

Mahesh Kumar Sanwaria Vs State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: Aug. 8, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Penal Code, 1860 (IPC) â€” Section 120B, 406, 415, 417, 420

Citation: (2007) 1 JCR 504

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the order dated 18.5.2004 passed

by Sri D. Baranwal, Judicial Magistrate, Dhanbad in C.P. case No. 1590 of 2002 whereby learned Magistrate having been found that the

prima facie, case is made out u/s 417 of the Indian Penal Code summoned the petitioner to face trial.

2. The facts giving rise this application are that complainant-opposite party No. 2 filed a complaint stating therein that the petitioner when offered to

sell his land, Girja Devi (wife of the complainant) and Poonam Devi (younger brother's wife of the complainant) purchased the land by two

separate sale deeds, bearing No. 1318 and 1180 for a valuable consideration on getting assurance that the land is free from encumbrances; recital

to that effect was also made in the sale deed.

Further case is that on coming to the possession of both the lands when the complainant applied for new electric connection, the Electricity Board

intimated that a sum of Rs. 1,64,000/- is outstanding as dues on account of charges of electric consumption. Thereupon, it was communicated to

the petitioner, who did not agree to pay the dues to Jharkhand State Electricity Board nor did agree to refund the money to the extent of the dues

outstanding. Thus, it has been alleged that the petitioner having been fully known about the existence of the dues purposely made recital in the sale

deed that the land is free from encumbrances in order to cheat the complainant and hence committed offence under Sections 406, 420 and 120-B

of the Indian Penal Code.

3. On filing the complaint, the complainant made statement on solemn affirmation and thereafter the matter was taken up for enquiry. After holding

enquiry learned Magistrate did find that the prima facie case is made out u/s 417 of the Indian Penal Code and hence summoned the accused to

face trial.

4. Being aggrieved with the order, the petitioner has preferred this application.

5. Learned Counsel appearing for the petitioner submits that building standing over the land in dispute was let to one M/s. Sanwaria Briquette

Industries on amonthly rental of which one Pradip Kumar Sanwaria was proprietor in whose name licence under the Factories Act was standing

and whatever electric dues was outstanding that was standing in the name of the said industries and the petitioner had absolutely no knowledge

about the dues outstanding against the said factory. Thus, it was submitted that since the petitioner was not a consumer, petitioner is not concerned

with the payment of electric dues nor petitioner can be held liable for making payment of the outstanding dues and it is only the person, who were

privity to contract are responsible to make payment and in that view of the matter, the Electricity Board can only recover the outstanding dues from

the consumer by filing certificate proceedings.

6. It was further stated that neither the petitioner nor the subsequent purchaser can be held liable for making payment. Second limb of the argument

is that electric dues never hold any charge over the property as has been held by the Patna High Court and by the Apex Court and in that view of

the matter, the petitioner cannot be said to have made false statement in the sale deed that the land is free from all encumbrances and in that event,

petitioner cannot be said to have committed any offence.

7. As against this learned Counsel appearing for the opposite party submitted that as because the statement was made in the sale deed that the land

is free from all encumbrances, the complainant got the land purchased but said statement was found to be false when the complainant came to

know that there has been outstanding dues on account of consumption of electricity over the premises standing over the land in dispute. Therefore,

the petitioner can be said to have committed an offence punishable u/s 417 of the Indian Penal Code.

8. There can not be doubt that if the accused knowingly makes false statement that the property is free from all encumbrances and because of this

false representation the complainant purchased the property and parted with the money, the accused can be said to have committed offence u/s

415 of the Indian Penal Code. In this case before hand fact somewhat appears to be that a recital was made in the sale deeds that the land is free

from all encumbrances and the electricity dues which was found to be outstanding to the tune of Rs. 1,64,607/- has been taken to be to the

encumbrances and on that premise the Court did find that the prima facie case is made out u/s 417 of the Indian Penal Code. Normally one

understands that anything which interferes with the unrestricted right of the proprietor as if then existed would be an encumbrance upon the land. In

this situation, if the electricity dues outstanding on account of consumption of the electric energy against the occupier of the premises situated over

the land in dispute creates a charge upon the land then certainly it would be an encumbrances over the land. Therefore, the prime question falls for

consideration as to whether electricity dues hold any charge over the property or not? In order to get answer I need not to go to rival contentions

made on behalf of the parties as the matter seems to have been settled by the Apex Court in a case of Isha Marbles Vs. Bihar State Electricity

Board and Another, where issue falls for consideration as to whether auction purchaser (subsequent transferee) is liable to discharge the arrears of

electricity charges in respect of electricity supplied to that premises. It was held that when there was contract in between the erstwhile consumer

with the Board, the Board cannot seek the enforcement of contractual liability against the third party and held that electricity dues does not hold

charge over the property. In this view of the matter it cannot be said that outstanding dues of the charges of the electricity consumed on the

premises situated on the land in dispute was an encumbrances over the property and as such any statement made in the sale deed that the land is

free from all encumbrances, the petitioner cannot be said to have made a false statement so far it relates to electricity dues.

9. Consequent upon it when the matter is examined from another angle one can take notice that u/s 415 of the Indian Penal Code a person is said

to have cheated when he by deceiving another person fraudulently or dishonestly induces the person so deceived to deliver any property to him or

to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or

omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or

property.

10. There is no doubt that it is the case of the complainant that on being misrepresented by the complainant that the land is free from all

encumbrances he got the land purchased, though electricity dues worth Rs. 1,64,607/- was outstanding from before. But in view of the ratio laid

down by the Supreme Court as has been referred to above, when subsequent purchaser cannot be held liable for payment of the electricity dues

outstanding from before, the complainant cannot be said to have suffered any damage or harm to his property, body, mind or reputation.

11. Under the circumstances, I do find that the impugned order suffers from illegality amounting to abuse of the process of law and hence, it is set

aside.

12. In the result, this application is allowed.