

Jagjit Singh Vs. State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Apr-18-2016

Appellant : Jagjit Singh

Respondent : State of Jharkhand and Anr

Advocate for Pet/Ap. : Mr. Ananda Sen

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 156 of 2009
----- Jagjit Singh, Son of Sardar Man Singh, Resident of 'D' Ram Das Bhatta,
P.O. & P.S. Bistupur, Jamshedpur, Distrit-Singhbhum East. ..Petitioner Versus 1.
The State of Jharkhand.

2. Biswajit Chakraborty, S/o late P.C. Chakraborty, Residing at Holding No. NIL-
14, Contractor's Area, Bistupur, Town- Jamshedpur, P.O. P.S. Bistupur, District-
Singhbhum East. .Opposite Party ----- With Cr.M.P. No. 277 of 2009 --- Abhijit
Chakraborty, Son of Arojit Chakraborty, Resident of Duplex No. 1 Syndicate
Colony, Ulyan, Kadma, P.O. & P.S. Kadma, Jamshedpur, District-Singhbhum
East.Petitioner Versus 1. State of Jharkhand.

2. Biswajit Chakraborty, Son of late P.C. Chakraborty, Resident of Holding No.
Nil,14, Contractor's Area, Bistupur, P.O. & P.S. Bistupur, Jamshedpur, District-
Singhbhum East.Opposite Parties ----- Coram: HONBLE MR JUSTICE
RONGON MUKHOPADHYAY ----- For the Petitioners : Mr. Ananda Sen, Advocate

For the State : APP For the Opposite Party No. 2 : Mr. Chinmoy Pal, APP -----
12/18.04.2016 Heard the parties.

2. Since common questions of law and facts are involved in these applications, the same are being decided by this common order.

3. The petitioners have prayed for quashing the FIR in connection with Bistupur P.S. Case No. 321 of 2008, which has been instituted for the offence under sections 406, 409, 420, 466, 467, 468, 471 and 472 of the Indian Penal Code.

4. Initially, a complaint case was instituted by the opposite party no. 2, in which it was stated that the complainant is one of the legal heirs of Paresh Chandra Chakravorty, who owned several landed properties including an area measuring 2281 sq. ft. in holding no. 14, contractors Area Bistupur. The petitioner in Cr.M.P. No. 156 of 2009 intended to be a tenant on payment of Rs.10,000/- per month and accordingly he was inducted as a tenant and registered tenancy agreement was executed on 18.6.1996 on the terms and conditions mentioned therein. The said tenancy agreement was prepared by the -2- petitioner in Cr.M.P. No. 277 of 2009 and who is elder brother of the complainant. Rent was being regularly paid by the petitioner-Jagjit Singh from June 1996 to January, 2008, which was collected by the petitioner-Abhijit Chakravorty and who distributed the same amongst his siblings. It is alleged that from February, 2008, Jagjit Singh failed and neglected to pay rent to the complainant. Further allegation has been levelled that the accused nos. 2 and 3 have a Firm in the name of N.K. Enterprises and rent was being collected in the name of the Firm.

5. Based on the aforesaid allegations, complaint case no. 2163 of 2008 was instituted, which was subsequently referred to the police under section 156(iii) Cr.P.C. resulting in institution of Bistupur P.S. Case No. 321 of 2008.

6. Heard Mr. Ananda Sen, learned counsel for the petitioner and Mr. Chinmoy Pal, learned counsel for O.P. No. 2 in both the cases.

7. Mr. Ananda Sen, learned counsel for the petitioner, has submitted that a registered deed of agreement was executed on 18.6.1996, in which the petitioner-

Jagjit Singh was approached to construct a building out of his own fund and therefore there was no inducement on the part of the petitioner. It has been submitted that since the petitioner was no longer interested in continuing to be a partner in N.K. Enterprises, he had retired on 1.4.1998 and the sister in law of the opposite party no. 2 became the proprietor of N.K. Enterprises. It has further been submitted that the entire dispute emanates from an agreement and such circumstances do point to the fact that the dispute is purely civil in nature and there being no criminality on the part of the petitioner to attract a penal provision of the Indian Penal Code , the entire criminal proceedings deserves to be quashed and set aside. In support of his argument, learned counsel for the petitioner has referred to the counter affidavit by submitting that a title suit has been preferred being Title Suit No. 130 of 2007.

8. Mr.Chinmoy Pal, learned counsel for O.P. No. 2, has submitted that certain facts have not been brought on record by the petitioner. It has been submitted that an agreement was entered into in June 1996 between the complainant and others with petitioner- Jagjit Singh. The first party member had delivered the vacant possession, in which the building was constructed but in violation of -3- the terms and conditions of the agreement, rent was being collected in the name of N.K. Enterprises. It has been submitted that accused nos. 2 and 3 in connivance with accused no. 1 had filed HRC Case No. 12 of 2008. Learned counsel submits that a title partition suit was filed by the opposite party no. 2 being Title (Partition) Suit No.136 of 2007 excluding 2281 sq ft. of land. It has been submitted that after the investigation, chargesheet has been submitted against the petitioner and cognizance has been taken pursuant to submission of such chargesheet. Learned counsel adds that the rent, which is being collected from various occupants have been misappropriated by the accused persons and therefore the dispute cannot be said to be a civil dispute.

9. From the arguments advanced by the learned counsel for the parties, it appears that the entire dispute is with respect to collection of rent from the constructed premises in vacant land of the complainant and his other co-sharers and which has been recorded as Schedule-B property in the sale deed. The deed of agreement, which has been brought on record by the opposite party no.2, reveals

that it has been mutually agreed upon by both the sides that after making payment of Rs.10,000/- to the first party, second party shall have the absolute right to keep balance amount of rent to be collected from the building in question. The dispute thus stems from collection of rent of building, which according to learned counsel for O.P. No. 2, has been misappropriated thereby inviting criminal prosecution of the petitioners. Partition suit, which has been filed by the opposite party no. 2, excludes the area of 2281 sq ft., for which rent was being collected. The petitioner in Cr. M. P. No. 277 of 2009 is the own elder brother of the complainant and the dispute between the brothers and sisters of the complainant is with respect to the collection of rent. Thus what would suffice from the records that at best there is a violation of the terms and conditions of the agreement entered into and such violation would at best invite civil consequences. It is no doubt true that an allegation may have a civil flavour as well as a colour of criminality but it has to be seen as to whether the nature of allegations are overwhelmingly civil or criminal in character. As has been referred to above, the petitioner-Jagjit Singh retired from M/s N.K. Enterprises from 1.4.1998 and it was to be run by Smt. Kalpana Chakraborty as proprietor. Since the tenancy -4- agreement is the focal point of controversy, which has been tried to be given a colour of criminality by alleging misappropriation of funds on the part of the petitioners, such criminal prosecution if allowed to continue, would be an abuse of the process of Court and would lead to a miscarriage of justice.

10. As a cumulative result of what has been discussed above, these applications are allowed and the entire criminal proceeding in connection with Bistupur P.S. Case No. 321 of 2008, which has been instituted for the offence under sections 406, 409, 420, 466, 467, 468, 471 and 472 of the Indian Penal Code, are hereby quashed and set aside. (Rongon Mukhopadhyay,J) Rakesh/

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