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Court : Chhattisgarh

Decided On : Jul-05-2001

Reported in : 2001(3)MPHT37(CG)

Judge : Mr. R.S. Garg, J.

Acts : Indian Panel Code, 1860 - Sections 405, 406, 420, 422, 423, 441, 442 and 448; Code of Criminal Procedure (CrPC) , 1973 - Sections 200, 202 and 482

Appeal No. : Misc. Criminal Case No. 6918/99

Appellant : Rohit Verma

Respondent : Sheikh Sultan and Another

Advocate for Pet/Ap. : Shri. P. Diwakar, Shri. Bhaskar Payashi

Disposition : Cases Party allowed

Judgement :
ORDER

R.S. Garg, J.

1. This order shall dispose of M.Cr.C. Nos. 6918/99, 6469/99 and 4891/99, filed under Section 482, Cr.P.C. seeking quashment of the proceedings.

2. Along with the petition a copy of the complaint, certain agreements and statements of the complainant recorded under Section 200, Cr.P.C. have been also annexed. Non-applicants Sheikh Sultan and Smt. Mehmooda Begum entered into an agreement on 15-6-91 with M/s. J.K. Builders and Engineers through partners Jitendra Kumar Goyal and Prakash Dawda. According to thesaid agreement, the said two persons were to pay sum of Rs. 37,00,000/- to the complainants. After execution of the agreement, the property was handed-over to said M/s. J.K. Builders through Partners Jitendra Kumar Goyal and Prakash Dawda. These persons started raising construction over the property. After construction of some part or raising some structures, the non-applicant Nos. 1 and 2, Prakash Dawda and Jitendra Kumar Goyal entered into an agreement with certain persons for selling the shops/flats/structures. The agreements were executed on different dates, but there is no dispute before me that the agreements are signed by the complainants Sheikh Sultan and Sml. Mehmooda Begum as party No. 1 (Seller), M/s. J.K. Builders and Engineers, through Prakash Dawda and Jitendra Kumar Goyal as party No. 2 (Seller) and the proposed purchasers. The agreements clearly stipulated that the purchasers had paid the settled amount to the owners and builders and possession of the property had been handed-over to them by the owners of the land and the builders.

3. It appears that because of some dispute between the complainants (Non-applicant Nos. 1 & 2) and the Builders i.e., Prakash Dawda and Jitendra Kumar Goyal, the complainants made a complaint to the police staling that the builders have played fraud with them and without paying them money, obtained their signatures on certain documents. They also informed the police that the purchasers, in conspiracy and connivance with the builders took the possession of the property and as they were not vacating the premises despite their notice, they were also liable to be prosecuted. It appears that the police did not take any action against the builders and the proposed purchasers, therefore, the complainants filed a private complaint in the Court of Judicial Magistrate, First Class, Raipur. The statements of P.W. 1 Sheikh Sultan, P.W. 2 Mohd. Mehmood and P.W. 3 Mohd. Hasan were recorded under Sections 200 and 202, Cr.P.C. After recording the statements of the said witnesses, the Court below directed that summons be issued against Prakash Dawda and Jitendra Goyal in relation to offences

punishable under Sections 420, 422, 423 and 406, IPC. The Court below also directed that against the rest of the accused persons summons be issued in relation to offences punishable under Section 448/406, IPC. The present applicants being aggrieved by the said order dated 11-1-99 have come to this Court seeking quashment of the proceedings.

4. Shri P. Diwakar, learned counsel for the applicant Jitendra Kumar Goyal in Misc. Cr. Case No. 4891/99, submits that from perusal of the documents annexed with the present petition, allegations made in the complaint and the statements recorded under Sections 200/202, Cr.P.C., it would clearly appear that the non-applicant Nos. 1 and 2 want to exert unnecessary pressure upon the builders to have illegal gains and in this design of theirs they are falsely prosecuting the applicants. He also submits that present is a civil dispute, but the same has been coloured as criminal matter and the Court below without appreciating the true nature of the dispute, has illegally issued summons against the applicant Jitendra Kumar Goyal.

