
(2015) 03 JH CK 0065

In the Jharkhand High Court

Case No : Criminal M.P. No. 67 of 2002

Nagendra Mohan Prasad Srivastav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(5)(8)

Citation : (2015) 3 AJR 352 : (2015) 3 JLJR 59

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : A.K. Chaturvedi, for the Appellant; A.K. Pandey, APP, Advocates for the Respondent

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. A.K. Chaturvedi, learned counsel for the petitioner and Mr. A.K. Pandey, learned counsel for the State. No one appears on behalf of O.P. No. 2 in spite of valid service of notice.

2. In this application, the petitioner has prayed for quashing the entire criminal proceeding instituted against the petitioner in connection with Gumla P.S. Case No. 32 of 2001, corresponding to G.R. No. 85 of 2001, including the order dated 6.8.2001, passed by learned Chief Judicial Magistrate, Gumla, whereby and whereunder cognizance has been taken for the offences punishable under sections 467, 468, 420, 506/34 of the Indian Penal Code and under section 3(1)(5)(8) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act.

3. The written report, on the basis of which the FIR was instituted, is to the effect that late husband of the informant was a servant of ex-landlord and by virtue of a Hukumnama, he was given 13 decimals of land of khata No. 4, plot No. 89. It has been stated that the husband of the informant had made some

construction over the land in the year 1952 and have given the same on rent. It has been alleged that on 20.12.2000 at night the accused persons had come to her house and they had abused her and had threatened her for the purpose of evicting her. It has further been alleged that the accused persons have prepared forged document and on the basis of the said forged document, they are trying to evict her from her own house.

4. Based on the aforesaid allegations, Gumla P.S. Case No. 32 of 2001 was registered for the offence punishable under sections 467, 468, 420, 506/34 of the Indian Penal Code and under section 3(1)(5)(8) of the Scheduled Castes and Schedules Tribes Prevention of Atrocities Act.

5. On conclusion of the investigation and having found the case to be true, chargesheet was submitted against the accused persons including the petitioner and thereafter vide order dated 6.8.2001, the learned Chief Judicial Magistrate, Gumla was pleased to take cognizance for the offence punishable under Sections 467, 468, 420, 506/34 of the Indian Penal Code and Sections 3(1)(5)(8) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act.

6. Learned counsel for the petitioner has submitted that none of the ingredients necessary for constituting the offences under the sections mentioned in the order taking cognizance is present against the petitioner. It has also been submitted that in course of investigation, no specific statements were given by the witnesses supporting the allegations made by the informant and as such the police itself with a deliberate and mala fide intention had submitted chargesheet against the petitioner. It has further been submitted that the subject matter of the dispute relates to plot No. 890, khata No. 4, area 04 decimals of Murli Bagicha, Ward No. 1 within Gumla police station, which the petitioner had come in possession through a deed of registered gift executed by Braj Kishore Singh and Jay Kishore Singh in favour of the petitioner on 9.9.1994 and late husband of the informant was a witness to the deed. It has also been submitted that with respect to the land in question, a land ceiling proceeding was also initiated and in the said proceeding the land was exempted in favour of Baraik Brij Kishore Singh and Baraik Jay Kishore Singh vide notification No. 17 dated 17.01.1989. It has been submitted that after execution of the deed in favour of the petitioner by the ex-landlord, an application for mutation of the said land was made, which was mutated in the name of the petitioner by the order of the Circle Officer dated 25.07.1995 and a correction slip was issued in the name of the petitioner and the petitioner is regularly paying rent to the State. It has further been submitted that in course of mutation proceeding, late husband of the informant had filed an application, which, however, was rejected. In such circumstances, learned counsel for the petitioner prays that the entire criminal proceedings as against the petitioner, deserves to be quashed.

7. Learned counsel for the State, on the other hand, has submitted that it has been specifically mentioned in the FIR that the petitioner along with other accused persons with an intention to drive out the informant, who is a poor

widow from her own house in order to grab the said property and it has been specifically stated that on the basis of a forged and fabricated document, the petitioner was trying to lay his claim over the property in question. It has further been submitted that investigation revealed that whatever allegations have been levelled by the informant were true resulting in filing of the chargesheet against the petitioner and other accused persons and in such circumstances, it cannot be said that the allegations made in the written report do not constitute an offence.

