

(2016) 01 JH CK 0072

In the Jharkhand High Court

Case No : W.P. (Cr.) Nos. 432 and 538 of 2015

Ravish Chandra Verma and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, Section 406, Section 420, Section 467, Section 468, Section 471

Citation : (2016) 162 AIC 538 : (2016) 1 AIRJharR 785 : (2016) CriLJ 2083 : (2016) 1 JBCJ 490 : (2016) 2 JCR 159 : (2016) 1 JLJR 710

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Indrajit Sinha, Bibhash Sinha, K. Roy and S. Roy, for the Appellant; P. Pranay and Kr. Harsh, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—1. Both the writ applications arose from the same impugned order, thus, are heard together and disposed of by this order.

2. In these writ applications, petitioners have challenged the order dated 30.04.2015 passed by Judicial Magistrate, Ist Class, Ranchi in Jagarnathpur P.S. case No. 1909/2014 corresponding to G.R. No. 3162/2014, whereby and where under he took cognizance of the offences under sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code against the petitioners.

3. It appears that respondent No. 2 filed a written report before the Officer-in-Charge, Jagarnathpur Police Station, alleging therein that he came to know that the petitioner (Girish Chandra Verma) was desirous to sale his share in the property pertaining to House No. 42, Tagore Town, Allahabad, U.P. Accordingly, the respondent No. 2 approached Girish Chandra Verma at Delhi and negotiated with him for purchasing the aforesaid property. It is alleged that Girish Chandra Verma agreed to sale 390 Sq. Yards of lands falling in his share, at the rate of Rs. 18,000/- per square yard. Thus, total value of the property fixed at Rs.

70,20,000/- . It is stated that after the above negotiation, the informant gave Rs. 7,00,000/- to Girish Chandra Verma as earnest money. It is then alleged that in the month of June, 2011 Girish Chandra Verma informed respondent No. 2 that his brother Rabish Chandra Verma (petitioner of W.P. Cr. 432/2015) was also desirous to sale his share in the above property and if respondent No. 2 is desirous to purchase his share, then he should talk to Rabish Chandra Verma. Thereafter, three family members of respondent No. 2 talked to Rabish Chandra Verma and his wife Sushma Verma for purchasing their share in House No. 42, Tagore Town, Allahabad. It is alleged that petitioner-Rabish Chandra Verma also agreed to sale his share to respondent No. 2 at the same rate i.e. Rs. 18,000/- per square yard. It is further alleged that thereafter, an unregistered written agreement entered in between the parties on 12.07.2011 and respondent No. 2 paid Rs. 9,00,000/- to Rabish Chandra Verma as earnest money. It is further alleged that thereafter, on several occasions, as demanded by the petitioners, respondent No. 2 paid different amounts to the petitioners. It is then alleged that thereafter, respondent No. 2 made several request for executing the sale deed, but on each occasion, petitioners on one pretext or other took time for executing the sale deed. However, they used to take different amounts from respondent No. 2 during that period. Ultimately, in the month of February, 2014 at the instance of respondent No. 2, both the petitioners executed a supplementary agreement of sale, wherein petitioners assured respondent No. 2 that they will execute the sale deed before 31.05.2014 and if they will not execute the same by that time, then they will put the respondent No. 2 in possession of the property, as they have already taken a sum of Rs. 79,50,000/- from the respondent No. 2. It is stated that the aforesaid agreement registered before the Notary Public on 13.02.2014. It is further alleged in the written report that when in the month of May, 2014, petitioners not executed the sale deed, as promised in the supplementary agreement, respondent No. 2 along with others went to the house of petitioners situated at 42 Tagore Town, Allahabad, U.P. where they found that the the said house was locked and nobody was residing in that house. Therefore, respondent No. 2 met with one Uday Bir Singh, who told that petitioners are residing at Delhi. Later on, respondent No. 2 came to know that petitioner Girish Chandra Verma had sold his share to the mother and wife of Uday Bir Singh on 26.09.2013 by a registered sale deed, whereas petitioner Rabish Chandra Verma executed a registered deed of agreement for sale in favour of aforesaid two ladies. It is stated that thereafter, respondent No. 2 asked the petitioners to explain as to why they entered into a supplementary agreement, when they have already sold the property to the mother and wife of one Uday Bir Singh. Whereupon petitioner Girish Chandra Verma had assured him that they will execute sale deed in favour of Respondent No. 2. It is stated that such assurances were given by the petitioners through SMS on the mobile phone of respondent No. 2 while he was posted at Ranchi. It is further alleged that suddenly, Rabish Chandra Verma deposited Rs. 18,00,000/- in the account of respondent's wife situated at Ranchi and disclosed that he will not sale the aforesaid property to the respondent No. 2. Thereafter, the present case filed.

4. It appears that on the basis of aforesaid written report, Jagarnathpur P.S. case No. 190/2014 instituted under sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code. Thereafter, police took up investigation. After completion of the investigation, police submitted charge-sheet against the accused-petitioners under sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code. The said charge-sheet received in the office of Judicial Magistrate, Ist Class, Ranchi on 30.04.2015, who on the same day took cognizance of the offences against the petitioner. The petitioners in both the writ applications had challenged the aforesaid order dated 30.04.2015 by which learned Magistrate took cognizance against them.

