
(2008) 12 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 21344 of 2007

Krishna Nand Singh @ Krishna Nandan Singh and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 34, 419, 420, 467, 468

Citation : (2011) 1 PLJR 422

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The father and son combine, who are the only accused of Ballia P.S. Case No. 211 of 2006 have prayed for the quashing of the entire criminal proceeding arising therefrom including the order dated 8.3.2007 passed therein by the learned Chief Judicial Magistrate, Begusarai, whereby he has taken cognizance of offences under Sections 467, 468, 419, 420, 504, 506/34 I.P.C. against the Petitioners.

2. One Most. Kailashi Devi, who had been earning her livelihood from cultivation of the lands in the share of her deceased husband, impleaded herein as O.P. No. 2, submitted a written report to the Ballia P.S. on 27.11.2006, inter alia alleging that her co-villager Krishna Nand Singh had induced her to rush to Begusarai, under the pretext that the Government was affording pension and other social security measures to widows and there he took her thumb impression on several stamp papers as also on a register. To her query about the payment of pension he avoided giving a proper answer on one pretext or another. It is alleged that in November, 2004 the said Krishna Nand spread information in the village that she had executed a registered deed of mortgage in favour of his son, Rahul, for six years after receiving a sum of Rs. 45,000/-. As she had not executed any registered deed of mortgage in respect of 5 kathas of land appertaining to khata

No. 58, khesra Nos. 2507, 2515 and 2552 nor had she received any money she became sanguine that Krishna Nand had manufactured a forged document on the stamp paper whereupon he had taken her thumb impression. At a panchayati held subsequently the punches directed Krishna Nand to return the deed by 2006 without taking any money and that he may, if he so desires, cultivate the lands on thika (contract). It is further alleged that even before the expiry of the time stipulated in the deed Krishna Nand started demanding return of Rs. 45,000/- and also started extending threats to her of forcibly taking away her cultivated crops and danger to her life and property if the money was not returned.

3. The submission on behalf of the Petitioners is that Kailashi Devi had executed a registered deed of Tamasuk Sudhverna Makfula (usufructuary mortgage) on 27.9.2000 for six years in favour of Rahul, Petitioner No. 2, in respect of 2 bighas, 5 kathas being 1/3 share of land measuring 6 bighas 15 kathas appertaining to khata No. 58, khesra Nos. 2507, 2515, 2522, khata No. 311, khesra Nos. 2537, 2498 after payment of consideration money in advance on condition that the Petitioners would cultivate and appropriate its usufruct and on receipt of the money peaceful possession was delivered to the Petitioners who came in peaceful possession thereof. It is further submitted that on the verge of completion of the stipulated period of expiry of mortgage, the Petitioners demanded return of the money through legal notices dated 22.8.2006, 13.9.2006 and 15.11.2006 which were not heeded and on 22.9.2006 the informant dispossessed the Petitioners from the said land in contravention of the conditions stipulated in the deed. It was also submitted that it was primarily with the purpose of misappropriating the mortgaged money that the present false case had been instituted. The further submission is that from the recital in the written report and the statements of the witnesses u/s 161 Code of Criminal Procedure no offences under any of the sections whereunder cognizance has been taken appears to have been made out and at any rate only a civil remedy is available for cancellation of mortgage deed. Even otherwise the Petitioners had filed Title Suit No. 321 of 2006 seeking the relief of preliminary money decree of Rs. 45,000/- as mortgage money and Rs. 5,000/- as expenses incurred by the Plaintiff for execution of mortgage deed as also a decree for mesne profits.

4. Unfortunately, although O.P. No. 2 was duly served with notice she has chosen not to appear and contest this application. Therefore, the submissions advanced by the learned Counsel for the Petitioners remains unrebutted.

5. Apparently, the entire dispute revolves round the alleged execution of a mortgage deed by the informant whose genuineness is disputed by the informant. On the other hand a Title Suit has been filed by the Petitioners for money decree and mesne profits. The dispute is completely a civil dispute and no criminal liability can arise therefrom. Prosecution of the Petitioners would be an absolute abuse of the process of the Court.

6. Accordingly, the impugned order as also the criminal proceeding is quashed and the application is allowed.