

Anita Garg Vs. Alok Garg

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Court : Madhya Pradesh

Decided On : Apr-11-2007

Reported in : IV(2007)BC293

Judge : S.C. Vyas, J.

Appellant : Anita Garg

Respondent : Alok Garg

Disposition : Petition allowed

Judgement :

ORDER

S.C. Vyas, J.

Heard finally with the consent of both the parties.

1. This is a petition filed under Section 482 of Cr.P.C., for quashment of the proceedings of Criminal Case No. 16153/2006, which is pending in the Court of Judicial Magistrate, First Class, Indore against present petitioner for the trial of the offences punishable under Sections 420 and 406 of IPC.

2. As per the averments made in the complaint filed by the respondent before Judicial Magistrate, First Class, it appears that present petitioner and the respondent are wife and husband. House No. 11/2 of Sought Tukoganj was

purchased by the husband/respondent in the name of his wife/present petitioner. It is alleged that initially the plot was allotted by Co-operative Society in the name of the present petitioner and, thereafter, house was constructed over that plot. It has also been stated in the complaint that the house was mortgaged with HDFC Bank by the petitioner as well as respondent for the purpose of obtaining loan of Rs. 9 lacs and the title deed of the house was handed over to the concerning Bank for the same purpose. It has also been alleged in the complaint that present petitioner without informing complainant/respondent and the Bank sold the house, while it was still under mortgage with the Bank and thereby committed an offence of cheating and forgery with the Bank as well as with the present respondent.

3. Learned Counsel for the petitioner drawn attention of this Court towards the entire complaint as well as the statement recorded by the Trial Court under Sections 200 and 202 of Cr.P.C. of the complaint Alok Garg and his witness Amit Gupta. He submitted that statements of these two witnesses and the averments made in the complaint clearly shows that the house was standing in the name of present petitioner and it was mortgaged with the Bank. He further submitted that it has been admitted by Amit Gupta (PW-2), Assistant Manager of the Bank in Paragraph No. 2 of his statement that on 19.10.2005 the entire amount of loan was paid by the present petitioner to the Bank and thereafter the title deed of the house mortgaged with the Bank was handed over to her by the Bank.

4. Learned Counsel further submitted that in view of this statement it is clear that after making full payment of the amount of loan, title deeds were obtained by the present petitioner from the Bank and, thereafter, the house was sold. He further submitted that agreement of sale of the house was already executed and amount of consideration was obtained from the purchaser by the present petitioner and the same amount was deposited by the petitioner with the Bank and, thereafter, title deeds were released by the Bank and then sale deed was executed. He also submitted that in view of all these facts neither any ingredients of the offences punishable under Section 420 of IPC nor of Section 406 of IPC are made out.

5. Learned Counsel for the respondent submitted that though the house stood in the name of present petitioner, but in fact it was purchased by the

respondent/complainant and the entire amount of construction of house was spent by the respondent. The amount of consideration of the plot was also paid by the respondent, which can very well be seen from the Income Tax returns of the respondent. He further submitted that the property was that of the respondent and the name of present petitioner had only been shown as owner, because she happens to be wife of respondent. He further submitted that in this way respondent/complainant was the rightful owner of the property and the present petitioner played fraud with him and without his knowledge sold the same, when it was still under mortgage with the Bank, therefore, she committed the offence of cheating and criminal breach of trust.

6. The arguments advanced by learned Counsel for the respondent are totally misconceived. After passing the enactment of Benami Transaction (Prohibition) Act, 1988, this argument is not available to the respondent as Section 4(1) of the Act bars such actions, as that of present complaint. When the house was standing in the name of present petitioner then only she can be treated as rightful owner so far as the facts of present case are concerned. When she paid full amount of loan to the Bank and then sold the house to third person, then it cannot be said that she committed any offence. She committed no forgery or cheating with anyone. The property was never entrusted to her by any one because she was the rightful owner, therefore, prima facie there is no material to show that the ingredients for the offence punishable under Sections 402 and 406 of IPC are available in the facts of the present case. If the averments made in the complaint are believed in toto, including the statement given by the complainant as well as his witness before Trial Court at the time of registration of the offence even then the offences punishable under Sections 420 and 406 of IPC are not made out.

7. Thus it appears to be a fit case, where the jurisdiction available under Section 482 of Cr.P.C. to this Court is required to be exercised and the further proceedings of the criminal case are required to be quashed in the interest of justice, being only abuse of process of law.

8. Therefore, the petition succeeds and is allowed. The proceedings of Criminal Case No. 16153/2066 pending in the Court of Judicial Magistrate, First Class,

Indore against present petitioner, on the basis of criminal complaint filed by the respondent are hereby quashed.

C.C. as per rules.

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