

**(2011) 09 AHC CK 0318**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Application No. 19595 of 2007

Margoob Ahmad Lari and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Sept. 30, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 482
- Penal Code, 1860 (IPC) - Section 120B, 419, 420, 467, 468

**Citation:** (2012) 1 ACR 754 : (2011) 10 ADJ 209

**Hon'ble Judges:** N.A. Moonis, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Hon"ble N.A. Moonis, J.

Heard Sri N.I. Jafri learned counsel for the applicants, Sri P.S. Pundir learned counsel for the complainant/opposite party No. 2 and the learned AGA and have taken through the record.

2. By means of the present application u/s 482 Cr.P.C. the applicants have invoked inherent jurisdiction of this Court with a prayer to quash the further proceedings initiated pursuant to the charge-sheet vide case No. 2042 of 2006 under Sections 419/420/467/468/120B IPC arising out of Case Crime No. 296 of 2005, P.S. Salempur, District Deoria pending in the Court of Chief Judicial Magistrate Deoria.

3. The genesis of the case in a nut shell is that the applicants got a forged and fictitious Hibanama executed in their favour. On the basis of the forged and fictitious Hibanama, the applicant illegally took possession of the property in question. The First Information Report was lodged against the applicants by the opposite party No. 2. The same was challenged before Division Bench of this Court by means of Criminal Misc. Writ Petition No. 9782 of 2005 (Margoob Ahmad Lari and others v. State and others) and the Hon"ble Bench was pleased to pass interim order

dated 21.9.2005 staying arrest of the petitioners till the submission of charge-sheet. The matter was investigated by the investigating officer and the investigating officer found clinching and credible evidence against the applicants on the basis of which charge-sheet was submitted as stated above.

4. It is submitted by the learned counsel for the applicants that the applicants are maliciously being prosecuted. The civil dispute has been given colour of criminal proceedings and the applicants who are in possession of the property in question are facing untold hardship and privation on account of criminal proceedings initiated against them. The title of the property and the genuineness of the Hibanama cannot be adjudicated upon in criminal proceedings and the civil litigation is still pending between the parties where the complainant is at liberty to adduce all the documents in support of his contention. The Court below will decide the civil dispute after weighing entire documents adduced by the parties. The investigation was done in very unfair and biased manner which culminated into charge-sheet. When the property in dispute owned by the father of the respondent No. 2 was transferred by Oral Hibanama in favour of the Institution viz. Smt. Khudaiza Bibi Makhdoom Bux Girls Degree College Deoria and the possession was also taken over by the Institution. The Institution is running since 1994. The aforesaid Hibanama was reduced in writing by the father of the respondent No. 2 on 13.12.1999 in the presence of two witnesses namely applicant Nos. 2 and 3. The father of the opposite party No. 2 executed the Power of Attorney in favour of the applicant No. 1. Pursuant to the Hibanama, the name of the Institution was entered in the revenue record. After the death of the father of opposite party No. 2, the opposite party No. 2 moved an application before the Naib Tehsildar Salempur for rescinding the order dated 24.5.2002 whereby the name of the institution was mutated in the revenue record and contended that his father had never executed any will in favour of the Institution thus the applicant had committed fraud and forgery. The Naib Tehsildar without issuing any notice to the institution and without affording any opportunity to the applicants passed the order dated 21.7.2005 staying his own order dated 24.5.2002. The Institution is running since 1994 on the basis of valid Hibanama of which the opposite party No. 2 was fully aware that the Naib Tehsildar had mutated the name of the applicant No. 1 pursuant to the will. The opposite party No. 2 filed an application before the Sub-divisional Magistrate Salempur on 4.8.2005. The said application was also addressed to the S.H.O. Police Station Salempur District Deoria with allegation that his father had never executed any Hibanama in favour of the applicant No. 1 and the mutation in favour of the applicant had also been stayed, therefore, action may be taken against the applicants. Pursuant thereto, criminal proceedings have been initiated against the applicants. The allegations levelled in the First Information Report against the applicants are false, frivolous and concocted. The opposite party No. 2 has adopted unfair means of prosecuting the applicants with the oblique motive of grabbing the property in question. The applicants are respectable persons and on account of

