
(2012) 05 JH CK 0089
In the Jharkhand High Court
Case No : A.B.A. No. 3206 of 2011

Tapas Sarkar

APPELLANT

Vs

The State of Jharkhand and Chandan Mittal

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 120B, 323, 379, 387, 406

Citation : (2012) 05 JH CK 0089

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; Mahesh Tiwary, Advocate for the Opp. Party No. 2 and , Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—Heard the learned counsel for the petitioner and the learned counsel for the State. The petitioner is an accused in a case registered under Sections 323/426/420/406/467/452/468/387/379/419 and 120B of the I.P.C.

2. The prosecution case in brief as appears from the complaint petition that the complainant is the proprietor of M/s Mittal Promoters and Developers, a construction company having its office at Shastri Nagar, Block No. 4, Kadma, Jamshedpur. On 1.12.2010 at about 11.30 A.M., two persons entered into the chamber of the complainant and introduced himself as Sonu and other persons as Tapas Sarkar (the petitioner). The aforesaid persons produced some documents relating to a land belonging to Tapas Sarkar and offered to sell the land as Tapas Sarkar was in a need of money. On 11.12.10 they again came to complainant for the same purpose and accordingly the complainant became ready to purchase the same on price of Rs.50 lakhs. On 12.12.10 an agreement for sale was entered into between complainant and Tapas Sarkar when the complainant handed over an account payee cheque of Rs.11,000/- to Tapas

Sarkar in presence Sonu as advance. The original agreement was retained by the complainant and the photocopy was taken by Tapas Sarkar. On 13.12.10 again Sonu contacted complainant with another copy of agreement and wanted signature of the complainant on the plea that Tapas Sarkar wants another copy of the agreement which was accordingly signed by the complainant Sonu assured the complainant that he will give the complainant a xerox copy of the same later on. On 15.12.10 when the complainant deployed his labours to clean the bushes over and one Uttara Chalak came and objected to the said work and when the complainant contacted said Sonu and Tapas Sarkar they informed that Uttara Chalak has filed a case which is pending before Hon"ble High Court. Thereafter, the complainant settled the matter with Uttara Chalak at Rs.50 Lakhs and accordingly paid her Rs.25 Lakhs on 21.12.10 when she gave her no objection as also the money receipt. Another agreement was executed between the complainant and Tapas Sarkar on 6.1.11 when the complainant paid Rs.5 lakhs to Tapas Sarkar in presence of Sonu, Tapas Sarkar executed registered power of Attorney in favour of the complainant. On 20.1.11 the complainant again paid Rs.5 Lakhs to Tapas Sarkar and then Deed of sale was registered and then the complainant got his name mutated on 9.2.11 and paid rent to the State and got building plan approved. Thereafter, the complainant received a notice u/s 144 Cr.P.C. from the court of SDO whereby he could know that Tapas Sarkar has claimed ownership of the land and that he has not executed any power of attorney in favour of the complainant. When the complainant appeared in the court, he found Sonu there, who represented himself to be Tapas Sarkar and denied to have executed agreement for sale on 12.12.2010 and the registered power of attorney on 6.1.11. However the said proceeding was dropped on 2.4.11. Thereafter accused Sonu @ Tapas Sarkar along with some anti social elements visited the construction site on 19.6.11 and started manhandling the staffs of the complainant. He again came along with the anti social elements to the office of the complainant and demanded Rs.20 lakhs as rangdari and on protest, snatched the golden chain valued of Rs. 37,000/- from the complainant and went away. The complainant informed the matter to the Kodama Police Station but no action was taken. Thereafter, the complainant has filed the instant case.

