

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1754 OF 2010

(@ SPECIAL LEAVE PETITION (CRL.) No.1644 of 2007)

RAMA DEVI

... APPELLANT

Vs.

STATE OF BIHAR & ORS.

... RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.
2. This appeal is directed against the judgment and order dated 20th December, 2006, passed by the Patna High Court in Crl. Misc. No.19975 of 2006 dismissing the same.

3. The Respondent No.2, Birendra Kumar Sinha, filed a Complaint Case No.3714C of 2005 against the Appellant alleging that she had committed offences under Section 406, 420, 465, 468, 120-B of the Indian Penal Code (IPC) by executing a Deed of Sale in his favour, on 12th February, 2005, in respect of a plot of land measuring 1 Katha 5 Dhurs, pertaining to Survey No.235 in Khata No.3 of Mauza Dhelwan under Phulwarisharif P.S., District Patna, Bihar. According to the complainant, the boundary wall erected by him around the said plot was demolished and on inquiry, he came to know that one Prabhu Singh, who had sold the land to the Appellant was the full brother of one Sita Ram Singh, who had earlier sold the entire area of Survey plot No.235 to different persons at different points of time by different sale deeds. The complainant alleged that Prabhu Singh, the Appellant's vendor and brother of Sita Ram Singh, had acted as an

attesting witness in the said Sale Deeds executed by Sita Ram Singh, which indicated that inspite of having knowledge that Sita Ram Singh had sold the lands in question to others, Rama Devi purchased the said lands and in order to cheat the complainant, executed the Sale Deed in his favour on 12th February, 2005.

4. On 28th February, 2006, the Sub-Divisional Judicial Magistrate, Patna, took cognizance of the alleged offences and issued process only against the Appellant herein. Aggrieved thereby, the Appellant filed Criminal Miscellaneous Petition No.19975 of 2006 before the Patna High Court on 10th May, 2006, for quashing the cognizance taken as also the entire proceedings in Complaint Case No.3714C of 2005 pending before the said Sub-Divisional Judicial Magistrate, Patna. On 20th December, 2006, the Patna High Court dismissed the Appellant's aforesaid petition under Section 482 Cr.P.C., which is the

subject matter of challenge in the present appeal.

5. On behalf of the Appellant it was pointed out by Mr. Nagendra Rai, learned Senior Advocate, that the learned Magistrate had taken cognizance of the offences complained of on an erroneous appreciation of the material before him to the effect that it was not disputed that the property in question had earlier been sold by Sita Ram Singh, who was the brother of the Appellant's vendor, and that the Appellant had attested the said Sale Deed, which clearly indicated that the Appellant had knowledge of the earlier sale and despite the same, had not only executed the Sale Deed in favour of the complainant but had also indicated that no other deed had been executed in respect of the property which were free from all encumbrances. Mr. Rai referred to the Sale Deeds which had been referred to by the learned Magistrate, from which it would be apparent that

the Appellant was not an attesting witness to any of the sale deeds. Mr. Rai also referred to the Sale Deed executed by the Appellant in favour of the complainant to show that Prabhu Singh was not an attesting witness in the said document either and the witnesses were : (1) Kedar Prasad Singh, (2) Nawal Kisahore and (3) Awadhesh Kumar.

6. Mr. Rai submitted that since the very basis for the cognizance taken by the learned Magistrate was fallacious and without any foundation, the High Court erred in dismissing the Appellant's application under Section 482 Cr.P.C. and that the cognizance taken by the learned Magistrate, as also the proceedings relating to the Complaint Case No.3714C of 2005, were liable to be quashed.

