

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1208 OF 2016

Rajmal Goyal, S/o Shankar Lal Goyal, aged about 53 years, R/o Pendra, P.S. & Tehsil Pendra, District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through District Magistrate, Bilaspur, District Bilaspur (C.G.)
2. Santosh Gupta, S/o Dhaniram Gupta, aged about 45 years, R/o New Bus Stand Pendra, P.S. & Tehsil Pendra, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Ashok Kumar Soni, Advocate.
For Respondent No.1-State	:	Mr. Ashok Swarnakar, Panel Lawyer.
For Respondent No.2	:	Mr. K.M. Ansari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/02/2017

1. The present Criminal Misc. Petition under Section 482 of CrPC has been preferred by the Petitioner assailing the order dated 12.8.2016 passed by the Additional Sessions Judge, Pendra Road, District Bilaspur, in Criminal Revision No. H-12 of 2016 and also the order dated 9.2.2016 passed by the Judicial Magistrate First Class, Pendra Road, in an unregistered case.
2. Vide order dated 9.2.2016, the Magistrate Court at the first instant has dismissed the complaint case under Section 200 of CrPC preferred by the Petitioner-Complainant, holding that the ingredients necessary for making out the offence under Sections 380, 457 and 448 was not available and the dispute appears to be more of a civil dispute between the parties. The Revisional Court also vide its order dated 12.8.2016, considering the contentions and submissions put forth on either side, reached to the same conclusion that the dispute between the parties was more of a civil dispute and that the Trial Court has not committed any error of law nor is there any infirmity

in reaching to the conclusion of the rejection of the complaint case in exercise of powers under Section 203 of CrPC.

3. Some of the facts relevant for the proper adjudication of the present case are that, the disputed property is a shop/godown originally owned by Respondent No.2. On 9.10.2004, an agreement to sale was entered into between the wife of the Petitioner-Complainant and Respondent No.2 for sale of the said disputed property. The sale consideration of the suit property was Rs.4 Lakh. At the time of agreement, Rs.3.75 Lakh was made towards advance and the balance amount was agreed to be paid at the time of registration of the sale deed. Possession also is said to be given to the wife of the Petitioner. The Petitioner was operating his business using the suit property as his godown for stocking his articles.

4. Respondent No.2 filed a civil suit before the Court below seeking for declaration, declaring the agreement to sale as null and void and also for possession of the property. The said civil suit was registered as Civil Suit No. 22-A of 2006. The said suit got decided in favour of Respondent No.2 i.e. the Plaintiff and the judgment and decree was passed in favour of the Plaintiff on 11.5.2007. The present Petitioner, i.e., the Defendant, preferred a First Appeal before the High Court, which was registered as First Appeal No.74 of 2007. Meanwhile, the execution proceeding Case No. 5-A of 2009 was also instituted by the Petitioner, which is also still pending consideration before the High Court.

5. It is alleged that on the intervening night of 27th & 28th January, 2015, the Respondent No.2-Plaintiff, the decree holder, is said to have broken open the lock of the suit premises and is said to have taken forceful possession of the suit property after preparation of a panchanama in the presence of others. A police report was made by the Petitioner in this regard at Police Station Pendra and the police authorities after investigation, refused to register the

case on the ground that the dispute between the parties was more of a civil nature. The Petitioner subsequently filed a complaint case before the Judicial Magistrate First Class, Pendra Road, under Section 200 of CrPC.

6. The Trial Court called for a report from the police authorities and after hearing the contentions of the Petitioner as well as on perusal of the report of the police authorities, vide its order dated 9.2.2016 rejected the complaint on the ground that the dispute between the parties was in fact of a civil dispute and the matter stood ceased in a proceeding before the Court and that the averments made in the complaint do not constitute the offence under Sections 380, 457 and 448 of IPC. The said order of the Magistrate Court dated 9.2.2016 was subjected to challenge before the Revisional Court where the case was registered case Criminal Revision No. H-12 of 2016.

7. The Revisional Court also taking into consideration the entire facts and circumstances and also considering the nature of dispute between the parties as also taking note of the civil suit which has been decreed in favour of Respondent No.2-Plaintiff and the first appeal which is pending consideration before the High Court, did not found any illegality or infirmity on the order passed by the Magistrate rejecting the complaint. The Revisional Court was also of the view that the dispute between the parties was more of a civil dispute.

8. These two orders are under challenge in the present petition.

9. Learned Counsel for the Petitioner assailing the two orders submits that it is a case where the two Courts below have not appreciated the facts and circumstances of the case in its proper perspective. According to the Counsel for the Petitioner, it is a case where admittedly the Respondent No.2 was the owner of the property and in the civil suit there is a decree in his favour but the said judgment and decree of the Civil Court was under challenge before the High Court and the High Court has passed an interim order of maintaining the

status quo of the suit property as it exists, which is still in force, and, therefore, taking over the possession of the property forcefully by the Respondent No.2 is in violation of the order passed by the High Court in the First Appeal and is also a criminal act which falls within the provisions of Sections 380, 457 and 448 of IPC.