3. Mr. Indrajit Sinha appearing for the petitioner has submitted that the petitioner is the innocent and has not committed any offence. It is not disputed that the petitioner agreed to sell the land at Rs.50 lakhs for which an agreement was entered into between the parties on 13.12.2010 and received a cheque of Rs.11,000/- but no agreement was entered between the parties on 12.12.2010 as that day was Sunday. The petitioner never visited the office of complainant on 19.11.10 or at any point of time nor the petitioner ever informed the complainant about institution of case by family members of Uttara Chalak and it is also false to allege that the complainant paid Rs.25 lakhs to her to settle the dispute. It was further submitted that the petitioner has no concern with Uttar Chalak or anyone related to her. It is further submitted that the petitioner has

not executed any agreement on 6.1.11 in favour of complainant upon receipt of Rs.5 lakhs or so called power of attorney, said to be executed by petitioner is false and forged, The petitioners in fact the actual owner and is in possession of the land in question and the petitioner though entered into agreement with complainant to sell the land after receiving Rs.11,000/- as advance, and the balance amount of Rs.49,89,000/- was stipulated to be paid within 30 days but the same was not paid even after 3 months. Accordingly, as per agreement the advance money was forfeited. But the petitioner was informed on 3.3.11 that the complainant by producing an unknown person got executed and registered a power of attorney in his favour. Thereafter, he obtained certified copy of power of attorney and sale deed, where from he could see that his signature was forged and the photograph affixed on power of attorney was not his own. Thereafter, the petitioner made complaint to the Sub Registrar, Jamshedpur and D.C Jamshedpur and when no action was taken, a complaint case was filed vide C/1 Case No. 758 of 11 and the petitioner found that the complainant started making construction, he initiated a proceeding u/s 144 Cr.P.C and only after institution of above case, this present case was filed by the complaint Thus, the petitioner has not committed any offence rather he has been cheated by the complainant.

4. Mr. Mahesh Tewary, the learned counsel appearing for the complainant opposite party no. 2 has submitted that he has filed detailed counter affidavit in this case controverting the statements made in the bail application. The learned counsel has submitted that the petitioner with help of his friend Sonu has taken Rupees Ten lakhs (Rs.10,00,000/-) from the complainant by way of consideration amount as agreed for the land in question, knowing fully well that the title of the petitioner was not perfect and after receiving Rs.10 lakhs and transferring the land in question through his friend projecting him as Tapas Sarkar, the petitioner declared himself as actual Tapas Sarkar and as such the complainant has been cheated and defrauded by the petitioner and huge amount has been fraudulently taken by the petitioner. The entire transaction has taken place at the instance of and in presence of the petitioner keeping the complainant in dark with respect of his actual identity.

5. Mr. Tewary has further submitted that the petitioner has not taken any step for cancellation of the Sale deed executed on 20.01.2011 till date and has not challenged the said document in any civil court. The complainant got his name mutated with after following the proper procedure by the authority concerned.

6. Mr. Tewary has further submitted that the proceeding u/s 144 Cr.P.C. has been dropped by the S.D.M. Jamshedpur holding that the opposite party who is the complainant in the present case is in peaceful possession of the land in question. To support this contention the complainant has filed the order dated 29.3.11 passed in the aforesaid 144 proceeding is annexed as Annexure-1 in the counter affidavit filed by the opposite party/complainant in this case.

7. Mr. Tewary has further submitted that in the proceeding u/s 144 Cr.P.C. the petitioner has submitted that the land in question has been registered in favour

of his father, thus the petitioner in one place claims himself to be owner of the land in question and in another place that the land in question has been registered in favour of his father which shows the fraudulent nature of the petitioner. Considering the submissions made by both the parties and considering the facts and circumstances of the case furthermore, though according to the petitioner he has come to know about the forged sale deed but he has not taken any step for cancellation for the said sale deed nor he has challenged those documents in proper court till date and on the other hand the complainant has got his name mutated by the authority concerned and further there are other allegations against the petitioner of threatening the complainant on the point of Pistol and snatching his gold chain, I am not inclined to grant anticipatory bail to the petitioner. Accordingly the prayer for the anticipatory bail of the petitioner is, hereby rejected.