5. It is submitted by learned counsel for the petitioners that even if the allegation levelled in the FIR are taken to be true in its entirety, no offences under sections 406, 420, 467, 468, 471 of the Indian Penal Code made out. It is submitted that the dispute between the parties is purely civil in nature, therefore, no offence is made out. It is further submitted that though no criminal liability made against the petitioners, but the respondent No. 2 misused the process of law to harass the petitioners. It is further submitted that none of the offences committed within the jurisdiction of Ranchi district. The written report reveals that all the offences committed, either at Delhi or at Allahabad. Thus, Ranchi court has no jurisdiction to try this case. Accordingly, it is submitted that the order taking cognizance is wholly without jurisdiction.

6. On the other hand, learned State Counsel and the counsel appearing for the respondent No. 2 submitted that in the instant case, there are sufficient materials to show that the petitioners had committed criminal breach of trust and cheating. It is submitted that the criminal intent of the petitioners reflected from the fact that though petitioners sold the property to the mother and wife of Uday Bir Singh in the year 2013, they executed a registered supplementary deed of agreement in favour of respondent No. 2 on 13.02.2014. It is further submitted that another accused namely, Rabish Chandra Verma executed another registered deed of agreement for sale in favour of wife and mother of Uday Bir Singh on 19.05.2014. It is submitted that the aforesaid acts and omission on the part of the petitioners shows that they have committed the offence of cheating. It is further submitted that it is specifically mentioned at paragraph 29 of the complaint petition that from the month of May, 2013, when respondent No. 2 was posted at Ranchi, both the petitioners gave false assurances to respondent No. 2 at Ranchi through SMS. It is further submitted that petitioner-Rabish Chandra Verma sent information for cancellation of the agreement at the house respondent No. 2 situated at SAIL Satellite Township in the district of Ranchi, and deposited part of the amount in the account of the wife of respondent No. 2. Accordingly, it is submitted that part of the offences took place at Ranchi. Thus, the Ranchi court has jurisdiction to try this case.

7. Having heard the submissions, I have gone through the records of the case.

8. From perusal of the records, I find that the dispute between the parties relates

to sale and purchase of landed property. It appears that initially negotiation took place at Delhi. But from perusal of paragraph No. 29 of the written report, I find that from May, 2013, several time negotiations took place at Ranchi through SMS. In course of argument, learned counsel for respondent No. 2 had produced Photostat copy of the details of SMS, sent by the petitioners to respondent No. 2. From perusal of the same, I find that on different occasions, petitioners gave assurances to the respondent No. 2 through SMS and promised that they will fulfill their promises and requested respondent No. 2 to keep calm and patience. It is not out of place to mention that petitioner Rabish Chandra Verma in his writ application had annexed a letter dated 28.04.2014 addressed to respondent No. 2, in which address of respondent No. 2 was mentioned as E-103, Sector-II, H.E.C. Colony, Dhurwa, Ranchi. In the above letter, he mentioned that he is unable to sale his share to the respondent No. 2. This also shows that some negotiations took place in between the petitioners and respondent No. 2 at his Ranchi. In the aforesaid fact and circumstance, I find that part of the cause of action arose in the township of Ranchi, therefore Ranchi court has jurisdiction to try the case.

9. Now, coming to the second contention raised by the learned counsel for the petitioners that no offence made out against the petitioners, it is worth mentioning that the petitioners had taken substantial amount towards part payment of consideration and for which they gave receipts on the non-judicial stamp paper. The aforesaid receipts were enclosed with the written report. It also appears that petitioner Girish Chandra Verma had sold his share of property pertaining to house No. 42B Tagore Town, Allahabad in favour of Smt. Saroj Singh and Smt. Seema Singh by registered deed of sale on 26.09.2013. But inspite of that petitioners executed a joint supplementary agreement for sale on 12.02.2014 in favour of respondent No. 2, wherein they promised that they will sale their share in the ancestral property at 42 Tagore Town, Allahabad, Uttar Pradesh to respondent No. 2. In the said supplementary agreement they also promised that they will execute sale deed in the last week of May, 2014. Thus, aforesaid act of the petitioners prima facie shows that they had cheated respondent No. 2, because if one of them had already executed registered sale deed in favour of Smt. Saroj Singh and Smt. Seema Singh on 26.09.2013, then how they will execute another sale deed in favour of respondent No. 2 by the end of May, 2014. Thus, the offence of cheating made out against the petitioners. It further appears that Rabish Chandra Verma who is one of the executant of supplementary agreement, had executed registered agreement of sale in favour of Smt. Saroj Singh and Smt. Seema Singh on 19.05.2014. It is also alleged that petitioners have taken huge amount from respondent No. 2, in token of which they have issued written receipts on stamp papers. It appears that till the date of lodging of F.I.R. they have not returned entire amount. Thus, I find that the offence of criminal breach of trust also made out against them.

10. It is submitted by learned counsel for the petitioners that learned Magistrate, while taking cognizance had not applied his mind. The aforesaid submissions

appears to be incorrect, because from perusal of impugned order, I find that learned Magistrate had perused the record of the case and the case diary and concluded that prima facie case under sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code made out against the accused persons, namely, Rabish Chandra Verma and Girisih Chandra Verma. Under the said circumstances, I find no illegality in the order passed by the learned Magistrate.

11. In view of the discussions made above, I find that these writ applications have no merit. Accordingly, the same are dismissed.