

Rameshwar Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-19-2012

Judge : Virendra Vikram Singh

Appeal No. : Criminal Revision No. 584 of 2010

Appellant : Rameshwar Singh

Respondent : State of U.P.

Judgement :

1. THE challenge in the present revision is to the order dated 9.12.2009 passed by Judicial Magistrate-V, Mathura in case crime no. 240/ix/2009. By the impugned order, the present revisionists along with Smt. Laxmi Singh, wife of revisionist no. 1 has been summoned to face trial for the offence under section 420, 120 B IPC.

2. THE accusation against the accused persons have been brought forward by moving an application under section 156 (3) Cr.P.C. by Smt Rani, wife of Laxman. With the facts that her husband is mentally sick and his mental age is hardly that of a kid of 4 or 5 years. He owns plots Nos. 274 and 202 of different areas in village Kurkunda P.S. Farah, District Mathura. Because of his poor mental condition, Laxman was not employed anywhere and he frequently used to visit the company of Tunda and Ramjeet presently revisionist no.4 and 5. Tunda was employed as driver with revisionist no. 1, who also employed Laxman as guard at his house. The complainant came to know that Rameshwar Singh got executed

the sale deed of the entire holding from Laxman, her husband, by way of two different sale deeds. One sale deed was executed in favour of Vijay Pal and Ganesh and the other sale deed was executed in favour of Smt. Laxmi wife of Rameshwar Singh. The complainant while came to know about these sale deeds, she complained the matter to Tunda and Ramjeet, who assured for the cancellation of these documents but did not adhere to their promise. On these facts, the accusation was levelled that the accused persons having hatched a conspiracy, got executed sale deed of the property of her husband, costing about Rs. 1.5 crores. The remaining two accused revisionists are the marginal witness to the sale deed executed in favour of Smt. Laxmi.

The application of Smt. Rani under section 156(3) Cr.P.C was treated as complaint. During the course of inquiry, Smt Rani examined herself under section 200 Cr.P.C and Shyam Singh and Amar Singh were examined as witnesses under section 202 Cr.P.C. Having gone through the evidence on record the learned Magistrate by passing the impugned order summoned the accused persons to face trial for the offence under section 420 IPC read with section 120-B IPC.

3. ON behalf of the respondents, a preliminary objection has been put forth that the revision is not maintainable against the impugned summoning order as the order is interlocutory and not revisable under the provisions of Section 397(2), of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). Since this issue of maintainability of the revision has been raised, the Court proposes to decide this issue first.

4. IN support to the contention that the revision against the order of summoning is not maintainable reliance has been placed on the decisions of Adalat Prasad vs. Rooplal Jindal and others 2004 All JIC 792, Rajbali and others vs. State of U.P and another 2007 (2) All GIC page 239. On behalf of the revisionist the argument has been controverted.

In the case of Adalat Prasad (Supra), Hon'ble the Apex Court has held that a Magistrate summoning the accused to face the trial has no power to review its order. The remedy lies by invoking the jurisdiction under section 482 Cr.P.C. After the pronouncement in the case of Adalat Prasad referred to above, in the case of

Subramaniam Sethuraman vs. State of Maharashtra, 2005 All JIC 44 (SC), the Apex Court again held that the order of summoning the accused under section 204 Cr.P.C is an intermediary order.

5. THE provisions of section 397 (2) of the Code of Criminal Procedure prohibits the maintenance of revisional jurisdiction of Court against an interlocutory order. In both the two cases, i.e. Adalat Prasad and Subramaniam Sethuraman referred to above, it was not specifically laid down that the order of summoning the accused persons to face trial is an interlocutory order, or that against such order the revision is not maintainable. However on the basis of the pronouncement of the two aforesaid cases decided by Hon'ble the Apex Court, the decisions of the Allahabad High Court in the case of Rajbali and others (Supra) and other cases such as Kamal Krishna Vs State of U.P. and others 2006(1) JIC 751, Bhajanlal and others Vs State of U.P. and another, 2006(2) JIC 751, Hariram Raikwar and another Vs State of U.P. and another, 2008(2) JIC 280 and in others cases decided by the Allahabad High Court, it was held that the revision is not maintainable against the order of the Magistrate summoning the accused for trial.

6. THIS issue was again decided by the Apex Court in the case of Dhariwal Tobacco Products vs. State of Gujarat, 2009 (2) SCC page 370. By this pronouncement, it was held by Hon'ble the Apex Court that,

"Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. The order of summoning the accused is not an interlocutory order".