10. It was further contended by the Counsel for the Petitioner that so far as the taking of the possession is concerned, the decree holder i.e., Respondent No.2, had made several attempts by moving appropriate applications before the execution court as well as before the appellate Court in the First Appeal and that he had failed in all attempts and that all the more made the act on the part of Respondent No.2 in taking the forceful possession of the suit property to be one which would fall under Sections 457 and 448 of IPC. The fact that he has now with a criminal act taken over the property in spite of on earlier occasion entering into an agreement of sale and taking huge amount of money as advance payment and subsequently turning around from the said agreement and illegally taking possession of the suit property also, would also come within the ambit of Section 380 of IPC.

11. It was also contended by the Counsel for the Petitioner that the Respondent No.2 had in between also filed two separate writ petitions, where also he has not been able to succeed and those two writ petitions were also against the order passed by the execution Court in not granting any relief of handing over the possession of the suit property to the Respondent No.2. This all the more would show that the Respondent No.2 when he failed to succeed from any of the proceeding from the Court of law he has taken the law in his own hands and thus it is a criminal act which has been done by him and therefore the Magistrate ought to have proceeded further with the case and should have registered the offence against the Respondent No.2.

12. Per contra, opposing the revision petition learned Counsel for Respondent No.2 submits that the plain reading of the two orders under challenge by itself are self-explanatory and would lead us to hold that there was no scope of interference. According to the Counsel for Respondent No.2, the two authorities have scrutinized the entire contentions of the parties and reached to the conclusion that the nature of dispute between the parties was civil in nature and therefore the Magistrate Court and the Revisional Court have rightly taken that into consideration while rejecting the complaint case. It was further contended that, the Courts below had looked into the police report which was called upon by the Magistrate and in the police report also it was revealed that the dispute between the parties was more of a property dispute and that the nature of dispute was also more of a civil dispute in nature. Therefore, the two Courts below have rightly relying upon the police report rejected the complaint as well as the revision petition. He thus prayed for the dismissal of the present Criminal Misc. Petition as well.

13. Having considered the rival contentions put forth on either side and on perusal of the record, what primarily has to be seen is that whether the Magistrate Court at the first instance was justified in rejecting the complaint in exercise of powers under Section 203 of CrPC. For ready reference, Section 203 of CrPC is quoted herein under:

“203. Dismissal of complaint.– If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

14. Now, a plain reading of the aforesaid provision would clearly reveal that it is incumbent upon the Magistrate to consider the statement which has come before the Court in the complaint filed by the complainant and would also take into consideration the report of the enquiry or the investigation which has been conducted under Section 202 of CrPC. Only thereafter, in case, if the

Magistrate finds that there is no sufficient ground making out of the offence as alleged by the complainant he shall dismiss the complaint. What is all the more important to know is that the said Section itself shows that while dismissing the complaint the Magistrate may briefly record reasons for doing so and that the Magistrate's order need not to be exhaustive and detailed giving elaborate reasons and justifications for rejection of the complaint. This all the more reflects that the power so conferred under Section 203 of IPC is a subjective power given upon the Magistrate and only on the Magistrate being satisfied of a criminal act to have occurred would he initiate a proceeding or else he has to reject the complaint.

15. Taking into consideration the aforesaid provisions when we look into the order passed by the Magistrate, it would reveal that the facts which were brought before the Court below prima facie made the Magistrate reach to the conclusion that from the statement of the complainant and also the other witnesses there does not reveal commission of an offence and found that there was no sufficient ground making out the offence under Sections 380, 457 and 448 of IPC. As per the provisions of Section 203 of IPC, the Magistrate Court was supposed to dismiss the complaint and which the said Court has done it rightly so. Prima facie, it does not appear that the Trial Judge has committed any grave error in dismissing the complaint case. Another aspect which has to be seen is that the Magistrate has also given his reasons for rejection of the complaint. The conclusion of the Trial Court as well as the Revisional Court was that it was not a case of Respondent No.2 breaking open the lock of the suit property and taking illegal possession, rather it was a case when the neighbours intimated of the Petitioner leaving the shop premises open and when Respondent No.2 came and saw that the suit property was lying open, he took possession of the vacant property. The fact that

Respondent No.2 was the original owner of the suit property cannot be brushed aside.

16. Thus, from the findings recorded by the two Courts below, this Court does not find any error in law committed by the two Courts below while rejecting the complaint case as well as the criminal revision. Section 203 of CrPC specifically holds that in the event if the Magistrate is of the opinion that no sufficient ground for proceeding is made out on the basis of the statement of the complaint and of the witnesses, the Magistrate shall dismiss the complaint. Thus, if the Magistrate after giving the reasons particularly, referring to the civil suit, first appeal and the execution proceeding, reaches to the conclusion that the dispute between the parties is more of a civil nature, this Court does not find any illegality or infirmity to have been committed by the two Courts below in passing the impugned orders.

17. In case, if the Petitioner is of the opinion that the action is violative of the interim order of the High Court then the Petitioner has the remedy under Civil Procedure Code to be taken against the Respondent for the breach of the Injunction order, if any.

18. The present Criminal Misc. Petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge