

(2017) 10 PAT CK 0020

In the Patna High Court

Case No : 47902 of 2014

Smt. Geeta Devi @ Geeta Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 245](#) - When accused shall be discharged
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#), [Section 46](#)

Citation : (2017) 10 PAT CK 0020

Hon'ble Judges : Rajeev Ranjan Prasad

Bench : SINGLE BENCH

Advocate : Bhola Prasad, Ashok Kumar, Madhuri Lata, Krishna Prasad Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and learned counsel representing the opposite party no. 2 as well as learned A.P.P. for the State.

2. The petitioners in the present case are seeking quashing of the order dated 21.10.2014 passed by learned S.D.J.M., Aurangabad in Complaint Case No. 907/2011 by which the application of the petitioners under Section 245 Cr.P.C. has been rejected by the learned S.D.J.M. holding that there are sufficient materials to frame charge against the petitioners under Sections 420, 467, 468 and 504 I.P.C .

3. Learned counsel for the petitioners submits that the

genesis of the present case lies in the dispute which was the subject matter of adjudication in Title Suit No. 34/1996 filed by the mother of this complainant - opposite party no. 2 in the court of the learned Munsif, Aurangabad. Learned counsel submits that in fact the very basis on which the foundation of the present complaint case was laid has gone during the pendency of the present application because the judgment and decree passed by the learned Munsif, Aurangabad in Title Suit no. 34/1996 has been set aside by the learned S.D.J.M., Aurangabad in Title Suit No. 1/2003 vide judgment dated 10.03.2017. A supplementary affidavit has been filed on behalf of the petitioners enclosing therewith a copy of the certified copy of the judgment dated 10.03.2017 passed by the Appellate Court.

4. A perusal of the materials available on the record would show that according to the complainant, Plot No. 154 measuring area 3.1/8 dismals of land falling under Khata No. 171 in Village Varundih, District - Aurangabad was purchased by the mother of the complainant; a registered sale deed was executed by the petitioner no. 2 in her favour but the sale deed was retained and not handed over to the mother of the complainant on the ground that she had not paid the entire consideration amount. The retention of the sale deed by the vendor (petitioner no. 2) was challenged by the mother of the complainant - opposite party no. 2 in Title Suit No. 34/1996 wherein a prayer was made for directing the defendant to receive Rs. 5,000/- from the plaintiff and to hand over the original sale deed to the plaintiff which had been taken by the defendant from the Registry Office, a further prayer was made to put the plaintiff in possession of the land detailed in Schedule "A" of the Plaint.

5. The said suit was decreed and, according to the complainant, his mother was put in possession of the land by virtue of the steps taken in Execution Case No. 1/2003. It is alleged that despite

the said judgment and decree in favour of the mother of the complainant and handing over of possession in the execution case, the accused no. 1 (petitioner no. 2) acted under a conspiracy and executed a sale deed vide Deed No. 9589 dated 08.08.2011 in favour of his wife (petitioner no. 2) showing a total receipt of Rs. 1,92,000/- as consideration amount. Further allegation is that on asking as to why such a fraudulent sale deed has been executed by the accused no. 1, both these petitioners allegedly abused and beaten the complainant, the accused no. 1 took out a sum of Rs. 5,000/- from the pocket of the complainant.

6. Learned counsel for the petitioners submits that so far as the latter part of the allegations of abuse, beating and taking out of Rs. 5,000/- from the pocket are concerned, those are only superimpositions and baseless allegations without there being any material on the record, the allegation of beating and taking out a sum of Rs. 5,000/- was not believed by learned magistrate, and in fact the main allegations and dispute were with respect to execution of the sale deed as it was the case of the complainant that her mother had succeeded in the title suit. He further submits that in fact in the Title Appeal, the Appellate Court has come to a conclusion that only because of registration of the sale deed, any right, title or interest did not pass to the plaintiff / respondent. The Appellate Court has also come to a conclusion that the plaintiff also failed to prove that she performed her part of the contract prior to the repudiation of the contract by the appellants. On the strength of this judgment of the Appellate Court, learned counsel submits that in the nature of the present case, which is a pure and simple civil dispute though with certain superimpositions of allegations with an intention to give it a criminal colour, in view of the finding of the Appellate Court, further prosecution of the petitioners would only be an abuse of the process

of court. Learned counsel also submits that in order to set at rest the entire dispute this criminal proceeding need to be quashed in the interest of justice.

7. Learned counsel representing the opposite party no. 2, on query made by this Court, informed that his client has not challenged the judgment dated 10.03.2017 passed by the Appellate Court but according to him, the order rejecting the application for discharge of the present petitioners need not be interfered with. Learned counsel submits that the learned S.D.J.M., Aurangabad has considered the materials available on the record and has come to a conclusion that there are sufficient materials to proceed against the accused persons and, therefore, the test required for consideration of an application for discharge has been fully taken care of.

8. This Court has perused the materials available on the record. A bare reading of the complaint petition would show that the whole case has been built on the basis of the judgment and decree passed by the learned Munsif in Title Suit no. 34/1996. The plaintiff alleged that the execution of the sale deed by the petitioner no. 2 in favour of his wife is under a conspiracy but how the execution of the sale deed would be affecting the case of the mother of the plaintiff is not even indicated. The Title Appeal was still pending and finally it has resulted in setting aside of the judgment and decree passed by the learned Munsif in Title Suit No. 34/1996.

9. In these circumstances, this Court is of the considered opinion that continuance of the criminal proceeding against the petitioners any more would only be an abuse of the process of court. The order rejecting the petition of the present petitioners for discharge was passed before the judgment of the Appellate Court in Title Appeal no. 1/2003. Now that the judgment of the Appellate Court has been brought on the record, it is an uncontroverted and unimpeachable

document, this Court finds it just and proper in the interest of justice to take the said judgment in consideration and based on that when the court comes to a conclusion that the very basis of the complaint case has gone no purpose will be served in keeping the complaint case pending in the court below.

10. It is well settled that in appropriate case the Court can exercise its inherent jurisdiction to stop abuse of the process of court. In the opinion of this Court it is one of those cases where by virtue of the materials which are before the court continuance of criminal proceeding would only be an abuse of the process of court. Hence, the impugned order as well as the entire criminal proceeding arising out of the Complaint Case No. 907/2011, corresponding to Tr. No. 1559/2014, pending in the court of learned S.D.J.M., Aurangabad is hereby set aside.

11. The petition is allowed.