
(2010) 11 PAT CK 0055

In the Patna High Court

Case No : Criminal Miscellaneous No. 35043 of 2006

Urmila Devi and Others

APPELLANT

Vs

The State of Bihar and Paras Nath Patnak

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0055

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the Petitioners and learned Additional Public Prosecutor for the State. There is none on behalf of learned Counsel for the opposite party No. 2 in spite of earlier appearance.

2. This is an application u/s 482 of the Code of Criminal Procedure seeking quashing of order dated 13.04.2006 passed by Girish Mishra, Judicial Magistrate, 1st Class, Gopalganj, in G.R. No. 2658/2004 Tr. No. 2838/2006 in Gopalganj P.S. Case No. 412/2004 taking cognizance for the offence under Sections 419, 420, 467, 468, 471, 120B of the Indian Penal Code.

3. The relevant facts of the case in brief is that one Sheo Kumar Pathak had three sons Krishna Mohan Pathak Petitioner No. 2, Paras Nath Pathak opposite party No. 2 and Triyogi Narayan Pathak. There is one registered deed of gift executed on 13.08.2003 in the name of Sheo Kumar Pathak in favour of Petitioner No. 1 who is none else than Petitioner No. 2. The deed in question was ascribed by Petitioner No. 5 and Petitioner Nos. 3 and 4 appeared as witnesses.

4. As per opposite party No. 2 in Complaint Petition earlier he had no knowledge of such transaction, however, on death of his father he could know and on obtaining certified copy of the document, learnt the details and lodged the complaint case No. 2270 of 2004 on 14.12.2004 which was sent before the police on institution and investigation u/s 156(3) of the Code of Criminal Procedure, on the basis whereof Gopalganj P.S. Case No. 412 of 2004 was instituted on 17.12.2004, simultaneous to filing of the complaint. Title Suit No. 526 of 2004

was also filed by opposite party No. 2 being Plaintiff No. 2 and his brother Triyogi Narayan Pathak as Plaintiff No. 1, only impleading Petitioners No. 1 and 2 for a declaration that deed of gift dated 13.08.2003 is forged, fabricated and void document conferring no Title or possession to the donee.

5. It is undisputed that Late Sheo Kumar Pathak was a freedom fighter and member of legislative assembly for several times and was recipient of pension of his such services. Admittedly, on the document his photograph is appended as the executant of the deed. It is the case of the opposite party No. 2 complainant informant that the executant by impersonated by someone else and without going through the contents etc. deed was brought into existence by the Petitioners but the complaint petition finds no mention. Details of the person who appeared in place of the executant whose photograph is appended. Moreover, in spite of simultaneous filing of the complaint petition as well as plaint, there is no whisper of such filings vice versa in the plaint or complaint petition. Rather the complainant speaks of bit more and the executant was putting his signature on the registers as regard to receipt of pension at his home, perhaps, his signature or L.T.I. was obtained on the document in question in garb of his signature on the pension register.

6. The police after investigation submitted final form in the case as the same being of civil nature but the court below taking a different view took cognizance giving rise to instant application.

7. Learned Counsel for the Petitioners in support of his contentions placed reliance upon decision of Apex Court in a case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, and another decision of the Apex Court in case of All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another, submits that the case is entirely of civil nature. There is no ingredient in the complaint petition to constitute any offence for which simultaneously civil suit is also been filed and is going on.

8. In another decision in a case Devendra and Others Vs. State of U.P. and Another, paragraph 24 as said:

...It is now well settled that the High Court ordinarily exercise its jurisdiction u/s 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.

It is further held in paragraph 27 that.

...when dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

9. As stated earlier, there is none on behalf of complainant informant opposite party No. 2. Learned Additional Public Prosecutor tried to submit that criminal offence is made out against the Petitioners, but, at the same time learned Additional Public Prosecutor could not explain how and in what circumstances the complaint petition does not find mention about filing of the civil suit which was simultaneously filed, moreover, when photograph of the executant and well known personality of the area was available there and appended on the document in question, who impersonated him and in what manner the complaint petition is conspicuously silent about all such details. Moreover, prima facie the execution was accepted by the executant whose photograph is there before Sub-Registrar, who is not made accused. This fact may also be considered that there is no grievance attributed against the Registrar in absence of such materials also it can be very well be said that criminal proceeding is not at all desirable and maintainable for such transaction for which undisputedly civil proceeding was initiated and is going on. If criminal proceeding is permitted to continue, it shall be nothing but abuse of process of law and sheer wastage of precious judicial time which is not at all permissible in law.

10. Thus, the impugned order and proceeding before the court below is hereby quashed and this application stands allowed.