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Court : Patna

Decided On : Sep-13-2010

Judge : Akhilesh Chandra, J.

Acts : Indian Penal Code (IPC) - Sections 417, 465, 120B

Appeal No. : CRIMINAL MISCELLANIOUS No.26419 OF 2005

Appellant : Fuleshari Devi, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Atul Chandra, Adv.

Advocate for Pet/Ap. : Mr. Ashutosh Kumar; Mr. Nachiketa Jha; Mr. Chandra Mohan Jha; Mr. Sanjay Kumar Singh, Advs.

Judgement :

1. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State and learned counsel for opposite party no.2.

2. This is an application on behalf of four petitioners seeking quashing of the order dated 30.03.2005 passed by Shri H. Ansari, Judicial Magistrate, Siwan, in complaint case no. 204C/2005 taking cognizance for the offences under Sections 417, 465 and 120B of the Indian Penal Code besides quashing of entire proceeding before the court below.

3. The relevant facts of this case is that opposite party no.2 claiming herself purchaser of a piece of land by virtue of registered sale deed executed by one Deojhari Kunwar as self and Karta of the family constituting herself and only son Dhananjay Kumar Singh, who appeared as witness in the deed dated 18.10.2002, subsequently petitioners perforce got a deed executed in their favour by said Dhananjay Kumar Singh claiming the land falling in his share on partition without paying any consideration.

4. The opposite party no.2 had filed earlier complaint case 1728/2002 with some allegation and after inquiry by order dated 18.01.2005 it appears dismissed. Thereafter, complaint in hand no. 204/2005 was filed on 22.02.2005 stating at the far end of the complaint petition that earlier complaint case filed by him was dismissed for non-prosecution and lack of evidence.

5. Learned counsel for the petitioners while assailing subsequent complaint and impugned order on the grounds that in face of dismissal of earlier complaint on merit second complaint on same facts is not maintainable and dispute between the parties appears to be of civil nature, if at all, complainant had any grievance, may file civil suit regarding his title etc. but the complaint case, wherein even executed of the deed in favour of the petitioners has not been made accused is not tenable.

6. Learned counsel for the opposite party no.2 who finds support from learned Additional Public Prosecutor initially tried to submit that earlier complaint was dismissed for non- prosecution but when he was confronted with order dated 16.01.2005 basing complaint case no. 1728/2002 by Shri Vishwanath Singh, the then Judicial Magistrate, 1st Class, Siwan, on record Annexure A of the application wherein the learned Magistrate though has mentioned that for the last few dates none appearing on behalf of the complainant but he has discussed and considered statement of complainant on Solemn Affirmation besides three witnesses examined during inquiry and thereafter finding no prima facie case dismissed the complaint petition. Learned counsel representing the opposite party no.2 could not stand on his earlier submission that it was an order dismissing the complaint for non-prosecution.

7. From the averments contained in the complaint petition it does not appear that any criminal offence is made out, the executant of the deed in favour of the petitioners has also not been made accused if he was forced or executed the deed in favour of the petitioners under duress and coercion and he himself could have come forward and got the criminal proceeding initiated for such coercion etc. but inspite of execution of the deed in the year 2002, he kept mum so now dispute between the parties admittedly remains involving question of title prevailing of two deeds executed with respect to same land one deed executed by mother as stated as self and karta of the family another deed by the only son, as only other member of the family exercising independent right. By no stretch of imagination such dispute cannot be termed as a dispute of civil nature. And for such civil dispute no criminal case is permissible to be entertained and proceed further.

8. In order to resolve such type of disputes apart from conventional forum of civil court, there is another competent authority by way of Legal Services Authority, commonly known as Lok Adalat, wherein such disputes may even be entertained and disposed of at pre-litigating stage by the amicable settlement. Any aggrieved person is only required to approach appropriate forum, if fails in redressal of dispute, the aggrieved person may knock the doors of conventional forum by filing regular suit, but the person is not permitted to adopt and putting pressure tactics upon its adversory by initiating a criminal proceeding.

9. In the result, application stands allowed and impugned order as well as entire proceeding before the court below arising out of complaint case no. 204C/2005 is quashed.

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