

Pranab Kumar Vs. State of Jharkhand and Anr.

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Court : Jharkhand

Decided On : Feb-06-2015

Appellant : Pranab Kumar

Respondent : State of Jharkhand and Anr.

Judgement :

Cr. M. P. No. 134 of 2002 Applications under Section 482 of the Code of Criminal Procedure, 1973 Pranab Kumar, son of late S. N. Kumar, resident of Dangratoli, Kumhar Toli, Purulia Road, P.S. Lower Bazar, District Ranchi Petitioner Versus 1. The State of Jharkhand 2. Tarapado Chakarworthy . Opposite Parties PRESENT HONBLE MR. JUSTICE RONGON MUKHOPADHYAY For the Petitioner : Mr. Badal Vishal For the State : A.P.P. For the O.P. No. 2 : Mr. B. Mukherjee C.A.V. on 15.01.2015 Delivered on 06.02.2015 R. Mukhopadhyay, J Heard Shri Badal Vishal, learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the opposite party No.

2. In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with Complaint Case No. 357 of 2001 including the order dated 24.9.2001 passed by the learned Judicial Magistrate, Ranchi. A complaint case was instituted by the complainant/ opposite party No. 2 in which it was alleged that on the offer made by the petitioner to sell his property to the complainant on a consideration amount of Rs. 5.50 Lakhs, the petitioner executed a written agreement for sale on 25.10.1998 and on the same date itself the petitioner received an amount of Rs. 1 Lakh from the opposite party No. 2 through

an account payee cheque dated 15.10.1998 drawn on State Bank of India, Main Branch, Ranchi and the said cheque was duly encashed by the petitioner. It was also alleged therein that even after insistence by the complainant for execution of the deed of sale, the petitioner did not perform his part of the contract and ultimately a legal notice was sent on 8.4.1999, but of no avail. It has further been alleged that the petitioner with a mala fide intention was evading the complainant. After the complaint case was instituted, enquiry was conducted u/s 202 of the Code of Criminal Procedure (Cr.P.C.) and vide a detailed order dated 21.9.2001, the learned Judicial Magistrate, Ranchi was pleased to take cognizance for the offence punishable u/s 406/420 of the Indian Penal Code (IPC). The learned counsel for the petitioner has submitted that the complaint petition reveals that at best a civil liability could have been fastened upon the petitioner and in no circumstances any criminal offence is made out. He has further submitted that with respect to the same transaction, the complainant has already filed a title suit 2. being Title Suit No. 268 of 2001 in which he has mentioned about the existence of the present criminal case. He thus submits that in view of the suit which has been preferred by the complainant, the present criminal case is liable to be quashed. At this learned counsel for the opposite party No. 2 had drawn the attention of the Court to Paragraph-5 of the complaint petition in which the complainant has alleged that he had insisted the accused to execute the deed of sale in his favour by receiving the balance consideration amount which according to the learned for the opposite party No. 2 shows the bona fide of the complainant in performing his part of the contract. He has further submitted that the suit, which has been filed by the complainant, has still not been admitted for non-filing of the court fee and it cannot be said that the suit is still pending, as the same is defective. Learned counsel for the opposite party No. 2 has also drawn the attention of the court to the order taking cognizance in which the learned Judicial Magistrate has considered the entire aspects of the allegations. After hearing the learned counsel for the petitioner and the learned counsel for the opposite party No. 2 and on perusal of the records, I find that vide order dated 24.9.2001, the learned Judicial Magistrate, Ranchi had taken cognizance for the offence punishable u/s 406 and 420 I.P.C. The order taking cognizance reveals that the learned Judicial Magistrate, Ranchi was influenced by the fact that the complainant who was an

employee of M/s Central Coalfields Ltd. had retired in the year 1999 and Rs. 1 Lakh had been taken by the petitioner from the complainant. The learned Judicial Magistrate has overtly relied upon the evidence of the complainant as well his witnesses while taking cognizance. No doubt it is trite law that both civil and criminal case can lie with respect to one set of offence and there is no bar in continuance of the said proceedings. However, the same is applicable when there appears to be a criminal intent on the part of the accused, but when the same is absent, this Court u/s 482 Cr.P.C. can exercise its inherent powers. In the complaint case, the complainant has categorically stated about the non-performance of the contract on the part of the petitioner for which the complainant had already instituted a case in which prayer (A) was:- (A) A decree for specific performance of contract under Annexure-1 (agreement dated 25.10.98) with respect to property in suit be passed and defendant be directed to execute and register the deed of sale on receiving balance consideration of Rs. 4.50 Lakhs (four lakhs fifty thousand) and to put the plaintiff in possession thereof, on failure to do by the defendant the same may be executed through the process of court and further the plaintiff may be put in khas possession upon the property in suit. Prayer (B) Alternative a decree for realization of Rs. 1.00 Lac (one lac) paid to the defendant be passed and the same be paid to the plaintiff along with interest permissible at the bank rate in 1998. The suit for specific performance of contract was filed immediately after the institution of the criminal case. As has been discussed earlier, the ingredients for 3. constituting the offence punishable u/s 406/420 IPC are absent from the complaint petition and the same being purely a case of a civil dispute for which the complainant has chosen the appropriate remedy before the civil court this Court in such circumstance has no option but to entertain this application. Accordingly, the present criminal miscellaneous petition is allowed and the entire criminal proceedings in connection with Complaint Case No. 357 of 2001 including the order dated 24.9.2001 passed by the learned Judicial Magistrate, Ranchi, is quashed. (Rongon Mukhopadhyay, J) Dated the 6, January, 2015 Jharkhand High Court, Ranchi MK/N.A.F.R.