

Surendra Pratap Singh, and ors. Vs. State of Bihar, and anr.

Surendra Pratap Singh, and ors. Vs. State of Bihar, and anr.

SooperKanoon Citation : sooperkanoon.com/916202

Court : Patna

Decided On : Sep-24-2010

Judge : Akhilesh Chandra, J.

Acts : Indian Penal Code (IPC) - Sections 407, 468, 420, 120B

Appeal No. : CRIMINAL MISCELLANIOUS No.34373 OF 2005

Appellant : Surendra Pratap Singh, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Damodar Pd. Tiwary, Adv.

Advocate for Pet/Ap. : Mr. Rajendra Pd. Singh; Mr. Rajeev Kr. Singh; Mr. Mukesh Kr. Singh, Adv.

Judgement :

1. Heard learned counsel for the petitioners in all the three cases, learned Additional Public Prosecutor for the State and learned counsel representing the informant. Since all the three petitions arise out of one case, they have been heard together and being disposed of by Composite order.

2. The relevant facts for consideration is that one Janaki Devi was undisputed owner of the subject matter of the proceeding who executed two registered sale deeds for her property having an area of 3 Kathas 9 Dhors respectively on 16.03.2001 and 17.03.2001 in favour of opposite party no.2 on payment of

consideration. The informant further averted that in the house in question Chandeshwari Prasad Singh, deceased father of petitioner no.3 in Cr. Misc. No. 9336/2007 was a tenant who assured to vacate the house within a short period and he along with other petitioners persuaded the informant to enter into transaction as the property in question is free from any encumbrance and dispute but after purchase and mutation in the names of the purchaser/informant with respect to said property Late Chandeshwari Prasad Singh started avoiding eviction and further in collusion with each other got an antedated agreement for sale of same property prepared in his favour purported to be under signature of vendor of the informant but as alleged in pen and writing of his son petitioner no.3 on anti dated stamp paper provided by non-petitioner Md. Moinuddin the Stamp Vendor and the informant further averted that purposely to grab money from him he was inspired by all such persons to enter into transaction and subsequently deed of agreement was brought into existence. On such assertions Buxar Nagar P.S. Case No. 105/2001 was instituted on 09.06.2001 for the offence under Section 407, 468, 420 and 120B of the Indian Penal Code. Wherein, as it appears after investigation initially charge sheet was submitted against three persons Chandeshari Prasad Singh, Janaki Devi and her husband, keeping the investigation pending and subsequently supplementary charge sheet was submitted against the petitioners besides one non-petitioner i.e. Stamp Vendor. Here, it would not be out of place to mention that prior to submission of charge sheet and order taking cognizance besides the instant application bearing Cr. Misc. No. 34373/2005, Cr. Misc. No. 40577/2005 have been filed seeking quashing of entire First Information Report and subsequently Cr. Misc. No. 9336/2007 has also been filed by the three petitioners seeking quashing of order dated 25.11.2005 passed by Sri Gopal Jee, Judicial Magistrate, 1st Class, Buxar, in G.R.No. 609/2001 Tr. No. 2111/2006 in connection with Buxar Town P.S. Case No. 105/2001, taking cognizance for the offence under section 407, 468, 420 and 120B of the Indian Penal Code.

3. It is also admitted position that Chandeshwari Pd. Singh has already filed Title Suit No. 105/2001 in the court of Sub-Judge, 1st, Buxar, against the common vendor Janaki Devi as well as said purchaser the informant and his brother seeking decree for specific performance of the contract and transfer of the land in

his favour alleging that the purchasers had full knowledge of the earlier deed of agreement to sale whereas the purchasers i.e. informant have also filed a suit for eviction bearing 3/2004 in the court of Sub-judge, 1st Buxar, against all the heirs of deceased Chandeshwari Prasad Singh in whose name alleged deed of agreement for sale appears standing that means there are altogether two suits filed before one competent court i.e. 1st Sub-Judge, Buxar, wherein the matters relating to execution of the deeds and allied are to be critically examined and decision is to be arrived at.

4. On basis of the above facts and circumstances, which also finds mentioned in case diary, learned counsel for the petitioners made almost similar submission that there is absolutely no justification in initiation of a criminal case wherein the allegation is of a civil nature and the two suits are already going on. Moreover, as regard to the petitioners of first two cases there is absolutely no allegation but only to the extent that they also recommended the informant to purchase the land. Learned counsel representing opposite party no.2 as well as learned Additional Public Prosecutor both submitted that after investigation charge sheet has been submitted and on going through the materials cognizance has also been taken so there is no need to interfere.

5. No doubt, during pendency of earlier two cases investigation proceeded and on submission of charge sheet cognizance has been taken but there is no denial of the fact that controversy between the parties is of civil nature and matter is under adjudication by the competent court in two cases respectively filed by the concerned persons. But at the same time it is to be noticed that against petitioners of subsequent case, there is direct allegation of forging signature of the vendor and appearing as witness on the deed of agreement and petitioner no.3 of this case is now one of the beneficiary also.

6. Since main controversy between the persons benefited by the transactions relates to period of execution of two sets of different deeds, in one set there is two registered sale deeds, another one deed of agreement for sale though on stamp paper but unregistered and the materials emerging other investigation does not warrant commission of criminal offence at least with respect to the petitioners of

first two cases i.e. Dr. Jagdish Rai and Ram Vilas Prasad Gupta, who only said to have recommended the informant to purchase. And the dispute between real persons is subjudice before competent civil court in the cases initiated at the instance of informant as well as the persons in whose name deed of agreement stands now dead, but represented by his heirs including petitioner no.3 of Cr. Misc. No. 9336/2007 under such circumstances continuation of criminal proceeding against 1st two petitioners appears nothing but abuse of process of law and wastage of precious judicial time which requires due interference of this court.

7. In this context some decisions of the Apex Court may also be relevant and needs to be referred:

" The Supreme Court in a case of Inder Mohan Goswami & Ors. V. State of Uttaranchal & Ors. reported in 2007(12) SCC 1, after discussing different decisions including the case of State of Haryana and Others v. Bhajan Lal and Others 1992 SUPP (1) SCC: 1992 SCC (cri) 426 and especially in paragraph 34 referring case of G. Sagar Suri and another v. State of U.P. and Others 2000(2)SCC 636 has held that "this court observed that decision due and obligation of the Criminal Court to exercise a great deal of caution in issuing the process, particularly when matter are essentially of civil nature."

8. In view of the findings that no criminal offence is made out against 1st two petitioners, permitting further to continue the proceeding against them before court below would amount to an abuse of process of court and to prevent the same, it would be just expedient in the interest of justice to quash the order taking cognizance with respect to the two petitioners. But at the same time impugned order cannot be held bad with respect to remaining three petitioners directly connected with deed of agreement said to have been antedated and contained forged signature etc. It is further made clear that any observation made here shall not cause any prejudice to any right of the parties before the court below.

9. In view of the above, impugned order dated 25.11.2005 passed in Buxar Town P.S. Case No. 105/2001 to the extent of petitioners Dr. Jagdish Rai and Ram Vilas Prasad Gupta, is hereby quashed, and the two applications i.e. Cr. Misc. No.

34373/2005 and Cr. Misc. No. 40577/2005 are allowed but at the same time without affecting any right of the three petitioners in Cr. Misc. No. 9336/2007 to agitate their points at the appropriate stage in connection with proceeding in the above case, their application stands disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com