8. After hearing learned counsel for the parties and after going through the records, I find that in the written report, the informant had stated that a disputed plot of land was given to the husband of the informant by virtue of a Hukumnama by the ex-landlord in the year 1952 and subsequent to the same, a construction was made over the said plot of land. It appears that the ex-landlord had executed a registered gift in favour of the petitioner on 9.9.1994 and thereafter an application for mutation was made before the concerned authority, which was allowed vide order dated 25.07.1995. In the mutation proceedings, husband of the informant namely late Mahadeo Munda had filed an application before the Deputy Commissioner, Gumla and the same was referred for inquiry to the Sub-Divisional Officer, Gumla who on inquiring into the matter came to a finding that the late husband of the informant namely Mahadeo Munda did not have any right and title over the land in question. Order for mutation in the name of the petitioner in spite of the objection made by the husband of the informant led him to file a mutation appeal before the Land Reforms Deputy Collector, Gumla, vide Mutation Appeal No. 18/1995-96, which was, however, dismissed vide order dated 24.04.1996. At the time of assessment of tax in favour of the petitioner, an objection was also raised by late Mahadeo Munda before the municipal office, Gumla, which was also rejected by the authority concerned. It further appears that an eviction suit was also preferred by the petitioner against the opposite party No. 2 being Eviction Suit No. 27/1996 and after hearing the matter, the learned Munsif had passed an order under Order 7 Rule 10 of CPC for return of plaint to present the same in the court, in which the suit should have been filed. Title Suit No. 33 of 2002 was instituted by the petitioner, in which after adducing evidence, judgment was passed on 4.7.2006 by learned Sub Judge-1 deciding the suit in favour of the petitioner and a decree was also prepared on 18.07.2006. It further appears that after the judgment and decree was passed in favour of the petitioner, an application for execution of the decree was preferred by the petitioner being Execution Case No. 10 of 2006 and delivery of possession through the process of court was given to the petitioner on 16.02.2012. Learned counsel for the petitioner in the supplementary affidavit filed by him has also brought to the notice of court a title suit which was filed by the husband of the informant being Title Suit No. 22 of 1995 and during the said proceedings on the death of the informant, his legal heirs were substituted but the title suit was dismissed albeit on technical ground. The entire episode, as has been narrated above, clearly reveals that the dispute is purely of a civil nature and both parties had taken recourse to a civil remedy and in no circumstances, a

criminal case can lie. Although, an attempt has been made by the informant to make certain imputations and insinuations against the petitioner to give a colour of criminality but in view of the fact that the entire dispute is with respect to the land in question and the ownership of the petitioner has been affirmed by virtue of a decree by a competent court of law, no criminal case against the petitioner can be allowed to continue. The documents which have been relied upon by learned counsel for the petitioner are unimpeachable and impeccable documents being orders given by judicial and quasi judicial authorities and as such under Section 482 Cr.P.C., the Court is empowered to place reliance on the said documents while coming to a logical conclusion. Moreover, what has been asserted by the petitioner has not been controverted by the opposite party No. 2 either by putting in appearance or by filing a counter affidavit denying the assertions made by the petitioner. In such circumstances, there being no case which has been made out by the informant so as to prosecute the petitioner in a criminal case, the present application deserves to be allowed.

9. Accordingly, this application is allowed and the entire criminal proceeding instituted against the petitioner in connection with Gumla P.S. Case No. 32 of 2001, corresponding to G.R. No. 85 of 2001, including the order dated 6.8.2001, passed by learned Chief Judicial Magistrate, Gumla, whereby and whereunder cognizance has been taken for the offences punishable under sections 467, 468, 420, 506/34 of the Indian Penal Code and under section 3(1)(5)(8) of the Scheduled Castes and Schedules Tribes Prevention of Atrocities Act, is hereby quashed.