

(2012) 04 AHC CK 0186

Allahabad High Court

Case No: Criminal M.B.A. No. 1195 of 2010 with Criminal M.B.A. No's. 3023 and 31440 of 2010

Pradhan Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 409, 419, 420, 467, 468

Citation: (2012) 2 ACR 2355

Hon'ble Judges: Ashok Srivastava, J

Bench: Single Bench

Advocate: U.K. Saxena, Vikas Srivastava, H.N. Shukla and R.R. Shukla, for the Appellant;
P.K. Shukla and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Ashok Srivastava, J.

All the above mentioned three bail applications relate to the same crime number of the same police station therefore, they have been heard together and disposed of by this common order. The applicants Pradhan Singh and O.P. Chowdhary are involved in Case Crime No. 263 of 2009 u/s 419/420/467/468/471/409, I.P.C.. P.S. Vijay Nagar, district Ghaziabad and further the applicant Sartaj Singh Atwal is also detained u/s 506. I.P.C. but in the same case crime number.

2. I have heard learned counsel for the parties and perused the record.

3. It is admitted case of the appellants that some 400 persons formed a housing society namely Himachal Sahkari Awas Samiti Ltd. (for short the society) which was registered under the Societies Registration Act. The society purchased a piece of land measuring 4.895 hectares for its members with a view to develop a colony, carve out plots for the members and after developing the same the plots were to be handed over to them to construct their respective houses. The applicant Pradhan

Singh was the President of the Society, Sartaj Singh Atwal was the Secretary and O.P. Chowdhary was the Treasurer. As per allegations all the three applicants hatched a conspiracy and held a meeting of the General Body and without ensuring the requisite quorum passed a resolution to sell a large chunk of land belonging to the Society on the pretext that the land purchased by the Society came under the land acquisition process and necessary notifications were published by the State of U.P. It is further the case of the applicants that the members of the Society were pressurizing the officer-bearers of the society including the applicants to sell the land and the money obtained shall be distributed amongst them so that they may get their money back which they invested a few months before the date of the notification.

4. It has also been mentioned that an F.I.R. was lodged by one of the applicants against the co-accused Praveen Dalai with the allegation that the latter was threatening the applicants that if the applicants did not sell a portion of land belonging to the society to him and his men they will kill the applicants or kidnap their children and family members.

5. It is also the case of the parties that on a particular date certain sale deeds were executed in favour of Praveen Dalai and his associates. The facts also disclose that the land was sold by the applicant Sartaj Singh Atwal as if the chunk of land was his personal property and it was sold against cash and post dated cheques.

6. As per allegation the entire land was sold for a sum of Rs. 3,31,70,000 and a sum of Rs. 1,39,07,000 was received in cash and the remaining in form of post dated cheques. The area which was sold was 2.954 hectares. It has also been the prosecution case that the cash was never deposited in the account of the society. The account of the society was in a Co-operative Bank. To defraud the society and its members the applicant opened another account in Canara Bank but even in that account no money was deposited. It should be mentioned here that the society was taken over by the Registrar. Cooperative Societies and an administrator was appointed to look after the functioning of it.

7. It has been submitted from the side of the applicants that the applicants Pradhan Singh and O.P. Chowdhary are in jail since 3.8.2009 and the applicant Sartaj Singh Atwal is in custody since 6.9.2009. They have further prayed that they are innocent and have committed no offence. It has further been submitted that a few persons who are holding high official posts in the district of Ghaziabad are inimical to them and therefore, they concocted a false case and lodged an F.I.R. against them.

8. It has further been submitted from their side that when the land was acquired the frightened members of the society pressurized the office bearers to sell a portion of the land to a suitable purchaser and after getting the sale proceeds the money should be distributed between the members so that they can get their money back which they had invested to purchase their plots. It has further been submitted that a

General Body Meeting of the Society was called and it was decided that the applicants should dispose of a portion of the land and the money be distributed amongst the members who were desirous to take their money back. It has also been submitted that a piece of land was sold to the co-accused Praveen Dalai who had threatened the applicants that if the land is not sold to him, their men will kill the applicants or kidnap their children and family members. It has further been submitted that the money which was received by the applicants in cash was paid to various members of the society and they have filed their affidavits in which they have stated that they have received their money back. It has also been submitted that the post dated cheques were never deposited in any account and therefore, it cannot be said that the amount due to be paid through the post dated cheques were misappropriated.

9. All the three bail applications have been vehemently opposed by Mr. P.K. Shukla, learned counsel for the complainant and by the learned A.G.A. arguing on behalf of the State.

10. It has been submitted by Mr. P.K. Shukla that from bare perusal of the sale deeds it will be evident that it was not sold by the society but it was sold by the applicant Sartaj Singh Atwal in his personal capacity and two other applicants were the witnesses to the sale deed. Sri. Shukla has further stated that not a single penny was deposited in the account of the society and no money was kept in the cash chest of the society either. Mr. Shukla has pointed out that no amount has been mentioned in any of the affidavits said to have been sworn by the members. He has further stated that had it been a case of re-payment to the members a proper and formal receipt should have been issued by the society in which the paid amount should have been mentioned. Mr. Shukla has further stated that the land was allegedly sold on behalf of the Society and in such type of sales it is customary that cheques or bank drafts are received as consideration. This has not been done.

11. From the perusal of the record it is evident that the land was sold by the applicants without any proper authority. The society was taken over by the Registrar and an Administrator was already appointed. From perusal of the sale deed it appears that it was sold as if the land was the private property of the applicant Sartaj Singh Atwal and not the property of the society. It is quite unusual, in such cases, to receive payment in cash and in the shape of post dated cheques. There is nothing on record which may indicate that the amount of Rs. 1,39,70,000 or any part thereof was ever deposited in the bank account of the society or the amount payable to some members of the society was paid to them. There should have been a proper receipt for the same issued by the office of the society but nothing is there. Considering all the aspects of the case and without expressing any opinion as to the merits of the case I do not find that there is any force in all these bail applications and all the three bail applications are rejected.