5. Opposing the argument, Shri P.C. Jain, learned counsel for the Complainants submits that from a very perusal of the complaint, statementsrecorded under Sections 200 and 202, Cr.P.C, it would clearly appear that Jitendra Kumar Goyal and Prakash Dawda played fraud upon the complainants. He submits that present is not a fit case for quashing the prosecution in favour of Jitendra Kumar Goyal.

6. Shri Bhaskar Payashi, learned counsel for the applicants in Misc. Cr. Case Nos. 6918/99 and 6469/99, submits that from the allegations made in the complaint, the statements recorded under Sections 200/202, Cr.P.C. the documents annexed with the present petition, it would clearly appear that the applicants are being prosecuted with ulterior motive. He also submits that a perusal of the documents would clearly show that the applicants are bona fide purchasers of the property and that too on a representation made by the complainants themselves and as in the statements recorded under Section 200, Cr.P.C., the complainants have not levelled any allegations against them relating to fraud or commission of trespass, the proceedings deserve to be quashed. For Section 406, IPC, it is submitted that present cannot be a case of criminal breach of trust on the part of the applicants,

but the facts would show that the complainants are playing fraud to exert extra money from these applicants.

7. Shri P.C. Jain, learned counsel for the complainants on the other hand submits that a perusal of the complaint, statements recorded during the course of the verification and the documents would clearly show that the proposed purchasers joined hands with the other co-accused, without seeing that the money was paid to the complainants or not entered into possession of the property and despite a notice to them refused to vacate the premises, therefore, summons have been rightly issued against them.

8. I have heard the parties at length and have gone through the records.

9. So far as the allegations against Jitendra Kumar Goyal are concerned, the complaint says that Prakash Dawda and Jitendra Kumar Goyal played fraud upon them, assured them of payment of Rs. 37,00,000/- and with this assurance obtained their signatures on certain documents. The complaint further says that the accused Prakash Dawda and Jitendra Kumar Goyal did not pay the money and started selling the property. In his statement recorded under Section 200, Cr.P.C. the complainant had said that these two persons played fraud upon him, they assured him of payment of money and without informing him obtained his signatures on certain documents. Whether his statements are correct or not and whether the defences raised by the present applicant Jitendra Kumar Goyal are correct or not, are yet to be seen by the Trial Court. At this stage, it cannot be said that the Court below was unjustified in issuing the summons against Jitendra Kumar Goyal. The said applicant is still free to submit his documents and raise his defences before the Trial Court. If he convinces the Trial Court that present is a civil matter, then, the Trial Court certainly would discharge him. In the matter of Jitendra Kumar Goyal, I find no reason to interfere. His petition M.Cr.C No. 4891/99 is dismissed.

10. In the matter of Rohit Verma and Ku. Malik Bano Lalani and others, the documents show lhat certain agreements were entered into be-tween the complainants, Prakash Dawda, Jitendra Kumar Goyal and the purchasers. In Para 1 of the said agreement, it is clearly stated that the proposed vendors

(complainants) Prakash Dawda and Jitendra Kumar Goyal have agreed to sell the property, well described in the agreement, to the purchasers. They also acknowledged the receipt of the full consideration. In Paragraph 2, they further admitted that the owner and the builders had handed-over the property/structures to the purchasers. In Paragraph 5 of the agreement, it is clearly mentioned that on due execution of the agreement, the purchasers have become owners of the property and after obtaining the f completion certificate, the vendors shall execute the sale-deed in favour of the purchaser or any person nominated by them. Paragraph 6 of the agreement says that the purchaser can sell the property or may enter into an agreement to self and in accordance with the directions of the purchaser, the vendors shall execute the sale-deed. It is not in dispute before me that these agreements were executed by the complainants, builders (Prakash Dawda and Jitendra Kumar Goyal) and the purchasers. The complaint lodged by the complainant, in Paragraph 8, says that possession of the property had been given by Prakash Dawda and Jitendra Kumar Goyal to other accused persons and the said persons were occupying the premises without permission of the complainants and without any authority of law. The complaint further says that the alleged agreement and possession certificate were obtained by Prakash Dawda and Jitendra Kumar Goyal to play a fraud upon the complainants. The complaint further says that taking protection under such agreement, the purchasers were put in possession who were not delivering the possession to the complainants despite a notice. In support of the complaint, the complainant has examined himself as a witness. In Paragraph 2 of his statements, he has made allegations against Jitendra Kumar Goyal and Prakash Dawda. On page 2 of his statements, he had stated that the possession of the property was given by the accused persons to other accused persons who were not vacating the premises despite a notice. Beyond this, he had not stated even a single word against the present applicants/purchasers.

