

(2015) 02 AHC CK 0081

In the Allahabad High Court

Case No : Criminal Misc. Application No. 9185 of 2008

Dharmpal Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 464, 467, 471, 482

Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 229-B

Citation : (2015) 3 ADJ 121

Hon'ble Judges : Vipin Sinha, J

Bench : Single Bench

Advocate : Amit Kumar Srivastava, for the Appellant; Irfan Chaudhary and Prashant Rai, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vipin Sinha, J.—Heard Sri Amit Kumar Srivastava, learned counsel for the applicants, Sri Prashant Rai, learned counsel appearing on behalf of opposite party No. 2 and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed for quashing of the proceedings of case No. 4441/9 of 2007, arising out of case crime No. 318 of 2007, under Sections 420, 467, 468, 471, 120-B IPC, police station Civil Lines, District Meerut pending in the Court of Additional Chief Judicial Magistrate, Court No. 1, Meerut.

Brief Facts of the Present Case.

The contention as raised in the affidavit filed in support of the application is to the effect that opposite party No. 2 has lodged an FIR against the applicants and as per the FIR, the land of opposite party No. 2 being khasra No. 540 and 540Ba is situated at village Amhera Adipur, Police Station Inchauli, District Meerut. Applicant No. 1 had executed an agreement to sell dated 12.2.2007 in respect of

land bearing khasra No. 540A, 549Ba in favour of applicant No. 2 in a fraudulent manner. During the investigation, the statement of opposite party No. 2 was recorded under Section 161 Cr.P.C. and in his statement, he has reiterated his version as stated in the FIR.

2. It is relevant to state here that during the investigation, opposite party No. 2 also supplied photostat copies of two registered agreements to sell executed by Sri Hari Bhushan, father of opposite party No. 2 in favour of applicant No. 1 on 28.12.1981 in respect of same plots of land.

3. The Investigating Officer submitted a charge-sheet against the applicants under Sections 420, 467, 468, 471, 120-B IPC, police station Civil Lines, District Meerut on 29.9.2007 before the Court of Additional Chief Judicial Magistrate, Court No. 1, Meerut. On that charge-sheet a cognizance was taken by Additional Chief Judicial Magistrate, Court No. 1, Meerut on 25.10.2007 in case No. 4441/9 of 2007.

4. After submission of chargesheet, the Senior Superintendent of Police, Meerut passed an order for farther investigation in the present case. In further investigation, the Investigating Officer opined that the applicants have not committed any offence and matter is purely of a civil in nature.

5. However, being aggrieved against the charge-sheet and the cognizance taken, the present application has been filed.

A counter-affidavit has been filed on behalf of opposite party No. 2 wherein it has been stated that the father of opposite party No. 2 is the owner of the land being khasra No. 540A and 540B which is situated in village Amehra Adipur District Meerut and the father of opposite party No. 2, namely, Sri Hari Bhushan had executed an agreement to sell on 29.10.77 and 28.12.81 to applicant No. 1 i.e. Dharampal Singh. It is further stated that the name of the father of opposite party No. 2 is entered in Khatuni in plot No. 540 A and 540B. A certain time is given to applicant No. 1 in the said agreement for sale and in failure of sale-deed the agreement of sale-deed would be cancelled. It is further stated that the applicant No. 1 has never executed the sale-deed and, therefore, the alleged sale-deed has been cancelled.

6. It is further alleged that applicant No. 1 fraudulently represented himself to be the owner of executed an agreement to sell dated 12.2.2007 land being khasra No. 540A and 540B in favour of applicant No. 2 in a fraudulent manner. Applicant No. 1 shown himself to be the landlord and owner of that land in page 5 of the agreement dated 12.2.2007 and it was submitted that the applicants have played fraud and thus, they cannot escape the criminal liability.

7. Written arguments have been filed by both the sides which have been taken on record.

8. On the basis of the written submissions filed on behalf of the applicants, Sri Amit Kumar Srivastava, learned counsel for the applicants submits that from the

side of opposite party No. 2 a civil suit for injunction being original suit No. 66 of 2007 was filed before the Court of Civil Judge (J/D), Meerut which was dismissed for non-prosecution by the Court below vide order dated 17.10.2007. It is relevant to state here the aforementioned order dated 17.10.2007 has not been recalled till date and no appeal against the aforementioned order has been preferred by opposite party No. 2, hence, the order dated 17.10.2017 has attained finality.