Thus the controversy has been set at rest with the decision of Dhariwal Tobacco referred to above and it is now abundantly clear that an order summoning the accused to face the trial passed under section 204 Cr.P.C., is not an interlocutory order and against such order the revision is maintainable. Thus the initial objection put forth on behalf of the respondents does not gather any force and is liable to be discarded while holding that against the impugned order the revision is maintainable.

On behalf of the revisionists it has been argued that Smt Rani, the complainant presently respondent no. 2 also launched a civil case on the basis of the same facts. The arguments has been advanced in terms that since another civil litigation for the same facts is pending before the civil Court, hence the criminal proceedings were not maintainable. On behalf of the opposite party this argument has been controverted and it has been argued that in support of the same set of facts civil and criminal proceedings may be initiated simultaneously and there is no bar to proceed with the criminal trial if the civil suit on the basis of the same fact is pending.

7. THE Apex Court in the case Lee kunhee and others vs. State of U.P. And others, 2012 (1) All JIC page 510 has laid down that mere pendency of civil suit between the parties is not a ground to quash the criminal proceedings. In view of this pronouncement of the Apex Court, the court is not inclined to quash or stay the criminal proceedings simply on the ground that the civil suit between the parties is pending on the basis of the same facts.

8. LEARNED counsel for the revisionist has argued that from facts of the case, it evidently appears to be of a civil nature and in no case the offence under section 420 IPC or that of cheating can be said to have been made out against any of the accused. It has been attempted to be impressed upon that Laxman out of own wishes and freewill executed the sale deed in favour of Rameshwar Singh's wife for a consideration of Rs. 28 lakh of which Rs. 15 lakh were paid to him by cheque and the remaining Rs. 13 lakh were paid to him in cash. Much after the execution of the sale deed when Laxman realized that the prices of the land has escalated, he in order to extort undue pressure and to extract more money, has launched this false case through his wife.

On behalf of respondent no. 2, it has been argued that at this stage when the accused persons have been summoned to face trial, the only scope of this revision is to ascertain whether a prima facie case is made out against the accused and the defence of the accused has not to be considered at this stage. It was argued that from the facts of the case a prima facie case was made out and learned Magistrate has rightly arrived at the conclusion by passing the impugned order. By

repeated pronouncement of this Court and the Apex Court, including the decision of the Apex Court in Shivjee Singh Vs Nagendra Tewary and ors. AIR 2010 SC 2261, it has been held that at the stage of summoning the accused to face trial, the Court has simply to see whether sufficient grounds for proceeding exist as it has been held under Section 204 of the Code. It was held that at this stage the Court has simply to see the existence of a prima facie case against the accused persons and the criteria cannot be that there is sufficient evidence to record conviction. Howsoever the criteria for summoning the accused persons to face trial may be lenient but at the same time the summoning of the accused pursuant to a complaint cannot be a matter of routine course as it has been observed by the Apex Court in the case of Pepsi Food Limited vs. Sub Judicial Magistrate and others AIR 1998 SC 128. By the subsequent judgment of Hon'ble the Apex Court in the case of Maqsood Sayyad vs. State of Gujarat and others 2008 (2) Supreme Court cases criminal case page 749, the Court has laid down as follows:

"Whether a jurisdiction exercised on a complaint petition while in terms of section 156(3) or 204 Cr PC, the Magistrate is required to apply his mind while summoning the accused in a criminal case as the same is a serious matter. The criminal law cannot be set into motion as a matter of course."

9. IN view of the pronouncement of the Apex Court it lies heavy on this Court to decide whether on the basis of the facts put forward the order for summoning of the accused to face trial was justified or not.

10. IN any case the Court on the basis of the fact of the case will have to arrive at the conclusion as to whether the prosecution in question was of a civil nature or any criminal offence is made out against any of the accused justifying their trial. The Apex Court in the case of Madhavrao Jiwajirao Scindia and others.Vs Sambhajirao Chandrojirao Angre and others 1988 Cr LJ 853; has held as follows:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to

permit a prosecution to continue. This so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

Again in the case of G. Sagar Suri and another vs. State of U.P and others 2000 Cri LJ 824, the Apex Court has held that it is the duty and obligation of the criminal court to exercise its power with great deal of precaution in issuing the process particularly when matters are essentially of civil nature.

In view of the legal proposition discussed above the broad facts of the case need to be looked into. The accusation against Smt. Laxmi (Non revisionist the wife of revisionist no.1) is that a sale deed was executed in her favour, by Laxman. The accused Phool Singh and Omveer are the marginal witnesses to the sale deed and Tunda and Ramjeet are said to be the friends of Laxman allegedly for their self interest. There is no evidence of conspiracy. None of the witnesses has mentioned the facts as mentioned in the complaint. The Factum of conspiracy has been derived on the basis of hypothesis only since an undue transaction of execution of sale deed is alleged to have taken place it was in pursuant to a conspiracy. Now the Court shall examine whether the facts narrated brings home any charge of cheating at all.

