

Mohit Kumar Vs. The State of Jharkhand and Other

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Court : Jharkhand

Decided On : Feb-21-2015

Appellant : Mohit Kumar

Respondent : The State of Jharkhand and Other

Advocate for Pet/Ap. : Mr. Sanjeev Thakur

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Miscellaneous Petition No. 1145 of 2012 --- Mohit Kumar S/o late Tanik Prasad Singh resident of village Bhagwati Colony, Chas, PO & PS Chas, District Bokaro Petitioner Versus 1.The State of Jharkhand 2.Smt. Kalabati w/o Sri Prem Prasad Hazara, resident of village Panduki, Tola Purnadih, PO Nagnagar, PS Barwadda, District Dhanbad 3.Smt. Munia Devi, W/o Sri Jairam Hazara, permanent resident of village Laldih, PO Alkusa, PS Chas, District Bokaro, presently resident of village Panduki, Tola Purnadih, PO Nagnagar, PS Barwadda, District Dhanbad Opposite Parties --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : Mr. Sanjeev Thakur, Advocate For the Opposite Party : Mr. Pravin Kumar Rana, A.P.P. --- 9/21.02.2015 Heard Mr. Sanjeev Thakur, learned counsel for the petitioner and Mr. Pravin Kumar Rana for the opposite party nos. 2 & 3.

2. In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with C. P. Case No. 1968 of 2011 including the order dated 02.04.2012 passed by the learned Judicial Magistrate whereby and

whereunder cognizance has been taken for the offence punishable under Sections 420 of Indian Penal Code and Section 138 of N.I.Act.

3. A complaint case was instituted by the opposite party nos. 2 and 3 in which it was stated that the accused persons have purchased land of the complainants' mother by virtue of sale deed no. 1604 dated 11.02.2001 and sale deed no. 1605 dated 11.02.2001. The sale deeds which were executed by the mother of the complainants pertains to an area of 1.62 decimal in Mouza Alkusa, Chas. Since the complainants had an equal share and were entitled for Rs. 3,07,000/-, two cheques of the same value dated 05.04.2011 and 07.04.2011 were issued and on being presented the same were dishonoured showing insufficient fund. Thereafter a legal notice was issued and since the accused persons did not make the payment of the said amount, the complaint case was instituted.

4. After conducting an inquiry by examining the complainants on solemn affirmation and their witnesses, cognizance was taken by the -2- learned Judicial Magistrate 1st class, Bokaro vide order dated 02.04.2012 for the offences punishable under Sections 420 of Indian Penal Code and 138 of N.I.Act.

5. The learned counsel for the petitioner has submitted that admittedly the land of the mother of the complainants were sold for which two separate sale deeds were entered into between the mother of the complainants namely, Srimatya Dulali Deviya on one hand and Sri Nandlal Prasad and Sri Mohit Kumar (petitioner) on the other hand. Both the sale deed nos. 1604 and 1605 dated 11.02.2001 have been brought on record and based on the sale deeds, the learned counsel for the petitioner asserts that it is the mother of the complainants who has sold the land and therefore, the complainants were precluded from instituting any criminal case against the accused persons including the petitioner as none of the complainants were parties in the said sale deeds. It has further been submitted that the mother of the complainant had admitted that an amount of Rs. 2,03,000/- with respect to two separate sale deeds had been received by her and in such circumstances, the petitioner cannot be permitted to face the rigors of the trial. It has also been submitted that even in the solemn affirmation of the complainant Kalabati Devi, it has clearly been stated that the cheque amounting to Rs. 3,07,000/- was given by

co-accused Lalesh Kumar Sinha; and that no role has been attributed to the petitioners in the commission of the offence.

6. Learned counsel for the opposite party nos. 2 & 3, on the other hand has submitted that taking advantage of the physical condition of the mother of the complainants, sale deeds have been executed and since the mother of the complainants is sick and infirm, as such the present complaint case has been instituted by the complainants in the capacity of the daughters of Srimatya Dulali Deviya. It has also been submitted that two separate cheques amounting to Rs. 3,07,000/- were taken by the complainants which was subsequently dishonoured ultimately resulting in filing of the present complaint case. He has also submitted that the petitioner is hand in gloves with the main accused Lalesh Kumar Sinha who is said to have issued the cheques which have subsequently been dishonoured.

7. After hearing the learned counsel for the parties and after going through the records, I find that efforts have been made by the petitioner -3- to project the case to be that of a civil dispute, inasmuch as, assertions have been that in terms of the agreement, an amount of Rs. 2,03,000/- has already been paid to the mother of the complainant which would appear from the sale deed annexed in the main application. The question therefore remains that if the entire amount has been paid to the mother of the complainants, what is the occasion for the accused persons to subsequently issue cheques dated 05.04.2011 and 07.04.2011 for the amount of Rs. 3,07,000/- each to the complainants. Although, the cheques have been issued by Lalesh Kumar Sinha, but a perusal of the photo-copy of the said cheque dated 05.04.2011 reveals that the same was signed in his capacity of being one of the partners of M/s. Jai Mata Di, and therefore it cannot be at this stage concluded that it is Lalesh Kumar Sinha who can only be prosecuted under Sections 420 of Indian Penal Code and 138 of N.I.Act.

8. Since the query of the Court with respect to issuance of further cheques if as per the own version of the petitioner, the amount has already been received by the mother of the complainants has not been answered, it would not be just and proper for this Court to exercise its jurisdiction under Section 482 of the Cr.P.C.

when apparently there is a prima facie case under the aforesaid section which have been made out by the complainants. Moreover, this Court is not empowered to make a roving inquiry or a meticulous examination of the documents under Section 482 of Cr.P.C. in arriving at a finding when the documents itself cannot be termed to be of impeccable quality.

9. Considering what has been discussed above as also the fact that specific allegations have been levelled against the petitioner of committing a criminal offence, I am not inclined to entertain this application.

10. This application is accordingly dismissed at this stage. I. A. No. 5100 of 2013:

11. In view of the fact that the Cr.M.P. No. 1145 of 2012 has already been disposed of, this interlocutory application becomes infructuous.

12. Accordingly, I. A. No. 5100 of 2013 is dismissed as infructuous. (Rongon Mukhopadhyay, J) R. Shekhar Cp 3

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