IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48929 of 2013
Arising Out of PS.Case No. -47 Year- 2007 Thana -MADHUBANI COMPLAINT CASE District- MADHUBANI

WEB COPY NOT OFFICIAL

==

1. Elahi Mansuri, S/O Late Ramjani Mansuri
2. Suresh Prasad Yadav, S/O Late Nand Kishor Yadav. Both are residents of Village- Pauni, P.S. Madhepur, District- Madhubani
3. Madan Kumar Jha, S/O Late Dhirendra Jha, resident of Village- Pauni, P.S. Madhepur, District- Madhubani. Presently Resident of Village- Bhawanipur, P.S.- Biraul, Distt.- Darbhanga
4. Ram Shankar Yadav, Son of Banshee Lal Yadav, Resident of Village- Harari, Tole Karrahi, P.S.- Andharathathi, District- Madhubani

.... Petitioners

Versus

1. The State of Bihar
2. Gopal Jha, Son of Late Thakkan Jha, Resident of Village- Pauni, P.S. Madhepur, District- Madhubani

.... Opposite Parties

==

Appearance :
For the Petitioner/s : Mr. Hriday Narayan Harshit, Advocate
For the Opposite Party/s : Mr. Ramesh Jha, Advocate
For the State : Mrs. Pushpa Sinha No. 2, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 29-03-2016

Heard learned counsel for the petitioners and learned counsel for the State.

This application has been filed for quashing the order dated 06.09.2011 passed in Trial No. 2094 of 2013, arising out of Complaint Case No. 47 of 2007 by the learned Sub-Divisional Judicial Magistrate, Jhanjharpur by which cognizance has been taken against the petitioners for the offences under Sections 420, 465 and 467 of the Indian Penal Code as also for quashing the revisional order dated 12.05.2011 passed in Cr. Revision No. 987 of 2007 by the learned Additional Sessions Judge, F.T.C.-III, Madhubani.

The facts, in a narrow compass, are that a complaint case was filed alleging therein that the father of the complainant has purchased the land appertaining to Khata No. 42 Kheshra No. 310 area 9 katha 3 dhur from one Hitahi Gope and came in possession over the same. The further case is that the land measuring 4 katha 2 dhurs of old Khata No. 66 Plot No. 311 was purchased by the sister of the complainant Bhuneshwari Devi from Sudama Devi, the only daughter of Late Ghunesh Jha. The further case is that after the death of the father of the complainant, the step-brother sold 1/3rd share out of his only ¼th share to accused Elahi Mansuri and no share remained in his possession. It is further alleged that under a conspiracy he again sold the rest 07 katha land by forged and fabricated sale deed and ultimately alleged that he sold more than his share as well as the share of Bhuneshwari Devi. It is alleged that since the accused persons sold the land more than what is required in their share and they have executed a forged and fabricated sale deed and when it was protested then it is alleged that they abused and assaulted. On the said complaint, the complainant was examined on oath and the witnesses on behalf of the complainant were also examined. However, after examining the witnesses and taking into consideration the entire facts the learned Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure holding that the allegation is concerned with a title and the matter concerned with the civil dispute. The said order of the learned Magistrate rejecting the complaint under Section 203 of the Code of Criminal Procedure by the order dated 21.08.2007 was challenged in Revisional Court of Sessions Judge and the revisional court by its order dated 12.05.2011 set aside the order dismissing the complaint on the ground that merely because a title suit is pending, the criminal case cannot be dismissed and remanded the case with observation and in view of the observation and the finding that the court below has not considered the entire matter in the proper way and passed the order in casual manner and the ground of dismissal of the complaint petition by the court below is neither acceptable nor sustainable in the eye of law. It is further alleged that the court below should have gone into the question whether a prima facie case is made out. After remand of the case, the impugned order has been passed taking cognizance of case under Sections 420, 465 and 467 of the Indian Penal Code. However, in view of the observation made by the Additional District and Sessions Judge, Madhubani, the learned Magistrate found that the prima facie case against the accused persons is made out for offence under Sections 420, 465 and 467 of the Indian Penal Code.

Learned counsel for the petitioners has challenged the order of the learned Magistrate as well as the order of the Additional

Sessions Judge. It has been submitted that no offence has been made out taking allegation on its face value to be correct and order taking cognizance has been passed without due appreciation of mind by the learned Magistrate.

Learned counsel for the State and other opposite parties, however, contended that the petitioners have filed petition against the order of taking cognizance passed by the learned Magistrate. However, the petitioners have not challenged the order passed by the revisional court remanding the case for fresh consideration after setting aside the order dismissing the complaint under Section 203 of the Code of Criminal Procedure and hence, contended that the order of the learned Magistrate cannot be set aside till the order of the revisional court is not set aside and, hence, contended that the petitioners having not challenged the order of revisional court it is not proper to set aside the order passed by the learned Magistrate.

However, the application has been filed under Section 482 of the Code of Criminal Procedure and it is proper to go into the question about the power enshrined under Section 482 of the Code of Criminal Procedure to the High Court. Section 482 of the Code of Criminal Procedure provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order passed under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Hence, the High Court is competent enough to consider the question raised if it is found that allowing the prosecution to continue is an abuse of the process of Court then in the interest of justice he can proceed to quash the proceeding.