11. IN the complaint itself, it is mentioned that Laxman executed two different sale deeds, one in favour of Smt. Laxmi and another in favour of Vijaypal and Ganesh. The allegation is that Laxman by way of his minority and mentally sickness was not in a position to execute the sale deed. Strange enough no allegation has been levelled against Vijaypal and Ganesh. These persons have not even been arrayed as accused. Thus evidently Smt. Rani respondent no. 2 has considered this sale deed in favour of Vijaypal and Ganesh to be genuine. The court is unable to understand that when Laxman was found capable of executing the sale-deed in favour of Vijaypal and Ganesh, how can it be inferred that he was incapable to execute the sale deed in favour of other transferee, Smt. Laxmi. No certificate has

been produced to show the minority of Laxman and on the contrary of the circumstances goes to show that he was not a minor. He is married to Smt. Rani allegedly aged about 20 years and he is the father of two issues. No age certificate has been produced nor the age of Laxman showing him to be minor has ever been described. The respondent no.2 has claimed her husband Laxman to be minor on the ground that the mental condition of her husband is such that he behaves like a kid of 4 or 5 years. It is proper to mention here that it is not the intelligence quotient or the mental development of any person to declare him a minor. The minority of a person is always ascertained from his date of birth and age. In view of Sec. 3 of the Indian Majority Act, 1875, "Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years". Thus When any person attains the stipulated age of 18 years, he becomes major, irrespective of his mental development whatever it may be. Thus it is evident that Laxman was not a minor, on the date he executed the sale deed.

12. ON behalf of prosecution, no documentary evidence or any medical certificate has been produced to show that Laxman, husband of Smt. Rani respondent was mentally sick to the extent that he was incapable of taking any decision and mere oral assertion to this extent is not sufficient. Despite the infirmity in the prosecution case referred to above, the Court still proceeds to examine whether accepting the prosecution version as gospel truth, whether the offence under section 420 I.P.C. can be said to have been made out against any of the revisionist and Smt. Laxmi. The accusation in the present case can be summarized that the accused persons got executed one sale deed from Laxman a mentally sick person. There is no allegation in the complaint that the sale deed was executed without any consideration. On the contrary the sale deed shows a consideration of 28Lacs of rupees, which were received by Laxman in cash and by way of cheque. Thus it can hardly be inferred that the sale deed was executed without any consideration. In the complaint, it has been mentioned that the market price of the plots involved was much higher. On behalf of the revisionist the adequacy of the consideration has been attempted to be explained but at this primitive stage the Court does not see any reason to decide this issue. However even if the issue of adequacy of consideration be not decided and the averment in this behalf put forward by the prosecution be accepted, it hardly makes out a case of sale deed for inadequate

consideration and nothing more, which can hardly be a subject for the civil court to decide. Now it has to be decided whether any offence under section 420 IPC can be said to have been made out. The offence of cheating punishable under section 420 IPC has been defined under section 415 IPC as follows:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

13. THE Apex Court in the case of Inder Mohan Goswami and others vs. State of Uttaranchal and others, AIR 2008 Supreme Court page 251 has laid down the necessary ingredients to constitute the offence of cheating. THE Court has laid down as follows:

"On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. THE second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

Again in the case of Thermax Ltd and others vs. K. M. Johny and others 2012(1) ACR 399 (SC) the Hon'ble the Apex Court has held as follows.

"To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the Respondents made any willful misrepresentation."

14. IN the present case there is no evidence at all that the accused persons hatched any conspiracy. There is no evidence that the accused persons or any of the accused made any false representation or any representation as true which the accused concerned knew to be false to Laxman to sell his property. The evidence to this effect is also lacking that Laxman executed the sale deed under any pressure or fear. Thus even if the entire prosecution case be accepted as such, it cannot be a case more than the execution of sale deed for inadequate consideration. Even if the mental sickness of Laxman be taken to be correct the entire facts giving rise to a remedy of cancellation of sale deed and no criminal offence can be said to have been made out from the facts of the case. This Court having given a thoughtful consideration on the facts of the case and also the legal proposition of the case holds that no offence was made out against any of the accused and the learned Magistrate definitely erred in passing the impugned order in terms of summoning the accused persons to face trial for offence under section 420, 120 B IPC.

15. The impugned order thus deserves to be set aside. The revision is liable to be allowed. The revision is hereby allowed. The impugned order of summoning the accused persons to face trial is hereby set aside.

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