(2011) 08 AHC CK 0249

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ petition No. 16097 of 2011

Dr. Pankaj Sharma and Another — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2011) 08 AHC CK 0249

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—Heard Sri Anoop Trivedi, learned Counsel for the Petitioners,learned A.G.A. for the State and Sri Vinay Saran, learned Counselfor the complainant Counter affidavit filed today is taken on record.

2. With the consent of the parties, the petition is being disposed of atadmission stage itself.

3. This writ petition has been filed with a prayer to quash the summoning order dated 27.4.2011 passed by Judicial Magistrate-III, Meerut in complaint case No. 518/9 of 2011 (Annexure 8) andjudgment and order dated 11.8.2011 passed by Addl. Sessions Judge, Court No. 15, Meerut dismissing criminal revision No. 226 of2011 (Annexure 9).

4. The complaint was filed by Respondent No. 2 against the Petitioners Dr. Pankaj Sharma and Dr. Nirpan Sharma as well as against the co-accused Pawan, Rakesh and Smt. Shakuntala for havingcommitted offences punishable under Sections 420, 467, 468, 471, 504, 506, 120-B Indian Penal Code with the allegations that the complainant wasan old lady of 70 years of age and was the recorded tenure holderwith transferable rights of plots No. 360, 335 situated at village Sisauli, pargana, tehsil and district Meerut. On 6.3.2011, the aforesaid five persons came

to her field and were talking about sale of the crop. On inquiry, they disclosed that the land has been purchased by them and they are the owners of the land. The Petitioners disclosed that an agreement to sell dated 26.10.2010 was executed in their favour by Smt. Shakuntala for a consideration of Rs. 50 lacs and a sum of Rs. 30 lacs have been paid by them as earnest money. As soon as the complainant disclosed that she was Shakuntala Sharma and she had not executed any agreement to sell, the Petitioner No. 1 became angry and he and two of his companions threatened the complainant with death. On inquiry, it was revealed that the Petitioners got the agreement to sell executed on 26.10.2010 in their favour by putting up an impostor posing as Respondent No. 2 and the agreement did not have her photograph. The complainant filed a civil suit and obtained interim order in her favour. After recording the statements of the complainant and the witnesses under Sections 200 and 202 Code of Criminal Procedure, the summoning order was passed and the revision preferred by the Petitioners has been dismissed. Hence this petition.

5. Sri Trivedi submits that undoubtedly the agreement to sell was a fraud committed on the Petitioners by one one Pawan Kumar Sharma and his companions and the Petitioners have been deprived of a sum of Rs. 50 lacs. Pawan Kumar Sharma put up some unknown lady impersonating as the complainant, executed agreement to sell in favour of the Petitioners and Petitioners were the bonafide purchasers without any criminal intent and they have lodged the F.I.R. against Pawan Kumar Sharma and Ors. whereupon investigation is pending and Pawan Kumar Sharma has been arrested and, therefore, the Petitioners should not have been summoned to face trial. The contention is that the Petitioners are as much victim of the fraudulent agreement to sell as the complainant herself.

6. Sri Vinay Saran, learned Counsel for the complainant submits that the Petitioners are not so innocent as they claim to be. A property worth Rs. 5 crores is alleged to have been purchased by the Petitioners for a petty sum of Rs. 50 lacs. The sale consideration shown in the agreement was Rs. 50 lacs, but the Petitioners claimed to have paid a total sum of Rs. 55 lacs, which is unexplainable. The money was deposited in a Bank Account opened on the day of agreement or the next day and immediately thereafter the money was withdrawn. The further contention is that the disputed questions of fact cannot be adjudicated in the writ petition. Whether the Petitioners were innocent and bonafide purchasers, has to be established by defence evidence during the trial and the writ Court cannot interfere in the matter.

7. Learned A.G.A. supported the impugned orders.

8. In Venkateshwaran and Another Vs. Singaravel Yarn Traders, the Apex Court had held that disputed questions of facts cannot be adjudicated upon in the writ petition.

9. Learned Counsel for the Petitioners relies upon a decision of the Apex Court in

Md. Ibrahim and Others Vs. State of Bihar and Another, wherein the Apex Court held that if a persons sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, i.e., 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.

10. Learned Counsel submits that since the complainant was not a party to the agreement to sell, she cannot file the complaint. This argument does not hold water.

11. Respondent No. 2 may not be a party to the agreement to sell, but it was her property, which was agreed to be sold to the Petitioners by the impugned agreement to sell and, therefore, she has the right to file the complaint.

12. Sri Trivedi further submits that a suit for cancellation of agreement to sell was filed by Respondent No. 2 wherein the Petitioners filed their written statement admitting in clear terms that the agreement to sell was fraudulent and fraud was committed with them and on the basis of such admission, the suit for cancellation of agreement to sell was decreed and such admission in the written statement indicates that Petitioners were the bonafide and innocent purchasers of the property and there was No. criminal intent on their part.

13. The bone of the contention between the parties is whether the Petitioners were the innocent and bonafide purchasers of the property or they were actively involved in the fraud committed with the complainant. The determination of this question shall depend on the evidence, which may be led before the trial court as defence evidence or by way of cross-examination of complainant''s evidence. The disputed questions of fact cannot be adjudicated upon in a writ petition. Therefore, at this stage, No. ground for interference is made out and the aforesaid contentions may be raised by the Petitioners before the trial court at appropriate stage, i.e., at the stage of charge by means of a proper application for discharge.

14. In the facts and circumstances of the case, the writ petition is disposed of with a direction that if the Petitioners surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the courts below keeping in view a Full Bench decision of this Court in the case of Amrawati and Anr. v. State of U.P. 2004 (57) ALR 290 as affirmed by Hon''ble Apex Court in Lal Kamlendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 (SC).

15. If for any reason, disposal of the bail application on the same day is not possible, then the Petitioners shall be released by the courts below on interim bail till the final disposal of their bail application. For a period of three weeks, No. coercive steps shall be executed against the Petitioners