

Md.Ibrahim & Ors vs State Of Bihar & Anr on 4 September, 2009

Equivalent citations: 2010 AIR SCW 405, 2010 (2) AIR JHAR R 670, AIR 2010 SC (SUPP) 347, (2010) 4 KCCR 222, (2009) 2 CRILR(RAJ) 746, (2009) 67 ALLCRIC 679, 2009 (3) SCC (CRI) 929, 2009 CRILR(SC&MP) 746, 2009 CALCRILR 2 832, (2009) 4 CHANDCRIC 264, (2009) 3 ALLCRIR 3072, (2009) 4 EASTCRIC 6, (2009) 4 CURCRIR 213, (2009) 12 SCALE 250, 2009 (8) SCC 751, (2009) 4 CRIMES 13, (2009) 83 ALLINDCAS 58 (SC), (2009) 4 RECCRIR 369, (2010) 1 GUJ LH 184, (2009) 2 ALD(CRL) 775

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Bench: R. M. Lodha, R. V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1695 OF 2009
[Arising out of SLP [Crl.] No.6211 of 2007]

Md. Ibrahim & Ors.

... Appellants

Vs.

State of Bihar & Anr.

... Respondents

JUDGMENT

R.V.RAVEENDRAN, J.

Leave granted. Heard learned counsel for the parties.

2. Second respondent herein filed a complaint against appellants 1 to 3 (accused 1 to 3) and two others before the Chief Judicial Magistrate, Madhubani, alleging that he was the owner of Katha No. 715 Khasra No.1971 and 1973 admeasuring 1 bigha, 5 Katha and 18 Dhurs; that the first accused who had no connection with the said land and who had no title thereto, had executed two registered sale deeds dated 2.6.2003 in favour of the second accused in respect of a portion of the said land measuring - 8 Khatas and 13 Dhurs; and that the third, fourth and fifth accused being respectively

the witness, scribe and stamp vendor in regard to the sale deeds had conspired with accused 1 and 2 to forge the said documents; and that when he confronted accused 1 and 2 about the said forgery, they abused him and hit him with fists and told him that he can do what he wanted, but they will get possession of the land on the basis of the said documents.

3. The learned Magistrate by order dated 19.7.2003 took cognizance of the offences under sections 323, 341, 420, 467, 471 and 504 of Indian Penal Code (for short, 'the Code') and referred the complaint for investigation under section 156(3) of the Code of Criminal Procedure (for short, 'Cr.P.C.'). On the basis thereof a First Information Report was registered on 10.10.2003 with Pandaul Police Station. After investigation, a charge sheet came to be filed on 4.9.2004. The accused applied for discharge. According to the first accused, the complainant and first accused were cousins; that Badri Mian (paternal grandfather of the complainant) and Mithu Mian (maternal grandfather of first accused) were brothers and that they were the owners of plot nos.1973 and 1971; that the said plots was inherited by Badri Mian's son (father of complainant) and by Muthu Mian's children, one of whom was Girja, mother of the first accused; that as per a family arrangement, a portion of the said plots came to the share of Girja and that portion was in the possession of her husband who got it mutated in his name and was paying land revenue; and that after his death, the said land came into the possession of her son - the first accused; that his name was entered in place of his father, and he was paying land revenue in regard to the said portion of land; and that he bonafide sold a portion of the land measuring 8 Khatas and 13 Dhurs to the second accused; that the sale deeds were valid, and that the complainant filed a false complaint only to harass him. The other accused denied any collusion or complicity in any offence. It was also contended that the allegations by the complainant even if accepted to be true, would only give rise to a civil dispute and did not constitute any offence punishable under the Code or any other law.

4. The prosecution opposed the said application contending that the investigation showed that the plot sold was a part of land allotted to Badri, grandfather of complainant, and the first accused did not produce any documents in support of his title; and that therefore the Investigating Officer had submitted a charge-sheet against the accused for the aforesaid offences relating to preparation of false sale deeds.

5. The learned Sub-Divisional Magistrate, Madhubani, by order dated 14.12.2005 rejected the application for discharge holding that there was sufficient material for framing charges. The accused thereafter filed an application under section 482 Cr.PC before the Patna High Court for quashing the order dated 14.12.2005. In the meanwhile charges were framed against the accused. The High Court dismissed the petition observing that the learned Magistrate had found sufficient material showing the complicity of the accused in the crime. The said order is under challenge in this appeal by special leave.

6. The question that therefore arises for consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (sections 467 and 471) or cheating (section 420) or insult (section 504) or wrongful restraint (section 341) or causing hurt (section 323) and there was no

other material to show any offence and therefore, their application ought to have been accepted.

7. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

8. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in section

463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record--

First.--Who dishonestly or fraudulently -

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or

a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

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.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

10.1) 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.

10.2) 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.

10.3) 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.

11. 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 practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. 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 complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with 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 authorised 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 bonafide 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 documents', 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 authorised 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 as defined under section 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.

Section 420 IPC

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to

do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In *Dr. Vimla vs. Delhi Administration* - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss

to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in State of UP vs. Ranjit Singh - 1999 (2) SCC 617.

16. The Penal Code however defines 'fraudulently', an adjective form of the word 'fraud', in section 25, as follows : "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows : "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly". To 'defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (sec.206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (sec. 207).
- (iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (sec.239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253)
- (vi) Fraudulent acts relating to stamps (sec. 261-261)
- (vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)
- (viii) Cheating (sec. 415 to 420)
- (ix) Fraudulent prevention of debt being available to creditors (sec. 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).
- (xi) Forgery making or executing a false document (sec. 463 to 471 and 474)
- (xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)
- (xiii) Fraudulently going through marriage ceremony (sec.496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law. Section 504 of Penal Code

17. The allegations in the complaint do not also made out the ingredients of an offence under section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation in the complainant is that when he enquired with accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by first appellant in favour of the second appellant.

Conclusion

18. The averments in the complaint if assumed to be true, do not make out any offence under sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under section 341 and causing hurt under section 323 of IPC.

19. For the reasons stated above, the appeal is allowed in part. The order of the High Court is set aside. The order dated 14.12.2005 of the learned Sub-Divisional Magistrate is quashed insofar as offences under sections 420, 467, 471 and 504 IPC. Consequently, the charges framed under those sections are also quashed. The order dated 14.12.2005 and the charges in so far as the offence under sections 323 and 341 IPC are left undisturbed. The appeal is allowed in part accordingly.

.....J [R. V. Raveendran]J [R. M. Lodha] New Delhi;

September 4, 2009