

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11528 of 2015

Arising Out of PS.Case No. -234 Year- 2013 Thana -AURANGABAD COMPLAINT CASE

District- AURANGABAD

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1. Gyan Prakash Mohta
2. Manmohan Mohta @ Mahendra Mohta
Both sons of Late Om Prakash Mohta
3. Paramnav Mohta @ Padmanabh Mohta
Son of Manmohan Mohta @ Mahendra Kumar Mohta
4. Ganga Devi @ Ganga Devi Mohta, Wife of Late Om Prakash Mohta
All Resident of Mohta House 29, Strand Road, Kolkata (West Bengal)

.... Petitioners

Versus

1. The State of Bihar
2. Sarju Singh, Son of Late Shiv Ratan Singh, Resident of Prayag Bigha, Dalmiya Nagar, Police Station-Dehri-on-Sone, District- Rohtas. At present resident of Barun English, Police Station- Barun, District- Aurangabad

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate
For the State : Mr. Shantanu Kumar, APP
For the O.P. No. 2 : Mr. Mrigendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-09-2015

By way of the present application filed under Section 482 of the Code of Criminal Procedure (For short 'Cr. P.C.'), petitioners seek quashing of the order dated 30.05.2014 passed by the learned Judicial Magistrate-1st Class, Aurangabad in Complaint

Case No. 234/2013/Tr. No. 1752 of 2014 whereby after taking cognizance of the offences under Sections 417, 418, 465, 406, 341, 323 and 504/34 of the Indian Penal Code (For short 'IPC'), the petitioners have been summoned to face trial.

2. The complainant-opposite party no. 2 Sarju Singh filed the aforesaid complaint in the court of learned Chief Judicial Magistrate, Aurangabad alleging inter alia that he had negotiated to purchase land admeasuring 90 acres of village English from the father of petitioners no. 1 and 2, namely, Om Prakash Mohta and the father of witnesses no. 4 and 5, namely, Hari Prakash Mohta at the cost of Rs. 10, 93,100/-. Against the aforesaid amount, he paid Rs. 9,59,650/- as earnest money from the bank draft and cash to aforesaid Om Prakash Mohta and Hari Prakash Mohta. It was agreed between the parties that rest of the amount of Rs. 1, 33,450/- would be paid at the time of execution of the deed. He state that after receiving the aforesaid amount from the complainant on 14th July, 1982, Hari Prakash Mohta wrote an agreement for sale in his favour because Hari Prakash Mohta had obtained letter on the strength power of attorney obtained from all the share-holders. According to the condition of the agreement for sale, the sale deed was produced before the Registrar for registration but the Registrar refused to register the same due to pendency of ceiling proceeding



in respect of the land in question. Thereafter, in the year 1992 once again, Hari Prakash Mohta executed second agreement for sale in his favour stating therein that responsibility for taking permission from Jamabandi Officer and from the Collector in ceiling proceeding would be of the seller, but no permission was taken by him and only assurance was given to him that he would get permission very soon and thereafter, the transfer of land can be effected. He has further stated that he got possession over the land and he was doing agricultural work peacefully. However, Hari Prakash Mohta and Om Prakash Mohta subsequently died. The accused persons being legal heirs of Om Prakash Mohta did not take any step for taking permission for sale of aforesaid land rather, he started misleading the witnesses no. 4 and 5 who are heirs of aforesaid Hari Prakash Mohta. It has been stated that on 21.11.2012, he went along with witnesses to the house of the accused persons situated at Barun, Aurangabad and requested them for registration of the land but all the accused persons with common intention abused and pushed him as a result of which, he fell down. On 06.12.2014, a legal notice was also given to the accused persons on his behalf, but no reply was made to the notice by the accused persons.

3. On the basis of aforesaid complaint, Complaint Case



No. 234/2013 was registered in the court of Chief Judicial Magistrate, Aurangabad, Bihar, on 18th March, 2013. After taking cognizance of the offence, the learned Chief Judicial Magistrate, Aurangabad made over the case under Section 192 of the Cr. P.C. and transferred the case to the court of learned Judicial Magistrate-1st Class, Aurangabad for inquiry and trial. In course of inquiry, the complainant was examined on oath under Section 200 of the Cr. P.C. and on his behalf three inquiry witnesses, namely, E.W. 1 Khedan Singh, E.W. 2 Shyamji Singh & E.W. 3 Rajendra Singh were examined under Section 202 of the Cr. P.C.

4. After examining the complainant on solemn affirmation and the witnesses under Section 202 Cr. P.C., the learned Judicial Magistrate-1st Class, Aurangabad summoned the petitioners vide impugned order dated 30.05.2014 to face trial under Section 417, 418, 465, 406, 341, 323 and 504 read with 34 of the Indian Penal Code.

5. It is contended by learned counsel for the petitioners that petitioners no. 1 and 2 are full brothers. The petitioner no. 3 is the son of petitioner no. 2, whereas petitioner no. 4 is the mother of petitioners no. 1 and 2. He submits that Om Prakahs Mohta and Hari Prakash Mohta died long back. This fact is also admitted by the complainant in the complaint petition. He states that it does not



stand to reason as to why the complainant did not file the complaint case during life-time of late Om Prakash Mohta and late Hari Prakash Mohta. He submits that filing of the present complaint by the complainant after the death of the two persons with whom the complainant had made negotiation for purchase of land and after 31 years of the agreement for sale executed by Late Hari Prakash Mohta is nothing but an abuse of the process of court.

