

(2004) 12 JH CK 0015

In the Jharkhand High Court

Case No : Criminal Revision No. 475 of 2003

Smt. Saroj Jaiswal and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245

Citation : (2005) CriLJ 1767 : (2005) 2 JLJR 707 : (2005) 1 JCR 371 : (2005) 1 EastCriC 556 : (2005) 1 BLJR 484

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : A.K. Das, for the Appellant; T.K. Das and Bishram Bhagat for Opp. Party No. 2 and , Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This revision application has been preferred by the petitioners against the order dated 26th April, 2003, passed by Kumari R. Asthana, learned Judicial Magistrate, 1st Class, Ranchi, in Complaint Case No. 54 of 2002, whereby and whereunder, the application filed on behalf of the petitioners for their discharge u/s 245 of the Code of Criminal Procedure has been rejected and the learned Court below has fixed the date for framing the charges.

2. The main plea taken by the petitioners is that the dispute being civil in nature, relating to transfer of land, the criminal proceeding was not maintainable against the accused/petitioners. Further, as petitioner No. 2 has no concern with the land in question, the question of framing charges against him does not arise.

3. From the petition, filed by the petitioners, it appears that opposite party No. 2 filed a complaint petition, registered as Complaint Case No. 54 of 2002, wherein, he has stated that accused No. 1 (petitioner No. 1 herein) owns a piece of land bearing Plot No. 29, Khata No. 1, Thana No. 192 at Morhabadi within Bariyatu

Police Station, within the town and district of Ranchi, measuring an area about 6 Katthas. Both the accused persons (petitioners herein) used to visit the house of the complainant and in course of their visits, they disclosed that they want to develop an industry at Kokar in the town and district of Ranchi, which is closed since long and for that they need some money and, as such, they want to sell the land at Morhabadi. They proposed opposite party No. 2 to sell their land and opposite party No. 2 accepted their proposal to purchase the land at the rate of Rs. 25,000/- per Kattha and, accordingly, an agreement was entered into between them on 2nd April, 1998. In token of advance consideration amount, the complainant/opposite party No. 2 paid a sum of Rs. 7,000/- to the accused, which they accepted and granted a money receipt in lieu thereof. Again on 13th April, 1998 they approached the complainant/opposite party No. 2, showing necessity of money and they took Rs. 2,000/- from the complainant and granted money receipt. Subsequently, the complainant sent Advocate's notice on 19th August, 1998 to accused No. 1 (petitioner No. 1 herein) under registered cover, requesting her to obtain permission from appropriate authority for selling the land, so that the complainant/opposite party No. 2 by paying rest of the amount may get the land transferred in his name. However, no reply was received from her. It is alleged that the complainant/opposite party No. 2, thereafter, met the accused personally and along with others at their residence at Kokar and requested them to transfer the land but they gave excuse that they were busy in standing their industry and sought for 3/4 months time. The complainant, on their request, agreed to it but thereafter also no action was taken in spite of repeated reminders. In the last week of March, 1999 the accused persons approached the complainant/opposite party No. 2 and asked for Rs. 20,000/- more, showing that in order to meet their personal necessity and to meet out the expenses for taking permission, they need the amount. However, the complainant having no money at that time, asked them to come later on. On 25th April, 1999 accused No. 1 (petitioner No. 1 herein) approached the complainant and received a sum of Rs. 16,000/- and granted money receipt in lieu thereof and also took the forms, duly signed by the complainant, for obtaining permission and assured that the sale deed will be executed within two months and the land will be registered in the name of the complainant/opposite party No. 2. It is alleged that thereafter, in spite of repeated reminders, the accused persons did not sell the land and started avoiding them, showing that they are busy with the development of the industry. It is alleged that in September, 1999, the complainant/opposite party No. 2 came to know from one Mr. Puskar Munsri (a deed writer at Civil Courts, Ranchi) that the accused persons have already taken a sum of Rs. 60,000/- by executing an agreement in the name of his son for selling the same land for which the accused have taken advance money from the complainant and have given receipts. It is alleged that both the accused persons are habitual cheaters and frauds. Though they in the age and look appear to be like mother and son but actually they are wife and husband. Apart from her own original husband, accused No. 1 (petitioner No. 1 herein) alleged to have married with accused No. 2 (petitioner No. 2 herein), at a

far distant place at Madhupur vide an affidavit bearing No. 1164 dated 22nd February, 1997, sworn before the Notary Public Sri Harish Chandra Jha. It has also been learnt by the complainant/opposite party No. 2 that the accused persons (petitioners herein) have also taken a sum of Rs. 10,000/- from a retired Professor Sri B.P. Verma in January, 1998 regarding the same very land. Similarly the accused have entered into an agreement for selling the same land with one Pramod Kumar Singh son of Shiv Nandan Singh and Rajesh Verma son of late Jagdish Verma of Karamtoli, Ranchi and have taken a sum of Rs. 10,000/- on 10th August, 1998. With regard to the same land, the accused persons have also taken Rs. 20,000/- on 17th August, 1998 from one Satya Narayan Gupta and entered into an agreement to sell the same very land.

4. From the allegations, made in the complaint petition by the complainant/opposite party No. 2 it appears that he has tried to highlight the fact that the accused have cheated and played fraud in the name of selling the land. Though the petitioner have tried to highlight that the dispute is preliminary of a civil nature and the complainant was not justified in resorting to the criminal proceeding, such submission cannot be accepted. In the case of M. Krishnan Vs. Vijay Singh and Another, it was noticed by the Supreme Court that the High Court having been impressed by the fact of the said case that the nature of dispute was preliminary of a civil nature, held that the appellant was not justified in resorting to the criminal proceeding. The Supreme Court observed that accepting such a general proposition would be against the provisions of law inasmuch as in all cases cheating and fraud, in the whole transaction, there is generally some element of civil nature. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication of a civil dispute by a civil Court.

5. In the facts and circumstances of the case and taking into consideration the nature of allegation, made by the complainant/opposite party No. 2, this Court is not inclined to interfere with the impugned order dated 26th April, 2003, passed by the learned Judicial Magistrate, 1st Class, Ranchi, in Complaint Case No. 54 of 2002. There being no merit, this revision application is hereby dismissed.