

Uttamchand Verma Vs State Of M.P.

Court: MADHYA PRADESH HIGH COURT

Date of Decision: Jan. 13, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 401](#), [Section 197](#), [Section 200](#) - High Courts powers of revision - Prosecution of Judges and public servants - Examination of compl

Hon'ble Judges: Jarat Kumar Jain

Bench: Single Bench

Judgement

1. This order shall govern disposal of CRR Nos. 1498/2015 and 50/2016.

2. These revision petitions have been filed u/s. 397 read with Section 401 of the Cr.P.C. against the order dated 7.10.2015 passed by Eighth

Additional Sessions Judge (ASJ), Indore in S.T. No.945/2014 whereby framed the charges against the applicants u/s. 420, 467, 468 and 471 of

the IPC.

3. Brief facts of the case are that Smt. Varsha was the owner and occupier of agricultural land bearing Survey No.358/3/2 admeasuring 10.4

Acres situated at Chhota Bangarda, Indore. Out of the said land, Smt. Varsha sold 9 Acres of land vide registered saledeed dated 1.8.1996 to the

applicant Ramkishan, President of Shikshak Nagar Grih Nirman Sahkari Sanstha Maryadit, Indore. After execution of the sale-deed, 1.4 Acres of

land remained with Smt. Varsha. On 17.3.1997, the Joint Director, Town & Country Planning, Indore sanctioned the layout plan of colony

proposed to be developed upon aforesaid 9 Acres of land. Thereafter, a revised layout plan submitted by the society was sanctioned by the

applicant-P.N. Mishra, the then Joint Director, Town & Country Planning, Indore on 25.4.1998. In the year 2000, Narendra Singh, husband of

Smt. Varsha filed a complaint on behalf of his wife Smt. Varsha stating that the applicant-Ramkishan hatched the conspiracy with applicant-P.N.

Mishra, the then Joint Director, Town & Country Planning, Indore and got sanctioned the map of Smt. Varsha's land i.e. 1.4 Acres. In the map,

plot No. 22, 23, 32, 37, 55, 75 and 273 are shown and subsequently, these plots were mortgaged with Sub Divisional Officer (Revenue) and the

same were also mortgaged with Municipal Corporation, Indore. Thus, the applicants have cheated the complainant Smt. Varsha as well as

Government departments.

4. After enquiry, learned Magistrate vide order dated 20.7.2000 took cognizance against the applicants for the offence u/s. 420, 466, 468, 471 of

IPC and the case was committed to the Court of Sessions. Considering the material on record, learned Eighth ASJ, Indore framed the charges

against the applicants for the aforesaid offences. Being aggrieved, applicants have filed these revisions.

5. Learned counsel for the applicant-Ramkishan submits that there is a dispute of boundary between the complainant and the applicant. As per

applicant, complainant has encroached upon 0.25 Acre of land. For restoration of said land, the society had filed Civil Suit No.60-A/2009,

however, the said suit was dismissed by the Court. Under the provisions of Right to Information Act, applicant has sought information in respect of

encroachment by the complainant and his wife Smt. Varsha. As per information dated 24.6.2008, 0.04 Acre of land has been found to be less

from the total land of 9 Acres purchased by the society. Thus, it is a boundary dispute between the applicant and complainant. There is nothing on

record to presume that the applicant has dishonestly induced the complainant to deliver any property or prepared forged documents with an

intention of cheating. In such circumstances, there is no ground for framing the charge against the applicant-Ramkishan. For this purpose, he placed

reliance on the judgment of Apex Court in the case of Mohd. Ibrahim V/s. State of Bihar : (2009) 8 SCC 751.

6. Learned counsel for the applicant-P.N. Mishra submits that the original layout plan was sanctioned by one Shri Upadhyaya, the then Joint

Director, Town & Country Planning, Indore. In the revised layout plan, the numbers of some plots were changed, but so far as the area of land is

concerned, it is the same. Hence, the allegation that in the revised layout plan, additional land which belonged to complainant was included, is

incorrect. It is further submitted that the applicant has sanctioned the revised layout plan while he was discharging his official duty, therefore,

without prior sanction u/s. 197 of the Cr.P.C., the Court below was not competent to take cognizance against the applicant. Even if the complaint

and the statement recorded u/s. 200 of Cr.P.C. are accepted to be true in entirety, it does not disclose the ingredients of any offence of forgery or

cheating. Without prior sanction u/s. 197 of Cr.P.C., the Court cannot take cognizance. For this purpose, learned counsel for applicant placed

reliance on the judgment of Apex Court in the case of State of Bihar V/s. Kamla Prasad : (1998) 5 SCC 690; Abdul Wahab Ansaari V/s. State of

Bihar : AIR 2000 SC 3187; Rakesh Kumar Mishra V/s. State of Bihar : (2006) 1 SCC 557; Sankaran Moitra V/s. Sadhna Das : (2006) 4 SCC

584; and Prof. N.K. Ganguly V/s. CBI : 2016 Cri. L.J. 371.

7. On the other hand, learned counsel for the respondent/complainant submits that at the time of framing charge, the Court has to consider the

documents which are filed along with the complaint/final report. At this stage, the documents filed by the defence cannot be considered. Even if

there is grave suspicion, the Court should frame the charge. There is documentary evidence on record that the applicants have hatched the

conspiracy and got sanctioned the layout plan and map of land which is owned by the complainant Smt. Varsha. Not only this, they have

mortgaged the complainant's land with Sub Divisional Officer (Revenue) and also with the Municipal Corporation, Indore. Thus, learned ASJ has

rightly framed the charge against the applicants. It is further submitted that so far as prior sanction u/s. 197 of Cr.P.C. is concerned, the applicant-

P.N. Mishra had moved an application before the Magistrate, but the same was dismissed on 21.5.2004. The said order has not been challenged

by the applicant-P.N. Mishra in the higher Court, hence the said order has attained finality. The Apex Court in the case of Inspector of Police V/s.

