
(2012) 03 PAT CK 0095

In the Patna High Court

Case No : Criminal Writ No. 559 of 2007

Mostt. Champa Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 03 PAT CK 0095

Final Decision : Allowed

Judgement

A.K. Trivedi, J.—In Criminal Writ No. 422 of 2007, Hardeo Rai, Raj Kumar Choudhary, Raj Kishore Rai, Sushila Devi, Sahdeo Bharti, Bhola Singh, Chandeshwar Prasad Sinha, Anil Tiwari @ Anil Kumar Tiwary, Mrinal Kant Tiwari are the petitioners while in Criminal Writ No. 559 of 2007, Tripuranand Tiwary (since deceased) Mostt. Champa Devi, Mamta Devi, Rajesh Kumar, Shashi Bhushan Karn, Babu Lal Rai, Ganesh Pandey, are the petitioners and with the consent of learned counsel for both the parties, both the above referred writ petitions have been analogously heard and are decided by a common judgment.

2. In both the criminal writs there has been prayer of quashing of F.I.R. of Patori P.S. Case No. 9 of 2007 as well as prosecution.

3. Respondent, Prem Shankar Trivedi filed written report before the Officer-in-charge, Patori P.S. disclosing therein that the accused persons in conspiracy to each other to put wrongful loss to State Exchequer and further withholding to disclose the nature of land as homestead land executed sale deed showing less valuation of the land than the real one and by such action, they have managed to pay less registration fee than the actual one.

4. It has been contended on behalf of petitioners that instant case happens to be malicious one and been instituted out of personal grudges, vendetta in the background of the fact that the informant as well as vendors of the land in question are descendant from common ancestor and as there happens to be dispute with regard to share according to the informant for which Title Suit No.

182 of 2006 has been instituted by the informant himself against the vendors and others for declaration of title and confirmation of possession, declaration of sale deed as void with other ancillary reliefs. Therefore, the present prosecution appears to be non-permissive in the eye of law. Further submitted that no action is required against the witness, identifier as there is no complain or allegation levelled against them nor they are at all concerned with the creation of the document, more particularly, with the consideration amount what have been shown in the sale deed. It has further been submitted that there is no allegation regarding creation of the document by any deceitful means nor it happens to be a case of impersonation. As such launching of prosecution against the witness, identifier, appears to be non-maintainable.

5. Then it has been submitted that coming to remaining petitioners/ accused, no offence u/s 420, 467, 468, 470, 471, 34 of the I.P.C. is made out because of the fact that under the Registration Act, the fee whatever has to be realized should be according to the guidelines prescribed by the State as prescribed under Registration Act. The government through circular had entrusted the Collector of the District to fix valuation of the land for the purpose of realization of the fee which the petitioners have already paid. As such petitioners cannot be alleged to have misrepresented the fact leading to less payment of the registration fee. Even in worst case the fee so required and liable to be paid had nothing to do with the consideration amount as agreed amongst the parties because the same was to be paid as per valuation fixed by the Collector for that purpose. Consequent thereupon no offence under any of the penal provision where under case has been registered, is made out.

6. The petitioners further challenged status of the informant on the ground that even taking into account the allegation on its face, it happens to be the matter relating to the interest of Government and for that the Collector, under Registration Act, is authorized to realize the requisite fee. Then submitted that mere non-payment of less fee is not going to give a criminal cause and as such registration of the case is nothing but a fraudulent attempt of the informant to scum their family dispute.

7. It has further been submitted that court should not become tools at the hands of unscrupulous litigant facilitating their undesired just to satisfy. It has further been submitted that the nature of allegation satisfy the ingredients prescribed under Bhajan Lal case as such, the criminal prosecution is fit to be quashed.

