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Krishna Kumar Singh and Anr Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : May-13-2015

Appellant : Krishna Kumar Singh and Anr

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No. 159 of 2015 ---------- 1. Krishna Kumar Singh Son of Late Chandeshwar Singh 2. Manoj Kumar Singh, Son of Sri Krishna Kumar Singh Both residents of Housing Colony, Krishna Enclave, Rajendra Nagar, K.K.Singh Colony, PO & PS- Chas, District- Bokaro . . Petitioners --Versus-- 1. State of Jharkhand 2. Braj Mohan Kumar Singh, Son of Shri Surya Narayan Singh, resident of Adarsh Colony, Karma Road, Aurangabad (Bihar), at present resident of C-7 G.M. Colony, Dhori Area, Dhori, PO & PS- Bermo, District- Bokaro . . Respondents For the petitioners : M/s. Indrajit Sinha & Suraj Singh, Advocates For the State : Mr. Abhay Kumar Mishra, S.C.III For Respondent No.2 : Mr. Bibhash Sinha, Advocate CORAM: HONBLE MR. JUSTICE RAVI NATH VERMA ---------- C.A.V. ON:

07. 05/2015 PRONOUNCED ON:

13. 05/2015 The moot question, which has come up for consideration in this writ petition, is as to whether when the entire dispute is commercial in nature relating to purchase of land and payment thereof and when the parties have compromised the case, the continuation of the criminal proceeding is an abuse of the process of

law? 2. The details of the facts are not required to be enumerated in different paragraphs rather a brief statement of the facts will suffice. The prosecution case, which was instituted on the basis of a complaint filed by the complainant (respondent no.2 herein) Braj Mohan Kumar Singh, is that the complainant/respondent no.2 booked one A-Type residential bungalow on a consideration amount of Rs.16.35 Lakhs in the Housing Colony of M/s K.K.Co-ordinance in which the petitioner no.1 was the Managing Director and his son- 2 petitioner no.2 was his partner and the complainant paid the said amount between the period 18.08.2009 to 31.07.2011 on the assurance of the present petitioners to complete and handover the possession within 6 to 10 months but when even after lapse of about four months of deposit of booking amount, the possession of the bungalow was not handed over, a legal notice was sent to the petitioners upon which they abused the complainant/respondent no.2 on phone and also threatened him with dire consequence. It is also alleged that intention of the accused-petitioners since beginning was to cheat the complainant-respondent no.2 and dishonestly misappropriate the entire money. They have also criminally breached the trust of respondent no.2 by dishonestly misappropriating the amount of 10.35 Lakhs entrusted to them. Accordingly, the first information report was lodged being Chas P.S. Case No. 168 of 2014 corresponding to G.R. No. 1068 of 2014 registered under Sections 420/406/506/120-B of the Indian Penal Code and the same is pending in the court of learned Additional Chief Judicial Magistrate, Bokaro.

3. Learned counsel for the petitioners submitted that after filing of the aforesaid case, the parties have now settled their dispute outside the court and filed a joint compromise petition in the court of A.C.J.M., Bokaro and also filed a petition to grant them permission to file the compromise, but the court below has not passed any order on the compromise petition on the ground that since after investigation, the police has not submitted the charge sheet and the cognizance has not been taken of the offences, no order can be passed at this stage. Learned counsel further submitted that since no cognizance has been taken, the trial court refused to exercise its power under Section 320 of the Code of Criminal Procedure (hereinafter referred to as the Code) but as the offences alleged and the provisions of law in which the case has been instituted are all compoundable, it is

a mere wastage of Courts valuable time and the wastage of time of Investigating Officer, hence his prayer is to allow this writ petition in 3 terms of the compromise between the parties and the subsequent proceedings be quashed in the ends of justice.

4. Learned counsel representing the respondent no.2 fairly submitted that since the parties have settled their dispute outside the court and have filed a joint compromise petition, it would be sheer wastage of time of the Courts and Investigating Officer. By filing counter affidavit, learned counsel admitted the factum of compromise and in paragraph 3 of the said affidavit respondent no.2 has stated that he has received the whole amount of Rs.10,35,000/- from the petitioners and he has no grievance against them.

5. Section 320 of the Code sets out the details of the offences in different Tables, which are compoundable by the parties and those, which are compoundable with the leave of the Court. Out of the provisions as mentioned above, which is reiterated herein again Sections 406/420/506/120-B of I.P.C. in which F.I.R. has been instituted, Sections 406, 420 and 506 of I.P.C. are compoundable with the permission of the Court. The question, thus, arises whether this Court would be competent to allow compounding notwithstanding the bar of Section 320 of the Code? In a judgment reported in B.S. Joshi and others Vs. State of Haryana and another (2003)4 SCC675 the compounding was assented to by the Honble Apex Court in a proceeding under Section 498-A which similarly was not compoundable under Section 320. The Honble Apex Court further held that in the matrimonial cases, it becomes the duty of the court to encourage genuine settlement of matrimonial disputes. The Honble Court further observed that in the given fact, the parties having arrived at settlement and having revived their relationship as husband and wife with such eventuality, there would be almost no chance of conviction as quite obviously in view of the compromise, no evidence would be forthcoming against the accused persons. It was thus noticed that there would no reasonable likelihood of the accused being convicted of the offence. 4 6. Obviously, the offences as alleged in the first information report arising out of the complaint case are all compoundable under the Schedule given in Section 320 of the Code either with the permission of the Court or by the person or persons

cheated or by owner of the property in respect of which breach of trust has been committed. Since both the parties have jointly filed the compromise petition and subsequent to that, a counter affidavit admitting the factum of compromise and the fact that the respondent no.2 has received the entire amount given to the petitioners have been filed before this Court and both the parties have prayed that they do not want to proceed with the case, I am of the opinion that in the light of ratio decided in B.S. Joshi & Ors. Vs. State of Haryana & Anr. (supra) where the Honble Supreme Court has held that the High Court in exercise of its inherent power can quash the criminal proceedings or F.I.R. or complaint. The continuation of the proceedings in the facts and circumstances stated above would amount to wastage of valuable time of the Court and of the Investigating Officer and would certainly be an abuse of the process of law and in such eventuality, no evidence would come forward against the accused persons.

7. Accordingly, the first information report being Chas P.S. Case No. 168 of 2014 and the proceeding thereto pending in the Court of Additional Chief Judicial Magistrate, Bokaro are, hereby, quashed.

8. For the foregoing reasons, this Writ Petition (Cr.) is allowed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 13th May, 2015 Ritesh/N.A.F.R.

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