9. In pursuance of the agreement to sell dated 12.2.2007 executed by applicant No. 1 in favour of applicant No. 2 admittedly no sale-deed has been executed till date.

10. Learned counsel for the applicants has also placed reliance on the following cases:

"A. Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 .

B. Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another, AIR 2006 SC 2035 : (2006) 102 CLT 385 : (2006) CriLJ 2782 : (2006) 11 JT 133 : (2006) 5 SCALE 638 : (2006) 6 SCC 669 : (2006) 3 SCR 329 Supp : (2006) AIRSCW 2543 : (2006) 4 Supreme 217 .

C. Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 .

D. Harshendra Kumar D. Vs. Rebatilata Koley Etc., AIR 2011 SC 1090 : (2010) 1 BC 685 : (2011) 101 CLA 330 : (2011) 162 CompCas 247 : (2011) CriLJ 1626 : (2011) 1 Crimes 280 : (2011) 1 JCC 42 : (2011) 1 RCR(Criminal) 887 : (2011) 2 SCALE 278 : (2011) 3 SCC 351 : (2011) 1 SCC(Cri) 1139 : (2011) 106 SCL 159 : (2011) 2 SCR 670 : (2011) AIRSCW 1199 : (2012) AIRSCW 323 : (2011) 1 Supreme 742 : (2011) 8 Supreme 523

11. Sri Prashant Rai, learned counsel for opposite party No. 2 has filed his written arguments and his contention, in brief, is to the following effect:

12. The father of opposite party No. 2, namely, Sri Hari Bhushan is the owner of land being khasara No. 540a and khasara No. 540b who has executed an agreement to sale on 29.10.2077 to applicant No. 1. In the aforesaid agreement two years have granted to the applicant for execution of the sale-deed. Thereafter opposite party No. 2 has executed another agreement to sale dated 28.12.81. In the said agreement two months was further provided for execution of the sale-deed but till date no sale-deed has been executed. The certain time was provided to applicant No. 1 for execution of the sale-deed and in failure of sale-deed the agreement of sale-deed would be cancelled.

After a lapse of 26 years applicants have no right in the said land i.e. khatauni

No. 540a and 540b.

Mere agreement to sell gives no right of ownership to applicant No. 1.

13. Applicant No. 1 has never tried to execute the sale-deed in 26 years nor he has filed a civil suit for specific performance of sale-deed but he has filed a suit under Section 229B U.P.Z.A. & L.R. Act for declaration but the suit was decreed in favour of opposite party No. 2. Thereafter, applicant No. 1 has preferred an Appeal No. 53 of 2007-08 before the Additional Commissioner Meerut Mandal, Meerut which was allowed vide order dated 7.7.2008 in favour of applicant No. 1. Thereafter opposite party No. 2 has preferred IInd Appeal No. 129 of 2007-08 before Board of Revenue and Board of Revenue has stayed the order dated 7.7.2008 passed by Additional Commissioner Meerut Mandal Meerut in Appeal No. 53 of 2007-08 by order dated 18.7.2008.

14. The Board of Revenue has allowed the IInd Appeal No. 129 (Z.A. Act)/2007-08 in favour of opposite party No. 2 on 8.2.2013. Thereafter applicant No. 1 has preferred a Civil Misc. Writ Petition No. 15149 of 2013 which was allowed by the order dated 5.4.2013 on the ground that no opportunity was given to either side to address on the said substantial question of law. The Hon'ble High Court has further directed to the Board of Revenue to decide the second appeal expeditiously preferably within a period of six months from the date of production of certified copy of this order. However, after a period of 1 years 9 months no argument has taken till date due to lingering tactics adopted by applicant No. 2.

The name of the father of opposite party No. 2 has endorsed in khatauni in plot No. 540 and 540A.

15. Applicant No. 1 is not the owner of land because he was never intended to execute the sale-deed of said land knowingly and fraudulently executed an agreement to sell in favour of applicant No. 2, therefore he is guilty of offence under Section 420 IPC.

16. An agreement to sell dated 12.2.2007 was executed by applicant No. 1 in favour of applicant No. 2 showing himself to be the owner of transferable right of the land which is belonging to opposite party No. 2 and applicant No. 1 has no power to sell said land, and, thus, he is liable for the offence permissible under Section 420 IPC.

