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**(2010) 01 AHC CK 0127**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Miscellaneous Application No. 23569 of 2007

Om Prakash

APPELLANT

Vs

State of U.P.and others

RESPONDENT

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**Date of Decision:** Jan. 22, 2010

**Acts Referred:**

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

**Hon'ble Judges:** Ram Autar Singh, J

**Final Decision:** Allowed

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### **Judgement**

Ram Autar Singh, J.

I have heard Sri Vinod Kumar Agrawal, learned counsel for the applicant, learned AGA for O.P. Nos. 1 and 2 and perused the record.

This application has been moved on behalf of applicant Om Prakash, S/o Sri Natthi Singh, Secretary, Atma Nirbhar Sadhan Sahkari Samiti Ltd., P.S. Baldev, District Mathura with prayer to quash the criminal proceedings of complaint case no. 198/IX/2005 (Sia Ram Versus Khayali Ram @ Khillan Singh and another), under sections 420, 467, 468, 471 IPC, P.S. Baldev, District Mathura and order dated 7.7.2007, passed in above case with this allegation that O.P. No. 3, Siya Ram Singh moved an application under section 156(3) Cr.P.C. in the court of IInd Additional Chief Judicial Magistrate, Mathura on 22.8.2005 impleading Khayali Ram @ Khillan Singh and Om Prakash Singh as accused. The learned Additional Chief Judicial Magistrate, Court No. 2 Mathura, allowed the said application and directed O.P. No. 2 S.H.O. Baldev to register the case vide his judgment and order dated 7.9.2005, in compliance of which a case crime no. C/11/2005, under sections 420, 467, 468, 471 IPC was registered against both the accused persons. The O.P. No. 2 investigated the case and submitted chargesheet on 13.2.2006 against Om Prakash Singh (Secretary), Sahkari Bank and Khayali Ram @ Khillan Singh, while the applicant was neither an accused in the said case nor any investigation was conducted

against him. The Investigating Officer did not record his statement under section 161 Cr.P.C.. The court below took cognizance on the chargesheet, directed the Office to prepare copies of the police documents, but no summons were issued against the applicant. O.P. No. 3 in collusion with the court officials got issued nonbailablewarrant against the accused persons and the police started to take coercive proceedings under section 82 of Cr.P.C. without issuing summons against the accused. The present proceedings were time barred as the incident allegedly took place between the years 2000 and 2003 and the chargesheet was filed in February, 2006. The applicant being public servant moved a Criminal Misc. Application No. 1564 of 2007 in this Court and this Court finally disposed off the application and passed an order dated 18.4.2007.

2. The learned counsel for the applicant contended that the action of the opposite parties in lodging FIR without ascertaining the identity of the applicant was illegal, arbitrary and mala fide and Siya Ram Singh, complainant himself admitted that he could not initiate proceedings for a long time because O.P. No. 4 was his real brother. Siya Ram Singh levelled false and incorrect allegations in his application because application was neither the Branch Manager of any bank nor there was any bank namely District Cooperative Bank Limited Branch Madora and the court below committed illegality in summoning the applicant in the said case. The learned court below without issuing summons or bailablewarrants, issued nonbailablewarrant, against the applicant and took coercive action against him. There was no independent or a single witness in support of the allegations made in the FIR. The applicant was a public servant holding responsible post of Secretary of Atma Nirbhar Sadhan Sahkari Samiti Ltd. and there was no mens rea of the applicant and thus he did not commit any offence.

On behalf of O.P. Nos. 1 and 2, S.I. of P.S. Baldev filed his counter affidavit alleging that the FIR was lodged by one Siya Ram Singh stating therein that by making his forged signatures, the fraud was committed by the accused persons namely Khayal Ram @ Khillan (real brother of the complainant) and Om Prakash Singh, Secretary, District Cooperative Bank, Branch Madora, District Mathura. The matter was investigated and on completion of investigation chargesheet was submitted against both the accused persons. During investigation it was found that the applicant was involved in committing fraud and he committed the offences as mentioned in the chargesheet. The court below issued summons and thereafter bailablewarrant, and nonbailablewarrant against the applicant as he failed to appear in the court below and in compliance of nonbailablewarrants both the accused persons were arrested and sent to jail. Application moved under section 156(3) Cr.P.C. was not barred by time. In view of legal provisions contemplated in Code of Criminal Procedure O.P. No. 3 moved the said application within a period of limitation. The investigation was completed in the year 2006 and the chargesheet was submitted in the court on 13.2.2006 and the cognizance was taken on 3.3.2006. The orders dated 9.2.2007 and 18.4.2007 were obtained by the applicant by concealing the material facts. The arrest of the applicant was stayed by this Court vide order dated 18.4.2007 during investigation, while the investigation was completed and

chargesheet was submitted and thus material fact was concealed by the applicant at the time of obtaining order dated 18.4.2007.

