

(2017) 01 MP CK 0184
In the Madhya Pradesh High Court
Case No : 6712 of 2016

Mrs. Kalpana Khiwani & another. Vs Madhya Pradesh Housing & Infrastructure Development Board

Date of Decision : 04-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 465](#)

Citation : (2017) 01 MP CK 0184

Hon'ble Judges : Alok Verma

Bench : Single Bench

Advocate : Ashish Gupta, Sameer Athawale

Final Decision : Allowed

Judgement

1. This application under Section 482 Cr.P.C. is filed against the order passed by learned Additional Sessions Judge Badnagar, District-Ujjain in Criminal Revision No.356/2015, whereby the learned Additional Sessions Judge affirmed the order passed by learned JMFC, Badnagar, District-Ujjain, in Criminal Case No.511/06, wherein the learned JMFC framed charges under Sections 418, 465/34 of IPC.

2. Petitioner No.1 is Secretary, petitioner No.2 is Surpanch and petitioner No.3 is peon in Gram Panchayat Kharsodkala. A complaint was filed by the respondent Rajaram S/o Unkarlal alleging therein that he purchased a plot measuring 15*3 Sq. Ft. in the year 1972 situated in Gram Panchayat Kharsodkala and built a house on it after obtaining necessary permission from the Gram Panchayat. He constructed the house and paid all the taxes to the Gram Panchayat. It was alleged that in order to demolish the house of the complainant, the petitioners forged certain documents and also prepared certain proceedings in back date before the civil Court also they filed a false reply and also when demolishing the house, they committed robbery in this house. The Court took cognizance under Sections 107, 418, 463 and 465 of IPC and aggrieved by order framing charges, present application was filed.

3. The present petitioners approached the revisional Court. The revisional Court refused to interfere and confirmed the order passed by the Magistrate observing that dismissal of civil suit 89-A/2004 st by Civil Judge 1 Class and its appeal 46-A/2014 does not make any defence and charges were made out.

4. Learned counsel for the applicants submits that it was held by the civil Court that respondent was not the owner of the plot, it was also not proved that the house was constructed after obtaining necessary permission from Gram Panchayat, it was also not proved that the house was demolished illegally by the applicants and it was also not proved that the present applicants forcibly entered into the house of the respondent and demolish the house illegally. Further, the respondent was not found eligible for obtaining possession of the property.

5. The order passed by learned Civil Judge 1 Class in civil suit No.89-A/2004 was affirmed by appellate Court in Civil Appeal No.46-A/2014.

6. Learned counsel for the respondent supported the impugned order and submits that the application is devoid of force and should be dismissed.

7. I have gone through the orders passed by learned civil Courts below and find that all relevant facts on the basis of which the crime was registered was decided in favour of the present applicants. Both the Court below erred in not taking the findings by the civil Courts into consideration, which were in favour of the present applicants. Without taking into consideration the finding, the complaint was registered by both the Courts below. It was specifically found by the civil Court that the present applicant did not demolish the house illegally, which was the basis of registering the complaint. It was never a case of the respondent that the present applicant while demolishing his house forged certain documents and proceedings. This new fact brought before the criminal Court and the criminal Court without taking into consideration the fact that all the facts were already determined by the civil Court registered the complaint, which is not in accordance with law.

8. In this view of the matter, the application under Section 482 Cr.P.C. deserves to be allowed and allowed accordingly. Order passed by learned Additional Session Judge Badnagar, District- Ujjain, in Criminal Revision No.356/2015 and orders passed by st learned Judicial Magistrate 1 Class in Criminal Case No.551/2006 are set aside.

The present applicants are discharged from offences under sections 418 and 465 r/w section 34 of IPC.