8. At the other hand, the learned counsel for the private respondent submitted that there is no bar in allowing the parallel proceeding to proceed when both two gives independent cause. Then submitted that the investigation had already been concluded and a prima facie case has been found true. Then submitted that accused/ petitioner Tripuranand Tiwary intentionally and fraudulently created a power of attorney in name of Hardeo Rai on 06.10.2006 with regard to the land bearing R.S.P. No. 1328 and 1329 in spite of the fact that he was full aware that the aforesaid two plots belongs to informant and happens to be recorded in

Khatiyan in name of father and uncle of the informant. A house lies thereupon wherein at an earlier occasion Patori Post Office was running and for the present, clinic of one Homeopathic Doctor is there. Subsequently, all the accused persons connived and then got the fraudulent sale deed executed showing the consideration money much less than the real price of the land and by such action attempted illegally by paying less amount by way of registration fee, which happens to be punishable under the eye of law.

9. It has further been submitted that no prosecution can be quashed in routine manner unless and until there happens to be extraordinary circumstances visualizing there from. To support his plea also referred 2004 SC 517 (Para-11, 13), 2004 SC 555 (Para-5), 1977 SC 222 (Para-2), 1963 SC 447, 2006 SC 2780 (Para, 9, 29, 30), 2005 SC 9 (Para-10), 1992 SC 604 (Para-108, 109).

10. State had also filed counter affidavit showing that as per Hon''ble Court; direction no coercive step was to be taken against the accused persons, therefore, no charge sheet has been submitted as yet. The learned counsel for the State however endorsed the argument raised on behalf of the private respondent and submitted that a prima facie case has been coming out and so prayer of the petitioners are not at all maintainable.

11. The extraordinary power vested with the High Court either by way of inherent power identified u/s 482 Cr.P.C. or under Article 226 of the Constitution, so far relating to quashing of prosecution is concerned, times without number a rule of caution has been given by the Hon''ble Apex Court to the extent that it should sparingly be exercised taking into account the stage more particularly when it is being investigated and the materials are yet to be collected. Not only this, it has also been forbidden that the courts should not substitute the investigating authority whole investigation is going on, at the other hand has also held that in certain circumstances where it appears to be a malicious prosecution, barred by special law, even taking into account the allegation on its fact, it does not attract application of any of the penal law, quashing of prosecution has been consented. The aforesaid theme was identified in R.P. Kapur Vs. The State of Punjab, which latter on been magnified in State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein following ingredients have been prescribed.

(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 u/s 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 uncontroveretd 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, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 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 grounds for proceedings 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 proceedings 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 malafide 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.

12. The above referred ingredients have been put to test times without number and till today command the field.

13. It is needless to remind that civil cause and criminal cause have got their distinct identity and are permitted to proceed unless and until there happens to be overlapping of the causes. In the background of aforesaid settled principle, now the facts of the case is taken into hand. From the counter affidavit filed on behalf of respondent No. 2, whatever allegation as has been levelled by him in the written report, appears to be given a go by and a dispute of title and possession has been advanced. In the written report the allegation has been put with regard to loss of payment of registration fee putting the property under valued. During course of argument, respondent No. 2 deviating from the allegation levelled in the written report, divulged that in the background of land dispute (right to inheritance) the petitioners had intentionally under valued property so that purchaser should come and got the negotiation finalized on throw away price causing irreparable loss, injury not only to himself rather to the State Exchequer also. The counter affidavit followed with submission made on behalf of respondent No. 2 gives a different colour of litigation than whatever been flashed by way of written report.

14. Now, coming to the relevant provisions of law, Section 78 of the Registration Act prescribes fee to be fixed by the State Government and the Registrar has been put under obligation to realize all the fees at the time of presentation of document. Part-XIV of the Registration Act deals with criminal prosecution and as per Section 83, the Registering Officer has been vested with the power to launch a prosecution. Not only this, its corollary act the Stamp Act also forbids launching

of criminal prosecution at the behest of an individual as per Section 70.

15. In the totality of event, registration of case followed with investigation in present dissipated narration does not justify its continuance. Consequent, thereupon, is quashed. Thus, petition is allowed.