

(2012) 09 JH CK 0103

Jharkhand High Court

Case No: Criminal M.P. No. 1130 of 2012

Maneshwari Devi @
Mannkishwari Devi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 3, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 464, 467, 471
- Penal Code, 1860 (IPC) - Section 109, 120B, 201, 415, 420
- Prevention of Corruption Act, 1988 - Section 13(1), 13(1)(d), 13(2)

Citation: (2012) 4 JLR 230

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: B.K. Jha, for the Appellant; T.N. Verma for the Vigilance, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner and learned counsel appearing for the Vigilance. This application has been filed for quashing of the entire criminal proceeding of Vigilance Case No. 33 of 2002 (Special Case No. 38 of 2002) including the order dated 18.11.2009, passed by the then Special Judge, Vigilance, Ranchi whereby and whereunder cognizance of the offences punishable under Sections 420/ 423/ 424/ 467/ 468/ 469/ 471/ 477/ 201/ 120B/ 109 of the Indian Penal Code and also u/s 13(1)d read with Section 13(2) of the Prevention of Corruption Act, 1988 has been taken against the accused persons including the petitioner.

2. The facts giving rise to this application, are that certain land measuring 1.8 acres, appertaining to Khata No. 268, Plot No. 2983 situated at Mouza-Argora was

recorded in record of right as Gairmazurwa Malik. However, in the year 1970-71, two rent receipts were issued against that land in the name of Samu Sao. After his death, his son-Chandan Sao inherited the property and got his name mutated against the aforesaid land in the year 1982-83.

3. In course of time, Chandan Sao sold 0.49 acres and 0.59 acres of land separately to Mahavir Kashi, the then Secretary of Jai Bhawani Cooperative Society in the year 1988-91 who got his name mutated against the vended land. Mahavir Kashi sold the land to ten persons including this petitioner on 29.4.1991 who got her name mutated and accordingly Register-II was opened in her name.

4. Since, the land initially had been recorded as Gairmazurwa Malik, transfers of said land to different persons were considered to be illegal and, therefore, a case was lodged by the Inspector, Vigilance against 23 persons including this petitioner on the allegation that all those persons have committed offence of forgery, cheating and misappropriation etc.

5. Upon submission of the charge-sheet, cognizance of the offences, as aforesaid, was taken against the petitioner vide order dated 18.11.2009 which is under challenge.

6. Learned counsel for the petitioner submits that though initially the land was recorded as Gairmazurwa Malik but rent receipts with respect to that land were issued in favour of Samu Sao. After his death, his son-Chandan Sao inherited the property and got his name mutated against that land and even Register-II was opened in his name. Thereupon, he transferred the land to Mahavir Kashi, the then Secretary of Jai Bhawani Cooperative Society who in turn sold the land to different persons including this petitioner and thereby the petitioner cannot be said to have committed any offence either of cheating, forgery or misappropriation nor they can be said to have abetted the Government officials to commit offence of criminal misconduct and thereby the petitioner cannot be held responsible for commission of any offence either under the Indian Penal Code or under the Prevention of Corruption Act.

7. It was further submitted that how the petitioner can be instrumental in getting the rent receipts issued in the name of Samu Sao when he was not in picture at all at that time. It was further submitted that the petitioner after knowing that the land has been recorded in the name of Secretary of Jai Bhawani Cooperative Society purchased it and thereby she has not committed any offence under which cognizance of the offences has been taken and, therefore, the order taking cognizance is fit to be quashed.

8. As against this, Mr. T.N. Verma, learned counsel appearing for the Vigilance, submits that admittedly the land in question was recorded as GairMazurua Malik which land had never been settled to Samu Sao still Samu Sao managed to get the rent receipts issued in his favour against that land and then in connivance with the

Government officials he got his name mutated against the land in question. After his death, his son-Chandan Sao inherited the property. He also in connivance with the Government officials by illegal means got that land mutated in his name. The same is the case with the subsequent transferees and also the petitioner and thereby the charge-sheet has been submitted against the petitioner upon which cognizance of the offences has been taken which in the facts and circumstances cannot be said to be illegal.

9. It was further submitted that the culpability of all the accused persons including the Government officials would be evident from the fact that the relevant records have been missing.

10. In the circumstances, the question does arise as to whether the allegation made in the F.I.R. does constitute the offence of cheating, forgery, misappropriation or even the offence under the Prevention of Corruption Act?

11. Having heard learned counsel for the parties, it need not to be recorded in detail the manner in which the land was transferred to the petitioner except the fact that the petitioner is the purchaser in whose name land has been mutated and that the petitioner had purchased the land from the persons in whose name jamabandi had been created and under these circumstances, how the petitioner can be said to have committed offence of forgery. In this regard, I may refer to a decision rendered in a case of [Md. Ibrahim and Others Vs. State of Bihar and Another](#), wherein their Lordships after having regard to the provision contained in Section 470 of the I.P.C. as well as other provisions relating to forgery did observe as follows:--

The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

12. The Court has further observed that analysis of Section 464 of the Indian Penal Code shows that it divides false documents into three categories as follows:--

The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a documents in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not be reason of;

(a) unsoundness of mind; (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false, statement", if (i) he made or executed a document claiming to be someone else or authorized by some one else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

The sale deeds executed by the first appellant clearly and obviously do not fall under the second and third categories of "false statement". It, therefore, remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false document", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document is defined u/s 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

13. Thus, it has been categorically held that when a document is executed by a person claiming a property though it is not his property but when he is not claiming that he is authorized by someone else or he is someone else, execution of such document cannot be said to be a false document in terms of Section 464 of the

Indian Penal Code and if it is not a false document, then the question of committing an offence under Sections 467, 468 and 471 does not arise.

14. The ratio laid down in the aforesaid case equally applies in this case as the transferors, who always claimed the properties as their own, can never be said to have committed offence of forgery by transferring the land through sale deed to this petitioner and thereby the question of committing offence of forgery by this petitioner never arises.

15. Going further in the matter, one can hardly conceive as to how offence under Sections 423 and 424 of IPC is made out when there has been no case of dishonest or fraudulent execution of deed of transfer containing false statement of consideration nor it is the case of dishonest or fraudulent removal or concealment of the property.

16. Likewise in the facts and circumstances of the case, when the petitioner purchased the land from the persons in whose names jamabandi had been created and then got her name mutated against the land purchased, she can never be said to have committed offence of cheating as defined u/s 415 of Indian Penal Code punishable u/s 420 of Indian Penal Code.

17. Further in the facts and circumstances, as noted above, the petitioner cannot be said to have abetted the offence u/s 13(1)d of the Prevention of Corruption Act.

18. Under the circumstances, entire criminal proceeding of Vigilance. Case No. 33 of 2002 (Special Case No. 38 of 2002) including the order dated 18.11.2009 taking cognizance, is hereby quashed, so far the petitioner is concerned. In the result, this application is allowed.