
(2019) 01 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 13116 Of 2012

Sukhdeo Bhagat And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 482
Indian Penal Code, 1860 — Section 420

Citation : (2019) 1 PLJR 370

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Lala Sachindra Kumar, Rajesh Kumar Sharma, Jharkhandi Upadhyay

Final Decision : Dismissed

Judgement

AHSANUDDIN AMANULLAH

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

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

"That the petitioners, by this application seek quashing of order dated 24/2/2012 passed by Dr. Ram Lakhan Yadav, Additional Sessions Judge Ist, Madhepura in Cr. Rev. No. 24 of 2011 affirming the order dated 21/9/2010 passed by Sri A.Kumar, Judicial Magistrate Ist Class, Madhepura in complaint case being C-45/2010/ T. R. No. 3791 of 2010, taking cognizance under Sections 147/323/504/420/423/467/468 and 471 of the Indian Penal Code against the petitioners on the basis of a complaint petition filed by opposite party no. 2."

3. The allegation against the petitioners is of transferring lands belonging to the opposite party no. 2.

4. Learned counsel for the opposite party no. 2 raised a preliminary objection with regard to maintainability of the application for the reason that upon the complaint, the Judicial Magistrate had taken cognizance which the petitioners challenged in Criminal Revision No. 24 of 2011 and the same having been dismissed on 24.02.2012 by the Court of Sessions, the present application under Section 482 of the Code was not maintainable. For such proposition, learned counsel relied upon the decisions of the Hon'ble Supreme Court in the case of *Rajinder Prasad v. Bashir* reported as (2001) 8 SCC 522, the relevant being at paragraph no. 7; in the case of *Rajathi v. C. Ganesan* reported as (1999) 6 SCC 326, the relevant being at paragraph no. 10 and in the case of *Ganesh Narayan Hegde v. S. Bangarappa* reported as (1995) 4 SCC 41, the relevant being at paragraph no. 10.

5. Though, learned counsel for the petitioners was not in a position to counter the objection raised by learned counsel for the opposite party no. 2, with regard to maintainability but from perusal of the aforesaid judgments, it transpires that there is no complete bar to the Court exercising its inherent power under Section 482 of the Code except that in cases where already the party has availed of the remedy of revision under Section 397 of the Code before the Court below, the High Court while exercising inherent powers under Section 482 of the Code has to do so in appropriate cases to meet the ends of justice or to prevent the abuse of the process of the Court. Thus, in the present case, for the purposes of coming to a conclusion as to whether the present case falls under such category, which would persuade the Court to interfere so as to prevent grave miscarriage of justice, the Court has heard the matter on merits.

6. Learned counsel for the petitioners submitted that the dispute is purely civil in nature and criminal proceedings are an abuse of the process of the Court. It was submitted that except for the allegation of mild scuffle between the parties, no other criminal act is reflected from the complaint petition. Learned counsel submitted that the matter relating to title and execution of sale deed, being purely civil in nature, the opposite party no. 2 had the remedy before the Civil Court of competent jurisdiction for redressal of the same. It was further submitted that the brother of the opposite party no. 2 has filed Title Suit No. 2 of 2011, against the petitioners and others which is pending for cancellation of the sale deed executed by the petitioners. Learned counsel submitted that even otherwise, it has been held by the Court that cognizance could not be taken under Section 420 of the Indian Penal Code, as cheating in a civil dispute, without the purchasers of the land being made parties, which in the present case has not been done. For such proposition, he relied upon a decision of the co-ordinate Bench of this Court in the case of *Md. Abdul Raquib v. State* reported as 2007 (1) PLJR 556.

7. Learned A.P.P. submitted that though there may be a civil side to the dispute also, but both civil and criminal proceedings, in the particular facts and circumstances of the present case being maintainable, there is no error either in

the order taking cognizance or the revisional order.

8. Learned counsel for the opposite party no. 2 submitted that the stand of learned counsel for the petitioners that the allegation relates only to slight skirmish, which is of criminal nature is misconceived for the reason that in the complaint itself, it has been stated that the land which has been transferred by the petitioners were purchased by the ancestors of the opposite party no. 2 in the year 1924, and since then have also been mutated in the name of his forefathers/ancestors and even reflected in the revenue records, including the Khatiyani. It was submitted that in such background, it was the duty of the petitioners to show their title and when the same cannot be reflected from the revenue records, clearly transferring such lands without any basis or iota or any semblance of title over the land in question, the execution of such sale deeds is obviously fraudulent and the sections under which cognizance has been taken is correct, including Section 420 of the Indian Penal Code. It was submitted that on the contrary, right from the late 1920's, the name of the forefathers/ancestors of the opposite party no. 2, being reflected in the official revenue records of the Government, the petitioners could not, under any circumstances, have sold the lands without first getting declaration with regard to their right, title and ownership over such lands. It was further submitted that the decision of the Court in the case of Md. Abdul Raquib (*supra*) is misplaced for the persons before the Court were the vendors and the Court held that they can be said to have cheated only by the purchaser of the property for wrongly representing themselves as the owner of the land and purchaser not having filed the case, it cannot be said that the said petitioners had committed the offence of cheating. It was submitted that in the present case, the opposite party no. 2 is the owner of the lands which have been fraudulently sold by the petitioners and, thus, obviously even if the vendors may have a case against the petitioners, the opposite party no. 2 definitely has the right and locus to file a case against the petitioners. Learned counsel submitted that in the present case, the petitioners deliberately and with full knowledge that they have no right, title and interest over the lands in question having personated themselves as the legal owners of the lands and having executed sale deeds have definitely committed fraud and cheated the opposite party no. 2, for wrongful gain and, thus, once *prima facie*, the said allegations cannot be said to be frivolous, it cannot be held that the Courts below have erred in taking cognizance and, thus, the application deserves to be dismissed. It was further submitted that filing of title suit was for cancellation of the fraudulent sale deeds, which cannot be done in a criminal proceeding and thus, the same has no bearing in the present case.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds no merit in the present application. No point worth consideration having been advanced and the averments in the complaint disclosing criminal acts, in the opinion of the Court, do not warrant any interference. In such background, the issue of maintainability also becomes relevant as this is not a case where the Court would interfere

under its inherent powers under Section 482 of the Code for preventing miscarriage of justice and on this ground also, the present application is not worth interfering with.

Moreover, the Court deems it relevant to refer to the decision of the Hon'ble Supreme Court in the case of *Indian Oil Corporation v. NEPC India Limited* reported as 2006 (6) SCC 736, where at paragraph no. 12 the principles relating to exercise of jurisdiction under Section 482 of the Code have been enumerated which are quoted herein below:

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana vs. Bhajanlal, Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar vs. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan vs Vijay Kumar, and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque*. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a

criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

10. From the aforesaid it is clear that a given set of facts may make out a civil wrong as also a criminal offence. Mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegation in the complaint disclose a criminal offence or not. In the present case, the Court finds that criminal offence is disclosed in the complaint. Moreover, the decision relied upon by learned counsel for the petitioners in the case of Md. Abdul Raquib (*supra*), as has rightly been submitted by learned counsel for the opposite party no. 2, on facts, is distinguishable and, thus, would not be of any help to the petitioners in the present case.

11. Further, in the case of *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.* reported as (2008) 13 SCC 678, the Hon'ble Supreme Court at paragraph no. 22 has held as under:

"22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. For reasons aforesaid, the application stands dismissed.