

(2014) 07 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 5434 of 2008

Satya Narayan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 471

Citation : (2014) 07 PAT CK 0060

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma, Sr. Advocate, Advocate for the Appellant;
Upendra Kumar, Sr. Advocate and Jharkhandi Upadhayay, A.P.P, Advocate for the Respondent

Judgement

Ashutosh Kumar, J.—Heard Mr. Yogesh Chandra Verma, learned Senior Counsel for the petitioners, Mr. Upendra Kumar, learned Senior Counsel for the Opposite Party No. 2 and Mr. Jharkhandi Upadhayay, learned counsel for the State.

2. This application has been filed on behalf of the petitioners seeking quashing of the order dated 7th November, 2007 passed by the learned Chief Judicial Magistrate, Khagaria whereby cognizance was taken under Sections 471 of the Indian Penal Code.

3. The Opposite Party No. 2 had filed an FIR alleging that when petitioner no. 1 and his persons started creating disturbances over his land, in order to restrain them from creating disturbances, he filed an application before the S.D.M. for initiating a proceeding under Section 144 of the Cr.P.C. On such application, Opposite Party No. 2 was treated as first party whereas petitioner no. 1 appeared as second party. During the enquiry, which was undertaken by the learned Sub Divisional Magistrate, a document was furnished on behalf of the petitioners which according to the informant was a forged document. The petitioners are said to have made use of a document namely, sale deed executed way back in

the year 1919. The petitioners claimed that the descendants of Vendee of the sale deed of 1919 executed sale deed in favour of petitioner nos. 2 and 3, who are the married daughters of petitioner no. 1. When the informant enquired from the registry office about the genuineness of such sale deed of the year 1919, he was informed that no such sale deed was executed on that particular day and by that number. On such information having been received, the FIR was lodged against the accused persons under various sections of the Indian Penal Code. The police after investigation submitted charge sheet under various sections for which the accused persons were charged with but by the impugned order, cognizance was taken only for the offence under Section 471 of the Indian Penal Code.

4. Learned counsel for the petitioners submitted that Section 471 of the Indian Penal Code provides for punishment to a person who fraudulently and dishonestly uses as genuine any document which he knows or has reasons to believe to be a fraudulent document. The essential ingredients of the offence, therefore, are the fraudulent or dishonest intention of the accused namely his knowledge about a particular document being forged but still using it as a genuine.

5. Learned counsel for the petitioners further submitted that assuming for the sake of argument that the sale deed number 230 dated 1919 was a forged and fabricated document, nonetheless that by itself would not lead to the presumption that the accused persons (petitioners) had knowledge or had reason to believe the same to be forged document. It is further submitted on behalf of the petitioners that some of the persons, who survived the Vendee of 1919 sale deed sold some portions of land to the petitioner nos. 2 and 3 by a registered sale deed in the year, 1996.

6. It is further submitted by the petitioners that the sale deed by which petitioner nos. 2 and 3 came in possession of the land in question, has not been challenged anywhere in any Court of Law. This Court notices that after the 144 proceeding, no title suit was filed with respect to the determination of title and possession as between the parties. However, from the records, it appears that the mutation in favour of petitioner nos. 2 and 3 was cancelled at the instance of Opposite Party No. 2 (informant). Such cancellation was challenged by the petitioners but such challenge could not be sustained. The land remains in possession of the informant even today.

7. Learned counsel appearing on behalf of the Opposite Party No. 2 contends that because of forged documents having been used by the accused persons, civil proceedings as between them stood forestalled for quite sometime. He also refers various paragraphs of the police papers which incorporates the statements of witnesses, who have stated that the document, in question, was forged at the behest of petitioner no. 1. Attempt was also made by the Counsel for the Opposite Party No. 2 to show that even with respect to the Sale deed of 1996, which is being claimed by the petitioners as having been executed by the

surviving descendants of the Vendee of 1919 sale deed, the petitioner had the knowledge that all such transactions were sham and documents were manufactured for the purposes of defeating the claim of Opposite Party No. 2 as also creating disturbances in the peaceful possession of Opposite Party No. 2.

8. It appears that the 144 proceedings in which, forged document was alleged to have been used has already been terminated. There is no title suit pending between the parties. Even the sale deed of 1996 executed in favour of petitioner nos. 2 and 3 has not been challenged. It also appears that the mutation of the property in the name of petitioner nos. 2 and 3 stands cancelled and the informant-Opposite Party No. 2 is in possession of the land.

9. It is, thus, evident that the requisite guilty intention and knowledge with regard to a document having been forged is not available and therefore, even if such document was used in a proceeding under Section 144 Cr.P.C., that would not be squarely covered by the mischief of Section 471 of the Indian Penal Code.

10. As a result of the aforesaid discussions, the prosecution of the petitioners in the present case is meaningless.

11. Allowing such proceeding to continue would be the abuse of the process of the Court and would create bad blood between the parties.

12. The order taking cognizance dated 7th November, 2007 passed by the learned Chief Judicial Magistrate, Khagaria is thus set aside.

13. The application is allowed.