17. However, Sri Amit Kumar Srivastava, learned counsel for the applicants has placed heavy reliance on the judgment of the Hon'ble Apex Court rendered in case of Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 . The relevant extract of which reads as follows:

"16. There is a fundamental difference between a person executing a sale-deed claiming that the property conveyed is his property, and a person executing a sale-deed by impersonating the owner or falsely claiming to be authorised or

empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

20. When a sale-deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale-deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale-deeds. Therefore, it cannot be said that the first accused by the act of executing sale-deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale-deeds, deceived the complainant in any manner."

18. The Apex Court has further noted under the heading "A Clarification" that "When we say that execution of a sale-deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor

committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint." and thus it has been submitted by Sri Amit Kumar Srivastava, learned counsel for the applicants that the controversy as raised in the application is squarely covered by the Hon"ble Apex Court in the case of Mohammed Ibrahim and others (Supra) and thus, the proceedings as initiated are liable to be quashed.

19. A further reference may also be made to the judgment of the Hon"ble Apex Court rendered in the case of Joseph Salvaraj A. Vs. State of Gujarat and Others, AIR 2011 SC 2258 : (2011) 7 JT 53 : (2011) 3 RCR(Criminal) 632 : (2011) 6 SCALE 731 : (2011) 7 SCC 59 : (2011) 3 SCC(Cri) 23 : (2011) 8 SCR 815 , wherein it has been held that:

"16. Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the Complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the Appellant were prima facie made out from the complainant's FIR, charge-sheet, documents etc. or not.

17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil Crl. A. @ S.L.P. (CrI.) No. 2409 of 2007 13 dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra and Others Vs. State of U.P. and Another, (2009) CLT 1207 : (2009) 8 JT 120 : (2009) 7 SCALE 613 : (2009) 7 SCC 495 : (2009) 7 SCR 872 , relevant part thereof is reproduced hereinbelow:

"27. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

19. The Appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the Appellant and Complainant-Respondent No. 4, and is still sub-judice. In the said suit, the Appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by Trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the Appellant and Respondent No. 4 - the Complainant. There was no cause of action to even lodge an FIR against the Appellant as neither the Complainant had to receive the money nor he was in

any CrI. A. @ S.L.P. (CrI.) No. 2409 of 2007 15 way instrumental to telecast "GOD TV in the central areas of Ahmedabad. He appears to be totally a stranger to the same. Appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

20. Thus, from the discussion as aforesaid and the facts and circumstances of the present case as well as the legal position, it is clear that in the present case, proceedings for declaration of title under Section 229-B of U.P. Z.A. and L.R. Act are pending before the Board of Revenue. No criminal offence is made out. It is in the nature of a civil dispute. It has come on record that only an agreement to sell has been executed and no sale-deed has been executed till date and keeping in view the law laid down in the case of Mohammed Ibrahim and others (Supra) which squarely covers the controversy in issue, this Court can safely conclude that no case for prosecution under the Indian Penal Code is made out even prima fade.

21. In view of the aforesaid facts and circumstances of the case, the position which crystallizes after due filtration of the facts and circumstances of the case as well as law that the grievance, if any, in a transaction of a nature which is involved in the present matter, shall be with that of the purchaser of the property who can raise a grievance that he has been duped. The second aspect of the matter is that proceedings for declaration of title are in fact pending before the Board of Revenue and thus it can be safely presumed that no criminal offence under the Indian Penal Code is made out and the case is purely of a civil dispute.

22. It may further be appreciated that it is a admitted case of the prosecution that the father of opposite party No. 2 had executed a registered agreement to sell dated 29.10.77 in favour of applicant No. 1 and at the time of the aforementioned agreement to sell the possession has been handed over to applicant No. 1. The time limit for registration of the sale-deed was two years and since the sale-deed could not be executed, Hari Bhushan had executed another agreement to sell dated 28.12.81. The fact remains that the aforesaid agreement to sell is still intact as the same has not been challenged by opposite party No. 2 or his father late Hari Bhushan. The relevant extract of the sale-deed executed on 29.10.77 is quoted herein below:

"YAH KI KABJA ARAJI BAY TALAB PAR MAUKE PAR KHALI PAR FARIK AWAL KA ORSE FARIK DOYAM KO VAJRIYE VO JOT WAKAEE TAUR PAR DEDIYAGAYAHAI."

Thus in view of the aforesaid consistent legal position, the present application under Section 482 Cr.P.C. stands allowed and the proceedings of case No. 4441/9 of 2007, arising out of case crime No. 318 of 2007, under Sections 420, 467, 468, 471, 120-BIPC, police station Civil Lines, District Meerut pending in the Court of Additional Chief Judicial Magistrate, Court No. 1, Meerut are, hereby, quashed.