

(2024) 12 JH CK 0071

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 649 Of 2024

Shakuntala Devi

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Dec. 17, 2024

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Amritansh Vats, Shweta Shukla, Shashikant Ojha

Final Decision: Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel appearing for the petitioners, learned counsel appearing for the State and learned counsel appearing for the respondent No.

2.

2. Prayer in this writ petition is made for quashing of the entire criminal proceedings including the order taking cognizance dated 05.02.2024, arising

out of Complaint Case No. 376 of 2023, pending in the court of learned Judicial Magistrate, 1st Class, Lohardaga.

3. The complaint case was lodged instituted on the basis of written complaint filed by the complainant namely Nandan Prasad in the learned Court of

Chief Judicial Magistrate, Lohardaga, wherein he alleged that the complainant are three brothers and they all were living together from 55 years. The

middle brother of the complainant, accused no.1 namely Naval Prasad, who is Government headmaster of Kolsimiri School has been living separately

since after the construction of his new house and also taken the mother of the complainant along with him. He further alleged that when the

complainant's three brothers and mother were living together, the accused no.1 namely Naval Prasad kept purchasing household items in his names,

as the complainant and his brother Kamal Prasad were engaged and busy in the work of the shop and due to which the accused no.1 namely Naval

Prasad deposited all the money earned by three brother's when they were living together in the account of accused no.2 namely Shakuntala Devi by

saying it would be helpful in the future. He further alleges that after the construction of new house of the accused no.1 Naval Prasad, he took all the

belongings of the community like two vehicles XUV 500 bearing registration no. JH01BZ-1541 and KWID bearing Registration No. JH01CM-4961,

T.V, wardrobe, bed etc.

It is further alleged that the complainant also came to know that land situated in Kundo bearing Khata No.17, Plot No.204, 205 having Rakba of 18

decimals has been fraudulently transferred in the name of the accused no.1 Naval Prasad by the accused no.2 Shakuntala Devi, which was deed in

the name of the father of the complainant and when the complainant and his brother raised his objection then the accused no.1 naval Prasad gave an

assurance that everyone will leave together in the new house and soon the land will be transferred in the name of three brother's. He further alleges

that when the complainant and his brother Kamal Prasad went to the accused no.1 Naval Prasad to ask about their share then accused no. 1 and his

son and his daughter in law started abusing them and on contrary the accused person's filed a case against the complainant in Kuru police station. He

further alleges that accused no.1 naval Prasad by keeping the accused no.2 Shakuntala Devi is torturing the complainant by implicating them in a false

case and also threaten to sale the remaining land located in Kuru in which complainant and his brother is living and it has been further alleged by the

complainant that the accused no.2 Shakuntala Devi has harassed her daughter in law and took her life by torturing the first wife of the complainant

who died behind leaving her one year old son and accused no.1 namely naval Prasad also has an evil eye on money of Rs. 17,00,000 which is

deposited in Gramin Bank of Kuru in the name of Accused No.2 Shakuntala Devi.

4. Mr. Vats, learned counsel appearing for the petitioners submits that the petitioners and the complainant are family members, as the petitioner No. 1

is the mother of the complainant and petitioner No. 2 is the full brother of the complainant. He submits that the petitioner No. 1 is a senior citizen, whose husband is no more and left with three sons namely Kamal Prasad, Naval Prasad and Nandan Prasad. He further submits that she is a widow lady aged about 74 years and having various ailments and he refers to medical report contained in Annexure-

5. He then submits that the petitioner No. 1 has been constantly abused and assaulted by her two sons namely Nandan Prasad and Pawan Prasad and also thrown her out from her own house, due to which, she was taken care by the petitioner No. 2 Nawal Prasad, who is the second son of the petitioner No. 1. He submits that the petitioner No. 1, being a senior citizen has approached the Deputy Commissioner and Sub-Divisional Officer, Lohardaga for the abuse made by her sons and when no action was taken, the petitioner No. 1 has moved before this court in W.P.(C) No. 3398 of 2023 under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in which, interim protection was provided, however, later on the said case was disposed of. He further submits that in the said W.P.(C) No. 3398 of 2023, the notice was issued to the private respondents on 31.07.2023 and the present complaint case was filed on 21.08.2023. He then submits that maliciously the present complaint case was filed and the entire allegation in the present complaint is with regard to the land, belongs to the petitioner No. 1. He submits that the family arrangements have already been made between the parties, which is itself the part of the complaint petition. In these backgrounds, he submits that for a civil wrong, if any, the criminal motion has been tried to be made out and in view of that the entire criminal proceedings may kindly be quashed.

5. Learned counsel appearing for the State submits that prima facie it appears that there is family dispute with regard to the land, for that the complainant is required to move before the competent court of civil jurisdiction.

6. Mr. S.K. Ojha, learned counsel appearing for the respondent No. 2 has vehemently opposed the prayer and submits that the allegations are there in view of that the learned court has rightly taken the cognizance. He submits that petitioner No. 2 with connivance of petitioner No. 1, the part of the

land of the complainant and another brother has taken away, in view of that he submits that the case of cheating is made out and this court may not exercise its power at this stage.

7. In view of the above, it is an admitted position that the petitioner Nos. 1, 2 and complainant are the family members. The petitioner No. 1 is aged

about 74 years and she is mother of the complainant and further petitioner No. 2 and complainant are full brothers. It was pointed out that the property

in question was purchased by the husband of the petitioner No. 1 and if it was self-acquired property of the husband of the petitioner No. 1, she has

got every right to hand over the land to anybody and further under the Hindu Law, the wife is the first legal heir and successor of the property in

question. It has further been pointed out that the petitioner No. 1, being a senior citizen has approached the Deputy Commissioner and Sub-Divisional

Officer, Lohardaga for the abuse made by her sons and subsequently she was driven out from her house, for that the petitioner No. 1 has moved

before this court in W.P.(C) No. 3398 of 2023 under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in which,

interim protection was provided initially and part of the possession was handed over to the petitioner No. 1, however, later on the said case was

disposed of. It has also been pointed out that in the said W.P.(C) No. 3398 of 2023, the notice was issued to the private respondents on 31.07.2023

and the present complaint case was filed on 21.08.2023 and in the entire contents of the complaint petition, the allegations are only made with regard

to possession of Khata No. 117, Plot Nos. 204 and 205 admeasuring an area of 18 decimals and other plots also.

8. In these backgrounds, it is crystal clear that for a civil wrong if any, the criminal case has been filed and to allow the proceeding to continue will

amount to an abuse of the process of law. As such, the entire criminal proceedings including the order taking cognizance dated 05.02.2024, arising out

of Complaint Case No. 376 of 2023, pending in the court of learned Judicial Magistrate, 1st Class, Lohardaga, are hereby, quashed.

9. Accordingly, this petition is allowed and disposed of.

10. It is made clear that if any civil proceeding is there, that will be decided in accordance with law without being prejudiced by this order.