malicious prosecution initiated against them, they have been put in very horrendous and appalling situation. On account of submission of charge-sheet, learned Magistrate has taken cognizance. The dispute in question is purely of civil nature and the opposite party No. 2 has already approached to the civil Court. In these circumstances, the initiation of criminal proceedings against the applicants is nothing but a clear abuse of process of the Court hence the criminal proceedings initiated against the applicants may be quashed.

5. Per contra Sri P.S. Pundir learned for the complainant contended that no Hibanama was ever executed by the father of the complainant in favour of the applicant No. 1 hence there was no occasion to give power of attorney in respect of the property in question. The Hibanama was prepared in very shrewd and adept manner so as to usurp the ancestral property of the opposite party No. 2. The Division Bench while granting interim order staying the arrest of the applicants had observed that the disputed question of Will can only be decided by the competent Court. The investigation was done in a fair and impartial manner. After recording the statement of the witnesses and the investigating agency found credible and clinching material against the applicants on the basis of which charge-sheet was submitted. Learned counsel has further drawn the attention of the Court upon the decision of the Apex Court pronounced in the matter *Kamla Devi Agarwal v. State of West Bengal and others*, 2001 (43) ACC 1106, where same question had arisen before the Apex Court. The Apex Court held that the criminal cases have to be proceeded in accordance with procedure as provided under the Code of Criminal Procedure. The pendency of civil suit would not be a ground for quashing the criminal proceedings because the onus of proving the allegations beyond reasonable doubt in criminal case is not applicable in civil proceedings which can be decided merely on the basis of probabilities with respect to the acts complained of otherwise unscrupulous litigants apprehending criminal action against them would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after initiation of criminal proceedings.

6. From the perusal of the materials on record and looking into the facts and after considering the arguments of the learned AGA for the State, it cannot be said that no offence has been made out against the applicants. Cognizance taken by the trial Court, whereby the applicants have been summoned to face the trial suffers from no illegality and as such the prayer for quashing the proceedings is refused. This Court is not impressed by the contention that the civil suit is pending therefore, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Pendency of civil case cannot be made a basis for quashing the criminal proceedings as the latter has to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure.

7. At the stage of issuing process the Court below is not expected to examine and assess in detail the material place on record. Only this has to be seen whether prima facie cognizable offence is made out or not. The Apex Court has also laid down the guidelines in the case State of Haryana v. Bhajanlal, 1999 SCC (CrI) 426, and State of Bihar v. P.P. Sharma, 1992 SCC (CrI) 192, where the criminal proceedings could be interfered and quashed in exercise of its power envisaged u/s 482 Cr.P.C. only in exceptional case.

8. Having considered rival submissions advanced by the learned counsel for the parties, this Court does not find any justifiable ground for quashing the proceedings or the charge-sheet of the aforesaid case in exercise of its inherent powers conferred u/s 482 Cr.P.C. to thwart the legitimate prosecution at its inception. The disputed defence of the accused applicants may be considered through a proper application u/s 239 or 227/228 Cr.P.C. as the case may be before the trial Court. The application is accordingly dismissed.

9. However, considering the facts and the circumstances of the case, it is directed that in case applicants appear before the Court concerned in the aforesaid case within 30 days from today and apply for bail, the same shall be heard and disposed of in view of decision rendered in the case Smt. Amrawati and another v. State of U.P. 2004 (4) ESC 2321 (All)(FB), which was approved by the Hon"ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 (SC).

No coercive steps shall be taken against the applicants within the stipulated period of 30 days.

In case the applicants do not appear before the Court below within stipulated time the Court below shall proceed with the trial against the applicants in accordance with the provisions of law and decide the same on merits.