
(2016) 01 JH CK 0235
In the Jharkhand High Court
Case No : Cr. M.P. No. 1729 of 2013

Sudershan Ojha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, Section 482
Penal Code, 1860 (IPC) — Section 120A, Section 323, Section 34, Section 420,
Section 467, Section 468, Section 504

Citation : (2016) 01 JH CK 0235

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Gautam Kumar, Advocate, for the Appellant; Shekhar Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—1. In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with P.C.R. Case No. 25 of 2013 including the order dated 18.4.2013 passed by learned Chief Judicial Magistrate, Sahibganj, whereby and whereunder, cognizance has taken for the offences punishable u/s. 467, 468, 420, 120A, 323, 504 and 34 of the Indian Penal Code (IPC).

2. A compliant was made by one Mina Kumari wherein it was alleged that her father-in-law, namely, Pratap Chandra Choudhary was the owner of a piece of land bearing J.B. No. 4/496, J.B. No. 275/721, J.B. No. 113, 155/433, J.B. No. 9/496 measuring 26 Bighas, 11 Katha, 16 Dhurs, 10 Dhurki situated within Sahibganj. A partition suit being Title (P) Suit No. 07 of 1993 was filed and pursuant to the decision in the suit, the land measuring 4 Bighas, Katha and 15 Dhurs came in the share of accused Dilip Chaudhary. An appeal was preferred being Title Appeal No. 07 of 2005, but the same was also dismissed on 25.2.2008 and against that a Second Appeal has been instituted which is still

pending. It has been alleged that Dilip Choudhary with an intention to grab the land of the complainant fraudulently executed a sale deed dated 28.8.2006 in the name of his wife Mira Devi and in the said sale deed, the land of the complainant was also included. Allegation has been made that Mira Devi has sold the land measuring 5 Katha to the petitioner for which a sale deed dated 3.8.2012 was executed.

Upon conducting an enquiry u/s. 202 Cr.P.C. by examining the witnesses and the complainant on S.A., the cognizance was taken for the offences punishable u/s. 467, 468, 420, 120A, 323, 504 and 34 of the Indian Penal Code (IPC) vide order dated 18.4.2013.

3. Heard Mr. Gautam Kumar, learned counsel appearing for the petitioner, Mr. Shekhar Sinha, learned APP appearing for the State and Mr. Rajeeva Sharma, learned senior counsel appearing for the opposite party No. 2.

4. Mr. Gautam Kumar, learned counsel for the petitioner has submitted that the petitioner having purchased the land from co-accused Mira Devi has been made a victim of circumstance. It has been submitted that the complaint petition does not reveal any fraudulent activities on the part of the petitioner, as the petitioner is only alleged to have purchased a piece of land from co-accused Mira Devi and the said piece of land is alleged to be belonging to the complainant. Learned counsel further submits that after purchasing the land, the same was got mutated vide Mutation Case No. 318/2012-13 and rent receipts are also being issued. It has also been submitted that arising out of similar allegations, the complainant had instituted an F.I.R. registered as Sahibganj (T) P.S. case No. 24 of 2013 against co-accused Dilip Choudhary and Mira Devi, but the petitioner has not been made accused in the said case. It has further been submitted that the entire dispute appears to be civil in nature and the petitioner being the purchaser cannot be hauled up to face criminal prosecution and in this context he has referred to the judgment in the case of Mohammed Ibrahim and others v. State of Bihar and another reported in , (2009) 8 SCC 751.

5. Mr. Rajeeva Sharma, learned senior counsel appearing for the opposite party No. 2 has submitted that there is specific allegation against the petitioner of purchasing a piece of land in connivance with Dilip Choudhary and Mira Devi and therefore it cannot be said that the petitioner is a bona fide purchaser of the land in question.

6. Mr. Shekhar Sinha, learned A.P.P. appearing for the State on the other hand has submitted that the petitioner in active connivance with the Dilip Choudhary and Mira Devi has got registered 5 Kathas of land, which actually belonged to the complainant after partition. It has been submitted that the contention raised by the learned counsel for the petitioner cannot be considered in the present proceedings u/s. 482 of the Code of Criminal Procedure (Cr.P.C.) and in such circumstances, this application is liable to be dismissed.

7. The complaint petition was instituted on 17.1.2013 in which admittedly the

allegations of committing fraud by selling the land belonging to the complainant have been attributed to Dilip Choudhary and Mira Devi. So far as the present petitioner is concerned he is said to have purchased the land from Mira Devi and the petitioner, being an absolute stranger being not related to either the complainant or the accused persons, cannot be saddled with a criminal prosecution. It further appears that Sahibganj (T) P.S. Case No. 24 of 2013 was instituted by the complainant on 30.01.2013 in which although Dilip Choudhary and Mira Devi was arrayed as an accused, but the allegations had also been made about the petitioner of purchasing the said piece of land from Mira Devi for which the complaint case being P.C.R. Case No. 25 of 2013 had been instituted. It, therefore, appears that with respect to the same allegations two criminal cases have been instituted in the duration of a fortnight.

8. In the case of Mohammed Ibrahim (Supra), the Hon''ble Supreme Court while considering nature of a case being given colour of criminality has put in a note of caution and the same is being reproduced herein:--

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for setting scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. and Indian Oil Corpn. V. NEPC India Ltd.) Let us examine the matter keeping the said principles in mind."

It further went on to hold in the context of a purchaser being made an accused in a fraudulent transfer of land thus:--

"21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and

therefore not forgery we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complaint that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

9. As has been indicated above, the only allegation against the petitioner is of purchasing a piece of land from the co-accused Mira Devi and there is nothing from a recital of the complaint petition to show that there was a fraudulent act on the part of the petitioner that in spite of knowing about the lands to be sold as that belonging to the complainant he had agreed to such transaction. There apparently does not exist any inducement on the part of the petitioner or any deception so as to constitute a criminal offence. The petitioner being a bona fide purchaser seems to have implicated on that ground. Moreover, institution of two simultaneous proceedings for the same set of allegations does reveal the intention of the complainant to maliciously prosecute the petitioner. Even otherwise the allegation, which has been levelled against the petitioner is concerned, appears to be purely civil in nature and applying the ratio as laid down by the Hon"ble Supreme Court in the case Mohammed Ibrahim (Supra) continuation of the criminal proceedings as against the petitioner would be an abuse of process of court and therefore, having found merit in this application, the same is allowed and the entire criminal proceedings in connection with P.C.R. Case No. 25 of 2013 including the order dated 18.4.2013 passed by learned Chief Judicial Magistrate, Sahibganj, whereby and whereunder, the cognizance has taken for the offences punishable u/s. 467, 468, 420, 120A, 323, 504 and 34 of the Indian Penal Code (IPC) is hereby quashed and set aside.