

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.75 of 2021

Rajkumar Agrawal & Another **Petitioners**
Mr. Satya Ranjan Mulia, Advocate

-Versus-

State of Odisha **Opposite Party**
Mr. Tapas Kumar Praharaj, Standing Counsel

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:30.05.2023

1. Instant writ petition under Section 482 Cr.P.C. is filed by the petitioners assailing the order of cognizance dated 8th April, 2020 passed in connection with G.R. Case No.158 of 2017 by the learned S.D.J.M., Titilagarh on the grounds inter alia that there are no material to show their involvement in any such criminal conspiracy in the preparation of forged legal heir certificate at the time of purchase of property from vendors at proper market value and hence, it is liable to be interfered with and quashed in exercise of the Courts' inherent jurisdiction.

2. The complainants filed ICC Case No.11 of 2017 before the learned court below for a direction to the local PS to register a case and to take suitable legal action against the petitioners and other accused persons, who having entered into a criminal conspiracy, managed to execute sale deeds in respect of the property in question to deprive them and other legal heirs of their legitimate share which was based on a forged and fake legal heir certificate produced before the Sub-Register, Titilagarh, the fact which was learnt on enquiry. Accepting the complaint, the

learned court below directed registration of a case by an order under Section 156(3) Cr.P.C. Accordingly, Titilagarh P.S. Case No.105 dated 5th April, 2017 was registered under Sections 120-B, 420, 465, 467, 468, 471, 474, 294 and 506 read with 34 IPC. After completion of investigation, chargesheet was submitted against all the accused persons under the alleged offences. In fact, a preliminary chargesheet was filed against other accused persons and later on, the final implicating the petitioners, who are the vendees of the property sold under the sale deeds in question, whereupon, the learned court below took cognizance of the same by order dated 20th August, 2020 which is presently under challenge.

3. Heard Mr. Mulia, learned counsel for the petitioners and Mr. Praharaj, learned SC for the State.

4. Mr. Mulia, learned counsel for the petitioners submits that the petitioners are not involved in the alleged fraud committed by the vendors and they are only the innocent purchasers say to so, however, without any material evidence with regard to criminal conspiracy, both have been chargesheeted by the local police. It is also submitted that for the dispute in the family of the vendors and in connection with the subject matter, a suit in C.S. No.98 of 2015 is pending in the file of learned Civil Judge (S.D.), Titilagarh, whereafter, the FIR was lodged but in spite of the fact that the dispute is completely civil in nature, the learned court below on filing of the chargesheet, took cognizance of the offences against the petitioners vide Annexure-4 which is not tenable in law.

5. On the contrary, Mr. Praharaj, learned counsel for the State submits that all the accused persons allegedly hand in glove managed to get the sale deeds executed after obtaining a fake legal heir certificate showing one of the vendors as the sole legal heir. It is further submitted that in course of investigation, it was

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revealed that the complainants and other legal heirs were excluded and secretly the sale deeds came to be executed and the same was with a false plea that one of the vendors, namely, Akhandala Behera to be the sole legal heir to succeed the property and in the entire episode, the role of the petitioners was examined and ultimately at the end, the chargesheet was filed implicating them and hence, when such a conclusion has been arrived at, the learned court below cannot be said to have committed any wrong or illegality in taking cognizance of the offences under Annexure-4 which, therefore, calls for no interference.

6. The case record available with Mr. Praharaj, learned SC for the State with the relevant documents and Case Diary (CD) has been produced before the Court for its examination.

7. Mr. Mulia, learned counsel for the petitioners submits that the dispute is pre-dominantly civil in nature and in that connection, CS No.98 of 2015 has been instituted but thereafter, for the reasons best known, the complainants lodged the FIR and with false allegation, implicated the petitioners. In reply, Mr. Praharaj, learned counsel for the State submits that the dispute is no doubt between the legal heirs and for that a suit is pending before the local civil court but in so far as the allegation is concerned, it relates to creation of a fake legal heir certificate and thereafter, execution of the sale deeds with the involvement of the all the accused persons including the petitioners, who are the local residents and also known to the family of the complainants and hence, the criminal conspiracy was alleged and it was prima facie established and therefore, notwithstanding the dispute among the legal heirs, the mischief and misconduct committed by all does not obliterate the crime.

8. The settled legal position is that in case of a dispute purely civil in nature, any such complaint or FIR lodged with a criminal cloak, it should not be allowed to survive and continue which is not tenable in law and furthermore, it becomes a weapon of harassment. At the same time, if a criminal offence is committed in course of a transaction, a crime is committed as a result independent of having a civil consequence as well. So therefore, the role of the Court is to examine, whether, the dispute is entirely civil and if it has been given a cloak of a criminal offence. If it is found that there is no criminal offence committed but for certain reasons, complaint or FIR is filed or lodged, the Court may exercise extra-ordinary jurisdiction to terminate such an action. In the instant case, it is, therefore, for the Court to find out and ascertain if the petitioners could really be criminally prosecuted for the alleged offences when primarily the dispute is in between the complainants and the accused vendors.

