

(2007) 09 JH CK 0001
Jharkhand High Court
Case No: None

Ajit Kumar Mahato and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Sept. 28, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 423, 463, 464, 465

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

The petitioners have filed the instant application u/s 482 Cr. P.C., praying for quashing the entire proceedings including the order dated 06.12.2004, passed in C.P. Case No. 310 of 2004, whereby the learned court below took cognizance of the offences under Sections 423 and 465 of the I.P.C. against the petitioners.

2. The case before the court below was registered on the basis of a complaint filed by one Debendra Nath Mahato, Opposite Party No. 2, alleging, therein, that his grand-lather Jagan Mahato was the recorded raiyat of the lands measuring 49 decimals under Khata No. 196, Plot No. 1371, situated within Mouza-Lanka No. 165. After the death of the recorded tenant, his only son Haru Mahato inherited the property and after the death of Haru Mahato, his two sons, namely, the present Opposite Party No. 2 and Rakhahari Mahato have inherited the lands and since the death of their father, they have been in possession over the lands. It is also claimed that the aforesaid lands was recorded in the recent Survey in the name of the complainant's father, Haru Mahato. The complainant has, alleged, thereafter that by using forged documents, the petitioners/accused Nos. I to 4 had executed the deed of gift of the aforesaid lands in favour of the Governor of Jharkhand by a

Registered deed No. 4919 dated 15.09.2003. The complainant has alleged that the aforesaid petitioners in connivance with the petitioner Nos. 5 to 8 had dishonestly transferred the said lands with intent to cheat the complainant.

After examining the complainant and his witnesses/ the learned court below proceeded to take cognizance of the offences under Sections 423 and 465 of the I.P.C. and issued processes through summons, against the present petitioners directing them to appear and face the trial.

3. Learned Counsel for the petitioners submits that the case filed by the complainant is entirely with mala fide motives, and maliciously in order to cause prejudice to the petitioners and to harass them. Learned Counsel adds that the case has been filed by suppressing material facts and by misleading the Court. Learned Counsel adds further that even according to the allegations made in the F.I.R., no offence either under Sections 463 or 465 of the I.P.C is made out as because there is no averment made in the entire complaint petition that the complainant has in any manner been cheated by any of the accused persons or that the complainant has been dishonestly induced to deliver any property to the accused persons. Learned Counsel adds further that the allegation that the complainant has suffered any detriment is misconceived as because such grievance on account of the execution of the gift deed, if any, could at best be of the donee and not the complainant. Learned Counsel adds further that the dispute is essentially in relation to the title of the parties over the land and if the complainant feels that a cloud has been cast in respect of his title over the lands, his remedy lies in a civil proceeding. Learned Counsel adds further that as a matter of fact the complainant had suppressed that the ancestor of the complainant being not able to pay the rent, had surrendered the lands to the landlord in the year 1947, whereafter the landlord had settled the kinds in favour of the ancestor of the present petitioners, namely, Chatu Mahato. The settlees had thereafter paid the rent to the landlord and after vesting of the lands in the State, they have paid the rent in (hat behalf to the State Government. In the recent survey, due to mistake there is entry of the name of the complainant's father, Haru Mahato, who was named as raiyat but in the remarks column, the possession of Mehendi Mahato, ancestor of the petitioner Nos. 1 to 4 was shown in respect of the lands of plot Nos. 1644/1371. The complainant or his ancestor had never paid any rent, whereas, the rent receipts of the year 1972 and of the more recent years of 2003 would indicate that it is the present petitioners, who have been paying the rents. Learned Counsel adds further that earlier the complainant made a grievance that the accused persons, were forcibly ploughing the lands and on that basis, on the direction of the Circle Officer, Chandan Kiyari, the Halka Karamchari enquired into the matter and submitted his report staling that on the basis of local enquiry from the villagers, it was learnt that the ancestors of the complainant had surrendered the lands to the ex-Jamindar, whereafter the land was settled in favour of the ancestors of the present accused persons/petitioner Nos. 1 to 4. The Report of the Halka Karamchari, had also indicated that on verification of Register II, he found

that the Jamabandi No. 253 has been shown in the name of Chain Mahato and others, who were the ancestors of the accused petitioners and that Chatu Mahato and others have in fact gifted the lands to the school authorities by more than 35 years ago and since then the School is running within the said land and since the direction earlier made by an oral gift, a formal gift deed was executed and registered in favour of his Excellency, the Governor of Jharkhand.

4. Learned Counsel for the Opposite Party No. 2/Complainant, while refuting the entire grounds of the petitioners, submits that the Petitioner Nos. 1 to 4 in collusion with the remaining petitioners had fraudulently executed the deed of gift, although they do not have any authority over the same. Referring to the survey Khatiyan, learned Counsel claims that the lands stand recorded in the name of the complainant's father.

5. From the entire allegations made in the complaint petition, the inference drawn is that by virtue of the deed of gift executed by the petitioner Nos. 1 to 4, the disputed land was transferred in favour of the State Government. The complainant has alleged that the accused/petitioner Nos. 1 to 4 wrongly claimed themselves to be the owners of the lands and by such false representation had executed the deed of gift, purporting to transfer the lands in favour of the donee. The complainant has not stated as to what are the documents, which he claims to have been forged by the accused persons. It is not alleged that the accused persons had wrongly represented themselves as the complainant or that they had forged any particular document belonging to the complainant. Even according to the allegations, the accused persons had executed the gift deed in their own name and not in the name of the complainant. Mere execution of the gift deed in itself does not constitute the offence of forgery as explained under Sections 463 or 464 of the I.P.C. and neither such document in itself is sufficient to negate the title of the complainant, if any, over the lands. As rightly stated by the learned Counsel for the petitioners, there is no allegation in the complaint either that the complainant has been cheated or that he was dishonestly made to deliver the lands in question to the accused persons. Furthermore, even if the accused persons did not have a title to the lands and yet had executed the gift deed, it is the donee or the transferee, who can claim to be aggrieved.

6. It is apparent from the facts and circumstances of the case that the dispute is essentially concerning title over the lands and if the complainant feels aggrieved that a cloud has been cast on his title over the lands, his remedy lies by way of a civil proceeding and not by way of a criminal prosecution.

7. The learned trial court does not appear to have appreciated the facts of the case in proper perspective. The order of cognizance is, therefore, bad on the ground of non-application of the judicial mind and is, therefore, not sustainable.

For the reasons discussed above, I find merit in this application. Accordingly, the same is allowed. The proceedings pending vide C.P. Case No. 310 of 2004, including the order of cognizance dated 06.12.2004 pending in the court of Shri Tarun Kumar, Judicial Magistrate, First Class, Bokaro, is hereby quashed.