

Navin Kumar Rai vs Surendra Singh on 14 February, 2024

Author: Sanjay Karol

Bench: Sanjay Karol, B.R. Gavai

2024 INSC 116

NON-RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 890-891 OF 2024
(Arising out of Special Leave Petition(Crl.)Nos.5531-32 of 20

NAVIN KUMAR RAI

...

VERSUS

SURENDRA SINGH AND ORS. ETC. ETC.

...

RES

JUDGMENT

SANJAY KAROL, J.

Leave granted.

2. These appeal(s) call into question the correctness of a common judgment and order dated 24th March 2022 passed by the High Court of Jharkhand at Ranchi, in W.P(s)(Crl.)Nos. 02 of 2021 and 47 of 2021, by which the High Court quashed Giridih(T)P.S.Case No.217 of 2020 @ FIR No.04797769 dated 5th November, 1 |Crl.Appeal No...../2024 @SLP(Crl)Nos.5531-32 of 2022 2020, for the offences under Sections 420, 467, 468, and 471 of the Indian Penal Code, 18601, pending before the learned Chief Judicial Magistrate, Giridih.

Brief Background

3. One Purushotam Kumar (A-1) forged a Power of Attorney² on the basis of which transfer of certain land in favour of Bikash Kumar Singh, S/o Surendra Singh (A-2), Surendra Singh (A-3) with the latter witnessing the sale transaction stood registered with the Registrar having competent jurisdiction at a place known as Giridih. The original owner Naveen Kumar Rai, having learnt of

such an illegal transaction instituted proceedings before a Civil Court seeking a declaration of the transaction to be null and void. Independently, the District Deputy Registrar, Giridih initiated an inquiry in terms of Circular No.15/R(Miscellaneous)Public Applications-04/163 dated Nil resulting in the passing of an order, prima facie holding A-1 to have forged the PoA impersonating Naveen Kumar Rai, leading to the execution of a sale deed which document also stood registered with the very same Authority. Resultantly, on the basis of such an inquiry both the documents i.e., the PoA and the sale deed stood cancelled. Further, on the basis of the communication dated 15th October, 2020 that of the District Deputy Registrar, Giridih, FIR bearing the above-noted particulars stood registered by Sahdeo Mehra, against seven accused persons including A-1, A-2 and A-3. 1 IPC for short 2 PoA 3 'Circular' 2 |Crl.Appeal No...../2024 @SLP(Crl)Nos.5531-32 of 2022

4. Assailing the said action of initiation of criminal proceedings, the accused persons preferred separate writ petitions titled Surendra Singh & Ors. v. State of Jharkhand and Ors; and Purushotam Rai @ Purushotam Kumar Rai @ Purushotom Kumar Rai v. State of Jharkhand and Ors., which stood disposed of vide the judgment impugned before us.

5. A perusal of the impugned judgment shows the FIRs to have been quashed on the following counts:-

(a) The original owner had already initiated civil proceedings;

(b) No act of "criminality" can be said to be "made out";

(c) Initiation of criminal prosecution would amount to abuse of the process of Court ("perhaps meant as law");

(d) The alleged action "appears" to be "a civil wrong" in relation to which, "with respect to the same cause of action" the title suit is pending.

(e) For ready reference the operative portion of the judgment is extracted as under:-

"...However, in case, if it finds that the criminality is not made out and the criminal prosecution has been initiated, it will amount to an abuse of the process of Court. For the same cause of action and for cancellation of the sale deed as well as the power of attorney, the Title Suit has already been filed earlier by the intervener. It is well settled that any registered document can be annulled by way of filing the civil suit, which is not in the domain of the Deputy Commissioner to cancel the sale deed. Thus, it appears that for a civil wrong, the criminal case has been initiated against the petitioners and for the same cause of action, the title suit is pending.

3 |Crl.Appeal No...../2024 @SLP(Crl)Nos.5531-32 of 2022 In view of the above facts and reasoned analysis, the Giridih(T) P.S. Case No.217 of 2020 for the alleged offence under Sections 420, 467, 468 and 471 of the Indian Penal Code, pending in the Court of learned Chief Judicial Magistrate, Giridih, is hereby, quashed..."

