

Deepak Singh Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Dec. 17, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 311A
Penal Code, 1860 (IPC) â€” Section 419, 420, 467, 468, 471

Citation: (2013) 2 ACR 1941

Hon'ble Judges: Ramesh Sinha, J

Bench: Single Bench

Advocate: Ashwani Kumar Awasthi and Manish Tiwari, for the Appellant; Anil Kumar Singh, G.P. Singh, Aradhna Chauhan and Sanjeev Kumar Chaudhary, for the Respondent

Judgement

Ramesh Sinha, J.

Heard Sri Manish Tiwari, learned counsel for the applicant, Sri Anil Kumar Singh, learned counsel for the opposite

party No. 2. By means of the present 482 application, the applicant has prayed for quashing the order dated 2.11.2012 passed in Case No. 107

of 2012, Case Crime No. 285 of 2012, under Sections 419, 420, 467, 468, 471, 506, I.P.C., P.S. Aural, district Sant Ravidas Nagar/Bhadohi

and to direct the A.C.J.M., Bhadohi Gyanpur to direct the Investigating Officer to have the specimen signatures of the first informant taken in

Court and sent the same for analysis with the disputed signatures.

2. The brief facts are that on 21.8.2012, the informant came to know that the applicant alongwith other co-accused persons had executed a sale-

deed with respect to the plot Nos. 314, 323, 317, 318, 319, 320, 322, 315 and 316 Ka situated at Mauja Kathaura, P.S. Aurai, district Sant

Ravi Das Nagar in his village and he went to the Tehsil Aurai and obtained a copy of khatauni from his counsel and he came to know that on

15.6.2012, in a mutation proceedings, bearing case No. 542 of 2012. the name of the applicant Deepak Singh has been mutated on the basis of

forged and fictitious documents in the place of the informant namely Ashok Kumar Barnwal, opposite party No. 2. The informant/opposite party

No. 2 thereafter filed restoration application against the order dated 15.6.2012 before the concerned authority and also obtained a certified copy

of the sale deed from the Sub-Registrar Office which is said to have been executed on 5.5.2012 by the informant in favour of the applicant. The

value of the property in question was to the tune of Rs. 1,30,00,000. The informant did not know about the execution of the sale deed prior to

21.8.2012 and he apprehended that under some conspiracy, the applicant alongwith co-accused persons in order to grab his property with the

help of officers/employees of the Sub-Registrar of the office, the alleged sale-deed dated 5.5.2012 has been fabricated by the accused persons by

the purchaser alongwith the witnesses and the execution of the same has been made by producing an imposter. The informant stated that he has

neither put his signatures nor he put his thumb impression on the sale-deed nor he executed the same and the informant was further threatened on

several occasion and also apprehended danger to his family.

3. It is contended by the learned counsel for the applicant that the F.I.R. of the incident was lodged by the informant on 21.8.2012, though he

came to know to knowledge about execution of the sale-deed on 21.8.2012 and there is no explanation for the delay given by the informant as to

why no F.I.R. was lodged against the applicant and other accused persons for the last 10 days after coming to know about the execution of the

sale-deed in question on 21.8.2012.

4. It is further contended that the applicant has invested the huge amount to the tune of Rs. 1.30.00,000 in lieu of the property in dispute and also

paid Rs. 6.30,000 as stamp duty being a bona fide purchaser of the agricultural land from the informant. The applicant neither manipulated anything

nor obtained the land on the basis of forged and fictitious documents nor created any imposter in order to grab the land in dispute nor he is a land

mafia. It is further submitted that during investigation. The Investigating Officer has not sent the actual signatures of the informant/opposite party

No. 2 Ashok Kumar and has sent the left thumb impression of some other persons in order to create false evidence against the applicant. He

pointed out that the said thumb impression was not produced before any court nor any procedure has been followed up for taking thumb

impression as has been provided under the law. Hence the applicant had moved an application on 8.10.2012 u/s 311A, Cr.P.C. before the

