

(2019) 05 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No. 3660 Of 2015

Sachindra Mishra @ Sachindra Kumar Mishra

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 120(B), 420, 467, 468

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2019) 05 PAT CK 0034

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Sushmita Mishra, Surya Narayan Sah, Ashok Kumar Mishra, Subodh Kumar Mishra, Jharkhandi Upadhyay

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

"That in the instant application, the prayer of the petitioner is for quashing the order dated 5-06-14/5-05-14 passed by the learned C.J.M. Motihari in Motihari Town P.S. Case No. 156/2000 corresponding to Tr. 4300/14 whereby and where under cognizance u/s 420, 467, 468 and 120 (B) of the I.P.C. has been taken against the petitioner and other co-accused."

3. The allegation against the petitioner is that in connivance with other accused, who was the owner of the land in question, he has got the same registered in his name, even though it had already been bought by the opposite party no. 2-complainant earlier from the same land owner.

4. Learned counsel for the petitioner submitted that making the petitioner an

accused is absolutely an abuse of the process of the Court as he is not a buyer of the land belonging to other co-accused. It was submitted that the owner had registered the land in question in favour of the petitioner and, thus, if at all, the owner had earlier registered the same land in favour of the opposite party no. 2, then the opposite party no. 2 cannot have grievance only against the owner of the land and not against the petitioner, who is the purchaser. It was submitted that the opposite party no. 2 and the petitioner have direct link and further that it was not incumbent on the petitioner to find out as to whether the land which was bought by him from the land owner had been sold to any other person. Learned counsel submitted that the complaint filed by the opposite party no. 2, upon being sent to the police, resulted in institution of Motihari PS Case No. 156 of 2000 and after investigation, the police submitted final form treating it as civil dispute. However, learned counsel submitted that differing from the Final Form, the Court has taken cognizance against the petitioner without there being any material or justification for the same. It was further submitted that before the police, during investigation, the opposite party no. 2 has himself said that his grievance was basically with regard to demarcation and measurement and if the same had been done, there would not have been any dispute. Learned counsel further submitted that the land in question was bought by the petitioner on 25.11.1998 and he is coming in peaceful possession over the same after getting it mutated in the revenue records. It was submitted that if at all the opposite party no. 2 had bought the same land, he was required to mutate the same in his name before the revenue authorities, which he has not done. Learned counsel further submitted that even the sale deeds in favour of the opposite party no. 2 have not been brought on record before the Court below to show as to whether it was the same land which was bought by the opposite party no. 2 and is alleged to have been sold to the petitioner also.

5. Learned APP submitted that on the basis of materials collected during investigation, the Court has taken cognizance which does not require interference.

6. Learned counsel for the opposite party no. 2 submitted that he had bought the land on 31.10.1982 and 22.12.1989. He further submitted that the challenge being to the order taking cognizance, the Court below has done so on the basis of materials before it as was available from the police investigation itself, and the same is in accordance with law. Learned counsel submitted that earlier also the petitioner had moved the Court challenging the order of cognizance, which was passed earlier dated 03.08.2011 in Cr. Misc. No. 31896 of 2011, in which by order dated 05.03.2014, the matter was remitted to the Court below to examine the material to differ with the police report, and if he proposed to proceed with the case, differing with the police report, he may indicate some reason. It was submitted that thereafter, the Court below has again passed the present impugned order giving reasons for such cognizance being taken against the petitioner.

7. However, on a direct query of the Court as to how the allegation can be believed when in the complaint, it is stated that the opposite party no. 2 came to know of the land belonging to him was bought by the petitioner only when he had sent somebody to pick the fruit from the land whereas, before the police, he had stated that his only grievance was with regard to measurement and demarcation of the land, meaning thereby that still he had not got the land either measured or demarcated; learned counsel could not meet the query of the Court.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

9. As has rightly been submitted by learned counsel for the petitioner, he is the purchaser of a land from co-accused, who was also the vendor of land purchased by the opposite party no. 2. Further, the opposite party no. 2 not having brought on record the sale deeds in his favour, it cannot be said as to whether the land which has been sold to the petitioner is the same land which has been sold to the opposite party no. 2, as both claim that portion of land from a bigger chunk has been sold to them. Thus, in the absence of a clear cut demarcation, it cannot be said that any wrong has been committed, much less, by the petitioner, who purchased the land from the common land owner and with regard to which he has got his name mutated in the official revenue records. Further, the petitioner has brought on record the statement of opposite party no. 2 before the police in which he has stated that the dispute would not have arisen had his land been measured and demarcated, which has not been controverted by learned counsel appearing for the opposite party no. 2 and also no counter affidavit has been filed. This clearly proves that once there was no demarcation and the land claimed to have been bought by the opposite party no. 2, is from a bigger chunk of land, there cannot be any question of any criminal offence having been committed, much less by the petitioner, who is a purchaser from a common land owner. The land being sold by the common land owner, the petitioner cannot be fastened with any criminal liability, even if, it is assumed that the same land was sold twice, as the liability would be on the person who had sold the same land to two different persons on different dates. Moreover, the matter is purely civil in nature as it relates to a dispute relating to measurement and demarcation of land, as per the statement of the petitioner himself before the police during investigation and many other witnesses also.

10. Coming to the contention of learned counsel for the opposite party no. 2, that on remand earlier, again a detailed order has been passed, perusal of the same reveals that witnesses have stated only with regard to the opposite party no. 2 having purchased land from the common land owner, but nowhere any person has stated with regard to the petitioner having bought the same land or have attributed any role of the petitioner or have stated that it was the land purchased by the opposite party no. 2 which has been bought by the petitioner. Thus, even if such statements have been referred by the Court below in the

order impugned while taking cognizance, the same in no way implicate the petitioner and make him liable for criminal prosecution.

11. The Court would further observe that if a large chunk of land belongs to any person and from the same, pieces of land are sold in separate transactions, first and foremost, it is required that there be proper identification of the land and most importantly, ultimately, the responsibility would rest with the land owner for ensuring that the same piece of land is not sold to more than one person. Further, a person is not expected to buy a land which has already been sold to another person by the land owner, knowing fully well that the person to whom it has been sold earlier would have a better right and would claim the land and, thus, whatever money was being paid to the land owner would ultimately be of no value and would cause loss to the person so purchasing the land after being fully aware of such fact. This also goes to show that there was no mens rea on the part of the petitioner of purchasing a land which, as alleged, was already sold to the opposite party no. 2.

12. The Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal* reported as 1992 Supp (1) SCC 335, at paragraph no. 102 has enumerated categories where the Court would interfere under its inherent power under Section 482 of the Code. The same reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

13. The present case, in the opinion of the Court is covered under categories 1, 3 and 7 of the aforesaid judgment in Bhajan Lal (supra) at paragraph no. 102.

14. Similarly, the Hon'ble Supreme Court in State of Karnataka v. L. Muniswamy reported as (1977) 2 SCC 699, at paragraph no. 7, has observed as under:

"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... "

15. In view of the aforesaid, the Court finds that the present case against the petitioner is unsustainable and intended to harass the petitioner having been filed for oblique reasons. The Court would also observe that the matter basically relating to dispute as to whether the particular piece of land in question which the opposite party no. 2 claims to have bought from the co-accused land owner was the land which was also sold to the petitioner, can only be adjudicated by a Civil Court of competent jurisdiction and in such view of the matter also criminal proceeding cannot be justified.

16. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Motihari Town PS Case No. 156 of 2000 (Trial No. 4300 of 2014), pending before the Court below at Motihari, East Champaran, including the orders dated 05.04.2014/05.05.2014, as far as it relates to the petitioner, stands quashed.