

Sardar Ravi Inder Singh & Anr.

v.

State of Jharkhand & Anr.

(Criminal Appeal No. 2807 of 2024)

08 July 2024

[Abhay S. Oka* and Ujjal Bhuyan, JJ.]

Issue for Consideration

High Court whether erred in dismissing the writ petition filed by the appellants for quashing the complaint filed by the second respondent stating that the contentions raised were rejected in an earlier criminal revision application, which cannot be re-agitated and therefore, there was a bar under Section 362 of the Cr. PC.

Headnotes[†]

Quashing – Code of Criminal Procedure, 1973 – s.362 – When not applicable – Suit for specific performance of the agreements for sale filed against the appellants by the second respondent and his brother was later withdrawn in view of the out-of-court settlement – Effect on complaint filed by the second respondent – Writ petition filed by the appellants for quashing the complaint was dismissed by the High Court on the ground that there was a bar u/s.362 as the contentions raised were rejected in an earlier criminal revision application, which cannot be re-agitated – Correctness:

Held: High Court lost sight of the fact that it was a substantive petition under Article 226 of the Constitution of India for quashing the complaint on the ground that the continuation of the same was an abuse of the process of law – The second prayer in the writ petition could have been hit by s.362, as the prayer was to quash the order on the application for discharge – But the first prayer was for quashing the complaint itself – Therefore, dismissing the first prayer in the writ petition on the ground of the bar of Section 362 of the Cr.PC was erroneous – Furthermore, the second respondent filed application in the pending suit seeking withdrawal thereof categorically stating that in view of the out-of-court settlement with the appellants, he would not lay any claim in any manner whatsoever over the suit properties – He

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never disputed the correctness of what was stated in the said application, and the order passed permitting the withdrawal of the suit – Thus, he gave up his claim under the agreements and therefore, continuing the complaint would be nothing but an abuse of the process of law – A case was made out to quash the complaint – High Court fell in error in refusing to do so – Complaint quashed. [Paras 15, 16]

Case Law Cited

State of Orissa v. Debendra Nath Padhi [\[2004\] Suppl. 6 SCR 460](#) : (2005) 1 SCC 568 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Constitution of India. Penal Code, 1860

List of Keywords

Quashing, Agreements for sale; Suit for specific performance; Suit withdrawn/Withdrawal of suit; Out-of-court settlement; Application for discharge; Same contentions rejected earlier; Giving up claim under the agreements; Continuing the complaint would be abuse of process of law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2807 of 2024

From the Judgment and Order dated 17.07.2017 of the High Court of Jharkhand at Ranchi in WP No.243 of 2016

Appearances for Parties

Krishnan Venugopal, Sr. Adv., M/s. Legal Options, Ms. Sonia Dube, Shatadru Chakraborty, Ms. Kanchan Yadav, Ms. Surbhi Anand, Krishnan Agarwal, Tanishq Sharma, Ms. Saumya Sharma, Advs. for the Appellants.

Saurabh Kumar, Ms. Rose Maria Sebi, Faisal Sherwani, Rajiv Shankar Dwivedi, Jayant Mohan, Ms. Meenakshi Chatterjee, Ms. Adya Shree Dutta, Advs. for the Respondents.

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1. Leave granted.

FACTUAL ASPECTS

2. In substance, the appellants' prayer in this appeal is to quash the criminal proceedings of a complaint filed by the second respondent, Ganesh Kumar Agiwal. The present appellants are the trustees of Sardar Bahadur Sir Inder Singh (Personal Estate) Trust (for short, "the Trust"). The present appellants and one Gurdev Singh, as the trustees of the said Trust, entered into two separate agreements for sale dated 29th January 2001 (for short "the agreements") in favour of the second respondent and one Uma Shankar Agiwal. In the agreements, the second respondent and Uma Shankar were described as the partners of Sri Mahakaleshwar Enterprises (for short, "the firm"). They entered into the agreements on behalf of the firm. Uma Shankar is the real brother of the second respondent.
3. The second respondent and his brother Uma Shankar filed a suit for specific performance of the agreements against the appellants in the year 2005. On 8th May 2007, Uma Shankar filed an application in the pending suit stating that the entire advance of Rs.28,01,000/- paid by him and the second respondent has been received back from the appellants by way of a Demand Draft, and in addition, the second respondent and Uma Shankar received a sum of Rs.5,00,000/- by a pay order. Therefore, Uma Shankar prayed for permission to withdraw the suit.
4. On 28th June 2007, the second respondent filed a complaint bearing C/1 Case No.1027 of 2007 under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'the Cr. PC') against the appellants and others before the Chief Judicial Magistrate, Jamshedpur, alleging the commission of offences punishable under Sections 420, 406, 424 and 120-B of the Indian Penal Code, 1860 (for short, 'the IPC'). The foundation of the complaint was the sale transaction of property in the form of the agreements. In the complaint, Uma Shankar was shown as the first accused, and the present appellants were shown as the second and third accused. In the complaint, the second respondent

