

M.Cr.C No. 17848/2016

15.12.2016

Shri B.K.Mishra, learned counsel for the petitioner.

Shri K.S.Patel, PL for the respondent/State.

This application under Section 482 of Cr.P.C. has been filed by the petitioner being aggrieved by the impugned order dated 24.08.2016 passed by JMFC, Satna in unregistered complaint case, wherein the Court has issued notices to the petitioner after taking cognizance of the complaint filed by respondent No. 1 for offences punishable under Section 420, 466, 468 and 471 of IPC.

Facts of the case are that, the respondent no.1 filed a complaint case for the offence mentioned above against the petitioner. Learned Court below by taking cognizance of the same issued arrest warrant against the petitioner. Gopika Prasad Mishra has filed a civil suit against petitioner before the Fourth Civil Judge Class-II, Satna which is in the evidence stage. Gopika Prasad Mishra has also filed a criminal complaint earlier for the same purpose which was dismissed vide order dated 24.05.2011 and against the same, complainant Ramrudra Prasad Shrivastav filed a revision before the learned First Additional Sessions Judge, Satna. Same has been dismissed vide order dated 23.07.2012. Therefore he moved an application under Section 482 of Cr.P.C before this Court.

In M.Cr.C no. 9971/2012 on 25.04.2013, this Court allowed the application, setting aside the order of the learned Courts below directed to proceed with the trial of the case in accordance with the law.

The petitioner contended that after the lapse of more than 3 years learned Court below has issued warrant against the applicant which is against law.

Applicant further contended that Gopika Prasad Mishra had already filed civil suit against the applicants before the Civil Judge, Satna which is still pending. Learned Trial Court without appreciating the real facts and circumstances, issued warrant against him. It is prayed that the impugned order be set aside and proceeding of the impugned order be stayed during the pendency of this appeal.

Prayer made by counsel for the applicant is vehemently opposed by the counsel for the respondent.

Heard counsel for the parties. Perused the record.

During the arguments, learned counsel for the petitioner has in writing informed that complainant Gopika Prasad died on 05.09.2014. He has no son. He has married daughters, residing with their in-law's house. Hence, he prayed to dismiss the complaint case. Learned Counsel for the petitioner placed reliance on **Subbanna Hegde & Ors. Vs. Dyarappa Gowda reported in 1980 CRILJ 1405** in which it has been held that, if on the day appointed for appearance of accused, complainant absent because of his death – Magistrate must acquit the accused.

“Section 256 Cr.PC

provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provision of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.....”

In this case, learned Trial Court took cognizance of offences punishable under Section 420, 466, 468 and 471 of IPC against the petitioner triable by Session Court, as per the provisions of warrant trial. Hence, case cited by learned counsel is not applicable in the case in hand.

In M.Cr.C no. 9971/2012, this Court earlier found that facts and documents indicates that mutation order dated 12.08.1988 was passed and its proceedings were conducted fraudulently and with forgery with the connivance of *patwari* and complainants. This Court also held that this is a case based on the allegations of forgery and fraud relating to the documents and mutation of land and illegal rights of ownership acquired on the basis of such documents.

On the aforesaid facts of this case, it cannot be concluded at this preliminary stage that this is a frivolous complaint. The criminal prosecution cannot be thwarted at the initial stage merely because the civil proceeding is pending. The act which has civil profile cannot be allowed to denude of its criminal outfit. Learned Trial Court also found the same on the basis of statements of complainant and witnesses recorded under Section 200 and 202 of Cr.P.C.

For the above mentioned reasons, this Court finds that there is no illegality or perversity in the impugned order passed by the Courts below. It is not a fit case for invoking the

inherent powers of this Court under Section 482 of Cr.PC in favour of the applicant.

Consequently, the present petition is hereby dismissed at motion stage.

(Smt. Anjali Palo)
Judge

vidya