

(2012) 02 AHC CK 0359

Allahabad High Court

Case No: Criminal Revision No. 145 of 2006

Chandra Lok Gramin Sahkari
Awass Samiti and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 420, 467, 468, 471

Citation: (2012) 4 ADJ 67

Hon'ble Judges: Ramesh Sinha, J

Bench: Single Bench

Advocate: S.N. Singh, Rakesh Kumar Singh, Tripti Singh, R.K. Singh and P.N. Singh for the Revisionists, for the Appellant;

Final Decision: Allowed

Judgement

Hon'ble Ramesh Sinha, J.

Heard Sri R.K. Garg, learned counsel for the revisionists, learned AGA for the State and perused the record. This Criminal Revision has been preferred against the judgment and order dated 11.11.2005, passed by the Additional Sessions Judge, Fast Track Court No. 5, Firozabad in Criminal Revision No. 75 of 2004 (State v. Ram Niwas and others), by which the Lower Revisional Court allowed the revision and set aside the order dated 15.1.2004 passed by the Additional Chief Judicial Magistrate, Firozabad in Case No. 1204 of 1992 (State v. Ram Niwas and others), under Sections 323, 506, 420, 467, 468, 471 I.P.C., Police Station-Uttar, District-Firozabad by which the learned Magistrate discharged the accused/revisionists from the said offence.

2. An FIR was lodged by Smt. Lilawati, widow of Late Daujee Ram, stating that her husband had some plots i.e. Khasra Nos. 429,664,665, 685, total area of which was 11 Bighas, 4 Biswa, 10 Biswansi in Village-Tapa Khurd, Police Station-Uttar, District-Firozabad. After the death of her husband on 11.11.1988 her name was

mutated as legal heir of her husband by the order dated 16.11.1988 passed by the Tehsildar and her name was entered into the revenue records. From the said plots, some portion were sold by her by executing sale-deed. One Rajendra Singh, resident of Village-Tappa Khurd, who alleged himself to be the Secretary, Chandralok Gramin Sahkari Avas Samiti Ltd. alongwith other accused persons in order to grab the land of the informant, one Prem Chandra got the forged documents prepared and got the sale-deed of the said plots registered on 22.5.1990 in the office of Sub Registrar, Firozabad. While she was returning from the Tehsil, she was stopped near the crossing of the post office and Rajendra Singh and Prem Singh alongwith two other persons in order to kill her, tried to strangulate her and assaulted her with kicks and fists. The said incident was witnessed by Kishan Pal.

3. After investigation, a charge-sheet was submitted against the accused Rajendra Singh, son of Jageshwar Singh and Prem Chandra son of Mansa Ram on 2.4.1991 and a supplementary charge-sheet was submitted against the accused Ram Kumar, Hori Lal, Rajveer Singh, Ram Niwas, Abdul Wahid, Ram Niwas Sharma and Virendra Kumar. Thereafter, the accused persons moved a discharge application before the Magistrate in Case No. 1204 of 1992 for offence under Sections 323, 506, 420, 467, 468, 471 I.P.C., Police Station-Uttar, District-Firozabad on the ground that on the basis of the FIR and charge-sheet no offence was made out against them.

4. It appears that the accused revisionists Rajveer Singh, son of Ram Swaroop alongwith some other accused persons had approached this High Court by means of filing a Criminal Misc. Application No. 14052 of 1992 (Rajveer and others v. State and others). This Court vide order dated 28.1.1997 disposed of the application and the directed the revisionists to approach the Court below by moving an application before it regarding the fact that the informant Lilawati had made a statement in the civil suit pending between the parties which has been finally decided and the certified copy of the judgment may be considered by the Court below at the time of framing of the charges.

5. In pursuance of the order passed by this Court, the accused/revisionists moved an application before the Court below raising their contentions and further prayed to the Court that they may be discharged from the offence as from perusal of the FIR and charge-sheet, no offence is made out against them.

6. Learned Magistrate after considering the material on record and hearing the prosecution and the defence was of the opinion that even if the prosecution case is to be taken on the face of it the case cannot proceed against the accused/revisionists for offence under Sections 323, 504, 506, 467, 468, 471 I.P.C. and discharged them vide order dated 15.1.2004.

Smt. Lilawati, who was the aggrieved party, did not challenge the order dated 15.1.2004 passed by the learned Magistrate discharging the accused/revisionists and it was the State through D.G.C. (Criminal), Firozabad who preferred a criminal

revision before the Additional Sessions Judge, Fast Track Court No. 5, Firozabad, which was numbered as Criminal Revision No. 75 of 2004 (State of U.P. through D.G.C. (Criminal), Firozabad v. Chandralok Gramin Sahkari Avas Samiti Ltd. through its Secretary and others).

7. The Lower Revisional Court vide order dated 11.11.2005 allowed the aforesaid revision and set aside the order dated 15.1.2004 passed by the Magistrate discharging the accused/revisionists. Hence the present revision before this Court.