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referred to the application dated 8th May 2007 for withdrawing the suit filed by Uma Shankar. He alleged that this was done without his knowledge by Uma Shankar in connivance with the appellant. He alleged that he had paid the entire advance to the appellants. The allegation is that the appellants failed to execute the sale deeds notwithstanding the agreements. Cognizance was taken by a criminal Court based on the above complaint on 19th July 2007. It must be noted here that the second respondent filed, more or less, a similar complaint under Section 200 of the Cr.PC against the appellants on 31st July 2007. The second respondent's subsequent complaint bearing Case No.1248 of 2007 was dismissed by the learned Judicial Magistrate by the order dated 14th September 2009, in the exercise of power under Section 203 of the Cr.PC by holding that no case was made out against the appellants.

5. Uma Shankar was transposed as a defendant in the suit for specific performance, who filed a written statement contending that the entire consideration paid to the appellants with compensation for delayed payment has been returned. On 11th November 2008, the second respondent filed an application in the pending suit, contending that there was a settlement between the parties and that the second respondent has no right, title or interest in the suit properties. Therefore, he prayed for a grant of permission to withdraw the suit. By the order dated 27th November 2008, the learned Trial Judge dismissed the suit for specific performance as withdrawn.
6. In the first complaint bearing Case No.1027 of 2007, the appellants applied under Section 245 of the Cr.PC for discharge on the grounds of compromise. The application for discharge was rejected by the learned Judicial Magistrate, First Class, Jamshedpur, by the order dated 28th August 2012. The appellants preferred a criminal revision application against the order before the High Court of Jharkhand at Ranchi. The High Court dismissed the criminal revision application. The High Court declined to look into the application for withdrawal of the suit made by the second respondent, and the consequent order passed on the said application by the Trial Court on the ground that at the time of framing of the charge, the accused had no right to produce any documents. The Special Leave Petition filed before this Court by the appellants against the orders of the Trial Court and the High Court was withdrawn with liberty to avail such remedies as may be available.

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7. Thereafter, the appellants invoked a remedy before the High Court by filing a substantive writ petition under Article 226 of the Constitution of India for quashing the first criminal complaint. By the impugned order, the High Court dismissed the said writ petition on the ground that the same contentions had been rejected in an earlier criminal revision application, which cannot be re-agitated. Therefore, there was a bar under Article 362 of the Cr. PC.

SUBMISSIONS

8. The learned senior counsel appearing for the appellants has taken us through the copy of the plaint, the application for withdrawal made by the second respondent and the order passed thereon by the learned Trial Court. He submitted that the High Court had adopted a very hyper-technical approach. He submitted that the learned Judicial Magistrate dismissed the second complaint filed by the second respondent by holding that no case was made out to proceed. He submitted that after the second respondent received all the money he had paid under the agreements for sale, the prosecution of the first complaint was nothing but an abuse of the process of law.
9. The learned counsel appearing for the second respondent supported the impugned order and submitted that the High Court was correct in not allowing the appellants to re-open the issue, which was closed by the order passed in the earlier criminal revision application filed by the appellants. The learned counsel appearing for the respondent state also supported the impugned order.

CONSIDERATION OF SUBMISSIONS

10. The agreements for sale were executed by the appellants and another Trustee of the said Trust for the sale of two properties described as Schedule 'A' and Schedule 'B' and for consideration of Rs.2.75 crores and Rs.1.50 crores, respectively. The averments made in paragraph 3 of the suit filed by the second respondent and his brother, Uma Shankar, disclose that they paid the earnest money of Rs.28,01,000/- to the appellants by separate demand drafts. The allegation in the suit is that by another agreement dated 17th February 2004, the appellants agreed to execute and register the sale deed in favour of the second respondent and his brother regarding the properties subject matter of the agreements. According to the case of the second respondent and his brother, the suit for specific performance was filed as the appellants refused to execute the deed.

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11. In the first complaint (subject matter of this appeal) bearing C/1 Case No.1027 of 2007 filed by the second respondent, the facts stated in the plaint have been reiterated. It is alleged that the appellants have refused to execute the sale deed. It is claimed that as TISCO Ltd. had objected to the execution of the sale deed in terms of the agreements, a fresh agreement was executed on 17th February 2004 on request made by the appellants. After that, the second respondent referred to a suit for specific performance. It is alleged in the complaint that the first appellant herein had executed a power of attorney in favour of one Kishan, who was the fifth accused and subsequently, on 23rd October 2005, the first appellant transferred the property symbolically in favour of one Ashish, who was the fourth accused. After that, there is a reference in the complaint to the application dated 8th May 2007 made by Uma Shankar to withdraw the suit for specific performance. The application is alleged to be a false document that Uma Shankar created by entering a conspiracy with the present appellants. Therefore, the offences punishable under Sections 468, 420, 406, 424 and Section 120-B of the IPC were alleged. Cognizance was taken on the said complaint by the Criminal Court. Uma Shankar was transposed as a defendant in the suit for specific performance.
 12. What is material here is the application dated 11th November 2008, admittedly filed by the second respondent as a plaintiff in the suit for specific performance. Paragraphs 2 and 3 of the said application read thus:

2. That henceforthwith the plaintiff has got no manner of right, title, interest and possession over the suit properties of this suit any more he will lay any claim in any manner whatsoever over the suit properties of this suit in future.

