
(2018) 03 MP CK 0194
In the Madhya Pradesh High Court
Case No : 463 of 2018

Makhan S/o Babusingh Sisodiya and others	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161
Indian Penal Code, 1860 — Section 120(B), 420, 467, 468, 471

Citation : (2018) 1 MPWN 124

Hon'ble Judges : S.K.Awasthi

Bench : Single Bench

Advocate : Abhijit Singh Chouhan, Rajesh Mali

Final Decision : Dismissed

Judgement

1. The present applicants are discontent with the framing of charges by the trial Court in sessions trial No. 372/2017 vide order dated 01.12.2017.

The present applicants have been named as co-accused persons in a Trial for commission of offences punishable under Section 420, 467, 468, 471 read with Section 120-B of IPC.

2. The facts leading to filing of the present application are that a lady named Smt. Chanchala Nalwaya, had executed a sale deed dated

17.07.1997 in favour of Kirti Jain with respect to survey No. 87/8 admeasuring 0.138 hectare situated at village - Bicholi Hapsi, District - Indore

(MP). It appears that the complainant Kirti Jain did not use the land for a considerable period of time and therefore, with the objective of

demarcating the land, an application before the Tehsildar was moved in furtherance to which the complainant reached the said survey No. on

12.09.2015 and on such date, a person named Deepak Sharma informed him

that the said survey number. is in possession of persons named

Vikram, Ashok and Abhay, by virtue of a sale deed dated 27.12.2012. Upon gathering the knowledge of execution of second sale deed with

respect to the plot purchased by the complainant in the year 1997, the matter was reported to police and a FIR dated 04.10.2015 was registered.

3. During the course of investigation, the police recorded the statements of subsequent purchasers and one of the subsequent purchasers, Mr.

Vikram recorded his statement under section 161 of Cr.P.C. as also submitted a complaint against the present applicants on the ground that they

had persuaded him to enter into the transaction with the person, namely, Smt. Chanchala Nalwaya. Consequently, the name of the present

applicant was also incorporated in the final charge-sheet as an accused person leading to framing of charges vide order dated 01.12.2017 which is

the subject-matter of this application.

4. The learned counsel for the applicant submitted that the present applicants have no role to play in the execution of the second sale deed and they

have been falsely implicated in the matter as their role is confined to suggestion about the owner of the property which the subsequent purchasers,

namely, Vikram, Ashok and Abhay, sought to purchase. However, no assurance was ever given by the present applicants with respect to status of

title of the property as also the veracity of documents used by Smt. Chanchala Nalwaya, which was solely the responsibility of Mr. Vikram as

there is a well-established principle of caveat emptor. Apart from it, the learned counsel for the applicant apprised the Court about the fact that

there is a litigation pending between Kirti Jain and Smt. Chanchala Nalwaya with respect to the same property. Therefore, continuance of criminal

proceedings would cause obstruction to the outcome of the pending civil suit and eventually, it is under a civil suit that an issue of title can be

decided. Consequently, the learned counsel for the applicant prayed for exoneration from the pending criminal trial.

5. Per contra the learned counsel for the respondent informed this Court that the present applicants had also affixed their signatures in the capacity

of witness in the second/subsequent sale deed and therefore, they are equal participants in the commission of offences against the complainants.

6. Having considered the rival contentions of the parties, this Court is unable to

persuade itself to discharge the present applicants from the pending criminal trial. The reason for having this opinion about the matter is the fact that the role of the present applicants can further be explained or elucidated during the course of examination of prosecution witnesses as also the justifications offered are in fact in the nature of defence, which cannot be considered in the present proceedings. Apart from it, it is also pertinent to observe that the present applicants have affixed their signatures as witnesses to the second/subsequent sale deed and therefore, they cannot plead complete ignorance about the particulars of the transaction in question as also the ownership related facts. In this regard, this Court can profitably refer to Judgment of the Hon''ble Apex in the case of Chitresh Kumar Chopra v. State, (2009) 16 SCC 605, in the following terms:

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding

out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences.

For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the

prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for ""presuming"" that the

accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

26. In Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820] a three-Judge Bench of this Court explained the meaning of the word

presume"". Referring to dictionary meanings of the said word, the Court observed thus: (SCC p. 671, para 32)

32. ... if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a

case for framing of charge exists. To put it differently, if the court were to think that the accused might have [Ed.: The words ""might have"" were

emphasised in the original.] committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused

has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into;

the materials brought on record by the prosecution has to be accepted as true at that stage.

(emphasis supplied)

7. The perusal of the above leaves no scope of doubt that the present revision application is misplaced and cannot be entertained at this stage.

8. Before parting, it is apposite to deal with the contention of the learned counsel for the applicant that there is a civil suit pending between the

same parties to the controversy with respect to the same property; consequently, the criminal proceedings would hinder free and fair adjudication

of the pending civil suit. In this regard, suffice it to observe that the Hon''ble Apex Court in the below mentioned judgments has settled the

proposition that the criminal proceedings and civil proceedings can run simultaneously. The relevant excerpts are reproduced hereinbelow: -

In *Kishan Singh (D) through I.Rs. Vs. Gural Singh and others* ; AIR 2010 SC 3624, the Hon''ble Supreme Court relying on the law laid down in

P. Swaroopa Rani v. M. Hari Narayana alias Hari Babu; AIR 2008 SC 1884, this Court has held as under :

It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings

or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.... Filing of an independent criminal proceeding,

although initiated in terms of some observations made by the civil court, is not barred under any statute.... It goes without saying that the

respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only

because in law simultaneous proceedings of a civil and a criminal case is permissible.

In *Sh. Vishnu Dutt Sharma Vs. Smt. Daya Sapa*; (2009) 13 SCC 729 the Hon''ble Apex Court has held that :

13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil

proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.

9 In view of the above, the instant revision application fails and is hereby dismissed.