8. Learned counsel for the revisionists submitted that the dispute which has arisen between the informant Lilawati widow of Late Daujee Ram, who has lodged the FIR against the revisionists had filed a civil suit No. 243 of 1992 in the Court of Munsif Magistrate, Firozabad against the revisionists for cancellation of the registered sale-deed dated 22.5.1990, has moved an application (paper No. 85Ga) alongwith an affidavit (paper No. 86Ga) praying that Khasra Nos. 429, 664, 665, 685 of which a sale-deed was executed on 3.11.1988 by her husband Late Daujee Ram in favour of Chandralok Gramin Sahkari Avas Samiti Ltd. is correct and genuine and she has no concern or right over the same and the owner of the said plots is Chandralok Gramin Sahkari Avas Samiti Ltd. and the said suit has also not been instituted by her. It was further urged by the learned counsel for the revisionists that the Civil Judge (Junior Division), Firozabad on 1.5.1996 allowed the said application (paper No. 85Ga) and dismissed the civil suit after examining Smt. Lilawati before it. It was further submitted by the learned counsel for the revisionists that the informant Smt. Lilawati had also filed an affidavit on 21.1.1997 before the Magistrate stating that she has no concern at all with the disputed lands and accused Rajendra Sharma and Rajveer Singh have never threatened her nor have abused her and she has not lodged the FIR and some other person has lodged a false report in order to falsely implicate the accused persons/revisionists.

9. Learned counsel for the revisionist further argued that the Lower Revisional Court has committed an error of law in setting aside the order of discharge passed by the Magistrate on erroneous considerations and the view taken by the Lower Revisional Court is based on surmises and conjectures, hence the same is liable to be set aside by this Court.

On the other hand, learned AGA argued that the order passed by the lower Revisional Court is legal in the eyes of law and the order of the learned Magistrate discharging the accused/revisionists was rightly set aside by the Lower Revisional Court.

10. Having considered the submissions advanced by the learned counsel for the parties, it is apparent from the order passed by the Lower Revisional Court that the Court allowed the revision of the opposite parties firstly on the ground that the learned Magistrate should not have considered the materials submitted by the accused/revisionists for discharging the accused persons and secondly at the time

of framing of charge the Magistrate has only to see whether a prima facie offence is disclosed against the accused or not. The Lower Revisional Court found that the Magistrate has committed a gross illegality in considering the defence material of the accused persons/revisionists at the time of framing of the charge and has discharged the accused persons/revisionists.

11. In my opinion, the Lower Revisional Court has failed to consider that from the FIR and the materials collected during investigation if taken to be true, then to no offence whatsoever is made out against the accused/revisionists. It is relevant to note here that the informant Smt. Lilawati who was the aggrieved party has already filed an application in the civil suit No. 243 of 1992 in which she has specifically stated that her late husband Daujee Ram had executed a sale-deed in favour of the Chandralok Gramin Sahkari Avas Samiti Ltd. on 3.11.1988 and she has no claim on it and the said Society is the owner of the plots in question. The Civil Judge (Junior Division), Firozabad after examining Smt. Lilawati in the Court made queries from her about the application (paper No. 85Ga) alongwith affidavit (paper No. 86Ga) which she had filed in the civil suit No. 243 of 1992, the Civil Court allowed the said application filed by her and dismissed the civil suit.

12. Moreover, on 21.1.1997 an affidavit was filed before the Magistrate by the informant Smt. Lilawati in which she stated that she has no concern at all with the disputed plots and no threatening was given to her by the revisionist No. 1 and revisionist No. 3. Learned Magistrate considered the application for discharge of the revisionists in pursuance of the order dated 28.1.1997 passed by this Court at the time of framing of charge and was of the opinion that no offence whatsoever is made out against the accused persons, as was evident from the materials brought before him at the time of framing of the charge. The Lower Revisional Court without realizing the fact that the dispute between the parties have already been settled and there was no need for the State to file the revision against the order of the Magistrate discharging the accused, when the aggrieved party i.e. Smt. Lilawati had no grievance from the order of discharge. It appears that the Lower Revisional Court had further taken some technical view as to how the application filed by Smt. Lilawati in civil suit No. 243 of 1992 was entertained by the Civil Judge (Junior Division), Firozabad when a Civil Misc. Writ Petition No. 34585 of 1994 (Chandralok Gramin Sahkari Avas Samiti Ltd. v. Additional District Judge and others) was filed by the revisionist No. 1 and a stay order was passed staying the proceedings of O.S. No. 243 of 1992 pending in the Court of Munsif, Firozabad. It is further submitted that on 21.8.1996 the said writ petition was got dismissed as not pressed by the revisionist No. 1 as the suit in question was already dismissed by the Civil Judge (Junior Division), Firozabad on 21.5.1996.

In view of the foregoing discussions, I find that the impugned order dated 11.11.2005 is not sustainable in the eyes of law hence the same is set aside and the order dated 15.1.2004 passed by the Magistrate discharging the accused

persons/revisionists is restored and upheld. The present revision is allowed accordingly.