

(2010) 09 AHC CK 0320

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 16346 of 2010

Balistar Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 166, 168, 409, 420, 467

Citation : (2010) 09 AHC CK 0320

Hon'ble Judges : Amar Saran, J and Surendra Singh, J

Final Decision : Dismissed

Judgement

Amar Saran and Surendra Singh, JJ.—Heard learned counsel for the petitioners and the learned A.G.A. for the State.

This petition has been filed for quashing of an F.I.R. lodged by Sri Mahaveer Singh, respondent No. 3 at Case Crime No. 3020 of 2010, under sections 420/467/468/471/472/409/166/168/506 I.P.C., P.S. Kotwali, district Farrukhabad and staying the arrest of the petitioners in the meanwhile.

The allegations in the F.I.R.were that the petitioners and others had forged and used the order of the Consolidation Officer (C.O.) dated 3.1.2002 under section 20 of the Consolidation of Holdings Act, hereinafter C.H. Act, which was forged in order to grab the lands of Forest Department as well as that of the respondent No. 3.

2. Four submissions were raised by learned counsel for the petitioners.

One, it was submitted by the learned counsel for the petitioners that in the appeal filed by the informant on 12.2.2009 against the order dated 3.1.2002, there was not a whisper that the C.O.'s order dated 3.1.2002 was forged, although it was described as misconceived and illegal.

Two, it was also submitted that proceedings under section 340 Cr. P. C. had been

initiated by the respondent No. 3 before the S.O.C. for prosecuting the petitioners, but the S.O.C. had rejected the prayer, vide his order dated 26.3.2010.

Three, a questionnaire obtained from the C.O. Fatehgarh dated 4/5.3.2010 mentions that the copies of the order dated 3.1.2002 have been issued on 11.1.2007 and 10.7.2007.

3. Four, the arrest of the coaccused Kaptan Singh has been stayed in Criminal Misc. Writ Petition No. 15557 of 2010.

Learned A.G.A. controverted the contentions of the learned counsel for the petitioners.

In our view, it is possible that when the appeal was filed before the S.O.C. against the order of the C.O., the respondent No. 3 may not have been aware of the forgery. Also simply because the Office clerk of the C.O.'s office reported that the order dated 3.1.2002 had been issued in 2007, it could not refute the clear finding recorded by the C.O. Chakbandi in his order dated 26.3.2010 which clearly mentioned that the earlier C.O. in his report dated 4.11.2009 noted that the said order was not on the record or in the case diary. Even the Bench Reader in his report dated 30.11.2009 sent on 30.1.2010 observes that the so called order dated 3.1.2002 was not on the file or in the case diary. Hence a finding was recorded by the C.O. on 26.3.2010 that the said order appeared to be forged for causing benefit to some parties.

Even a direct perusal of the said order, which has been annexed as Annexure No. 2 clearly shows that the Forest Department did not raise any objection, but gave its consent for the transfer of the Forest land for Sri Krishna, father of the petitioners. This giving of consent by the Forest Department when it usually protects its lands fervently is also a reason to suspect the genuineness of the order dated 3.1.2002.

4. The reason why the C.O. by his order dated 26.3.2010 did not initiate proceedings under section 340 Cr. P. C. was mentioned in the order itself that the matter was pending in appeal before the S.O.C., and not because the C.O. considered the order to be genuine and not forged.

Also as the order of the Division Bench in Criminal Misc. Writ Petition No. 15557 of 2010 was only an interim order, which has not examined the merits of the case, hence it is not binding on us, when we proceed to decide this petition finally.

The Full Bench of this Court in *Ajit Singh @ Muraha v. State of U.P. and others* (2006 (56) ACC 433) reiterated the view taken by the earlier Full Bench in *Satya Pal v. State of U.P. and others* (2000 Cr.L.J. 569) after considering the various decisions of the Apex Court including *State of Haryana v. Bhajan Lal and others* (AIR 1992 SC 604) that there can be no interference with the investigation or order staying arrest unless cognizable offence is not ex facie discernible from the

allegations contained in the F.I.R. or there is any statutory restriction operating on the power of the police to investigate a case.

5. For all the aforesaid reasons, it cannot be said that the F.I.R. allegations do not disclose any prima facie case. Hence no ground exists for quashing of the F.I.R. or staying the arrest of the petitioners.

The petition has no force and it is, accordingly, dismissed.

Office is directed to place a copy of this order on the record of Criminal Misc. Writ Petition No. 15557 of 2010, Kaptan Singh vs. State of U.P. and others.