
(2012) 02 JH CK 0098

In the Jharkhand High Court

Case No : Criminal M.P. No. 1479 of 2005

Smt. Kiran Devi @ Kiran Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 420, 465, 466, 467
Registration Act, 1908 — Section 19, 21, 82, 83

Citation : (2012) 02 JH CK 0098

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This is an application for quashing of F.I.R. and entire criminal proceeding in connection with Deoghar P.S.case no. 292/06 corresponding to G.R.no. 784/05 dated 20.9.2005 u/s 465/466/467/477/420 and 34 of the I.P.C. pending in the Court of C.J.M. Deoghar. The case of prosecution as alleged; in the F.I.R. is that one Chandra Bhushan Ojha, S/o Sri Raghunath Ojha, P.O. Ashoknagar, Kankarbagh, Patna executed a sale deed in favour of petitioner, (Smt. Kiran Devi) vide sale deed no. 3415/1994 dated 05.12.1994, it is further stated that one Sri Kamal Narayan ma applied for certified copy of aforesaid sale deed on 06.04.2005. It is alleged that at that time record-keeper, of Deoghar Registration Office detected that hand-writing and ink of first page of aforesaid sale deed is different from its other five pages. Thereafter, matter was brought to the notice of Deputy Commissioner, Deoghar and on his direction notice issued to Vendor, Vendee and deed writer of aforesaid sale deed. It is stated that notice on vendor has not been served, whereas vendee(petitioner) instead of filing of explanation filed a writ application in the High Court, whereas deed writer, namely, Sitaram Pandit filed his explanation in pursuance of the said notice-in the said explanation, he stated that first page of the sale deed was in his hand-writing, but the rest five pages are not in his hand writing. He further stated that signature on the last page of sale deed is not his signature.

Accordingly, District Sub-Registrar, Deoghar on the direction of Deputy Commissioner requested Officer-in-Charge Depghar police station to institute a case. It appears that on the basis of written report of District Sub-Registrar, Deoghar P.S. case no. 292/05 dated 20.9.2005 instituted under sections 465/466/467/477/420 and 34 of the I.P.C. Aforesaid F.I.R. is impugned in this application.

2. It is submitted by Sri A.K.Kashyap, learned senior counsel for the petitioner, that as per section 83 of the Registration Act, a prosecution for any offence under the Registration Act can commenced only with the permission of Inspector General of Registration. It is submitted that facts enumerated in the F.I.R. constitutes offence u/s 82 of the Registration Act. Thus, as per section 83 it is incumbent upon the District Sub-Registrar. Deoghar to take prior permission of Inspector General of Registration for lodging of F.I.R. It is submitted that in the instant case, such permission has not been taken, therefore, lodging of F.I.R. is an abuse of the process of law. It is further submitted that petitioner filed writ application in this Court vide W.P.(C) No. 3682/05, wherein a bench of this Court had stayed operation of notice issued by District. Sub-Registrar. Under the said circumstance, F.I.R. lodged by District Sub-Registrar is against the order of this Court. It is further submitted that petitioner had litigating term with one Sujit Kumar Jha. It is submitted that present F.I.R. filed on his behest with a view to take vengeance from petitioner. Accordingly, it Is Submitted that criminal prosecution launched against the petitioner is mala fide, therefore, liable to be quashed.

3. On the other hand, Sri T.N.Verma, Addl. P.P. and Sri K.P.Deo, learned, counsel for Opposite party no. 4, submitted that in the instant case has been instituted under sections 465/466/467/477/420 and 34 of the I.P.C, because after registration of sale deed some forgery committed in it, the sale deed kept in record-room. Thus, said offence is not covered by section 82 of the Registration Act. It is further submitted that District Sub-Registrar is competent to lodge F.I.R. because said forgery committed in his office. It is submitted that this Hon"ble Court while passing order in W.P.(C) No. 3682/2005 had stayed only operation of notice issued by District Sub-Registrar. This Court has not prohibited District Sub-Registrar from taking legal action on the basis of conclusion of an internal inquiry conducted by him. Thus question of violation of order of this Court does not arise. It is further submitted that aforesaid F.I.R. is filed by District Sub-Registrar, Deoghar on the direction of Deputy Commissioner, Deoghar, who is Registrar of the District. It is submitted that there is nothing on record to show that District Sub-Registrar and/or Deputy Commissioner Deoghar were influenced by Sujit Kumar Jha. Thus, it can not be said that. District Sub-Registrar and Deputy Commissioner Deoghar had acted on the behest of Sujit Kumar Jha. Accordingly, it is submitted that there is absolutely no material to interfere with the impugned F.I.R. and/or criminal proceeding initiated on the basis of aforesaid F.I.R.

