IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36640 of 2016

Arising Out of PS. Case No.-502 Year-2011 Thana- MUZAFFARPUR TOWN District- Muzaffarpur

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1. Sudha Kumari @ Sudha Devi, Wife of Suraj Kumar
2. Suraj Kumar
3. Rahul Raj, Both Sons of Hari Shankar Prasad Sinha
4. Hari Shankar Prasad Sinha, Son of Bishwanath Prasad, All Resident of Mohalla- Motijheel, P.S.- Muzaffarpur Town, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Lal, Son of Satyanarayan Lal, Resident of Mohalla-- Ayodhya Prasad Lane, Motijheel P.S.- Muzaffarpur Town, District- Muzaffarpur.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Arun Kumar
For the Opposite Party/s : Mr. DR. INDIWAR KUMARI

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date : 21-09-2017

Through the present application, prayer has been made for quashing the order dated 25.4.2016 passed by the learned Sessions Judge, Muzaffarpur in Cr. Revision No. 32 of 2016, whereby the learned Sessions Judge dismissed the revision and affirmed the order dated 22.1.2016 passed by the learned Sub Judge IX cum ACJM, Muzaffarpur in Trial No. 175 of 2016 arising out of Muzaffarpur Town P.S. Case No. 502 of 2011, whereby the petitioner’s application for discharge under section 239 of the Cr.P.C. has been rejected.

The prosecution case got initiated with lodging of the Complaint Case No. 1165 of 2011 filed by the O.P. No. 2 Sanjay Kumar Lal on 6.6.2011 before the learned Chief Judicial Magistrate, Muzaffarpur, which was transferred to the Police under Section 156(3) of the Cr.P.C. and ultimately, got registered as Muzaffarpur East Town P.S. Case No. 502 of 2011 dated 26.9.2011, under sections 420, 467,468, 469, 471 and 120B of the IPC.

The prosecution case is that complainant-O. P. No. 2, namely, Sanjay Kumar lal and his father namely, Satyanarayan Lal purchased 7 dhurs of land appertaining to Khata No. 122, Plot No. 614 (ka) and (kha) situated in Mohalla Motijheel through registered sale deed dated 26.12.2007 and 16.1.2008 from Badal Chandra Patra, Lalit Patra and Uday Patra. Subsequently, they came in peaceful possession of the land, got their names mutated and have been paying rent. It is alleged that the accused persons were having a greedy eye on the said land and earlier, the petitioner no. 4 created forged Agreements dated 15.1.2006 and 16.01.2006, by forging the signature of the complainant and his father on the said Agreement. In the said Agreement the petitioner no. 4 had mentioned his alive father as Late Bishwanath Prasad, whereas he died on 6.3.2006. In this regard, the father of the complainant had registered Muzaffarpur Town P.S. Case No. 450 of 2009. Yet again, the petitioner no. 4 conspired and with the help of one Chameli Devi, Wife of Keshav Chandra Adak, created a forged Sale Deed executed in favour of Sudha Devi (daughter-in-law of petitioner no.4), on 26.2.2010. The complainant came to know about this fraudulent activity on 23.11.2010 and thereafter, the complaint was filed and ultimately, the police case was registered.

On conclusion of investigation, police submitted final form (chargesheet) under Sections 420,467,468,469,471 and 120B of the IPC and consequently, the order taking cognizance of offence was passed by the learned Magistrate. Subsequently, the petitioners filed an application under section 239 of the Cr.P.C. for discharge on the ground that no forged document has been seized but the learned Sub-Judge 9th cum ACJM, Muzaffarpur, vide order dated 22.1.2016 rejected the petition for discharge on the ground that from perusal of the materials in the case diary it appears that enough material has been collected during investigation and chargesheet was submitted and cognizance order has been passed. Hence, there is sufficient material on record for framing of charge. The said order refusing to discharge dated 22.1.2016 passed by the learned Sub-Judge-XI-cum-ACJM, Muzaffarpur was challenged by the petitioners in Cr. Revision No. 32 of 2016 but the same was dismissed by the learned Sessions Judge, Muzaffarpur vide order dated 25.4.2016 on the ground that considering the material collected during investigation the learned ACJM took cognizance of the offences and thereafter, the learned ACJM rejected the discharge application finding enough material for framing charge and since the charge can be framed on strong suspicion also. The said order is under challenge in the present proceeding.