9. The petitioners are to local inhabitants of Titilagarh town. One of the vendors of the sale deeds claimed himself as the sole successor-in-interest and with others executed the sale deeds in favour of the petitioners. The copies of the sale deeds are available in the case record. On a reading of the sale deeds, it is made to appear that the alleged vendors introduced themselves as the sole successors and in such capacity transferred the property in question. For the purpose of execution of the sale deeds, the legal heir certificate was obtained from the local Tahasildar allegedly in a proceeding vide RMC No.27/146 of 2015. It has been alleged that a fake legal heir certificate was managed by the vendors which was revealed after enquiry by the Tahasildar, Titilagarh, when the petitioners applied for mutation. According to the complainants, the petitioners are known to their family and aware of the fact that vendors are not the sole legal heirs to succeed the property. It is made to reveal so from the statements CRLMC No.75 of 2021

of the material witnesses recorded under Section 161 Cr.P.C. So therefore, it is alleged by the State that the petitioners are no innocent purchasers, rather, they had the knowledge that the family property is not succeeded by the vendors alone.

10. On perusal of the CD, the Court finds that all the relevant documents have been seized and enquiry and investigation was held with regard to the legal heir certificate and whether the vendors are the sole successors and also with regard to the execution and registration of the sale deeds before the local Registering Authority. It has been found after enquiry that the vendors posed themselves as the only successors and produced a fake legal heir certificate and managed it from the local Tahasildar in RMC No.27/146 of 2015. It has been alleged that the record of the said proceeding was reportedly misplaced or was not traceable. Even according to the complainants, the fake legal heir certificate could not be traced out in the office of Sub-Register, Titilagarh which created suspicion in their mind about the mischief and it was finally detected after the petitioners applied for mutation followed by an enquiry conducted by the order of the Tahasildar, Titilagarh. The question is, whether, the petitioners did play any role in obtaining the fake legal heir certificate and then managed the alleged sale? The contents of the alleged sale deeds no doubt reveal that the vendors alienated the property in favour of the petitioners by posturing themselves as the sole successors.

11. In course of enquiry in the mutation proceeding, it was revealed that there are other legal heirs besides the complainants, the fact which was suppressed and with the fake legal heir certificate, the sale deeds were executed by the alleged vendors and hence, mutation was disallowed for the aforesaid reason. Whether the petitioners had the knowledge about the fake legal

heir certificate and the vendors to be the sole successors-in-interest before engaging themselves in the transaction is a matter of enquiry. In fact, as earlier stated, some of the witnesses including the complainants in their statements under Section 161 Cr.P.C. deposed that the petitioners new about the family and the number of successors but despite that purchased the property and for a consideration at a lower market value which suggested their tacit involvement. In other words, it is noticed that the petitioners are alleged of having proper knowledge about the family of the vendors but still entered into the transaction and purchased the property and thereafter, applied for mutation. So to say, the integrity of the petitioners has been questioned. Such suspicion against the petitioners with the allegation of their clear involvement found favour with the local police which led to the submission of the chargesheet. But then, the Court, apart from the statements of the complainants and others under Section 161 Cr.P.C. and other relevant documents, searched for more evidence to find out the involvement of the petitioners either directly or indirectly in the creation of the fake legal heir certificate with a conspiracy hatched besides the vendors before execution of the sale deeds. However, excepting the materials available, it could not find any material showing the direct involvement of the petitioners. Of course, when criminal conspiracy is alleged, direct evidence hardly surface. At the same time, it is also unjustified to prosecute someone merely on the basis of suspicion. Since the petitioners are alleged to be having prior acquaintance with the family of the vendors and hence, not unfamiliar about all the legal heirs succeeding the property, keeping that in view and the evidence revealing the vendors procuring fake legal heir certificate, it prompted the local police to submit the chargesheet against all. In cases of the present kind, a thin line demarcates innocence and complicity which needs

proper examination considering the evidence in its entirety. The Court is not self-assured, whether, all such evidence is available in the case record. Furthermore, the Court is of the view that having regard to the evidence so found, since a final chargesheet is submitted against the petitioners on the premise and with a narrative that they did have the knowledge about the real legal heirs succeeding the schedule property, it has to be accepted so as a prima facie view, however, giving them the liberty seeking discharge before the learned court below for a decision on merit by appreciating the evidence in wholesome which would rather serve the purpose and meet the ends of justice.

12. Accordingly, it is ordered.

13. In the result, the CRLMC stands disposed with the liberty allowed in favour of the petitioners to move for their discharge and in the event any such application so received from them, the learned S.D.J.M., Titilagarh shall consider the same in connection with G.R. Case No.158 of 2017 and thereafter to pass necessary order as per and in accordance with law after considering the entire of the evidence on record without being influenced by any of the observations of this Court made herein above.

(R.K. Pattanaik)
Judge

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