
(2007) 07 PAT CK 0170

Patna High Court

Case No: Criminal Miscellaneous No. 25790 of 2006

Gita Devi Budhia and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: July 11, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 482
- Penal Code, 1860 (IPC) - Section 420

Citation: (2008) 1 PLJR 422

Hon'ble Judges: Madhavendra Saran, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Madhavendra Saran, J.

Heard learned counsel for the parties. This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order dated 7.3.2006 passed by the learned Sessions Judge, Gaya in Cr. Rev. No. 9/ 2005 by which he has set aside the order dated 3.1.2005 passed by Sri R.K. Mishra, Judicial Magistrate, 1st Class, Gaya in Complaint Case No. 736/2004 corresponding to Trial No. 612/2004 wherein the learned Magistrate had dismissed the complaint finding no prima facie case u/s 420 of the Penal Code made against the petitioners. There is further prayer in the supplementary affidavit filed on behalf of the petitioners that consequent to the revisional order dated 7.3.06 Sri S.K. Shukla, Judicial Magistrate, 1st Class, Gaya has passed order dated 1.11.2006 taking cognizance against the petitioners and therefore the same be also quashed.

2. It appears that O.P. No. 2/ complainant, Kumar Bikramendra Pratap Singh filed complaint case No. 736/04 on 8.7.2004 in the Court of C.J.M., Gaya with the allegations that the accused persons/petitioners belonged to a prosperous family of

Ranchi and accused No. 1 Sanwarmal Budhia was introduced to the complainant by one of his closed friends named, Paras Nath Dubey in the year 1995. The accused No. 1, Sanwarmal Budhia in order to sell his property called as Lal Kothi and a piece of adjoining land measuring about 54 decimals situated at Mohallah Gaiwal Bigha near Circuit House, Gaya approached complainant and his friend Birendra Kumar Singh at Gaya in the month of December, 1997. He informed that the property being 8.75 acre in area including Lal Kothi was purchased by his elder brother Atmaram Budhia through a registered sale deed in the year 1948 from Kumar Amar Singh son of Captain Maharaj Kumar Gopal Sharan Singh of Tekari and after mutual partition in the Budhia family 8.20 acres were sold and the balance 54 decimals was gifted to accused Nos. 2, 3 and 4, that is the petitioners, by registered deed of gift in the year 1972. He further informed that the petitioners have authorised him to sell the property by executing general power of attorney. Accused No. 1 also showed certified copy of the documents relating to the title, mutation and partition of the same in the Budhia family. On 27.12.97 accused No. 1 agreed to sale the aforesaid property on his behalf and on behalf of the petitioners to Sri Birendra Kumar Singh who is the complainant's friend at the complainant's house at the rate of 1.50 lac per Katha and received a sum of Rs, 2.00 lacs from Ashwini Kumar Singh who is nephew of Birendra Kumar Singh. It is further said that in January, 2000 the accused No. 1 again requested Sri Birendra Kumar Singh to pay a sum of Rs. 3.00 lacs in advance for his daughter's marriage but he refused and stated that he wanted to make payment of the remaining amount at the time of execution and registration of sale deed. Accused No. 1 then approached the complainant and upon his advice Birendra Kumar Singh paid a sum of Rs. 3.00 lacs to accused No. 1 against a receipt on 8.2.2000. It is alleged that even after lapse of months, the accused persons did not turn up to execute the sale deed then legal notice was given and ultimately Birendra Kumar Singh filed title suit No. 124/2001-308/2000 against all the accused persons which is pending before Subordinate Judge, 2nd, Gaya for specific performance of contract for execution and registration of sale deed.

3. It is alleged that accused Pushpa Devi and Gita Devi appeared in the title suit and filed their written statement stating therein that accused No. 1 was not holder of their power of attorney and had no right to enter into negotiation on their behalf and had not been authorised by them to receive any amount as advance. It is thus said that accused persons made false representation before the complainant and cheated him by Rs. 3.00 lacs which is an offence u/s 420 of the Penal Code.

4. It appears that complainant was examined on S.A. and during enquiry u/s 202 of the Code three witnesses were examined and the learned Magistrate after enquiry found that no prima facie case has been made out against the petitioners u/s 420 of the IPC vide order dated 3.1.2005 dismissed the complaint case No. 736/2004. Against the said order of dismissal the complaint filed Cr. Rev. No. 9/2005 before the Sessions Judge, Gaya which was allowed by order dated 7.3.2006 and in the light of observation given in the order the learned Magistrate by order dated 1.11.06 took

cognizance against the petitioners and issued summons against them for appearance.

5. It was submitted on behalf of the petitioners that allegations made in the complaint petition did not constitute the offence of cheating. The complainant is a complete alien person. He has no right to file such complaint petition. It was further pointed out that everything is oral and there is no paper to support the transaction.

6. Learned counsel for O.P. No. 2 supported the impugned order and submitted that present application is not maintainable. He also pointed out that prayer made in the supplementary affidavit cannot be entertained.

7. Now the position is that present complaint case has been filed by Kumar Bikramendra Pratap Singh. It is admitted position that negotiation for sale of the property in question was settled between the accused Sanwarmal Budhia and Birendra Kumar Singh. Birendra Kumar Singh has already filed title suit No. 308/2000 in the Court of Principal Judge, Gaya against the present petitioners and accused No. 1 for specific performance of contract. The said suit was filed in the year 2000. Present complaint by friend of Birendra Kumar Singh was filed in the year 2004. In the complaint petition Birendra Kumar Singh has not been cited as a witness. It appears from the impugned order of the learned Magistrate dated 3.1.05 that no any agreement with regard to any sale or purchase of any property was placed on record by the complainant. It is further admitted position that the complainant is an alien person. The complainant not being the victim with whom no agreement was entered into has no right to file such case.

8. It was rightly argued on behalf of the petitioners that even if the allegations made in the complaint is accepted to be true and correct petitioners cannot be said to have committed any offence of cheating. According to learned counsel the dispute involved in the complaint is of a civil nature and none of the acts committed by the petitioners give rise to any criminal liability. Learned counsel in support of his contention placed reliance on a decision reported in [Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another](#), .

9. In the aforesaid facts and circumstances, I find that the allegation made in complaint does not disclose any offence u/s 420 of the Penal Code. Thus no case of cheating is made out and cognizance taken by the Magistrate consequent to the order passed by the learned Sessions Judge in Cr. Rev. No. 9/2005 against the petitioners for offence u/s 420 of the IPC is an abuse of the process of the court and interference by this court is expedient in the interest of justice.

10. For the aforesaid reasons, the impugned order dated 7.3.2006 passed by the learned Session Judge, Gaya in Cr. Rev. No. 9/2005 is hereby quashed. Consequently, the order dated 1.11.06 passed by the learned Magistrate in the said complaint case whereby and whereunder he has taken cognizance u/s 420 of the Penal Code against the petitioners is hereby quashed. This application is, accordingly, allowed.