

Bilautia Devi and ors. Vs. State and anr.

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Court : Jharkhand

Decided On : Jan-24-2001

Reported in : 2001(49)BLJR983; 2001CriLJ1649

Judge : D.N. Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 418

Appeal No. : Cr. Misc. No. 8024 of 1998(R)

Appellant : Bilautia Devi and ors.

Respondent : State and anr.

Advocate for Def. : N.N. Mahto, APP,; H.N. Sahu and; D.K. Chakrabarty, A

Advocate for Pet/Ap. : A.K. Sahani,; N.K. Sahani and; Prem Prakash, Advs.

Disposition : Application dismissed

Judgement :

D.N. Prasad, J.

1. This criminal miscellaneous application has been filed under Section 482 of the Code of Cr PC by the petitioners praying there in for quashing the order dated 5.8.1998 passed by the Judicial Magistrate, Ist Class, Jamshedpur in C/1 Case

No. 500 of 1998 whereby and whereunder the learned Magistrate took cognizance under Sections 406/418 of the Indian Penal Code.

2. Brief facts as alleged in the complaint petition is that the petitioner No. 1 Bilautia Devi is, step mother of complainant and petitioner No. 2 Rambriksh Sao is her brother, whereas Laxman Sao is husband of Bilautia Devi was the owner of the premises who had two daughters by his first wife whereas petitioner No. 1 was his second wife and she had no issue. After the death of Laxman Sao the dispute was settled by deed of settlement dated 7.12.1972 but accused Nos. 1 to 3 started creating trouble for which a Title Suit No. 99 of 1992 was filed. It is further alleged that the petitioner No. 2 dishonestly sold a portion of the property to the petitioner No. 5, whereas petitioner No. 1 also sold the property dishonestly to the accused Nos. 2 and 4, having full knowledge of the right of the complainant. On 21.7.1998 the complainant requested the petitioners to return the property but no step could be made hence the complaint case was filed and after inquiry the cognizance was taken under Sections 420/148 of the Indian Penal Code.

3. The opposite party No. 2 also filed counter affidavit claiming therein that Laxman Sao had two daughters by his wife Chuttu Bai and after demise of Chuttu Bai, Laxman Sao re-married with petitioner No. 1. There was a deed of family settlement on 7.12.1972 executed in between petitioner No. 1 and opposite party No. 2 and her brother Rambriksh Sao and Nephew of petitioner Nos. 2 and 3. Opposite Party No. 2 came to know after the said judgment and decree that during the pendency of the said suit being Title Suit No. 99 of 1992, petitioner No. 1 sold the property in part in favour of her brother Rambriksh Sao, the petitioner No. 2 and other part to Devendra Singh petitioner No. 1. Petitioner No. 1 also preferred an appeal being Title Appeal No. 9 of 1997 before the learned District Judge at Singhbhum (East) at Jamshedpur, against the judgment and decree dated 14.10.1996. The allegation made in the complaint has fully established and constituted an offence and the learned Court below has rightly taken cognizance and as such the petition is fit to be dismissed.

4. The learned counsel appearing on behalf of the petitioners at the very outset submitted that the opposite party No. 2 and petitioner Nos. 1 to 3 are own relatives

as well as petitioner No. 1 along with Dhaneshwari Devi filed a Title Suit No. 99 of 1992 in the Court of Munsif at Jamshedpur. The above suit was decreed on contest and the right, title and interest of the petitioner No. 1 and Dhaneshwari Devi have been declared. It is further argued that no case under Sections 406/418 of the Indian Penal Code is made out as the allegation as described is of purely civil nature as well as Title Appeal is still pending against the judgment and decree passed by the learned Munsif, therefore, the Court below has wrongly taken cognizance against the petitioners which is fit to be quashed.

5. On the other hand, the learned counsel for the opposite party contended before me that there was as deed of family settlement and the terms and conditions as laid down in the said deed have already been violated by the petitioners. It is also submitted that even if the civil suit is pending between the parties, there is also criminal liability and there is no hurdle in continuing criminal case. It is further argued that the allegations as made out in the complaint case are sufficient and constitute the offences for which the Court below has taken cognizance and there is no illegality for interference with the impugned order.

6. From perusal of the complaint case, it appears that the allegation as made out has established the offences for which, cognizance was taken. It is true that civil suit is also pending between the parties even after passing of the judgment and decree. But it has already been held that the criminal proceeding cannot be thwarted merely because civil proceedings are also pending. The reference may be made in the case of *Usha Ahuja and Ors. v. State of Haryana and Ors.*, reported in AIR 1999 SCW 3215 : 1999 (2) East Cr C 273 (SC). If the allegations as made out in the complaint prima facie discloses commission of an offence, the order taking cognizance should not be interfered. Trial of the case is the proper forum. Where both parties will also get an opportunity to controvert the allegation.

7. The inherent power under Section 482 of the Cr PC could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. It is also settled that if on the basis of allegation, a prima facie case is made out then this Court should be very loath to quash the proceeding. This Court is also not justified in judging the probability, reliability and genuineness of the

allegations made in the complaint at this stage. Apparently the allegations made out in the complaint, prima facie constitute the offences for which the cognizance was taken which does not call for interference.

8. For the reasons aforementioned, I do not find any merit in this application which is accordingly dismissed.

However, the petitioners shall be at liberty to raise all those points before the Court below at the appropriate stage of case.

9. Application dismissed.

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