Battenapatla Venkata Ratnam : (2015) 13 SCC 87 has held that the purpose of sanction for prosecution is not to shield the corrupt officers but to

protect the honest officials from malicious and vexatious prosecution. Thus, there is no substance in these revisions and the same be dismissed.

8. After hearing learned counsel for the parties, perused the record.

9. The question arises for consideration is, whether the material on record prima facie constitutes any offence against the applicants. The contention

of applicants is that, even if the allegations made in the complaint and FIR are accepted to be true in entirety, they do not disclose ingredients of

any of the offence of forgery or cheating.

10. Apex Court in the case of Mohd. Ibrahim (Supra) has held as under :

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories :

1. 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.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful

authority, after it has been made or executed by either himself or any other person.

3. 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 by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised 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 document"", if (i) he made or executed a document claiming to be someone else or authorised by

someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of

his senses.

11. Keeping in view the above analysis I have considered as to whether the applicants have made false documents. The complainant Smt. Varsha

sold 9 Acres of agricultural land to applicant-Ramkishan, President of Shikshak Nagar Grih Nirman Sahkari Sanstha Maryadit vide registered

sale-deed dated 1.8.1996. In the sale-deed the boundaries of the sold land is mentioned that on the Western side of land, there is land bearing

Survey No.353/3/2 area 1.40 Acres belongs to seller i.e. Smt. Varsha. After purchasing the land, the society has applied for diversion of land and

for sanction of layout plan for development of residential colony. The order dated 5.11.2003 passed by SDO (Revenue) mentions that on

24.9.1998, a diversion order was passed in respect of sold land as well as the land belonging to complainant Smt. Varsha. Therefore, the SDO

sought the sanction for review of its order and thereafter, he passed the order, which reads as under : ""VERNACULAR MATTER OMITTED

From the aforesaid it is clear that the applicant-Ramkishan has not only applied for diversion of land which is sold to them, but also for the land

which belongs to complainant-Smt. Varsha.

12. After the diversion of land, applicant-Ramkishan applied for sanction of layout plan for development of residential colony to Town & Country

Planning Department, Indore. As per map submitted before the Competent Authority, Urban Ceiling, Indore, signed by complainant Smt. Varsha,

the length of four sides of the plot which was sold by her was as under :

North - 670 ft.

South - 744 ft.

East - 568 ft.

West - 541 ft.

Subsequently, a revised map and plan was sanctioned by the applicant-P.N. Mishra, the then Joint Director, Town & Country Planning, Indore, in

which, the length of North side and South side have been increased. In the earlier map, North side was 670 ft. and South side was 744 ft. which

was increased to 695 ft. and 762.6 ft. Thus, in the revised sanctioned map and plan, 1.40 Acres of land of complainant has also been included.

13. When the above fact came to the knowledge of complainant, she had made a complaint against the applicants. The complaint was dealt with

by the Officer-in-Charge of Colony Cell, Municipal Corporation, Indore and after measurement by Nazul Officer it was found that the layout and

plan has also been sanctioned for Survey No.110 which is a way and for the land of complainant. Hence, on 13.11.2000, a letter was sent to the

Joint Director, Town & Country Planning, Indore to pass a revised layout plan and send the copy of such revised layout plan to Municipal

Corporation. Even after receiving such letter, the Joint Director, Town & Country Planning, Indore has not revised the layout plan, therefore, on

6.1.2004, the SDO (Revenue), Indore sent a letter to the Joint Director, Town & Country Planning, Indore for rejection of earlier layout plan.

14. From these documentary evidence, it is clear that in the revised map, the land belongs to complainant was included and a diversion order was

obtained from the SDO (Revenue) and thereafter a layout plan has also been got sanctioned from the Town & Country Planning Department,

Indore and when this fact was disclosed, even the then Joint Director-P.N. Mishra has not taken any action to correct layout plan.

15. From these facts it is also clear that dishonestly or fraudulently diversion order and layout plan got sanctioned. Thus, the applicant-Ramkishan,

the then President of the society is responsible. It is also to be seen that without connivance of the then Joint Director of Town & Country Planning,

it was not possible for the applicant-Ramkishan to get sanction of revised layout plan of the colony for the land which belongs to the complainant.

16. On these documentary evidence, at this juncture, it is prima facie proved that the applicants have made false documents.

17. Now, I have considered the objection in regard to sanction u/s. 197 of Cr.P.C. The applicant-P.N. Mishra had raised this objection by filing

an application before the Magistrate and the Magistrate vide order dated 21.5.2004 has dismissed the application holding that whether the

applicant is entitled for protection u/s. 197 of the Cr.P.C. shall be decided at the time of judgment.

18. I am of the view that it is not proper to decide the question of protection u/s. 197 of Cr.P.C. at the time of judgment. Hence, the applicant-

P.N. Mishra, if so advised, may file an application before the trial Court in this regard.

19. With the aforesaid, I am of the view that at this juncture, it cannot be held that the material on record prima facie does not constitute any

offence against the applicants. Thus, there is no substance in these revisions and the same are hereby dismissed. Let a copy of this order be sent to

the trial Court for information. Let a copy of this order be retained in the connected case.