
(2019) 11 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1557 Of 2019

Mamta Bhut @ Mamta Devi Bhut And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 427, 468, 471, 506
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 JH CK 0043

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Shankar Lal Agarwal, Rajesh Kumar Mahtha

Final Decision : Dismissed

Judgement

1. Heard Mr. Shankar Lal Agarwal, counsel appearing on behalf of the petitioners.
2. Heard Mr. Rajesh Kumar Mahtha, counsel appearing on behalf of the State.
3. This petition has been filed for the following relief: -

"for quashing the entire Criminal proceedings including first information report in connection with Sadar P.S. Case No. 48/19 instituted against the petitioners for the offence punishable under Sections 406, 420, 427, 468, 471, 506, 120B of the Indian Penal Code now pending in the Court of learned Chief Judicial Magistrate at Chaibasa."

4. Counsel for the petitioners submits that this case arises out of Complaint Case No. 120 of 2019 and as per the allegations made in the complaint case, no criminal case is made out. He submits that the impugned criminal proceeding is an abuse of process of law. He also submits that there is admittedly a partition suit pending amongst the family members of the vendor of the property and the vendor of the property has not been made accused in this case. The learned counsel further submits that during the pendency of Title Partition Suit, one co-

sharer of the property, namely, Hari Shankar Pandya sold a portion of the property in favor of the petitioners. He submits that the entire dispute arises out of civil dispute and the present proceeding may be quashed.

5. Counsel appearing on behalf of the State submits that the matter is still under investigation and it is pre-mature to say that no criminal case is made out against the petitioners. He submits that the averments made in Para 20 of the complaint petition indicates that the area which was sold by sale-deed and boundary which was shown in the map annexed with the sale deed were not the same and what was shown in the map, was much more than the actual area in occupation of the vendor of the property. He further submits that as the complaint has been sent by the learned court below for investigation by the police, it would not be proper to quash the entire criminal proceedings against the petitioners merely on the basis of allegation made in the complaint. He submits that the mismatch in the area in sale deed and the boundary as per map attached to the sale deed prima-facie reflects criminal intent. He further submits that upon investigation of the case it cannot be said with certainty as to the persons who will be charge-sheeted and be made accused in the case. He reiterates that no relief can be granted to the petitioners at this stage.

6. After hearing the counsel for the petitioners and state and considering the facts and circumstances of this case as well as the nature of allegations made in the complaint petition and also the fact that the complaint has been sent for investigation by Police and the investigation has not yet been completed, this Court is not inclined to quash the First Information Report by exercising power under Section 482 of the Code of Criminal Procedure. In the judgment passed by Hon'ble Supreme Court reported in reported in 1992 Suppl. (1) SCC 335 (State of Haryana Vs. Bhajan Lal and Ors.), it has been held in Para-102 as under: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. This court finds that the case of the petitioners does not fall under any of the broad criteria laid down by the Hon'ble supreme court in the aforesaid judgement and the investigation of the case is not yet complete. In the aforesaid facts and circumstances the present case for quashing of the FIR is hereby dismissed.

8. However, the petitioners are at liberty to raise all the points which have been raised in this petition and that may be available to the petitioners at appropriate stage before the learned court below and dismissal of this case will not prejudice the case of the petitioners in any manner whatsoever.

9. Pending interlocutory applications, if any, are also dismissed as not pressed.

10. Interim order, if any, stands vacated.

11. Let this order be communicated to the court concerned through 'FAX'.