
(2020) 06 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1131 Of 2018

Tara Devi And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 405, 406, 415, 420

Citation : (2020) 06 JH CK 0047

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Rajesh Kumar, Priya Shrestha, Pratyush Lala

Final Decision : Allowed

Judgement

1. The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10:30 A.M. They have no complaint in respect of the audio and video clarity and quality.
2. Heard the counsel for the parties.
3. By way of filing this petition, the petitioners have prayed for quashing the First Information Report in connection with Dhanbad P.S. Case No. 470/2017 (G.R. No. 3594 of 2017) registered for the offence under Sections 406, 420 and 120B IPC, pending in the court of learned Judicial Magistrate, Dhanbad.
4. The prosecution case is based upon the written report of the informant-Sanjay Kumar Gupta in which, it has been stated that there was an agreement between him and accused Tara Devi to sell two plot and accused agreed to sell the said plots for Rs.25,00,000/-. The said agreement was prepared in presence of the petitioners and other co-accused persons and it was said that accused - Tara Devi is the owner of land and she will execute registered sale deed in respect of said plot. In pursuance to agreement, the informant had given Rs.7,50,000/- in advance on 3.3.2014 but thereafter accused persons have not registered the said land in favour of informant. On the request of informant they

registered one plot on 3.1.2015 in favour of informant but they did not register the other plot. The informant sent legal notice dated 1.9.2017. They called him at Dhanbad Registry Office when he reached, where these petitioners along with co-accused persons were present. They hurled abuses and also extend threatening to informant that they will not execute registered deed in his favour of said plot and also threatened him for dire consequences. It is further alleged that he had given total Rs.15,00,000/- to accused persons for executing registered sale deed in respect of both the plots in his favour. Thus, he complains of cheating.

5. Counsel for the petitioners submits that by no stretch of imagination, the facts of this case constitute an offence under the Indian Penal Code, as there was land dispute between the parties, which has been given a colour of a criminal case. He further submits that admittedly in respect of one piece of land, the sale deed was executed. It is also admitted in respect of other piece of land, that huge amount is yet to be paid so the deed was not registered. He also submits that on the aforesaid fact, it cannot be said that any criminal case is made out against the petitioners.

6. Counsel for the opposite party No. 2 submits that inspite of receipt of money as advance at the initial stage, the sale deed was not registered by the petitioners. He further submits that even after much pressure and pursuation, one piece of land was registered but later on, the petitioners had filed a suit for declaring the said deed as null and void. He also submits that further another plot under agreement has not been registered and the petitioner dealt with another person and is trying to sell the land to him, which clearly goes to show the mala fide intention on the part of the petitioners.

7. In reply, counsel for the petitioners submits that the petitioners were forced to file a suit for declaring the sale deed null and void, as the consideration amount, which was to be paid, was not paid.

8. From perusal of FIR, I find that two pieces of land were to be sold by the petitioners to the opposite party No. 2 i.e. one piece of land was in relation to Thana Govindpur, Mouza- Aamaghata; whereas other piece of land was in relation to Thana- Govindpur, Chati Govindpur. There was an agreement for sale between the parties. Admittedly, the full amount was not paid and only an advance amount was paid. The land in relation to Mouza Chati Govindpur was registered, but admittedly, the land of village Aamaghata was not registered. It has further been admitted that the entire consideration amount was not paid. The aforesaid fact cannot be said to attract any criminal offence.

9. The contention of opposite party No. 2 that the petitioners have filed a suit for cancellation of sale deed and as such, the criminal intention was there, in my view, cannot be said to be a criminal offence. As the full consideration amount was not paid to the petitioners, the sale deed was not executed. This is a civil dispute, which cannot be given the colour of a criminal case.

10. Further the allegation that after entering into an agreement with the petitioners, the land of Mouza Aamaghata was negotiated by the petitioners with strangers and thus, a fraud was committed by them. This cannot also attract criminal action, as an agreement of sale does not create a right over the property. If the opposite party is aggrieved by the said action, they have remedy to file a suit for specific performance. During course of argument, a question was put, as to whether any suit for specific performance was filed or not, the counsel for opposite party No. 2, upon instruction, answers the same in negative.

11. The gist of the FIR is that some part of land, inspite of entering into an agreement for sale was not registered. Admittedly when some part of land has been registered and other part of the land was not registered and the entire money was not paid, it cannot be said that there exists criminality in the entire transaction. Thus, from the FIR, I find that no offence is made out against the petitioners, as there is no application of Sections 405 and 415 IPC in this case which is punishable under Sections 406 and 420 I.P.C.

12. In view of the aforesaid facts, the First Information Report being Dhanbad P.S. Case No. 470/2017 (G.R. No. 3594 of 2017) registered for the offence under Sections 406, 420 and 120B IPC, pending in the court of learned Judicial Magistrate, Dhanbad, is quashed and set aside.

13. Accordingly, this petition stands allowed.