However, on going into the question, at the outset, if the allegation made in the complaint makes out no offence then allowing the prosecution to continue against the accused shall be the abuse of the process of the Court and if the Court finds that there is abuse of the process of the Court then nothing has prevented this Court to pass order in the interest of justice to quash the proceeding. The Court has ample power to go into the question whether the allegation in the complaint makes out an offence or not and if the allegation made taken to be true does not make out an offence then allowing the prosecution to continue is only a harassment to the accused persons and there is no restriction to this Court in its inherent power to prevent the abuse of the process of the Court and to quash the proceeding or bequeath the proceeding of a criminal trial. Now, the only question is as to whether the allegation made in the complaint makes out an offence or not. If the allegation made in the complaint makes out an offence then there is nothing to interfere with the order. However, if the allegation made in the complaint does not make out an offence then allowing the complaint to continue is itself an abuse of the process of the Court and the proceeding requires to be quashed.

However, coming to the question a lis or a litigation may give rise to both the civil consequence as well as the criminal consequence. If both the civil consequence and the criminal consequence are going together then the continuation of a civil suit does not bar a criminal prosecution to continue. However, if the allegation made in the complaint does not make out an offence then irrespective of the fact that whether a civil suit is going or not a criminal case shall continue but if the allegation does not make out an offence then any continuation of criminal case shall be the abuse of the process of the Court and, hence, the question is not whether a civil suit is pending or not. The question is whether a criminal offence is made out or not and hence, the whole exercise is to look the complaint whether the allegation made make out an offence.

However, on going to the prosecution in the complaint on its face value, the only allegation made in the complaint that the father of the complainant has purchased the land and thereafter, it is said that the step-brother sold the land in excess to his share. It is further alleged that the accused, the vendor as well as the vendee in collusion with each other got a sale deed executed. However, the cognizance has been taken under Sections 420 , 465 and 467 of the Indian Penal Code. The allegation made is that the accused persons, who are the vendor and the vendee have executed a sale deed and the question concerned is whether an offence under Section 420 of the Indian Penal Code is made out.

Section 420 of the Indian Penal Code defines cheating as dishonestly inducing delivery of property. To constitute an offence under Section 420 of the Indian Penal Code there are two ingredients. The first is dishonest inducement of a person deceived and thereafter followed that this inducement the person deceased is to deliver any property to any person who has been deceived.

Here the complainant has neither been induced nor he has delivered any property to the accused persons and, hence, no offence of cheating is made out.

So far the offence under Sections 465 and 467 of the Indian Penal Code is concerned for making a forgery what is required to be proved in making out of a false document. The false document has been defended under Section 464 of the Indian Penal Code and it is relevant to quote Section 464 of the Indian Penal Code, which reads as follows:-

> ***"464 Making a false document. — [A person is said to make a false document or false electronic record—***

First. —Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

Section 464 of the Indian Penal Code is in three parts. The first part provides that whoever dishonestly and fraudulently makes, signs, seals or executes a document or a part of the document with the intention of causing it to be believed that such document or part of document was signed by an authority of a person by whom or by whose authority he knows that it was not made. However, the allegation made does not come under this part one. There is no allegation that the document was signed by some person other than the person who signed it or was signed by an authority and hence, the first part has an element of impersonation. Had there been an allegation that the accused persons executed the sale deed by impersonating themselves to be the complainant then it would have made an offence here. This is not the case that the accused persons impersonated and executed the document in the name of the complainant rather they have executed the document themselves asserting their right over the property and, hence, the first part does not attract.

The second part provides that whoever alters a document, there is no case that any alteration has been made and the third part provides that whoever dishonestly and fraudulently acts any person to sign or alter a document or knowing that the person by reason of his unsoundness of mind or intoxication or deception, he does or knows the contents of the documents or the nature of the alteration. Here it is not a case that the document was signed under the intoxication or unsoundness of mind that context of document was not known and, hence, the ingredients provided under Section 464 of the Indian Penal Code are not made out. The explanation given under Section 464 of the Indian Penal Code also does not cover the allegation made and, hence, whatever allegation made by the complainant is not covered under Section 464 of the Indian Penal Code or to cover a false document to attract Sections 465 and 467 of the Indian Penal Code. Hence, taking into consideration these facts, the allegation made does not make out a case of forgery to attract Section 465 or 467 of the Indian Penal Code. However, whatever allegation made with regard to share of the parties and the share of the party cannot be decided by the Criminal Court, the share of the party and the title of the party can only be decided by a Single Judge and, hence, whatever acted, is a civil consequence and once it is held that the allegation made does not make out a criminal offence rather a civil consequence, the criminal court has no jurisdiction to decide and to allow the prosecution to continue in Civil Court is only abuse of the process of the Court and, hence, in the interest of justice, the impugned order as well as the order passed by the revisional court and the entire criminal proceeding is, hereby, set aside. The petition is allowed.

However, this order shall not affect the right of the parties in the Civil Court whether the parties are litigating the matter is to be decided by the Civil Court and this order shall have no consequence for any parties in the Civil Court.

(Gopal Prasad, J)

Vats/-

U		T	