

(2016) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. 7907 of 2015.

Mukesh Kumar s/o Vardhaman Jain - Applicant @HASH Nagji s/o Hinduji Bagari and another - Non-Applicants

Date of Decision : 13-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, Section 202, Section 482
Penal Code, 1860 (IPC) — Section 467, Section 468, Section 471

Citation : (2016) 2 JabLJ 381

Hon'ble Judges : Shri Jarat Kumar Jain, J.

Bench : Single Bench

Advocate : Shri M.A. Mansoori, Learned Counsel, for the Applicant; Shri Rahul Singh Panwar, Learned Counsel, for the Non-Applicant No. 1/Complainant; Shri Milind Phadake, Learned Govt. Advocate, for the Non-Applicant No. 2/State

Final Decision : Dismissed

Judgement

Shri Jarat Kumar Jain, J. - This petition under Section 482 of the Code of Criminal Procedure [in brief "the Code"] has been filed against the order dated 28.07.2015 passed by ASJ, Khacharod, District Ujjain in Criminal Revision No. 88/2015, whereby affirmed the order dated 03.02.2015 passed by JMFC, Khacharod taking cognizance against the applicant for the offences under Sections 467, 468 and 471 of IPC in Criminal Case No. 61/2015.

2. Non-applicant No. 1/complainant has filed a complaint against the applicant and other 5 persons stating that the Non-applicant No. 1 and his wife Ayodhyabai have never executed sale-deeds in favour of the applicant and Non-applicant No. 1's sons have never given their consent. The applicant hatched a conspiracy with other accused persons and got executed sale-deeds of agricultural land in the name of Non-applicant No. 1 and his wife Ayodhyabai. In support of complaint, Non-applicant No. 1 gave statement under Section 200 of the Code and in support examined Prahalad, Bhomsingh, Ayodhyabai and Kalu. Learned Magistrate considering the averments made in the complaint and in the statements of the witnesses, took the cognizance against the applicant for the offences under Sections 467, 468 and 471 of IPC; whereas dismissed the

complaint against the other proposed accused persons who are the document writer; attesting witnesses; Sub Registrar, Naib Tehsildar and Patwari. The applicant has challenged the order before ASJ in criminal revision, but the same was dismissed. Being aggrieved, the applicant has preferred this petition.

3. Learned counsel for the applicant submits that the learned Magistrate has given ample opportunity to the Non-applicant No. 1 for producing the handwriting expert's report but he fails to do so. Without the handwriting expert's report, it cannot be proved that the Non-applicant No. 1 and his wife have not executed the sale-deeds in favour of the applicant. For this purpose, learned counsel for the applicant placed reliance on the judgment of this Court in the case of *Asharam v. Suraj Singh Baghel* [2011 (1) MPLJ 624]. It is further submitted that the Non-applicant No. 1 has produced witness Bhomsingh who is not the attesting witness. The applicant has filed the affidavit of the actual attesting witness Bhomsingh who stated that he had attested the sale-deeds in question. It is further submitted that disputed sale-deeds were executed on 27.05.2000; whereas after lapse of more than 8 years complaint has been filed on 19.12.2008. This fact shows the conduct of the complainant which should be taken into consideration at the time of taking cognizance. For this purpose, learned counsel for the applicant placed reliance on the judgment of Hon''ble apex Court in the case of *Sirajul v. State of U.P.* [(2015) 9 SCC 201]. It is also submitted that there is a vague allegation in the complaint that the applicant has taken illegal possession of the agricultural land of the Non-applicant No. 1, but the date has not been mentioned in the complaint and no reason has been assigned why the Non-applicant No. 1 has not immediately taken any action against the applicant. The whole story of the Non-applicant No. 1 is a concocted and false; whereas from the bare perusal of these sale-deeds it is apparent that the photographs of the sellers are affixed and sale-deeds have been duly executed and registered in favour of the applicant. In such circumstances, prima-facie execution of the sale-deed should be accepted. For this purpose, learned counsel for the applicant placed reliance on the judgment of this Court in the case of *Shiv Pratap Singh v. Smt. Maniraj Kumari* [1996 RN 377].

