(2023) 03 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1002 Of 2013

Shiv Shakti Kumar Singh And Others — APPELLANT

Vs

State Of Jharkhand And Others — RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:
Indian Penal Code, 1860 — Section 420
Code Of Criminal Procedure, 1973 — Section 202

Citation : (2023) 03 JH CK 0030

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : A.K.Das, Bishambhar Shastri, Jitendra Kumar Pasari

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

After hearing Mr. A.K. Das, the learned counsel for the petitioners, Mr. Jitendra Kumar Pasari, the learned counsel for the O.P.No.2 and Mr. Bishambhar Shastri, the learned counsel for the respondent State, the judgment was reserved on 15.03.2023.

This petition has been filed for quashing of the entire criminal proceeding as well as the order taking cognizance dated 01.02.2013 passed by the learned Judicial Magistrate, Dhanbad in C.P. Case No.1746 of 2012 whereby he has been pleased to take cognizance under section 420 of the I.P.C, pending in the court of learned Judicial Magistrate, Dhanbad.

The complaint has been made alleging therein that the petition dated 01.08.2012 lodged by the complainant against the petitioners and others is that the complainant is the owner of the raiyati land measuring 1.56 acres bearing plot no.137 within khata no.23 situates at Mouza Shyamdih, Mouza No.249 within Katras P.S. in the District of Dhanbad by virtue of sale deed no.14446 dated 19.08.1968 from Smt. Sharda Kumari for valuable consideration. Since the date of purchase the complainant is in peaceful possession thereof without any interruption whatsoever from any corner. The further case of the complainant is that he resides with his brother Sri Balmukund Rajgaria, in Rajgaria Market Complex at Rajganj Road, Katrasgarh, P.O. Katrasgarh, P.S. Katras, District Dhanbad and his wife had died long ago having only son and one daughter. The daughter was married in the year 1999 and the son namely Vinay Kumar Rajgaria has been residing in Assam in connection with his business. It is further alleged that the complainant fell in serious depression in the second week of June, 2012 and hence his brother, Balmukund Rajgaria had been getting his treated by Dr. T.R.Roy on and from 20.06.2012. It is further alleged that the younger brother of the complainant namely Shyam Sunder Rajgaria, resident of Rajganj, hearing serious depression of the complainant came to meet the complainant on 24th or 25th June, 2012 and told him that due to depression of the complainant, he may not be able to look after his property which may be grabbed by the miscreants of the locality and hence told the complainant to execute power of attorney in his favour only for looking after the said land so that the said land may not be grabbed by other persons. It is further alleged that believing the same, complainant agreed to execute the power of attorney. Upon this, Shyam Sundar Rajgaria and his son, accused no.9 came at Katrasgarh on 26.6.2012 and took the complainant to Govindpur Sub-Registry Office were they took the signature and L.T.I on some papers and also took finger prints there and photographs were also taken but due to serious depression, the complainant blindly believing on accused no.8 he executed the power of attorney without going through the contents made therein and after executing the said power of attorney on 26.06.2012 the accused no.8 took the complainant to Rajganj at his residence and left the complainant at Katras on the next day i.e. on 27.6.2012. It is further alleged that the son of the complainant Vinay Kumar Rajgaria was informed by the brother of the complainant namely Bal Mukund Rajgaria, who immediately came to Katras on 06.07.2012 in the night by purchasing “Tatkal Ticket” from Railway. It is alleged that on 10.07.2012 the complainant told his son, Vinay Kumar Rajgaria and younger brother Bal Mukund Rajgaria regarding execution of power of attorney on 26.6.2012 in favour of Shyam Sundar Rajgaria for looking after his land but his son and the said younger brother became suspicious an went to Govindpur Sub Registry Office for enquiry and upon enquiry they learnt that accused no.8 had committed fraud, cheating and breach of trust with the complainant by getting the power of attorney executed by the complainant in favour of three persons i.e. in the name of the accused no.5, accused no.6 and accused no.7 respectively whereby all the power including power of sell the land was given. While the complainant was told by the accused no.8 for execution of power of attorney only for the purpose of looking after the land. It is alleged that upon this, the complainant along with his brother, Bal Muknd Rajgaria and his son Vinay Kumar Rajgaria, went Rajganj at the residence of accused no.8 to meet on 12.7.2012 but neither the accused no.8 nor the accused no.9 were found in their house and they were told that they are out of station for some days. It is also alleged that having learnt such illegal conduct and apparent fraud with the complainant, he cancelled the said power of attorney dated 26.6.2012 on 13.7.2012 by executing registered cancellation deed at Govindpur Sub- Registry Office. It is alleged that the complainant sent a legal notice to the petitioners through his lawyer, Sri H.N.Agarwal, on 14.7.2012 intimating the revocation of powers dated 26.06.2012 the complainant further came to learn that the petitioners have sold the entire land part wise to the accused no.1 to accused no.4 by virtue a registered sale deed no.4264 dated 12.7.2012 in favour of Balika Devi showing consideration of Rs.1,60,000/-. Sale deed no.4370 dated 12.07.2012 in the name of Poonam Agarwal showing consideration of Rs.1,00,000/-, Sale Deed no.4371 dated 12.7.2012 in the name of Sri Amar Shankar Jha, showing consideration of Rs.1,00,000/- and Sale Deed No.4373 dated 12.7.2012 in the name of Smt. Puja Kumari showing consideration of Rs.1,60,000/-. It is alleged that the complainant intimated the Anchal Adhikari, Baghmara on 25.07.2012 regarding fraud committed by the accused Shyam Sundar Rajgaria and requested him not to mutate the name of the accused no.1 to accused no.4 in place of the complainant as the entire land is still in possession of the complainant and the sale deeds are illegal.

