

(2006) 01 AHC CK 0067

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 9900 of 2004

Smt. Rameshwari Devi, Krishna
Das Sharma and Rajendra Kumar
Gaur

APPELLANT

Vs

State of Uttar Pradesh and Sri
Kuldeep Kumar Sharma

RESPONDENT

Date of Decision: Jan. 12, 2006

Acts Referred:

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

Hon'ble Judges: K.N. Sinha, J

Bench: Single Bench

Advocate: G.C. Saxena, for the Appellant; M.D. Singh Sekhar and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

K.N. Sinha, J.

Heard the learned Counsel for the applicants, learned A.G.A. and learned Counsel for the opposite party No. 2.

2. By means of the present application, applicants have prayed for quashing of the summoning order dated 15.9.2004 passed by the Chief Judicial Magistrate, Aligarh and also the proceedings in case No. 632 of 2004 under Sections 420, 419, 471, 467 and 468 I.P.C.

3. The brief facts, giving rise to the present application, are that there was a partnership between Smt. Draupadi, Smt. Rameshwari Devi and Kuldeep Kumar Sharma Smt. Draupadi died and the second partnership came into existence on 4.2.2002 with Smt. Rameshwari Devi and Kuldeep Kumar Sharma, as partners. It is alleged that on 19.8.2002, Kuldeep Kumar Sharma, opposite party No. 2 retired from

the partnership, which is Annexure No. I to the affidavit. After the retirement of Kuldeep Kumar Sharma, opposite party No. 2 a new partnership deed was executed on 2.9.2002 to keep the firm alive. Opposite party No. 2 had to pay Rs. 3,00,000.00 to State Bank of India, Dibai, but he did not pay nor moved to arbitration as it was a clause (SIC) partnership deed. The new firm did contract work from Irrigation Department but the same was illegally terminated so there was an arbitration award of Rs. 24,97,981.00. The court ordered that 50 % of the amount be paid and remaining 50 % was to be paid after giving security. The new partnership firm opened an account and got the money. Kuldeep Kumar Sharma, opposite party No. 2 has already taken more than 50 % after retiring but wanted some more money from this amount of 50%. In order to fulfill this design, the opposite party No. 2 lodged an F.I.R. on 3.3.2003 under Sections 419, 420, 467, 468 and 471 IPC. The case was investigated and charge sheet was submitted against applicants.

4. The opposite party No. 2 filed a counter affidavit on the ground that the constitution of the first firm came into existence by the partnership deed (Annexure CA-1). Smt. Draupadi, mother of opposite party No. 2 died on 1.2.2002 and before her death she executed a will on 18.12.2001 by bequeathing her 1/3rd share in the partnership business. After the death of Draupadi, a second partnership was constituted with Smt. Rameshwari Devi and Kuldeep Kumar Sharma as partners. It came to the notice of the opposite party No. 2 on 26.2.2003 that the amount of award has been given to co-partner Smt. Rameshwari Devi only, which was cashed from the Bank of Baroda, Company Bagh, Aligarh by committing a fraud. The opposite, party No. 2 has deposed that applicants opened a new account No. 1207 on 21.10.2002 by constituting a forged and fictitious firm, in the name of Smt Rameshwari Devi and Krishna Das on 2.9.2002. Sub para (ix) of para 4 of the counter affidavit shows that the alleged deed of retirement of opposite party No. 2 was prepared on 19.8.2002 attested by one Notary by forging the signature of the opposite party No. 2, while no resignation or retirement deed was ever signed by the opposite party No. 2. When the opposite party No. 2 came to know about the forged and fictitious partnership deed, he lodged the F.I.R.

5. Rejoinder affidavit has also been filed on behalf of the applicants.

6. I have heard Sri Girish Chandra Saxena, learned Counsel for the applicants, Sri M.D. Singh Shekhar, learned Counsel for the opposite party No. 2 and learned A.G.A.,

7. The present application has been moved for quashing of the summoning order and the proceedings under the said charge sheet, By the affidavit, counter affidavit and rejoinder affidavit, according to the applicants, opposite party No. 2 retired from the firm willingly whereas according to the opposite party No. 2, the retirement deed was prepared with forged signature of Kuldeep Kumar Sharma, Now the question remains for determination, before the Court is regarding retirement deed. In case the retirement deed was genuine the version of the

applicants would be true. In case it was forged the version of applicants will become untrue. The summoning order has been assailed on the ground that when opposite party No. 2 had resigned, there was no occasion to file the F.I.R. nor charge sheet could be filed. It is settled law that the order summoning the accused on a charge sheet is based on the investigation conducted by the Investigating Officer and evidence collected during the investigation. If the Court finds sufficient ground to Summon the accused it can summon on the basis of *prima facie* evidence. The *prima facie* evidence means the evidence, which is sufficient to make out a case against the accused and not sufficient ground for the purpose of conviction. In the instant case, the wher matter is depend, anr on the genuineness or falsehood of the retirement deed which could not be decided by this Court at this stage.

8. So far as the quashing of the summoning order or the charge sheet is concemed, the powers of this Court u/s 482 Cr.P.C. are well defined in number of judgments of the Apex court. In the case of Union of India (UOI) Vs. Prakash P. Hinduja and Another, the Apex Court laid down certain principles by making reference to number of authorities of Hon"ble The Apex Court. Hon"ble The Apex Court broadly laid down the following principles:

The grounds on which power u/s 482, Cr.P.C. can be exercised to quash the criminal proceedings basically are (1) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in then entirely do not *prima facie* constitute any offence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of Code of Criminal Procedure or the concerned Act to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

9. The allegation in the F.I.R. and the charge sheet makes out a *prima facie* case, hence the summoning of the accused is based on the F.I.R. and the evidence collected by the Investigating Officer. The application u/s 482 Cr.P.C. has, therefore, got no force and it is hereby dismissed.