Learned counsel for the petitioners submits that the land in question having total area of 14 decimals belongs to one Satyanarayan Patra but he died leaving behind two sons namely, Satyendra Patra and Shankar Das Patra. Subsequently, by partition , half of the area of the land in question measuring about 7 ½ dhoor came in possession of Shankar Das Patra who died leaving behind his four sons, namely, Shyam Kumar Patra, Badal Chandra Patra, Uday Kumar Patra and Lalit Kumar Patra and three daughters namely, Malti Rani Patra, Bala Rani Patra, Lalita Rani Patra alias Chameli Patra alias Chameli Devi. However, Shyam Kumar Patra died as a bachelor. The sons of Shankar Patra fell in need of money, hence they executed sale deed in favour of petitioner no. 4 Hari Shankar Prasad Sinha and his brother Satya Narayan Lal. The complainant O.P. No. 2 is the son of Satya

Narayan Lal. Petitioner no. 1 is Sudha Kumari alias Sudha Devi who is wife of Suraj Kumar, petitioner no. 2. Petitioner nos. 2 and 3 Suraj Kumar and Rahul Kumar are sons of petitioner no. 4 Harishankar Prasad Sinha. The O.P. No. 2 claims to have purchased the land in question from Badal Chandra Patra and Lalit Patra through a sale deed dated 26.12.2007 and 2.1.2008, whereas prior to such Agreement to Sell being executed, Badal Chandra Patra and his brother had executed two agreement dated 15.1.2006 and 16.1.2006 and for non-execution of sale deed, in pursuance to the agreement to sell, Title Suit No. 79 of 2008 was filed by petitioner no. 4 for specific performance of contract, wherein the complainant is the second party. Lalit Rani Patra alias Chameli Devi who is the daughter of Shankar Das Patra executed the sale deed in favour of Sudha Kumari who filed Partition Suit No. 229 of 2010. Lalit Kumar Patra has also filed Title Suit No. 374 of 2009 for setting aside the sale deed dated 26.12.2007 and 2.1.2008, executed in favour of the informant's side i.e., Satyanarayan Lal and Sanjay Kumar Lal. Hence, it is submitted that for a civil nature of dispute, the remedy has been sought in criminal proceeding.

Learned counsel for the petitioners has relied upon the case of Mohammed Ibrahim and Ors. Vs. State of Bihar and Anr., reported in (2009) 8 Supreme Court Cases 751 and Indian Oil Corpn. Vs. NEPC India Ltd. & Ors, reported in (2006) 6 Supreme Court Cases 736.

However, learned APP submits that the petitioners preferred Cr. Revision No. 32 of 2016 against the refusal to discharge and the revisional order has again been challenged in the present quashing application which amounts to filing of second revision, which is barred under section 397(3) of the Cr. P.C.

Considering the rival submissions of the parties, there is no doubt that there is a bar on filing second revision under section 397(3) of the Cr.P.C., but that does not affect the jurisdiction of the High Court to entertain application under Section 482 of the Code of Criminal Procedure after availing the revisional jurisdiction as has been held in the case of Shakuntala Devi & Others Vs. Chamru Mahto and Anr. (2009) 3 Supreme Court Cases 310. Paragraph 24 reads as follows :

> "24. It is well settled that the object of the introduction of Sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the

prohibition under Sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us."

Similar view has been expressed by the Apex Court in the case of State, through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and Ors., reported in (2003) 6 Supreme Court Cases 641. Paragraph 29 reads as follows:

"29. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent

> jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

The inherent powers of the High Court, in the case where the remedy of revision has been availed of, have to be exercised very sparingly, as has been held in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr., reported in (2005) 2 Supreme Court Cases 571. Paragraph 5 reads as follows:

> "5. It may also be noticed that this Court in Rajathi v. C. Ganesan : 1999CriLJ3668 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can

> entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

In the present case, the petitioners availed revisional jurisdiction by challenging the order refusing to discharge before the learned Sessions Judge and the petitioners have not been able to make out any exceptional case for interference.

The Apex court in the case of Amit Kapoor Vs. Ramesh Chander & Anr., reported in (2012) 9 Supreme Court Cases 460 has laid down certain parameters for exercise of jurisdiction under section 482 of the Cr.P.C. where it has been held that after charge being framed in terms of section 228 of the Code, such power should be exercised very sparingly and with circumspection that too in rarest of the rare cases. More over, the High Court should not unduly interfere as no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge. However, the Court may in exercise of power under section 482 of the Cr.P.C. quash the case predominantly of a civil nature but has been given a cloak in order to get a quick justice through the criminal forum. Paragraph 27 reads as follows:

> "27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
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> 1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> 2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic

ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of

the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist."

No doubt, in the present case, the basic accusation suggests ingredients of civil dispute between the parties but there cannot be a water tight compartment segregating the case making a clear divider between the civil nature of dispute and criminal one. There are cases, facts of which can give rise to civil as well as criminal cause of action. In the present case also, the accusation is that the petitioners fraudulently created a forged agreement to sale and a sale deed. More so, when then trial is at the advance stage, this Court is not inclined to interfere in the matter.

This court is further not inclined to interfere in view of the supplementary affidavit dated 17.4.2017 filed on behalf of the petitioners making statement in paragraph 2 that after framing of charge three witnesses have already been examined. Paragraph 2 of the Supplementary affidavit reads as follows:

> "That in the aforesaid case after framing of charge three witnesses were examined."

Accordingly, this application is dismissed.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	