3. That in view of the aforesaid facts and circumstances the plaintiff does not want to proceed further in this suit and wants to withdraw the same.

(emphasis added)

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On 27th November 2008, the Trial Court allowed the application and disposed of the suit as withdrawn. In the said order, the Trial Court specifically recorded that the second respondent had signed the application. The second respondent never challenged the order permitting withdrawal of the suit passed on 27th November 2008.

13. The second complaint bearing no.1248 of 2007 was filed by the second respondent, showing the appellants as accused nos.1 and 2 and Ashish and Kishan as accused nos.3 and 4, respectively, who were shown as accused nos.4 and 5 in the first complaint. By the detailed order dated 14th September 2009, the learned Judicial Magistrate held that no *prima facie* case was made out in the complaint. He also noted that the suit for specific performance was pending. The allegations in the second complaint were again based on the same agreements for sale. It is alleged that the accused conspired to cheat the second respondent.
14. Now, we come to the prayer made for discharge by the appellants in the second complaint. The order of the learned Judicial Magistrate dated 28th August 2012 does not refer to the subsequent development of the second respondent withdrawing the suit based on the application dated 11th November 2008. In the criminal revision application preferred against the said order by the appellants, the subsequent events were pointed out regarding the settlement and withdrawal of the suit for specific performance. However, the High Court did not consider the said events by relying upon the law laid down by this Court in its decision in the case of *State of Orissa v. Debendra Nath Padhi*¹. The High Court held that the accused was not entitled to produce documents at the stage of the framing charge. As noted earlier, the special leave petition filed by the appellants against the said order was withdrawn with the liberty to adopt appropriate remedies as available.
15. Under the liberty granted by this Court, a writ petition under Article 226 of the Constitution of India was preferred by the appellants, in which the first prayer was for quashing the first complaint on the ground that in view of the compromise in the suit, the continuation of the complaint was a complete abuse of the process of law. We have perused the impugned order of the High Court. What the

1 [2004] Supp. 6 SCR 460 : (2005) 1 SCC 568

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High Court lost sight of was that it was a substantive petition under Article 226 of the Constitution of India for quashing the complaint on the ground that the continuation of the same was an abuse of the process of law. A prayer was made in the petition for quashing the order passed by the learned Judicial Magistrate, by which the application for discharge, made by the appellants, was rejected. In the earlier criminal revision application, the High Court had confirmed the order dismissing the application for discharge. The criminal revision application was rejected on the ground that the documents relied upon by the appellants regarding the settlement in the suit with the second respondent and disposal of the suit could not be considered while considering the prayer for discharge. While passing the impugned order, the High Court relied upon Section 362 of the Cr.PC, which reads thus:

“362. Court not to alter judgment.— Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

The second prayer in the writ petition could have been hit by Section 362 of the Cr.PC, as the prayer was to quash the order on the application for discharge. But the first prayer was for quashing the complaint itself. Therefore, dismissing the first prayer in the writ petition on the ground of the bar of Section 362 of the Cr.PC was erroneous.

16. We have already quoted what the second respondent stated in the application dated 11th November 2008. He categorically stated that in view of the out-of-court settlement with the appellants, he would not lay any claim in any manner whatsoever over the suit properties. The second respondent never disputed the correctness of what is stated in the said application, and the order passed permitting the withdrawal of the suit. The second respondent did not challenge the order permitting withdrawal by filing any proceedings. When the second respondent stated that he would not lay any claim in any manner whatsoever over the suit properties, he gave up his claim under the agreements dated 29th January 2001. The primary grievance in the first complaint was that notwithstanding the said agreements, the appellants tried to transfer the properties to the co-accused and

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created a false application for withdrawal of the suit dated 8th May 2007, which was, in fact, the creation of Uma Shankar, brother of the second respondent.

17. As the second respondent had given up his rights under the agreements, it is crystal clear that continuing the complaint would be nothing but an abuse of the process of law. Therefore, a case was made out to quash the complaint. The High Court fell in error in refusing to do so.
18. Accordingly, the appeal succeeds, and we quash C/1 Case No.1027 of 2007, pending before the Court of the learned Judicial Magistrate, First Class, Jamshedpur.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Divya Pandey