

(2017) 05 PAT CK 0030

In the Patna High Court

Case No : Criminal Miscellaneous No. 37977 Of 2011

Ram Niwas Giri @ Ram Niwas Gosai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-05-2017

Acts Referred:

Code Of Criminal Procedure, 1973 (CrPC) — 192, 202, 204, 482
Indian Penal Code 1860, (IPC) — 34, 323, 379

Citation : (2017) 2 PLJR 923

Hon'ble Judges : Nilu Agrawal

Bench : SINGLE BENCH

Advocate : Ved Prakash Srivastav, Zakir Haider, Akbar Ali, Kuber Pathak

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners, learned counsel for opposite party no.2 and the learned counsel for the State.
2. The present application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the " Cr.P.C .") for quashing of the order dated 04.10.2010 passed in Compliant Case No. C-1 of 2009 (Kamalawati Devi Vrs. Ramjee Giri & others) whereby and whereunder cognizance has been taken against the petitioners and not against Ramjee Giri, for offence punishable under Sections 323 and 379 / 34 of the Indian Penal Code, as well as for quashing of the entire proceeding against them in the aforesaid case.
3. In short, the brief facts of the case is that a complaint

case was lodged on 02.01.2009 by the complainant, namely, Kamalawati Devi before the Court of the learned Chief Judicial Magistrate, Buxar against four persons, namely, Ramjee Giri, Ram Niwas Giri, Jai Prakash Giri and Sri Niwas Giri stating therein that one Ramjee Giri, full brother of the petitioners being pleased with the services of the complainant had gifted a piece of land pertaining to Mauza - Zalilpur, Thana - Rajpur, Thana No. 71, Khata No. 182, Plot No. 275/276 measuring an area of 1.5 decimals to the complainant on 10.12.2008. It is alleged that on the date of occurrence, i.e., 28.12.2008, the three petitioners came to her house and having abused her asked her to return the land gifted by their brother, Ramjee Giri. It was also alleged that when the complainant did not accede to the demand, they had beaten the complainant and her husband with slaps and fists and danda and snatched her golden chain worth Rs. 13,000/-.

4. The complaint was filed on 02.01.2009 before the learned Chief Judicial Magistrate, Buxar, who made over the case under Section 192 of the Cr.P.C. to the Court of Sri A.K. Pandey, Judicial Magistrate 1st Class, Buxar, who pursuant to recording of statement of the complainant on oath and examination of witnesses under Section 202 of the Cr.P.C. ordered for issuance of process under Section 204 of the Cr.P.C. while taking cognizance against the petitioners, which order is under challenge before this Court.

5. It is contended on behalf of the petitioners that present complaint has been instituted making false allegation. The contention of the petitioners is that their full brother, Ramjee Giri had gifted a piece of land, which was part of the ancestral property of all the four brothers i.e. Ramjee Giri and three petitioners as such the petitioners had filed Title Suit No. 393 of 2008 on 20.12.2008 in the Court of Sub-Judge-III, Buxar for declaring the gift deed dated 10.12.2008 as null and void but the complainant for oblique purpose

and with intention to harass the petitioners as also with a view to put pressure upon them to withdraw the said title suit, has filed the present complaint case. Learned counsel for the petitioners further submits that petitioners are living in Chhattisgarh erstwhile Madhya Pradesh since long and were not present on the alleged date of occurrence and that petitioner no.1 is an old and ailing person of 70 years, petitioner no.2 is also an old and retired employee of Bhilai Steel Plant. Learned counsel for the petitioners contends that the matter relates to pure civil dispute between the parties for which Title Suit No. 393 of 2008 was filed by the petitioners against their brother, Ramjee Giri and Kamalawati Devi stating therein that their ancestral property which descended on the petitioners along with full brother Ramjee Giri, has been fraudulently gifted, and as soon as the same was detected by them, aforesaid title suit was filed to declare the gift deed as null and void.

6. Learned counsel appearing on behalf of opposite party no.2, on the other hand, controverts the submission made by the learned counsel for the petitioners. He submits that gift made by one of the brothers, Ramjee Giri was in lieu of the services rendered by the complainant and Ramjee Giri used to stay with her and submits that gift deed was genuine document executed by one of the brothers of the petitioners i.e. Ramjee Giri and opposes the relief claimed by the petitioners.

7. Learned counsel for the State also adopts the submission made on behalf of opposite party no.2.

8. Having heard the rival submissions made on behalf of the parties, I would like to first consider whether the averments made in the complaint even assuming to be true can allow the prosecution to continue as against the petitioners or would amount to gross abuse of the process of the Court. The ambit and scope of the

inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceedings has been discussed in paragraph 102 of the

judgment rendered in the case of State of Haryana and others vrs.

Bhajan Lal and others since reported in 1992 Supp (1) Supreme

Court Cases 335, wherein sub-paragraph (7) specifically deals with a

case where a criminal proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance and with a view to spite him

due to private and personal grudge, which is quoted hereunder:

"(7) Where a criminal proceeding is manifestly attended with mala fide 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."

Further in the case of Chandran Ratnaswami vrs. K.C. Palanisamy and others along with analogous cases since

reported in (2013) 6 Supreme Court Cases 740, Hon"ble Apex Court

has held that a court proceeding ought not to be permitted to

degenerate into a weapon of harassment or persecution. While

referring to the case of State of Haryana and others vrs. Bhajan

Lal and others (supra), Hon"ble Apex Court has also referred to the

case of State of Karnataka vrs. L. Muniswamy since reported in

(1977) 2 SCC 699, paragraph 7 of which is quoted as hereunder:

"7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it

would be impossible to appreciate the width and contours of that salient jurisdiction."

In the case of Indian Oil Corporation vrs. NEPC

India Ltd., since reported in (2006) 6 SCC 736, Hon''ble Apex Court has again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. In fact

in paragraph 13 of judgment it has been held as follows:

"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

Further in the case of Inder Mohan Goswami vrs. State of Uttaranchal since reported in (2007) 12 SCC 1, the Hon''ble

Apex Court after considering the series of decisions at paragraph 46 observed thus:

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent

jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

9. Thus criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing, particularly offence arising out of civil dispute, which is basically private or personal in nature and in the interest of justice to continue with the criminal proceeding would tantamount to abuse of process of law. In the present case, Title Suit No. 393 of 2008 had been filed by the petitioners against the complainant a few days before the lodging of complaint case by the complainant. Thus

the matter relates to a civil dispute of private nature.

10. For the reasons stated above, allowing the prosecution to continue as against petitioners would amount to a gross abuse of the process of Court.

11. In the result, the application is allowed and the order dated 04.10.2010 passed by Sri A.K. Pandey, learned Judicial Magistrate 1st Class, Buxar as well as the entire proceedings in complaint Case No. C-1 of 2009 is hereby quashed.