3. A perusal of record would go to show that the application under section 156(3) Cr.P.C. was moved on 22.8.2005 in the court below alleging that accused Khayal Ram @ Khillan and Om Prakash Singh with dishonest intention manufactured forged documents with fictitious signature of O.P. No. 3 while he did not receive any amount of loan from the abovementioned society some amount was said to be drawn by O.P. No. 3 while he did not avail any loan facility as he was performing his army duty in Gurudaspur (Punjab) on the relevant dates. No complaint was filed by Siya Ram Singh, but he moved an application under section 156(3) Cr.P.C., which was allowed and in compliance of order passed by Magistrate the case was registered under sections 420, 467, 468, 471 IPC, at case crime no. C/11/2005 against Khayal Ram @ Khillan and Om Prakash Singh and the police on completion of investigation submitted chargesheet against both the accused persons in the court below. The learned court below took cognizance on the basis of the chargesheet and issued process against accused persons.

In the meantime applicant accused Om Prakash Singh instituted Criminal Misc. Writ Petition No. 1564 of 2007 and obtained several orders by concealing real facts of the case. He also moved contempt petition no. 3256 of 2007 against opposite parties. The applicant in his application mentioned O.P. No. 4 at several places, but no O.P. No. 4 was impleaded in this application.

The learned counsel for the applicant vehemently contended that applicant Om Prakash Singh, Secretary Atma Nirbhar Sadhan Sahkari Samiti Ltd. never worked as Branch Manager (Secretary), District Cooperative Bank, Branch Madora, P.S. Baldev, District Mathura, while said process was issued against him. The applicant disputing his identity as accused categorically mentioned that he worked as Secretary, Atma Nirbhar Sadhan Sahkari Samiti Ltd. The applicant could move such application in the trial court with this prayer that first of all the finding to this effect might be recorded as to whether the applicant was the same person against whom FIR was lodged and chargesheet was submitted, but the applicant raised this question in this application moved under section 482 Cr.P.C. This contention cannot be decided in this application, because said controversy requires evidence, on the basis of which said controversy can be decided.

4. A perusal of FIR goes to show that offences under sections 420, 467, 468, 471 IPC are prima facie made out against the accused persons and probably the O.P. No. 3 being the member of Armed Forces could not know the distinction between Atma Nirbhar Sadhan Sahkari Samiti Ltd. and Cooperative Bank and due to this reason he mentioned the said address of the applicant in his application under section 156(3) Cr.P.C. The counter affidavit filed by S.I. Of Police Station would go to show that the said case was registered against the applicant and Khayal Ram @ Khillan and after completion of investigation the chargesheet was submitted against them. The offences are alleged to have been committed in the years 19992000, 20012002 and FIR has been lodged on 22.8.2005 and

the chargesheet has been submitted, on the basis of which cognizance has been taken on 3.3.2006 i.e. within a period of limitation. Thus the cognizance has been taken within period of limitation and the same cannot be said to be barred by time.

5. No collusion between the opposite parties has been found and no motive for lodging FIR has been established prima facie. The applicant concealing the real facts has tried to prolong his trial by moving above writ petitions and contempt petitions in this Court and obtained orders therein. The court below has not committed any illegality or irregularity in issuing summons, bailable warrants and non-bailable warrants against the applicant and his coaccused in the said case. The mens rea of the applicant is apparent as alleged in FIR and the applicant cannot get any benefit of the same. Under these circumstances this application moved under section 482 Cr.P.C. lacks merit and is dismissed.

The court below is directed to proceed with the case expeditiously and decide the same preferably within a period of one year so that the complainant may get justice.