4. Learned counsel for the applicant further submits that the Non-applicant No. 1 has filed the private complaint after lapse of more than 8 years and not taken any steps to protect title to property by filing civil suit. In such circumstances the charge of fraud and criminal conspiracy cannot be established beyond reasonable doubt. For this purpose, learned counsel for the applicant placed reliance on the judgment of Hon''ble apex Court in the case of *Lalchand v. State of Haryana* [1984 Cri.L.J. 164].

5. It is further submitted that in the present case prima-facie there is no material against the applicant for taking cognizance for the aforesaid offence. Thus, it seems to be a non-application of mind by the Magistrate. For this purpose, learned counsel for the applicant placed reliance on the judgment of Hon''ble apex Court in the case of *Mehmood UL Rehman v. Khazir Mohammad Tunda* [AIR

2015 SC 2195]. The Magistrate has wrongly taken the cognizance against the applicant. In such circumstances the order passed by the Courts below be set-aside and the applicant be discharged from the aforesaid charges.

6. On the other hand, learned counsel for the Non-applicant No. 1/complainant and learned Govt. Advocate for the Non-applicant No. 2/State vehemently oppose the prayer and submit that the revisional Court examined all the pleas which are raised before this Court and held that the learned Magistrate has rightly taken the cognizance. It is further submitted that the documents filed by the defence cannot be considered at the stage of taking cognizance. There is a limited scope in the petition under Section 482 of the Code. No interference is called for by this Court. Therefore, the petition be dismissed.

7. After hearing learned counsel for the parties, perused the record.

8. Before considering the facts of this case, I would like to refer the judgment of Hon''ble apex Court in the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89] in which it is held as under :-

"7. As to what should be the averments in a complaint, assumes importance in view of the fact that, at the stage of issuance of process, the Magistrate will have before him only the complaint and the accompanying documents. A person who is sought to be made the accused has no right to produce any documents or evidence in defence at that stage. Even at the stage of framing of charge the accused has no such right and a Magistrate cannot be asked to look into the documents produced by an accused at that stage. (See ? State of Orissa v. Debendra Nath Padhi - (2005) 1 SCC 568].

9. Keeping in view the aforesaid dictum of Hon''ble apex Court, the plea of defence and the documents produced i.e. affidavit of Bhomsingh, cannot be considered at the stage of taking cognizance.

10. I have considered the precedents cited by the learned counsel for the applicant. In the case of Asharam (supra), the trial Court has rejected the application of the plaintiff to get the documents examined by the handwriting expert to prove thumb impression at the stage of final arguments, then this Court has held that such application cannot be rejected on the ground that the application is filed at the stage of final arguments. Whereas, in the present case the learned Magistrate on the basis of the material has taken the cognizance and the application to get the documents examined by the handwriting expert can be considered even at the stage of final arguments. Therefore, this judgment is not helpful to the applicant.

11. In the case of Sirajul (supra), the complainant has filed the complaint when complainant stood convicted in a cross case at least after 10 years of the commencement of the trial against him. It is not held that if the complaint is filed after considerable delay, then it should be dismissed only on the ground of delay.

12. Now I have considered the dictum of Hon''ble apex Court in the case of

Mehmood UL Rehman (supra). Hon''ble apex Court in this case held that when the Magistrate issued process in the private complaint, then there must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of the investigation. The application of mind is best demonstrated by the disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 109/204 of the Code, the High Court under Section 482 of the Code is bound to invoke its inherent power in order to prevent abuse of power of criminal Court. In the present case, the learned Magistrate has considered the material against the applicant for taking cognizance. Non-applicant No. 1 ? Nagji, his wife Ayodhyabai and consenters Prahalad and Kalu; attesting witness Bhomsingh stated that they have not executed sale-deeds and put their signatures/thumb impression. At this stage the Magistrate has to consider the averments of the complaint and the statements recorded under Sections 200 and 202 of the Code. Learned Magistrate has passed the speaking order taking cognizance and the revisional Court has on examination affirmed the order.

13. With the aforesaid, I am of the view that the Magistrate has not committed any illegality in taking the cognizance against the applicant. Therefore, the petition is hereby dismissed.