6. In our considered view, the premise on which the Court proceeded in quashing the FIR is on the wrong assumption, interpretation, and application of the law.

7. It is argued before us that the Circular stands quashed vide Judgment dated 11th January, 2024 in W.P.(C)No.3103 of 2020 titled as Vinod Shankar Jha @ Binod Shankar Jha v. State of Jharkhand and Ors. with connected writ petitions.

8. Be that as it may. We are of the opinion that such a decision would have no bearing on the merits of the instant appeals. This we say so for the reason that the Circular primarily envisaged action for cancellation of the document by the authorities itself, whereas the power to set in motion the criminal machinery is totally independent and distinct from the cancellation of registration of the document.

9. We may note that Section 82 and 83 of the Registration Act, 1908, empowers the Inspector General; the Registrar; or the Sub-Registrar, in whose territories, district, or sub-district, the offence stands committed to commence prosecution. For facility of reference, Sections 82 and 83 are reproduced herein below:-

4 |Crl.Appeal No...../2024 @SLP(Crl)Nos.5531-32 of 2022 “82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment.-Whoever-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

83. Registering officers may commence prosecutions.

(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub- district, as the case may be, the offence has been

committed. (2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.”

10. It is not in dispute that the communication dated 15th October, 2020 resulting in registration of the FIR was that of a competent authority i.e., the Sub-Registrar of the concerned district. In any event, such a power is the result of an action only in reference to and in connection with the Act and not the general provisions of IPC in relation to other penal provisions for which the FIR actually stood registered.

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11. Given that the FIR against which the petition under Section 482 Code of Criminal Procedure⁴ had been preferred were offences contained only in the IPC, what the Court was required to consider was whether any of the well-established grounds that are enumerated in judgments of this Court viz., State of Haryana v. Bhajan Lal⁵; Neeharika Infrastructure v. State of Maharashtra⁶ and reiterated in Peethambaran v. State of Kerala⁷, were made out or not. We find the High Court to have referred to the detailed discussion in Vineet Kumar and Ors. v. State of Uttar Pradesh and Anr.⁸ but, however, discussion is conspicuously absent as to how the aspect of “criminality” is not present. It is all too well settled that while exercising such inherent powers what is required to be examined is only the prima facie existence of the offence sought to be quashed. For the offence of cheating, for instance, this Court has enumerated certain factors to be considered in Vijay Kumar Ghai v. State of West Bengal⁹.

12. The Court’s observation that because there is no order of the Inspector General, “in spite of that this FIR has been lodged by the District Sub-Registrar, Giridih, which is against Section 83 of the Registration Act, 1908” as demonstrated (supra) is completely divorced from the text of the Section itself, for, it provides, as 4 “Cr.P.C.” 5 1992 Suppl.(1) SCC 335 6 2021 SCC OnLine 315 7 2023 SCC OnLine 553 8 (2017) 13 SCC 369 9 (2022) 7 SCC 124 6 |Crl.Appeal No...../2024 @SLP(Crl)Nos.5531-32 of 2022 reproduced above, that a prosecution may be lodged by or with the permission of the Sub-Registrar in whose territory the offence has been committed.

13. It is for both the above reasons that the exercise of power under Section 482 Cr.P.C., in the attending facts and circumstances, was unjustified and entirely unsustainable. The FIR and the consequent case, quashed vide the impugned judgment stand restored to the file of the concerned district Court. All consequential steps may follow including the Trial Court commencing proceedings as per law. The appellant is directed to appear before the Court on 01.03.2024 at 10.00 a.m. Once such presence is registered with the Court and the proceedings begin, we direct the trial to be expedited and, if not inconvenient and otherwise, possibly conduct the same on a day-to-day basis, minimizing adjournments so as to ensure that the proceedings are taken to the lawful conclusion at the earliest.

14. With the above observations, the Criminal Appeals are allowed. Pending applications(s), if any, shall stand closed.

.....J. (B.R. GAVAI)J. (SANJAY KAROL) New Delhi February 14, 2024
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