7. Mr. Rai's submissions were strongly opposed on behalf of the Respondent No.2, Birendra Kumar Sinha. It was submitted that no case had been made out on behalf of the Appellant for

interference with the order of the High Court impugned in this appeal. Mr. P.S. Mishra, learned Senior Advocate appearing for the Respondent No.2, reiterated the submissions which were made before the High Court to the effect that Prabhu Singh, the Appellant's vendor, and his brother Sita Ram Singh had in conspiracy with each other sold away the entire lands comprising Survey Plot No.235 and that the Appellant was also a party to such conspiracy. Mr. Mishra urged that despite being part of the conspiracy, the Appellant got Prabhu Singh to transfer the land in question to her and got her name mutated in the concerned jamabandi, which would be apparent from the inquiry report of the application for mutation of Case No.650/7 Year 2001-02 Hulka No.7 dated 5th March, 2002. From the said report, it would be crystal clear that the names of both Sita Ram Singh and Rama Devi were shown in the column for recording the name of the raiyat in respect of the jamabandi. Mr. Mishra submitted

that the same would indicate a deep-rooted conspiracy hatched by the said Sita Ram Singh and his brother Prabhu Singh and Rama Devi, to defraud and cheat the Respondent No.2 by executing a sale deed after obtaining the full consideration, despite having knowledge that the land in question had already been transferred earlier by Sita Ram Singh to another party.

8. In addition to the above, Mr. Mishra denied the genuineness of the Deed of Sale executed by Rama Devi in favour of the Respondent No.2 in view of the observations made by the High Court in its impugned order indicating that Prabhu Singh, the Appellant's vendor had attested the sale deed despite having full knowledge of the earlier transactions in respect of the lands in question.

9. Mr. Mishra submitted that the High Court had rightly held that the question of genuineness of the documents and the intention of the Appellant,

Sita Ram Singh and Prabhu Singh were required to be decided on evidence in the backdrop of the conspiracy alleged by the Respondent No.2, which could only be done by holding a full-fledged trial.

10. Having considered the submissions made on behalf of the respective parties and having considered the documents placed before us and also the Courts below, we do not find any substance in Mr. Mishra's submissions on behalf of the Respondent No.2. From the materials produced before us, no link has been established between Prabhu Singh and the Respondent No.2. If at all the Respondent No.2 has any grievance in respect of the sale deed which had been executed in his favour by the Appellant, it could be against Prabhu Singh and not the Appellant. If we were to accept Mr. Mishra's submissions, then it was the Appellant Rama Devi who had been cheated by her vendor, Prabhu Singh, who had sold

her the property in question, although, the same is alleged to have been the subject matter of an earlier sale effected by his brother, Sita Ram Singh. The veracity of the Appellant's story may be gauged from the fact that after having purchased the suit property from Prabhu Singh by a duly registered deed of sale, she applied to the concerned authority of Phulwarisharif Circle for mutation of her name in respect of the jamabandi in which Survey Plot No.235 had been included and the property continued to be mutated in her name till such time as she transferred the same to the Respondent No.2. There can be no reason, as suggested by Mr. Mishra, for the Appellant to have obtained the sale deed in her name from Prabhu Singh with the intention of cheating the Respondent No.2. In fact, no link had at all been established between the sale deeds executed by Sita Ram Singh in respect of mutated property and the Appellant which could have given rise to suspicion, if any, of a

conspiracy between herself and her vendor and his brother Sita Ram Singh, with the intention of cheating the Respondent No.2.

11. If the Respondent No.2 has been prejudiced by the fact that the Appellant had executed a sale deed in his favour in respect of a plot of land which had already been the subject matter of a previous transfer, he can at best question such transfer and claim damages in respect thereof from the vendor of the Appellant by way of appropriate damages, but an action in the Criminal Court would not lie in the absence of any intention to cheat and/or defraud the Respondent No.2.

12. We, therefore, have no doubt in our minds that the Appellant, Rama Devi, cannot be made responsible for the circumstances which followed the sale effected by the Appellant in favour of the Respondent No.2 and the filing of such a criminal complaint was nothing more than an

attempt to pressurize the Appellant into making a settlement.

13. We, therefore, have no hesitation in setting aside the order passed by the High Court on 20th December, 2006, in Crl. Misc. No.19975 of 2006, which has been impugned in this appeal. Consequently, Complaint Case No.3714C of 2005 and the proceedings initiated on the basis thereof by the Sub-Divisional Judicial Magistrate, Patna, are also quashed.

14. The appeal, therefore, succeeds and is allowed.

.....J.
(ALTAMAS KABIR)

.....J.
(A.K. PATNAIK)

New Delhi
Dated : 14.09.2010