(2017) 04 AHC CK 0225

ALLAHABAD HIGH COURT

Case No: 31076 of 2015

Arun Kumar and others		APPELLANT
	Vs	
State of U.P & other		RESPONDENT

Date of Decision: April 28, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482, Section 156(3) - Saving of inherent powers of High Court - Police officers power to Investigate cognizable case
- Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 467, Section 506 - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc - Punishment for criminal ,intimidation

Hon'ble Judges: Pankaj Naqvi

Bench: Single Bench

Advocate: Dhirendra Mohan Chaudhary

Final Decision: Allowed

Judgement

1. This application under Section 482 Cr.P.C is filed for quashing the proceedings of Case No.25213/2010 (State vs. Harvir and others), arising out of Case Crime No.972/2010, under Sections 420/467/468/120-B/506 IPC, P.S. Shahibabad, Ghaziabad, pending in the court of C.J.M., Ghaziabad.

2. An application under Section 156(3) Cr.P.C came to be filed by O.P. No.2 against the applicants and non-applicant- Harvir, a co-accused, that the latter executed a sale deed in favour of applicant no.1 in excess of his share, in respect of which an application, an affidavit, copy of complaint to S.S.P, sale deed, copies khasra and

khatauni, etc. were filed. The learned Magistrate called for the police report from the P.S. concerned and after examining the materials, under its order dated 3.5.2010, directed the P.S concerned to register an FIR and investigate the same. Pursuant thereto, an FIR as Case Crime No.972/2010, under Section 420/467/506/120-B IPC came to be registered, in which after investigation, charge-sheet came to be submitted against the applicants and non-applicant Harvir in the above offences on 5.7.2010, cognizance taken and applicants summoned.

3. Heard Sri Dhirendra Mohan Chaudhary, learned counsel for the applicants and the learned A.G.A.

4. It is submitted by learned counsel for the applicant that assuming the allegations made in the FIR / charge-sheet, no offence whatsoever is made out and the prosecution of the applicants, is an abuse of the process the Court, which is liable to be quashed.

5. Learned A.G.A has opposed the submission.

6. The law is well settled that when prosecution is sought to be quashed at an initial stage, the Court has to examine only the allegations made in the FIR / complaint / charge-sheet as to whether on the basis of materials on record, a case of prima facie commission of offence is made out or not. If prima facie case is disclosed, the Court may refuse to quash the same. Where going by the materials, no offence whatsoever is made out or prosecution is based on malafides or is an abuse of the process of the Court or where allegations are absolutely absurd / ridiculous etc, this Court may quash the criminal prosecution. Reference in this connection may be made to the judgements of the Apex Court in Amit Kapoor vs. Ramesh Chander (2012) 9 SCC 460 & State of Haryana v. Bhajan Lal, 1992 S.C.C. (Cr.) 426.

7. Let us 1st examine as to whether the charged offences, i.e., Sections 467/468/471 in the 1st instance are prima facie made out or not.

Section 467 relates to forgery of valuable security, will, etc; 468 relates to forgery for the purpose of cheating and 471 using as genuine a forged document or an electronic record. In all the 3 above offences, forgery is common element present in all. Forgery is defined in Section 463 as under:-

463. Forgery.-- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent

to commit fraud or that fraud may be committed, commits forgery.

Forgery is essentially preparation of false documents / electronic record / part of a document or electronic record to claim a title of property, etc. with intent to commit fraud.

Section 464 defines making a false document as under:

464-Making a false document. -- [A person is said to make a false document or false electronic record-- First --Who dishonestly or fradulently--

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the 342 [electronic signature].

with the intention of causing it to be believed that such document or part of document, electronic record or 342 [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly --Who, without lawful authority, dishonestly or fraudu?lently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with 342 [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly --Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his 342 [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

False documents fall in 3 categories as provided under Section 464:-

(i) When a person dishonestly or fraudulently signs or executes a document with the intention of causing it to be believed that such a document was made, signed, sealed, executed by or by the authority of a person to whom it purport to be, knowing fully well that it was not made, signed, sealed, executed or affixed,

(ii) when a person dishonestly or fraudulently without any lawful authority, alters a document in material part thereon, after it was made / executed either by himself or by any other person,

(iii) when a person dishonestly or fraudulently causes any person to sign, execute or alter a document, knowing that such by raising of unsound of mind or intoxication or by deception practised upon him, but he does not the contents of the document.

To summarize a person can be said to prepare a false document:-

(i) when he executes a document either claiming it to be someone else''s or with the authority of a person to which it purports to be knowing that its not so,

(ii) where a document is altered or tampered,

(iii) where authentication in respect of a document is obtained by deception or the person is not in control of his senses.

8. The case of the informant is that Harvir, a co-sharer executed a sale deed in favour of applicant no.1 in excess of his share in which applicants nos. 2 & 3 are marginal witnesses, whereas applicant no.1 claims himself to be a bonafide purchaser. It is not disputed that Harvir (non-applicant) and informant / Virendra Kumar are co-sharers. It is also not disputed that share of Harvir (non-applicant) is not defined / declared by any court of law. It is not the case of the informant that there was any fraud or deception practised by the applicants or co-accused Harvir qua him. Dispute, if any, is purely civil, coupled with the fact that a suit for cancellation has already been filed by the informant which is pending adjudication. Thus, the essential attributes of a false document as specified in Clause -d of Section 464, are lacking, making Sections 467/468/471 inapplicable in the present case. The view taken herein is also supported by the judgment of the Apex Court in Mohd. Ibrahim and others vs. State of Bihar and others, (2009) 8 SCC 751.

9. In view of above discussion, it is evident that no offences under Sections

420/467/468/120-B/506 IPC are made out. Once the substantive offences are found to be wanting, a mere allegation of Section 506 IPC is of no consequence. The prosecution is an abuse of the process of the Court.

10. The application is allowed. The proceedings of Case No.25213/2010 (State vs. Harvir and others), arising out of Case Crime No.972/2010, under Sections 420/467/468/120-B/506 IPC, P.S. Shahibabad, Ghaziabad, pending in the court of C.J.M., Ghaziabad stands quashed.