
(2012) 09 JH CK 0002
In the Jharkhand High Court
Case No : Criminal Revision No. 334 of 2003

Ruden Tirkey

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2013) 2 JLJR 620

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : P.P.N. Roy and Ms. Pragati Prasad, for the Appellant; Pramod Kumar Choudhary for the State, for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and the learned counsel for the State. No one appears for the complainant opposite party No. 2 in spite of the fact that the opposite party No. 2 has appeared through advocate upon notice and the name of the learned counsel appears in the cause list. It is also apparent that the case was taken up on 6.8.2012 and in view of the fact that the learned counsel for the opposite party No. 2 had not appeared, the case was adjourned in order to give a chance to him. Thereafter, the case was taken up on 22.8.2012 and on the said date also, no one had appeared on behalf of the opposite party No. 2. Today also, no one has appeared on behalf of the opposite party No. 2. The petitioner is aggrieved by the order dated 4.2.2003 passed by Kumari Ranjana Asthana, learned Judicial Magistrate, Ranchi, in Complaint Case No. 815 of 1999, whereby, the application filed by the petitioner u/s 245 of the Cr. P.C. for discharge, was rejected by the Court below.

2. The petitioner has been made accused in Complaint Case No. 815 of 1999, filed in the Court of the Chief Judicial Magistrate, Ranchi, wherein, it is alleged by the complainant that he had purchased the lands in question, from the petitioner

for consideration amount of Rs. 44,000/-. It is stated in the complaint petition that before purchase, the necessary permission u/s 46 of the Chhotanagpur Tenancy Act was obtained by the accused petitioner by filing an application before the Rent Suit Deputy Collector, Ranchi and after getting the permission from the Rent Suit Deputy Collector, Ranchi by order dated 31.7.1990 in Case No. M-574 R 8 II of 1989-90, the sale deed was executed in favour of the complainant on 13.9.1991, which was registered vide Registration No. 10440 dated 13.9.1991. The lands in question were also mutated in favour of the complainant in Mutation Case No. 130 of 1992-93 and since then, the complainant is paying rent to the State Government. It is alleged in the complaint petition that when the petitioner wanted to construct his house on the lands, in question, in the year 1999, he was objected by one Smt. Krishna Bhasin and thereafter, upon enquiry, it was found that there was already a title suit with respect to the said land, in question, with one Jadu Nandan Tiwari, who had agreed to purchase the land through an agreement with the recorded tenant. In the said title suit, the petitioner had appeared and filed a compromise petition, admitting the right, title and interest of the said Jadu Nandan Tiwari and accordingly, the name of Jadu Nandan Tiwari was mutated, in the Government Sirista. The said Smt. Krishna Bhasin had purchased the land, in question, from the said Jadu Nandan Tiwari. Accordingly, the complaint petition was filed by the complainant, alleging the offences under Sections 420, 406 and 120B of the I.P.C. against the petitioner as the petitioner had sold the lands to the complainant knowing these facts and also knowing that he was not having the right, title and possession over the lands in question.

3. It appears from the impugned order that the complainant had supported his case in his statement recorded on S.A. and some witnesses were also examined by the complainant in the enquiry stage, on the basis of which, the prima facie case was found against the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. It has also been submitted that from the complaint petition itself, it would be apparent that the lands, in question, were sold to the complainant by the petitioner after obtaining the necessary permission under the C.N.T. Act and after execution of the sale deed in favour of the complainant the lands were also mutated in favour of the complainant and he is also paying rent to the State Government with respect to the lands, in question. Even the witnesses examined during enquiry, specifically admitted that the petitioner was in possession over the lands in question at the time of selling of the land to the complainant, as is apparent from the impugned order itself. Learned counsel has accordingly, submitted that this case is purely of civil nature and no offence can be said to be made out against the petitioner. Learned counsel accordingly, submitted that it is a fit case in which the petitioner ought to have been discharged.

5. Learned counsel for the State, on the other hand, has opposed the prayer and

has submitted that on the basis of the allegations made in the complaint petition and the discussions of the evidence in the impugned order, the offence is clearly made out against the petitioner.

6. After having heard the learned counsel for both sides and upon going through the record, I find that it is an admitted case of the complainant that before selling the lands in question, to the complainant, the permission as required under the law was taken by the petitioner and only thereafter, the land was sold to the petitioner vide Registered Sale Deed dated 13.9.1991. It is specific case of the complainant that thereafter, the complainant filed an application for mutation with respect to the lands in question and the mutation was also allowed in his favour in Mutation Case No. 130 of 1992-93 and thereafter, the complainant is paying rent to the State Government. Even the complainant's witnesses had admitted that the petitioner was in possession of the lands in question at the time of sale.

7. In the facts of this case, I am of the considered view that if any objection is made by a third party to the possession of the complainant over the lands in question, the complainant has the civil remedy in the competent Court and no offence can be said to be made out against the petitioner. Accordingly, the continuance of the criminal case against the petitioner is a misuse of the process of the Court and it is a fit case for discharging the petitioner in exercise of the inherent powers u/s 482 of the Cr. P.C. In view of the aforementioned discussions, the impugned order dated 4.2.2003 passed by Kumari Ranjana Asthana, learned Judicial Magistrate, Ranchi, in Complaint Case No. 815 of 1999 is, hereby, set aside. Consequently, the petitioner stands discharged. This application is accordingly, allowed.