4. Before dealing with the rival contention of the parties, I think it proper to quote Section 82 and 83 of the Registration Act, 1908:-

82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment:-

whoever-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding u/s 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

83. Registering officers may commence prosecutions-

(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar of the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

5. From perusal of section 82 of the Registration Act, it appears that the same deals with four types of offences classified under clauses (a),(b),(c) and (d). Clause (a) deals with intentionally making false statement before any officer acting under the Act, clause(b) deals with intentionally delivering a false copy of map or plan to registering officer, clause (c) deals with impersonation and false presentation of documents or making an admission or statement in the assumed character in any proceeding or inquiry in the Act and clause(d) deals with abetment of above offences.

6. Thus, if any person does any acts or omissions enumerated in the aforesaid four clauses, at the time of registration of any document then in that case he will be punished u/s 82 of the Registration Act. Section 83 of the Registration Act provide that if said acts or omissions comes to the knowledge of registering officer, he can prosecute said person.

7. In the instant case", admittedly, document was registered on 05.12.1994. There is no allegation in the F.I.R. that on the date of registration, any forgery committed. It is alleged in the F.I.R. that on 06.04.2005, when Sri Kamal Narayan Jha applied for certified copy of aforesaid sale deed, the Incharge record keeper of Registration Office, Deoghar, detected said forgery. Thus, it appears that forgery in the alleged sale deed committed while the same was kept in record room. Thus, in the instant case, section 82 of the Registration Act has no application. Consequently, permission u/s 83 as contended by learned counsel for the petitioner is not required.

8. Moreover, in the instant case, F.I.R. was lodged by District Sub-Registrar Deoghar. From plain reading of Section 83, it appears that prosecution can be launched under Registration Act either by the Inspector General, Registration or Registrar or Sub-Registrar in whose territory offence has been committed or by any other person with their permission.

9. As noticed above, in this case. District Sub-Registrar himself lodged F.I.R. In my view as per section 83 District Sub-Registrar is competent to initiate prosecution and for that purpose he is not required to take permission from any other authority.

10. In Dharmadeo Rai Vs. Ramnagina Rai, , the Hon"ble Supreme Court while interpreting Section 83 of the Registration Act has held that "the section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in its language and intent. In other words, the section is an enabling one."

11. In view of aforesaid conclusion of their Lordships of Supreme Court even a private person without permission of Inspector General Registration or Registrar or Sub-Registrar, can file complaint petition for prosecuting another person, who commits an offence as enumerated u/s 82 of the Registration Act. Thus, submission of learned counsel for the petitioner is on the teeth of aforesaid judgment of Hon"ble Supreme Court, accordingly rejected.

12. in the instant case, it appears that petitioner moved to this Court against the notice served upon her by District Sub-Registrar. Annexure- 10 to the application shows that said notice has been stayed by a Bench of this Court vide order dated 02.8.2005 in W.P.(C) No. 3682/05. There is nothing in the said order to show that this Court had prevented District Sub-Registrar from making internal inquiry and proceed further. Under the said circumstance second contention of learned counsel for the petitioner cannot be sustained.

13. As noticed above, written report has been lodged by District Sub-Registrar, Deoghar. In the present application petitioner has not stated that District Sub-Registrar, Deoghar had any personal grudge to falsely implicate her in a criminal

case. Contention of learned counsel for the petitioner that since she is in litigating term with O.P.No. 4 (namely, Sujit Kumar Jha) therefore, present F.I.R. lodged against her on his behest does not inspire confidence. From perusal of written report, it appears that Deputy Commissioner ordered for lodging of F.I.R., thus. District Sub-Registrar, Deoghar had lodged written report in compliance of direction of Deputy Commissioner, Deoghar. There is nothing to show that Deputy Commissioner Deoghar and/or District Sub-Registrar were managed by aforesaid Sujit Kumar Jha. Thus, contention of learned counsel for the petitioner is baseless, therefore, liable to be rejected. In view of the discussions made above, I find no merit in this application, accordingly, the same is dismissed.