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Date : 19/08/2026

(2017) 07 JH CK 0025

In the Jharkhand High Court

Case No : 78 of 2016

LAKNU SHAHU APPELLANT

Vs

STATE OF JHARKHAND & ORS. RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

Code of Criminal Procedure, 1973, Sections 482 -
Indian Penal Code, 1860, Section 120B, Section 420, Section 468, <a href

Citation : (2017) 07 JH CK 0025

Hon'ble Judges : ANANDA SEN

Bench : SINGLE BENCH

Advocate : Amit Kumar Das, C. Mukherjee, P.A.S Pati, Sanjay Kr. Pandey, Abhinesh Kumar, Ashutosh Mishra, Sharvan Kumar

Final Decision : Dismissed

Judgement

1. In both these petitions, filed under Sections 482 Cr.P.C., the petitioners have prayed for quashing the order taking cognizance dated 7.12.2015, by which, the learned SDJM, Jamshedpur, took cognizance for the offence under Sections 406, 420, 467, 468, 471 and 120-B and has issued summons for appearance of the accused persons.

2. Both these cases have arisen out of the common complaint and common order by which, cognizance has been taken against the accused persons and the petitioners of both the cases are shown as accused in C/1 1791 of 2015 and summons have been issued against them and therefore, these two petitions are being heard together.

3. The complainant (Opposite party No. 2) filed a complaint petition before the learned Chief Judicial Magistrate, Jamshedpur, alleging therein that several plots under Khata No. 106, recorded in the joint name of the ancestor of the

complainant, were not partitioned by metes and bounds. It is alleged that on 28.3.2015, the complainant came to know through the newspaper reports that accused Nos. 1, 2 and 3 sold the said lands in favour of TATA Steel Limited, which was purchased by the Company through accused No. 4. On enquiry, he could come to know that a registered sale deed was executed and the land was transferred for a total consideration of Rs.1,45,40,400/-. It is also alleged that from the sale deed, the complainant (opp. Party No. 2) could also come to know that his signature was forged and he was shown as witness in the sale deed, though he never stood as a witness in the sale deed and purported signature of the complainant has been forged by or at the instance of all the accused persons.

4. After the complaint was filed, the Opposite Party No. 2 (complainant) was examined on solemn affirmation and thereafter, three enquiry witnesses were also examined. All the witnesses have supported the averments made in the complaint petition. Thereafter, the court below found, prima facie, case against the accused persons and took cognizance under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code. After taking cognizance, summons were issued against the accused persons vide order dated 7.12.2015. Challenging the order taking cognizance dated 7.12.2015 and the order issuing summons against the accused persons, these two petitions have been preferred under Section 482 Cr.P.C. by the petitioners.

5. Counsel for the petitioners of Cr.M.P. No. 78 of 2016 submits that the petitioners are the relative of the Opposite Party No. 2 (complainant). He further submits that no criminal offence is made out as maximum allegation leveled against the petitioners is that they have sold the undivided landed property. He also submits that there is no allegation that the sale deed is forged and that being so the

court below should not have been taken cognizance for the said offence. He also submits that the dispute in transaction cannot be a ground to take cognizance and no criminal case would lie when the genuineness of the documents is not disputed. It is further stated that the dispute is between the co-sharers and thus, the order taking cognizance is absolutely illegal and bad. It is also submitted that the permission was taken from the Deputy Commissioner before selling the said land and after obtaining permission, the land was sold and thus leaving no room for any dispute. He lastly submits that with malicious intention, the present complaint has been filed.

6. The counsel appearing on behalf of petitioners in Cr.M.P. No. 263 of 2016 submits that these petitioners are the officials of TATA Steel Limited and the land was purchased through these petitioners. He further submits that they bona fidely purchased the land and the inter se dispute is between the co-sharers, which cannot be a ground to file the present complaint petition. It is further submitted that after taking proper permission under CNT Act, the land was purchased. The counsel appearing on behalf of petitioners in both petitions relies upon the judgment of Hon''ble Supreme Court of India in the cases of

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Mohammed Ibrahim and Others Vs. State of Bihar and Another reported in (2009) 8 SCC 751, Ashok Chaturvedi and Others Vs. Shitul H. Chanchani And Another reported in (1998) 7 SCC 698, and Maksud Saiyed Vs. State of Gujarat and Others reported in (2008) 5 SCC 668.

7. On the other hand, the counsel appearing on behalf of Opposite Party No. 2 (complainant) submits that the case is not simplicitor a land dispute between the co-sharers. It is submitted that the case is of impersonation and of forging signature, which is a criminal offence. From bare perusal of the complaint petition, it appears that offence is made out and thus the learned court below has rightly taken cognizance and issued summons against the petitioners. It is also submitted that in any transaction there is civil and criminal aspect. The criminality has to be dealt with by the court in terms of the criminal law and thus, the court below has rightly taken the cognizance and has issued summons against the accused persons.

8. I have heard the learned counsel for the parties and have gone through the records and the judgments, referred above.

9. After going through the record, I find that the land, which is in joint possession, was sold by the co-sharers of the Opposite Party No. 2 (complainant).

If the allegation only was limited to that extent only then as per the decision of the Hon''ble Supreme Court, referred above, no criminal offence would have been made out. But it is not the case here. In this case, the allegations in the complaint travel further. It is alleged that after making conspiracy with each other, the accused persons have made forged signature of the complainant and his brother in the sale deed. It means the signature of the complainant and his brother in the sale deed is not their actual signature and it has been signed by other persons impersonating the complainant and his brother. In sum and substance, the signature of the Opposite Party No. 2 (complainant) and his brother are forged. The documents i.e. the sale deed may not be a forged or fabricated document but the signature in the sale deed is alleged to have been forged for the benefit of the accused persons and that has been done a criminal conspiracy. This allegation definitely makes out a criminal offence. Thus, forging a signature or putting a signature by impersonating a person is subject to be tried upon. This allegation constitutes a criminal offence. When a criminal offence is made out, order taking cognizance cannot be quashed.

10. Thus, from the aforesaid fact when there are signatures of Opposite Party No. 2 (complainant) and his brother have been forged in the sale deed, I find that the decision referred by the counsel for the petitioners of both petitions will not help them. Thus, I find that the allegation leveled in the complaint petition needs to be tried as there is allegation of forgery after hatching conspiracy amongst themselves.

11. In the result, I find no merit in both petitions, the same are dismissed, accordingly.

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