6. He further submits that it is strange as to why the complaint has been filed only against the family members or legal heirs of late Om Prakash Mohta. Surprisingly, the sons of late Hari Prakash Mohta have been made witnesses in this case. He has submitted that the agreement for sale dated 14.07.1992 would make it evident that earnest money was taken by Late Hari Prakash Mohta, who is father of witnesses no. 4 and 5. He further submits that a perusal of agreement for sale would make it evident that the complainant was not kept in dark. The agreement dated 14.07.1992 clearly stipulates a condition that the difficulty in execution of the deed is the pending ceiling proceeding and the sale deed would be executed immediately after obtaining permission from the Chakbandi Officer and the Collector and the second agreement for sale was also executed by late Hari Prakash Mohta in the year 1992 stating almost same facts.



7. He further contends that the falsity of the case would appear from the fact that sons of late Hari Prakash Mohta have not been made accused in this case rather the petitioners who are sons, grand-son and wife of late Om Prakash Mohta who has not executed any agreement for sale of land in question have been made accused in the case whereas sons of Late Hari Prakash Mohta have been made witnesses to the case.

8. Learned counsel for the opposite party no. 2 has opposed the prayer made on behalf of the petitioners. He submits that the allegations made in the complaint do attract the ingredients of the offences alleged. He has submitted that after receiving Rs. 9,59,650/- as earnest money, late Om Prakash Mohta and Hari Prakash Mohta failed to obtain no objection certificate from the Collector in respect of the land in question and execute the sale deed. He contends that the petitioners being legal heirs of late Om Prakash Mohta are under pious obligation to fulfil the promise made by late Om Prakash Mohta and execute the sale deed as agreed between the parties after obtaining no objection certificate from the Collector in the land ceiling proceeding. He submits that the complainant always expressed his willingness to pay the balance amount but due to the indifferent attitude of the accused persons, the transfer of the land could not take place despite the fact that the

complainant is in possession of the land.

9. I have heard respective counsel for the parties and perused the materials available on record.

10. I find that the facts of the case are not in dispute. An agreement for sale was entered into between the complainant and father of witnesses No. 3 and 4, namely, Late Hari Prakash Mohta on 14th July, 2982. The father of petitioners no. 1 and 2, late Om Prakash Mohta is brother of Late Hari Prakash Mohta. It has been alleged in the complaint that he had also agreed to transfer the title of property to the complainant. The initial agreement dated 14.07.1982 which has been brought on record and annexed as Annexure-3 to the present application stipulates a condition that the only impediment in transfer of the land is the ongoing ceiling proceeding.

11. Thus, there was neither any suppression of fact nor any fraud was played upon the complainant while entering into agreement for sale. The complainant being fully aware of the ceiling proceeding entered into agreement and parted with the money. There is no allegation in the complaint that any forgery was committed or any forged document was prepared by the petitioners or late Om Prakash Mohta and late Hari Prakash Mohta. The complainant has not alleged that late Om Prakash Mohta and late



Hari Prakash Mohta did not have the property or that they were not competent to enter into an agreement to sale or could not have transferred title in the property if the land would have been exempted from the ceiling proceeding. The complainant does not make any averment so as to infer any fraudulent or dishonest inducement having been made by father of petitioners no. 1 and 2 late Om Prakash Mohta or by the petitioners pursuant to which the complainant parted with the money. Merely because the father or uncle of petitioner nos. 1 & 2 entered into an agreement to sale, which agreement they failed to honour during their life-time, the petitioners cannot be said to have committed any forgery, fraud or cheating punishable under different sections of the Indian Penal Code under which cognizance has been taken by the Magistrate.

12. Another startling fact of the present complaint is that two sons of late Hari Prakash Mohta who had executed agreement for sale on 14th July, 1982 have not been made accused and they have been put in the category of witnesses. The two sons, grandson and wife of late Om Prakash Mohta who had not even executed the sale deed on 14th July, 1982 and who is said to be brother of the executant late Hari Prakash Mohta have only been made accused in the present complaint.

13. I further find that the present complaint has been

instituted after 31 years of the cause of action when the main parties to the agreement, who are alleged to have negotiated and executed the deed, have already died. Apparently, the present prosecution is a gross abuse of the process of court.

14. The facts stated above clearly give an impression that the present complaint is manifestly attended with mala fide. The allegations made in the complaint are absurd and there is no sufficient ground for proceeding against the petitioners.

15. The principles relating to exercise of jurisdiction under section 482 of the Code to quash the complaint and criminal proceedings have been considered by the Supreme Court in several decisions. In **State of Haryana & Others Vs. Bhajan Lal and Others [1992 Supp (1) SCC 335]**, certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under Section 482 of the Code. It reads as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted

and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or 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 a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only

a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. Judged on the touchstone of the principles noted above in **State of Haryana Vs. Bhajan Lal** (Supra), the present complaint case would fall within the category nos. (3), (5) and (7).

17. Keeping in mind the ratio laid down in **State of Haryana Vs. Bhajan Lal** (supra) and the facts of the case as

discussed hereinabove, the entire proceeding of Complaint Case No. 234/2013 including the order dated 30.05.2014 passed by the learned Judicial Magistrate-1st Class, Aurangabad is hereby quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J.)

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