Mr Das, the learned counsel appearing for the petitioners submitted that the petitioners are innocent and they have committed no offence as alleged at all and they have been falsely implicated by the complainant at the behest of his son and brother out of greed to make more money. He further submitted that on 26.06.2012 a registered power of attorney has been executed by the complainant in favour of the petitioner accused no.5 to 7 being registered General Power of Attorney in respect of subject land wherein the complainant gave power in favour of the accused no.5 to 7 empowering the petitioners to transfer the subject land to any person by executing registered deed by the petitioners on behalf of the complainant. He further submitted that the petitioners for and on behalf of the complainant had sold the entire land to different purchasers who were cited as accused no.1 to accused no.4 in the case in hand and received consideration money from them on the date of execution of the registered sale deed i.e. 12.07.2012. The entire consideration amount has been received by the complainant to the tune of Rs.5 lakh at the registration office on 12.7.2012 and he issued a valid receipt in presence of the witnesses and the said receipt has been notorized dated 12.07.2012 contained in Annexure-3. He further submitted that the complainant being ill advised to purchase litigation and out of lust sent a notice dated 14.7.2012 to the accused no.5 to 7 intimating that the power of attorney given to them has been cancelled and revoked on 13.7.2012 at Govindpur Sub Registry Office which was received by the accused no.5 to 7 on 16.07.2012. He submitted that on receiving the said notice the petitioners were shocked and surprised to get the said notice. He submitted that the transaction was completed on 12.7.2012 however said power of attorney was cancelled on 13.7.2012 and notice was received on 16.07.2012 which itself suggest that the entire action was after thought. He further submitted that the complainant out of shrewdness on 23.7.2012 sold the entire subject land in favour of Bal Mukund Rajgaria, his brother and his son Vinay Kumar Rajgaria by registered sale deed no.4690 dated 23.7.2012 after receiving a sum of Rs.4,75,000/- only. Mr. Das, the learned counsel for the petitioner further elaborated his argument by way of submitting that only to make out a case falsely it has been stated that the complainant was suffering from depression, however, subsequently on 23.07.2012 he has gone to the registry office for execution of sale deed in favour of his brother and son. He further submitted that the complaint was filed on 01.8.2012 but however he has not stated in the complaint as well as in the solemn affirmation that the said land was sold by him on 23.7.2012 to his brother and son. Even the C.W.1 who was son of O.P.No.2 not stated on oath that he is one of the purchaser of the said land by virtue of registered sale deed no.4690 dated 23.07.2012. C.W.2 namely Bal Mukund Rajgaria who was brother of O.P.no.2 and he has also not stated about the purchase of the land by registered sale deed dated 23.7.2012. Mr. Das, the learned counsel further submitted that the complainant has also lodged Title Suit No.65 of 2012 before the Civil Judge, Senior Division-II, Dhanbad against the petitioners and the purchasers for getting declaration and cancellation of sale deed and injunction, etc. and in the suit the petitioners have already appeared and filed their written statement. On these background, he submitted that for civil wrong and for which the suit is already pending, the complaint case has been filed and the learned court has taken cognizance which amounts to abuse of process of law. On these grounds, he submitted that the entire criminal proceeding may kindly be quashed.

