in spite of the favourable order of the courts concerned and that the accused persons including the petitioner forcibly dispossessed him on the basis of forged documents do not stand to the truth in any manner and, therefore, the criminal prosecution of the petitioner calls for interference of this Court. Accordingly, the prosecution initiated against the petitioner Gouri Shankar Sahu who stands at serial No. 3 of the accused column in Ranchi Sadar Kotwali P.S. Case No. 266 of 2004, corresponding to G.R.

Case No. 1455 of 2004, pending in the court of special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands quashed with consequential effect. This petition is allowed.