11. From the tripartite agreement, it would clearly appear that the complainants and the builders had agreed to sell the property and had acknowledged the receipt of the money and further declared that the purchasers had been put in legal possession of the property. If that was so, then, the complainants were required to state before the Court that under what circumstances, agreements were executed

by them and in what manner the applicants/purchasers had defrauded them. In fact record shows that the applicants/purchasers appears to be bona fide purchasers for consideration; they have been made scape-goat in a dispute between the owners and the builders. The records do not show the complicity of the present applicants/purchasers in commission of any crime. So far as application of Section 448 and Section 406, IPC are concerned, I am at a loss to understand as to how these offences are made out. Section 406, IPC provides punishment for criminal breach of trust. Criminal breach of trust has been defined under Section 405, IPC. After going through the definition of criminal breach of trust, I am unableto hold that present applicants/purchasers were entrusted with any property or with any dominion over property, they dishonestly misappropriated or converted the same to his-their own use or dishonestly used or disposed of that property in violation of any direction of law prescribing the mode in which such trust was to be discharged, or of any legal contract, express or implied, which he/they had made touching the discharge of such trust, or wilfully suffered any other person so to do.

12. There is no dispute that possession of the property was given to the purchasers under the agreement, which has been signed by the owners/complainants and the builders. It is not the case of the complainants that immovable property was kept in trust with the applicants/purchasers. In absence of such allegations that property was kept in trust and the purchasers had dishonestly misappropriated or converted the property to their own use, it cannot be held that purchasers can be prosecuted for committing offence under Section 406, IPC.

13. So far as Section 448, IPC is concerned, prima facie the offence punishable under Section 448, IPC is not made out. Section 448, IPC says that whoever commits house trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand or with both. House-trespass had been defined under Section 442, IPC. According to Section 442, IPC if a person enters into or remains in any building, tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of the properly, is said to commit 'house-

trespass'. For proving a house-trespass one must prove that somebody committed criminal trespass. Section 441, IPC defines criminal trespass. According to Section 441, IPC whoever enters into or upon the property in the possession of another with intent to commit and offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'. For application of Section 441, IPC, the prosecution must prove that the accused entered into or upon the property which was in possession of the complainant or in the alternative it must be proved that the complainant was in symbolical possession of the properly, but the accused with an intention to commit some offence entered into the property. In the alternative, the prosecution may prove that the entry of the accused was lawful, but after he was required to leave, he refused to leave and thereafter remained on the property unlawfully.

14. In the present case, it is not the case of the complainants that they were in possession of the building/structures. It is also not their case that the accused persons entered into the property with intent to commit an offence or so. According to them, the accused persons entered into the property under an agreement, but refused to deliver the possession back to the complainants after service of the notice. The service of the notice would simply say that thecomplainants were demanding back the possession, but that would not mean that either the entry of the accused was illegal or their continuous possession would become criminal trespass under Section 441, IPC or would amount to house-trespass under Section 442, IPC. Prima facie there is no evidence on the record to show or suggest that the accused persons/purchasers entered into or upon the property which was in possession of the third party with an intention to commit an offence. Issuance of summons to the present applicants/ purchasers cannot be justified either on the facts or on law. The proceedings registered against them deserve to and are accordingly quashed.

15. In the net result, M.Cr.C. No. 4891/99 is dismissed; while M.Cr.C. Nos. 6918/99 and 6469/99 are allowed.

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