Per contra, Mr. Jitendra Kumar Pasari, the learned counsel appearing on behalf of the O.P.No.2 has submitted that the complainant has not received any amount from the petitioners rather the petitioners have obtained the signature on the blank paper and prepared the document. He further submitted that the complainant came to know about the cheating and that is why legal notice has been issued. He further submitted that son of the O.P.No.2 came and the accused persons in a very hurriedly manner have sold the land on 12.7.2012 to their wives and grand-mother and has stated that the said complainant has not received any amount from the petitioners. He submitted that the complainant has rightly registered the land to his brother since he is the owner of the land in question. He further submitted that the complainant was suffering from depression but seeing the cheating made by the petitioners and other co-accused persons he has registered the sale deed in question dated 23.07.2012. He further elaborated his argument by way of submitting that the enquiry was made by the learned court under section 202 of the Cr.P.C. and solemn affirmation was also taken of the complainant and a list of document was also filed by the complainant along with the complaint petition and thereafter the learned court after perusal of the deposition of the witnesses and the documents on record has took cognizance against the petitioners and other co-accused. He submitted that from the perusal of the deposition of the witnesses and the documents filed prima facie case is made out against the petitioners and that is why the learned court has taken the cognizance. He further submitted that there is criminality involved in the petition and if the criminality is involved the criminal proceeding as well as civil proceeding can go simultaneously and to buttress his argument he relied in the case of “Medchl Chemicals and Pharma Private Limited v. Biological E. Limited and Others”, reported in (2000) 3 SCC 269 Relying on this judgment, he submitted that complainant discloses the commission of the offence and the complain cannot be quashed merely on the ground that civil remedy is available as has been held by the Hon’ble Supreme Court. On the same line he also relied in the case of “Trisuns Chemical Industry v. Rajesh Agarwal and Others” reported in (1999) 8 SCC 686. On the same point, he also relied in the case of “Ganga Dhar Kalita v. The State of Assam and Others” in Criminal Appeal No.592 of 2015 [arising out of S.L.P.(Crl) No.4425 of 2014]. Relying on these judgments, he submitted that it is well settled that when the criminality is there, both the proceeding, civil as well as criminal, can go simultaneously and in that view of the matter, this petition is fit to be dismissed.

In view of the above facts and submissions of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record including the contents of the complaint and deposition of enquiry witnesses as well as the order taking cognizance.

It is an admitted fact that power of attorney was issued in favour of the brother of the complainant and pursuant thereto, such transaction has taken place by registered sale deed dated 12.7.2012 and after the said transaction, on another day, i.e. on 13.7.2012, the power of attorney has been revoked. The document annexed with the complaint petition, Annexure-3, it transpires that a sum of Rs.5 lakh was paid to the O.P.no.2 for such transaction and he has signed the said receipt on revenue stamp which was also notorized with the Notory, Dhanbad. In view of this Annexure-3, it transpires that a sum of Rs.5 lakh has been paid to the O.P.No.2 and thereafter such transaction has taken place. The power of attorney is also on record which suggest that power of attorney was provided to Shiv Shakti Kumar Singh, Pankaj Kumar, Lalit Agarwal for such transaction and on the basis of such registered power of attorney the transaction has taken place. Shyam Sunder Rajgaria the petitioner no.3 is brother of the O.P.no.2 and Bishwajit Rajgaria, the petitioner no.2 is the son of Shyam Sunder Rajgaria. From this it transpires that there is dispute between the family itself and for that the title suit has also been instituted which is pending and the parties have appeared for adjudication. Identical was the situation in the case of Rama Devi v. State of Bihar, (2010) 12 SCC 273 wherein at paragraph nos.14 to 18 it has been held as under :

