

(2013) 04 AHC CK 0145

Allahabad High Court

Case No: Criminal Revision No. 2751 of 2010 and Criminal Miscellaneous Application No. 15075 of 2010 and 39256 of 2012

Prithvi Pal Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 29, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 397, 401, 482
- Penal Code, 1860 (IPC) - Section 419, 420, 467, 468, 471

Hon'ble Judges: Aditya Nath Mittal, J

Final Decision: Disposed Of

Judgement

Aditya Nath Mittal, J.

Heard learned counsel for the revisionists, learned counsel appearing for opposite party no.3, learned A.G.A. and perused the record.

2. All these petitions relate to the same controversy between the same parties, hence they are taken together for decision.

3. This criminal revision has been filed against orders dated 4.3.2010 and 9.7.2010 passed by A.C.J.M.II, Jaunpur in Case No.854 of 2010 "State Vs. Ram Singh" arising out of Crime No.1163 of 2009, whereby the revisionists have been summoned to face the trial for the offences punishable under Sections 419, 420, 467, 468, 471 I.P.C. and nonbailable warrant has been issued against the revisionists.

4. Criminal Misc. Application u/s 482 Cr.P.C. No.15075 of 2010 has been filed with the prayer to quash the chargesheet under Sections 419, 420, 467, 468 and 471 I.P.C. in Case Crime No.1163 of 2009 and Case No.854 of 2010 pending in the Court of A.C.J.M.II, Jaunpur.

5. Criminal Misc. Application u/s 482 Cr.P.C. No.39256 of 2012 has been filed with the prayer to stay the proceedings of Case No.5427 of 2010 by which nonbailable

warrant has been issued in Case Crime No.1163 of 2009, under Sections 419, 420, 467, 468 and 471 I.P.C.

6. Learned counsel for the revisionists has submitted that it is a dispute of civil nature and the complainant has not disclosed his share in the alleged application under Section 156(3) Cr.P.C. It has also been submitted that learned A.C.J.M. has no jurisdiction to decide the share of the parties in the property in dispute. It has also been submitted that in counter affidavit the opposite party no.3 has admitted that revisionists have 2/6 share which were virtually comes to 1/3 share and the revisionists have not sold the land exceeding 1/3 share. It has also been submitted that suit for cancellation of sale deed as well as partition is also pending before the Civil Judge (J.D.), Janpur in which 1/3 share of Mahaveer, Shripal and Ganesh Singh has been admitted.

7. Learned counsel for the opposite parties has submitted that with intention to cause wrongful loss to the opposite party no.3, the revisionists have executed sale deed of property of which they are not absolute owners. It has further been submitted that in the counter affidavit 2/6 has been mentioned wrongly while it should be 1/6.

8. An application under Section 156(3) Cr.P.C. was moved by the opposite party no.3 alleging that the accused persons had only 1/6 share but with intention to cause wrongful loss to the complainant, they have executed a sale deed on 9.6.2009, therefore, the matter should be investigated by the police. This application was moved on 9.10.2009 upon which a case at Crime No.1163 of 2009, under Sections 419, 420, 467, 468, 471 I.P.C. was registered at Police Station Machli Shahar, District Jaunpur in which the chargesheet has been filed after investigation. The revisionists have challenged the summoning order and order by which nonbailable warrant has been issued against the revisionists.

9. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur versus State of Punjab, AIR 1960 SC 866, State of Hariyana versus Bhajan Lal, 1992 SCC (Cr) 426, State of Bihar versus P.P. Sharma, 1992 SCC (Cr) 192, and lastly Zandu Pharmaceutical Works Ltd. Versus Mohd. Saraful Haq and another (Para 10), 2005 SCC (Cr) 283 and lastly (2012) 11 SCC 465. Detailed reasoned order at the stage of issuance of process is not required under the provisions of Code of Criminal Procedure.

10. In (2012) 11 SCC 465, it has been further held that defences may be taken into consideration only if defence(s) raised by accused are factually unassailable and incontrovertible and demolish foundation of prosecution case.

11. From perusal of the F.I.R., it appears that there is a bonafide civil dispute between the parties. As per complaint, the revisionists have 1/6 share in the property in dispute while the revisionists have executed the sale deed of 1/3 share of the property in dispute. Admittedly a Civil Suit No.739 of 2009 "Ajab Singh Vs. Ram

Singh and others" is pending before the Civil Judge (J.D.), Jaunpur regarding cancellation of sale deed. The opposite party complainant has also not been granted any injunction order regarding the same property in dispute which is alleged to have been transferred fraudulently. The complainant alleges that Bisun Singh had transferred his 1/6 share in his favour as well as in favour of Ram Bahadur thereby he became the owner of 5/6 share of certain plots.

12. It has been alleged that the alleged sale deed has been executed with a view to provide wrongful gain to Dharma Devi and Suman Devi. What was the conspiracy or forgery, has not been disclosed in the F.I.R. From perusal of the contents of F.I.R., it appears to be a purely civil dispute regarding the share of respective parties which can neither be decided by this court in exercise of its revisional jurisdiction nor can be decided by a criminal court, therefore, I do not wish to enter into the dispute of alleged share of respective parties.