Magistrate with a prayer that the informant/opposite party No. 2 be summoned in the court and his thumb impression and finger prints and

signatures may be obtained before the Court and sent for its examination to the authorised concerned handwriting expert/Vidhi Vigyan

Prayogshala, which may be compared with the signatures and thumb impressions and finger print on the disputed document. Learned Magistrate

rejected the said application of the applicant by passing the impugned order dated 2.11.2012 by misinterpreting and misreading the proviso of

Section 311A, Cr.P.C. and made it applicable to complainant which is applicable to an accused, hence the same may be set aside by this Court.

5. Learned counsel for the opposite party No. 2 Sri Anil Kumar Singh could not dispute the proposition of law as has been laid down by the

proviso to Section 311A, Cr.P.C. and justify the reasons for rejecting the application of the applicant by passing the impugned order. He

submitted that the informant/opposite party No. 2 is ready to appear before the court concerned and give his thumb impression/finger

print/signatures as may be required for comparing the same on the disputed document which said to have been executed between the applicant and

the informant/opposite party No. 2, i.e., sale-deed dated 5.5.2012 provided the applicant produces the copy of the said original sale-deed before

the Magistrate within a stipulated period of time to which Sri Manish Tiwari, learned counsel for the applicant states that the applicant shall

produce the disputed sale-deed dated 5.5.2012 before the Magistrate for the said purpose.

6. Considered the submissions made by learned counsel for the parties. From the perusal of the provisions of Section 311A, Cr.P.C. is absolutely

clear that the Magistrate may for the purpose of any investigation or proceedings under this Code direct any person including an accused to give

specimen signatures or handwriting and he may make an order to that effect and in that case, the person to whom the order relates, shall be

produced or shall attend at the time or place specified for the Magistrate and shall give his specimen signatures or handwriting. The proviso to the

aforesaid Section makes it clear that no order shall be made u/s 311A, Cr.P.C. unless the person has had some time been arrested in connection

with such investigation or proceedings, meaning thereby that if an accused of a case has been arrested in a case at any point of time then no orders

shall be passed in the aforesaid Section against him for the aforesaid purpose.

7. From the perusal of the impugned order, it appears that the learned Magistrate has misread the proviso to Section 311A, Cr.P.C. and had

made applicable to the informant/opposite party No. 2 that he has never been arrested as the said fact has not been stated by the applicant in his

application. Hence it is apparent from the impugned order that the said proviso has been applicable to the complainant of the case by the

Magistrate. In the present case, the application was moved by the applicant who is an accused in the case and the Magistrate erred in observing

that the complainant/opposite party No. 2 has not been arrested at any point of time in the present case, hence he cannot be directed to be

produced before the court for giving his specimen signatures or thumb impressions for being compared on the disputed document. Hence the

impugned order passed by the learned Magistrate is not sustainable in the eyes of law. Therefore, it is hereby quashed.
The informant/opposite

party No. 2 is hereby directed to appear before the concerned Magistrate within ten days from today and the applicant may also within the same

period file the original copy of the sale-deed dated 5.5.2012 which is said to have been executed between the applicant and informant/opposite

party No. 2 Ashok Kumar and the learned Magistrate shall pass order afresh on the application of the applicant dated 8.10.2012 within a week

thereafter and obtain a report from the concerned handwriting expert/Vidhi Vigyan Prayogshala which shall be make available within four weeks

thereafter and transmit a copy of the same in a sealed cover to this court which is required to be perused for deciding of Criminal Misc. Bail

Application No. 30564 of 2012 of the co-accused persons which was also heard alongwith the present 482, Cr.P.C. application and has been

fixed for 21.1.2013.

The petition stands allowed.

Office is directed to connect this petition with Criminal Misc. Ball Application No. 30564 of 2012 which is fixed for 21.1.2013.