“14. Having considered the submissions made on behalf of the respective parties and having considered the documents placed before us and also the courts below, we do not find any substance in Mr Mishra's submissions on behalf of Respondent 2. From the materials produced before us, no link has been established between Prabhu Singh and Respondent 2. If at all Respondent 2 has any grievance in respect of the sale deed which had been executed in his favour by the appellant, it could be against Prabhu Singh and not the appellant. If we were to accept Mr Mishra's submissions, then it was the appellant Rama Devi who had been cheated by her vendor, Prabhu Singh, who had sold her the property in question, although, the same is alleged to have been the subject-matter of an earlier sale effected by his brother Sita Ram Singh.

15. The veracity of the appellant's story may be gauged from the fact that after having purchased the suit property from Prabhu Singh by a duly registered deed of sale, she applied to the authority concerned of Phulwarisharif Circle for mutation of her name in respect of the jamabandi in which Survey Plot No. 235 had been included and the property continued to be mutated in her name till such time as she transferred the same to Respondent 2.

16. There can be no reason, as suggested by Mr Mishra, for the appellant to have obtained the sale deed in her name from Prabhu Singh with the intention of cheating Respondent 2. In fact, no link had at all been established between the sale deeds executed by Sita Ram Singh in respect of the mutated property and the appellant which could have given rise to suspicion, if any, of a conspiracy between herself and her vendor and his brother Sita Ram Singh, with the intention of cheating Respondent 2.

17. If Respondent 2 has been prejudiced by the fact that the appellant had executed a sale deed in his favour in respect of a plot of land which had already been the subject-matter of a previous transfer, he can at best question such transfer and claim damages in respect thereof from the vendor of the appellant by way of appropriate damages, but an action in the criminal court would not lie in the absence of any intention to cheat and/or defraud Respondent 2.

18. We, therefore, have no doubt in our minds that the appellant Rama Devi, cannot be made responsible for the circumstances which followed the sale effected by the appellant in favour of Respondent 2 and the filing of such a criminal complaint was nothing more than an attempt to pressurise the appellant into making a settlement."

Further while executing the sale deed the petitioners did not make any false or misleading representation. There had also not been any dishonest act of inducement on their part to do or omit to do anything which they could not have done or omitted to have done if they were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, from the above facts, the dispute between the parties is a civil dispute. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. This does not mean that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken in a civil suit, it assumes significance.

Considering that civil suit is pending, the transaction took place on the basis of registered power of attorney the petitioner nos.2 and 3 are related with O.P.no.2 which suggest that there is dispute in the family. Moreover, the Annexure-3 is a document which suggest that consideration amount of Rs.5 lakh has been taken by the O.P.no.2 and the transaction took place on 12.7.2012 and the power of attorney was revoked on 13.7.2012 that too, after taking a sum of Rs.5 lakh. Thus, it is crystal clear that for civil wrong a criminal case has been filed and further to allow the proceeding to continue will amount to abuse of the process of law.

The judgments relied by the learned counsel for the O.P.No.2 are not in dispute. This Court has discussed the parameters of criminal liability and civil case hereinabove. Had it been the case that criminality made out, those judgments relied by Mr. Pasari, the learned counsel for the O.P.No.2 would have become applicable. In the facts of the present case, those judgments are not helping the O.P.No.2.

In view of the above facts, reasons and the analysis, entire criminal proceeding including the cognizance order in connection with C.P. Case No.1746 of 2012, pending in the court of learned Judicial Magistrate, Dhanbad is quashed in regard to the petitioners.

Cr.M.P.No.1002 of 2013 allowed in the above terms.

It is made clear that pending civil suit shall be decided on its own merit without being prejudiced to this order.

Pending petition, if any, also stand disposed of.