
(2013) 09 MP CK 0090

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3030 of 2012

Manorama Devi and Another

APPELLANT

Vs

Late Shri Shiv Kumar Jain

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 482

Motor Vehicles Act, 1988 — Section 140, 166

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2013) 09 MP CK 0090

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : Ami Prabal, for the Appellant; Ravi Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition has been filed u/s 482 of Cr.P.C. for quashing the order dated 07.02.2012, passed by JMFC, Guna, whereby cognizance has been taken against the petitioners for the offence punishable under Sections 420, 467, 468, 120-B of IPC and order dated 30.03.2012, whereby application filed by Purshottamlal u/s 239 of Cr.P.C. for discharging him from the charges has been dismissed. The brief facts of the case are that Late Shri Shiv Kumar Jain filed a private complaint under Sections 420, 467, 468, 120-B of IPC in the Court of JMFC, Guna against the petitioners alleging that the complainant having a plot situated at Gandhi Nagar in Halka No. 77 within the Municipal area and complainant has constructed a house thereon. The plot was purchased by the complainant from Girja Devi, W/o Shri Rajmal Jain vide registered sale deed dated 20.06.2002. Smt. Girja Devi had purchased the aforesaid plot from petitioner No. 2, Power of Attorney holder on behalf of petitioner No. 1, vide registered sale deed dated 10.04.1985. The petitioners again sold the house showing it as a plot to one Shiv Kumar S/o Shri Nannulal Kirar on 17.01.2008 while the petitioners were not having any right/title over the property. As soon as this fact has come into the knowledge of the complainant immediately the

petitioner No. 1 and Shiv Kumar Kirar entered into the compromise and has paid the entire amount of sale. On the basis of the aforesaid allegation the learned Court below has taken cognizance against the petitioners on 07.02.2012. Being aggrieved by the same, this petition has been filed by the petitioners.

2. It is submitted by the learned counsel for the petitioners that the learned Court below has taken cognizance in the matter on 07.02.2012 on the complaint of Late Shiv Kumar while Shiv Kumar died on 28.12.2011, therefore at the time of cognizance itself complainant was not alive. The complainant's legal heirs and his counsel has not informed the court and they have not performed their duties, but when the petitioners have brought this fact in the knowledge of the trial Court, the trial Court instead of dismissing the complaint fixed the case for appearance of the petitioners.

3. It is further submitted by the learned counsel for the petitioners that the criminal case cannot be continued against the petitioners. Trial is unwarranted, petitioners are old aged persons they have already cancelled the alleged sale deed in favour of Late Shiv Kumar, therefore, there should be no grievance to the family members of the complainant. It is prayed that order dated 30.03.2012, be quashed and petitioners be discharged.

4. Learned counsel for the respondents submits that the learned Court below has rightly taken cognizance and the legal heirs of the complainant can continue the proceedings.

5. I have considered the rival submissions of the learned counsel for the parties and perused the record.

6. It is not disputed that Late Shri Shiv Kumar has filed the complaint before the Court below, who is no more. From the perusal of Annexure P/2 it appears that on 28.12.2011 the report was lodged alleging that Shiv Kumar has died in motor vehicle accident.

7. Annexure P/3 is the post mortem report of Shiv Kumar S/o Shri Babulal Jain who died on 29.12.2011. Annexure P/4 is the claim petition preferred by the legal heirs of Shiv Kumar Jain u/s 166 & 140 of the Motor Vehicles Act alleging that the death of Shiv Kumar Jain took place on 28.12.2011 in motor vehicle accident. Thus, it is clear that on 28.12.2011 Shiv Kumar has died.

8. From the perusal of Annexure P/5 it appears that the learned Court has taken cognizance on the private complaint of Shiv Kumar on 07.02.2012. The submission of the learned counsel for the petitioners is that on 07.02.2012 complainant Shiv Kumar was not alive, therefore, it was the duty of the complainant's legal heirs and his counsel to inform the Court but they have not informed the Court, hence continuation of prosecution against the petitioners is unwarranted and amounts to abuse of process of law.

9. From the perusal of the order dated 07.02.2011, it appears that the allegation levelled in the complaint has been corroborated by Shiv Kumar in his statement

on oath, Ashok Kumar has also corroborated the statement of Shiv Kumar. The inquiry report filed by the Police Station, Cantt also supports the allegation levelled in the private complaint against the petitioners.

10. Thus, there is prima facie material against the petitioners for proceeding further against them. It is true that on the date when cognizance was taken by the Court below i.e. on 07.02.2012 complainant Shiv Kumar Jain was no more as he died on 28.12.2011. It is also true that this fact is not brought into the notice of the learned Court below by the counsel for the complainant Late Shiv Kumar Jain, however, taking into consideration that cognizance has been taken under Sections 420, 471, 467, 468 and 120-B of IPC, it cannot be said that the learned Court below has committed any illegality because offence u/s 420 of IPC is punishable for imprisonment for 7 years and fine, offence u/s 467 of IPC is punishable for imprisonment for life or 10 years and fine and offence punishable u/s 468 of IPC is punishable for imprisonment for 7 years and fine. The offence u/s 420 of IPC is triable by Judicial Magistrate First Class, however, the offence punishable under Sections 467 and 468 of IPC are triable by the Court of Sessions as amended by the M.P. Amendment Act, 2008.

11. Taking into consideration that the complaint was filed under Sections 420, 467, 468 & 120-B of IPC, the submission of the learned counsel for the petitioners that due to the death of complainant the complaint should have been dismissed is devoid of any merits.

12. The Hon''ble Apex Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, making reference of the following cases:-

- (i) R.P. Kapur Vs. The State of Punjab,
- (ii) State of Karnataka Vs. L. Muniswamy and Others,
- (iii) Chandrapal Singh and Others Vs. Maharaj Singh and Another,
- (iv) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others,
- (v) State of Haryana and others Vs. Ch. Bhajan Lal and others,
- (vi) Janata Dal Vs. H.S. Chowdhary and Others,
- (vii) G. Sagar Suri and Another Vs. State of U.P. and Others,
- (viii) Roy V.D. Vs. State of Kerala,
- (ix) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, and
- (x) Indian Oil Corporation Vs. NEPC India Ltd. and Others,

has observed in para 23 and 24 as under:-

23. This court in a number of cases has laid down the scope and ambit of courts

powers u/s 482, Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power u/s 482, Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers u/s 482, Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

13. In view of the aforesaid analysis and taking into consideration that there is prima facie material available against the petitioners for the commission of offence punishable under Sections 420, 467, 468 and 120-B of IPC., the submission of the learned counsel for the petitioners that continuation of the proceedings amounts to abuse of process of law cannot be accepted. Consequently, petition being devoid of any merits, is hereby dismissed.