13. Learned counsel for the revisionists has relied upon Arvind Kumar Tiwari Vs. State of U.P., 2005 Cr.L.J. 1952, in which the question of maintainability of criminal revision against interlocutory order has been decided.

14. Learned counsel for the revisionists has further relied upon Ram Babu Gupta Vs. State of U.P. and others, 2001 (43) ACC 50 (All)(FB), in which the powers of the court under Section 156(3) Cr.P.C. have been discussed.

15. Learned counsel for the revisionists has further relied upon Madhu Limaye Vs. State of Maharashtra, 1978 (1) SCR 749, Rajinder Prasad Vs. Bashir, AIR 2001 SC 3524 and Raj Kapoor Vs. State, 1980 SCC (Cri.) 72. All these rulings relates to the interpretation of Section 482 and 397 Cr.P.C.

16. In Devendra and others Vs. State of U.P. and another 2009 (67) ACC 886, Hon"ble the Apex Court has considered the civil wrong and criminal wrong and has held as under:

"We may, however, notice that the said decision has been considered recently by this Court in Mahesh Choudhary v. State of Rajasthan & another, 2009 (4) SCC 66 wherein it was noticed:

"Recently in R. Kalyani v. Janak C. Mehta and Ors. JT 2008 (12) SC 279 this Court laid down the law in the following terms:

9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the 15 provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

16. The chargesheet, in our opinion, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The chargesheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, in our opinion, no exception thereto can be taken.

We, therefore, do not find any legal infirmity in the impugned orders."

17. In Inder Mohan Goswami and another Vs. State of Uttaranchal and others 2008 (60) ACC 1 Hon"ble the Apex Court has held as under::

"The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a Civil Court of competent jurisdiction. The dispute in question is purely of civil nature and respondent No. 3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the Court."

18. In Hira Lal and others Vs. State of U.P. and others 2009 (66) ACC 28 Hon. the Apex Court has held :

"The question as to whether the transactions are genuine or not would fall for consideration before the Civil Court as indisputably the respondent No. 3 has filed a civil suit in the Court of Civil Judge, Gautam Budh Nagar wherein allegedly an interim injunction has been granted. What was the share of the respective cosharers is a question which is purely a civil dispute; a criminal court cannot determine the same."

19. In *Harshendra Kumar D. Vs. Rebatilata Koley and others* (2011) 3 SCC 351, Hon"ble the Supreme Court has held that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstances, can be looked into by the High Court In exercise of its jurisdiction under section 482 or for that matter in exercise of revisional jurisdiction under section 397 of the Code.

20. Hon"ble Apex Court has further held that it is clearly settled that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction under section 397 of the Code in a criminal case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations.

21. In *Indian Oil Corporation Vs. NEPC India Ltd. and others* (2006) 6 SCC 736, Hon"ble the Apex Court considering the judgment of Hridaya Ranjan Prasad Verma has observed as follows:

In *Hridaya Ranjan Prasad Verma*, this Court held :

"On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

22. In *Mohd. Ibrahim and others Vs. State of Bihar and another* (2009) 8 SCC 751, the Hon"ble Apex Court has held that 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.

23. In view of the above, the present dispute is purely of civil nature and opposite party no.2 has already instituted a civil suit for cancellation of the sale deed, therefore, initiation of criminal proceedings by the opposite party against the revisionists is clearly an abuse of process of the Court.

24. It is yet to be decided that whether the revisionists have sold their share or have exceeded their share without any sufficient ground. The share of the parties can be decided by the court of competent jurisdiction and the sale deed at this stage cannot be said to be a false document or a document executed with the intention to commit forgery. Respective parties shall have the full opportunity to prove their share before the civil court and at this stage, it cannot be said that what amount of share the respective parties have in the property in disputed.

25. For the aforesaid reasons, I am of the opinion that the civil dispute between the parties has been given a criminal colour and the fact of pendency of civil suit has also been concealed in the application under Section 156(3) Cr.P.C. given on 9.10.2009 while the civil suit has already been filed on 3.7.2009 i.e. much prior to the aforesaid application under Section 156(3) Cr.P.C. The pendency of the civil suit has also not been brought to the notice of the court which has passed the summoning order.

26. Hon"ble the Apex Court in Indian Oil Corporation Vs. NEPC India Ltd. and others (supra) has further held that any effort to settle the dispute and claim which do not involve any criminal offence by applying pressure through criminal prosecution, should be deprecated and discouraged.

27. In view of Devendra and others Vs. State of U.P. and another (supra), if somebody is aggrieved by the false assertion made in the said sale deed, he would be the vendees and not the cosharers.

28. For the facts and circumstances mentioned above, the revision is allowed and the orders dated 4.3.2010 and 9.7.2010 passed by A.C.J.M.II, Jaunpur in Case No.854 of 2010 "State Vs. Ram Singh" arising out of Crime No.1163 of 2009 are hereby set aside.

29. In view of the above, Criminal Misc. Application U/s 482 Cr.P.C. No.15075 of 2010 and Criminal Misc. Application U/s 482 Cr.P.C. No.39256 of 2012 regarding the same Crime No.1163 of 2009 are also disposed of accordingly.