

Jagdev Singh and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-10-2008

Reported in : RLW2008(3)Raj2754

Judge : H.R. Panwar, J.

Appellant : Jagdev Singh and anr.

Respondent : State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

H.R. Panwar, J.

1. By the instant criminal miscellaneous petition under' Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code' hereinafter), the petitioners seek quashing of FIR No. 218 dated 2.8.2007, Police Station, Gharsana, district Sri Ganganagar for the offences under Sections 420, 467, 468, 471 and 120B, IPC.

2. I have heard learned Counsel for the parties. Carefully gone through the FIR.

3. It is contended by the learned Counsel for the petitioners that the matter is of a civil nature and, therefore, the criminal prosecution is bad. Learned Counsel has relied on three decisions of the Hon'ble Supreme Court in All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain and Anr. 2007 AIR SCW 667; Inder Mohan

Goswami and Anr. v. State of Uttaranchal and Ors. 2007 AIR SCW 6679 and Suresh v. Mahadevappa Shivappa Danannava and Anr. 2005 Cr.L.R. (SC) 295.

4. Learned Public Prosecutor contended that the civil and criminal action can simultaneously be taken if the offence showing the criminal intend punishable under the Indian Penal Code is made out from the averments made in the FIR. Learned Public Prosecutor submits that at the stage of quashing the FIR, only the averments made in the FIR are to be seen and if the FIR discloses commission of cognizable offence then in such matters, the FIR may be allowed to be investigated and the powers of investigation cannot be taken away only on the saying of the petitioners that it is a matter essentially of a civil nature. He Learned Public Prosecutor has relied on the decisions of the Hon'ble Supreme Court in M. Krishnan v. Vijay Singh and Anr. : 2001 CriLJ4705 ; Alpic Finance Ltd. v. P. Sadasivan and Anr. : 2001 CriLJ1246 ; and Lalmuni Devi (Smt.) v. State of Bihar and Ors. : (2001)2SCC17 .

5. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

6. In the instant case, the first informant Sita Devi W/o Krishan Kumar lodged the FIR in question inter alia alleging therein that her husband Krishan Kumar expired on 4.8.1992. The land was originally allotted in favour of Ram Chandra measuring 80 Bighas as a claim under the Scheme of Custodian Allotment of Land and after the death of original allottee Ramchandra, the land was inherited by seven persons, i.e. four sons and three daughters of late Ramchandra. Her husband Krishan Kumar is one of the son of late Ramchandra. After the death of her husband, the land came in the share of her husband has been transferred by forgoing various documents as if they had been signed by him, whereas he was not even alive on the date of forging the documents and the documents by which the land has been transferred have been forged by the accused-persons who are the petitioners herein. There is clear averment in the FIR that after the death of her husband Krishan Kumar, the documents have been forged as if he was alive whereas he had expired much prior to the date mentioned on such document transferring the share of deceased Krishan Kumar.

7. Learned Counsel for the petitioners submits that it is open for the first informant to file a suit and establish her case.

8. Be that as it may, from the averments made in the FIR, in my view, it prima facie discloses commission of cognizable offences noticed above.

9. In *Lalmuni Devi (Smt.) v. State of Bihar and Ors.* (supra), the Hon'ble Supreme Court held that it is true that if the complaint does not make out an offence, it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In that case, the Hon'ble Apex Court held that on the facts it cannot be stated, at this prima facie stage, that this is a frivolous complaint and, therefore, on these premises, the Supreme Court held that merely on the ground that it is a civil wrong, the criminal prosecution could not have been quashed.

10. In *M. Krishnan v. Vijay Singh and Anr.* (supra), the Hon'ble Supreme Court observed as under:

The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. The proceedings could not be quashed only because the respondents had filed a civil suit. If mere pendency of a civil suit is made a ground for quashing the criminal proceedings the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law.

11. It was further held that in a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the

complaint, the respondents were entitled to discharge or acquittal but not otherwise.

12. In *Alpic Finance Ltd. v. P. Sadasivan and Ors.* (Supra), the Hon'ble Apex Court held that when somebody suffers injury to his person, property or reputation, he may have remedies both under Civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating.

13. In *Suresh v. Mahadevappa Shivappa Danannava and Anr.* (supra), the Hon'ble Supreme Court observed as under:

We have also perused the Annexures-P/1-P/3 which are copies of the pleadings/documents which form part of the records of the case in the High Court against whose order leave to appeal was sought for in this appeal. We have carefully perused the order passed by the High Court. The High Court, in our opinion, has passed the order in a mechanical way without applying its mind. A perusal of the complaint would show that the entire dispute raised by the complainant is based on the alleged agreement to sell dated 25.12.1988 nearly 11 years prior to filing of the private complaint on 17.5.1999. The existence of any such agreement or any advance taken has been specifically denied by the appellant by way of his reply dated 6.7.1996 in response to the legal notice dated 11.7.1996 sent by the complainant through his lawyer. For nearly 3 years from the date of reply, the complainant kept quiet before filling his complaint on 17.5.1999 before the Magistrate. It is stated that even as per the police report, no offence is made out against accused Nos. 2- 4. Despite this, the Magistrate issued process against accused No. 2-4 as well which clearly shows the non-application of mind by the Magistrate. A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not prima facie disclose commission of alleged criminal offence Under Section 420 IPC. The Magistrate, in

our opinion, has not considered the report filed by the police under Under Section 156(3) Cr.P.C. judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance Under Section 190 of Cr.P.C. In the instant case, as could be seen from the records, that the police has given a clean chit to accused Nos. 2-4. In our opinion, the Magistrate ought not to have taken cognizance of the alleged offence against the accused No. 1, the appellant herein and that the complaint has been made to harass the accused No. 1 to come to terms by resorting to criminal process.

14. In *Inder Mohan Goswami and Anr. v. State of Uttrachal and Ors.* (supra), the Hon'ble Apex Court that dispute for cancellation of agreement to sell property is a civil dispute and institution of criminal proceedings under Section 420, 120B, 467 IPC against vendor is an abuse of process of the Court.

15. In *All cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain Anr.* (supra), the Hon'ble Supreme Court noticed that the complaint petition not containing averments in regard to ingredients of offence. In that case, there was allegation of negligence and breach of contract on the part of carriers and their agent and it was a case of breach of contract simpliciter and therefore the Apex Court held that it does not constitute the offence.

16. Thus, the decisions relied on by the learned Counsel for the petitioners turn on their own facts and are of no help to the petitioners in view of the facts and circumstances of the instant case as disclosed in the FIR which was lodged by respondent No. 2 who is a widow and who clearly came with the case that her husband's share in the property has been transferred after his death by forging the documents using them as genuine and as such the petitioners prima facie committed the offences as noticed above.

17 Keeping in view the decisions of the Hon'ble Supreme Court in *M. Krishnan v. Vijay Singh and Anr.* (supra), *Lalmuni Devi (Smt.) v. State of Bihar and Ors.* (supra) and *Alpic Finance Ltd. v. A. Sadasivan and Anr.* (supra), the facts of which are nearer to the facts of the instant case, no case for quashing the FIR is made out. The criminal miscellaneous petition is, therefore, dismissed.

