
(2016) 01 RAJ CK 0173

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1697 of 2014

Sanjay Kumar and another

APPELLANT

Vs

State of Rajasthan and another

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 365, 420, 467, 468, 471

Citation : (2016) 2 CriCC 531 : (2016) 1 CriLR 434 : (2016) 1 RajCriC 258 :
(2016) 1 WLCRajUC 516

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Trilok Joshi, Advocate, for the Appellant; V.S. Rajpurohit, PP, Rakesh Matoria, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Sandeep Mehta, J. - By way of this misc. petition, the petitioners have approached this Court being aggrieved of the order dated 25.06.2014 passed by the learned ACJM, Srikanpur in connection with FR No. 159/2013 and FIR No. 1 17/2013 registered at the Police Station Srikanpur for the offences under Sections 420,467,468,471 and 365 IPC as well as for quashing of the above FIR.

2. Facts in brief are that the respondent No. 2 Mahendrapal submitted a complaint in the court of learned ACJM, Srikanpur alleging that his father Amarnath had been murdered about 7-8 years ago and his assailants had been convicted and had been sentenced to life imprisonment. They were released on bail by the High Court. The complainant, who claims to be a simpleton, was left all alone after the death of his father because his sister had been married earlier and was living at her in laws home. His grandfather Shri Hansraj, passed away leaving behind lots of properties like agricultural land, shops, houses etc. in the Tehsil Srikanpur. The complainant used to live all alone at the house No. 27 B Block, Srikanpur. The accused Rajendra Kumar Sihag was always on the look

out to usurp the property belonging to the complainant. He had formed a group with the other accused person with the sole objective of taking control of the complainant's properties. The complainant did not know the accused No. 1 Sohan Lal but the accused Rajendra Kumar Sihag, taking advantage of the complainant's simple nature : took him into confidence and engaged Sohan Lal for serving the complainant. On 01.02.2013 the complainant was illegally confined, assaulted and then abducted. He was forcibly taken from his house at Srikanpur and was made to sign blank papers and a fraudulent and fake power of attorney was got prepared. The stamps for executing the power of attorney were purchased from Vijay Kumar Stamp Vender. The document was got drafted through Madan Lal Gumber Deed Writer and without even producing the complainant before the Sub-Registrar, the power of attorney was got registered on 13.02.2013. On that day, the Sub-Registrar was in some village in relation to a revenue camp. Balwant Singh and Hanuman were made to identify the complainant in the fraudulently executed power of attorney, whereas they were not acquainted with the complainant. Whenever complainant inquired about the reason for preparing the power of attorney, the accused beat him up and confined him in a room. Thereafter, the accused misused the power of attorney and got executed a registered sale deed of the complainant's land located in the Chak 13A, Tehsil Srikanpur through the power of attorney Sohan Lal in favour of Sanjay Kumar on 25.04.2013 at the Sub Registrar Office, Sriganagar. The sale was made without his consent. The consideration which was mentioned in the sale deed was neither paid to the complainant nor deposited in his bank account. The complainant did not know the power of attorney holder Sohan Lal. An Aadath shop located at Hanumangarh which came to the complainant's share in partition was also sold in the same fraudulent manner. The complainant alleged that the accused and numerous other persons took undue advantage of the complainant's simple nature and got numerous of his properties sold through fake and fraudulent transactions. However, the complainant did not hand-over the possession to the alleged purchasers. The complainant resisted the attempt of the accused to get the mutation of his property transferred by filing appropriate applications before the Revenue Appellate Authority, Sriganagar.

3. The said complaint was forwarded to the Police Station Srikanpur where FIR No. 117/2013 was registered for the offences under Sections 420,467,468,471 and 365 IPC and investigation commenced. The Police conducted thorough investigation and came to a conclusion that the dispute between the parties was purely of a civil nature. Accordingly, a negative Final Report was filed in the concerned court. The complainant submitted a protest "petition. The learned ACJM, Karanpur, vide order dated 25.06.2014 directed the Police to conduct further investigation into the matter.

4. The accused persons have approached this Court by way of this misc.petition seeking quashing of the order dated 25.06.2014 as well as the. FIR on numerous grounds. Copies of the revenue litigation instituted between the parties in relation to the disputed properties have been filed along with the misc. petition.

5. Shri Trilok Joshi, learned counsel for the petitioners, during course of his arguments, placed on record a copy of the order dated 21.09.2015 passed by Revenue Appellate Authority, Sriganaganagar in appeal No. 204/2015 preferred by the complainant Mahendrapal and urged that the Revenue Appellate Authority has clearly ratified the registered sale deed of the complainant's land executed in favour of Sanjay Kumar and thus, the every substratum of the allegations set out in the FIR under challenge are nullified. He contended that even if the allegations levelled by the complainant in the impugned FIR are accepted to be true on the face value, then also, no prima-facie case is made out so as to justify the continuance of the investigation of the FIR under challenge. He further urged that the so-called fraudulent power of attorney was used for executing the sale deeds of the complainant's land in favour of the petitioner Sanjay Kumar as well as one Gursevak Singh. However, the complainant himself gave up the challenge to the sale deed executed in favour Gursevak Singh. Learned counsel thus submitted that as the complainant has himself partly given up his challenge to the so-called fraudulent sale by dropping the name of Gursevak Singh in the revenue proceedings, the challenge given to the remaining part of the sale transaction, which was executed in favour of the petitioner Sanjay Kumar can also not be sustained. He thus urged that the continued investigation of the impugned FIR amounts to a gross abuse of process of law and therefore, the FIR as well as the order dated 25.06.2014 deserve to be quashed.

6. Per contra, learned Public Prosecutor and Shri Rakesh Matoria learned counsel representing the complainant vehemently opposed the submissions advanced by the petitioners' counsel and urged that the complainant is a simple minded man. Misusing the said fact, the accused kept him in dark and fraudulently got executed a power of attorney in favour of Sohan Lal. The said power of attorney was then misused for transferring the properties of the complainant without his consent. They thus urged that the impugned order and the FIR do not require any interference of this Court in the exercise of its inherent powers.

7. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

8. The basic thrust of the allegations as set out in the impugned FIR is that the accused conspired together and managed to procure the complainant's power of attorney by using deceitful means and then fraudulently used the same to transfer the complainant's land without his consent and without making payment of consideration. The said allegation prima-facie cannot be accepted in view of the subsequent development in form of the revenue proceedings for injunction, instituted inter-se between the parties which form an integral part of the record of the instant misc. petition. The complainant, during the course of these revenue proceedings, gave up his challenge to the sale deed executed in favour if Gursevak Singh on the basis of the very same power of attorney, which is berated in the impugned FIR. While instituting the revenue proceedings, the complainant challenged the sale of his property in entirety i.e. the sale made in

favour of the present petitioner as well as in favour of Gursevak Singh. The order-sheet dated 19.12.2013 of the Revenue Appellate Authority clearly reflects that Mahendrapal withdrew the original revenue suit to the extent of Gursevak Singh. The appeal preferred by Mahendrapal was decided by the appellate authority on 21.09.2015 observing as under:-

"vihyKaV }kjk vius fgLLs dh Hkwfe iathd`r fodz;i= }kjk jsLiksaMsaM o xq:lsod flag dks fodz; dh xbZA fodz; i= nckc esa rS;kj djokus rFkk ekjihV dj gLrk{kj djok ysus dk vihyKaV dk vkjksi l{ke U;k;ky; }kjk izekf.kr ugha ekus tkus rFkk iathd`r fodz; i= dks l{ke U;k;ky; }kjk fujLr ugha djok fn;s tkus rd jktLo U;k;ky; }kjk iathd`r fodz; i= ds ek;/e ls gq, fodz; ,oa dCtk gLrkarj.k dks ekU;rk nsuh gksxhA vihyKaV us fodz; i= dh oS/kkfudrk dks pqukSrh nh gS ijUrq mlh fodz; i= ds lUnHkZ esa xq:lsod ds ekeys esa gLrkUrj.k Lohdkj fd;k gSA tc rd fodz; i= vFLrRo esa gS dzsrk jsLiks fookfnr vkjkth dk fjdkMsZM [kkrsnkj gS rFkk fjdkMsZM [kkrsnkj ds fo:) vLFkk;h fu"ks/kkKk ls badkj dj ijh{k.k U;k;ky; us dksbZ Hkwy ugha dh gSA vr% vihyKaV dh vihy rFkk LFkxu izkFkZuk i= blh LVst ij vLohdkj fd;s tkrs gSA"

9. Thus, the competent court has already decided that the registered sale executed on the strength of the power of attorney given by the complainant is legal and unquestionable. The complainant himself has not alleged in the FIR that his signatures on the power of attorney were forged or fabricated. Till date, neither the disputed power of attorney nor the registered sale deed have been challenged in any civil court. The investigating agency, after conducting thorough investigation found that the case as set up by the complainant in his FIR was totally false and the dispute if at all between the parties was purely of civil nature. In this background, this Court is of the opinion that the order passed by the learned ACJM, Srikanpur on 25.06.2014 directing further investigation is totally illegal was absolutely unwarranted and unjustified.

10. In view of the facts narrated above, this Court is of the firm opinion that there is no requirement of any further investigation in the matter whatsoever. On the face of the record, the dispute inter-se between the parties appears to be of purely civil nature. If at all, the complainant is aggrieved by the sale to Sanjay Kumar of his land on the basis of the power of attorney, then he is required to challenge the same by filing a suit for cancellation of the sale deed. Till date, no such proceeding has been instituted.

11. In this background, this Court is of the firm opinion that no further investigation is required in the matter and the order dated 25.06.2014 passed by the learned Magistrate directing further investigation and the impugned FIR are nothing short of gross abuse of process of law.

12. Accordingly, the misc. petition deserves to be and is hereby allowed. The order dated 25.06.2014 passed by learned ACJM, Srikanpur and all subsequently proceedings sought to be taken thereunder in connection with the impugned FIR No. 117/2013 registered at the Police Station Srikanpur as well

as the impugned FIR are hereby quashed.

13. IA No. 119/2015 as well as the stay petition are also disposed of.