

(2009) 09 AHC CK 0224

In the Allahabad High Court

Case No : Criminal M.W.P. No's. 12316 of 2009 and 13459 of 2009

Himanchal Awas Sahkari Samiti Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 506

Citation : (2009) 3 ACR 3420

Hon'ble Judges : D.R. Azad, J; Amar Saran, J

Bench : Division Bench

Advocate : Pankaj Kumar Shukla, for the Appellant; H.N. Shukla, R.S. Shukla, R.R. Shukla and D.R. Choudhary and A.G.A., for the Respondent

Judgement

Amar Saran and D.R. Azad, JJ.—Sri Ram Icchuk Yadav, A.C.J.M., Court No. 2, Ghaziabad, Sri N. M. Pandey, the A.C.J.M., Court No. 1, Ghaziabad, (the earlier A.C.J.M., Court No. 2) and Sri Rajendra Kumar Gautam, C.O. City I, Ghaziabad are present in Court today in pursuance of the earlier order dated 3.8.2009.

2. These two connected writ petitions are being disposed of by means of this common order.

3. We have heard Sri P. K. Shukla learned Counsel for the informant, learned A.G.A. for the State and Sri H. N. Shukla and Sri R. R. Shukla learned Counsel for Respondents No. 5 to 14 in Writ Petition No. 12316 of 2009 and for the Petitioners in Writ Petition No. 13459 of 2009 and the learned A.G.A. for the State in both the connected petitions.

4. An F.I.R. was lodged by the Petitioner M. K. Sharma, who claimed to be the Officiating Secretary of the Himanchal Awas Sahkari Samiti Limited, Ghaziabad on 18.3.2009 under Sections 420/467/468/471/ 506, I.P.C. at Case Crime No. 263 of 2009 at Police Station, Vijay Nagar, Ghaziabad.

5. The allegations in the F.I.R. were that the accused Sartaj Singh, who was the

alleged suspended secretary, Pradhan Singh, the ex-Vice President of the Society and O. P. Chaudhary, the earlier treasurer in order to make unlawful gains for themselves and for embezzling the funds of the society sold 2.94 hectares out of 4.695 hectares of the society's land situate in village Pipiyana Khurd Urf Tigri, pargana and tehsil Dadari, district Ghaziabad to the Respondents No. 5 to 14 (Petitioners in Writ Petition No. 13459 of 2009) by means of unauthorised sale deeds without obtaining permission from the Registrar or the Greater N.O.I.D.A. Development Authority, which was the legal requirement.

6. The first writ petition has been filed by the informant with the prayer for transferring the investigation from Meerut zone to some other zone and for handing over the investigation of this case for impartial and fair investigation and the second writ petition has been filed by the accused Rajesh Yadav and Ors. has been filed for quashing the prosecution at Case Crime No. 263 of 2009 in pursuance of the aforesaid F.I.R.

7. Although this fact is not mentioned in the F.I.R. but it is alleged in the writ petition preferred by the Himanchal Awas Sahkari Samiti that the value of the property sold was to the tune of Rs. 50 crores and it had been sold for a throwaway price of Rs. 3,31,70,000 crores by sale deeds dated 20.11.2008. In fact even the payments had not been received for the same. It was further alleged that in a collusive manner the accused Respondents (Petitioners in the second writ petition) were not being arrested and that the concerned Additional Chief Judicial Magistrate in Court No. 2 were colluding with the accused-Respondents 5 to 14 in that process.

8. It was urged that the accused-Respondents had earlier filed a Writ Petition No. 5941 of 2009 in which an order had been passed by a Division Bench on 2.4.2009 that it cannot be said that no prima facie case was disclosed. The accused-Respondents Dev Dutt Vashisht and Ors. could apply for bail by appearing before the Court concerned within three weeks and the Court concerned was to dispose of the bail application in accordance with the decision of the Full Bench in Amrawati's case. The said order was filed before the Additional Chief Judicial Magistrate Court No. 2, Ghaziabad, but the Additional Chief Judicial Magistrate, instead of taking the accused Respondents in custody passed an order on 22.4.2009 directing the officer-in-charge not to take coercive steps against the accused persons. This order of the Additional Chief Judicial Magistrate, was stayed in Criminal Misc. Writ Petition No. 8145 of 2009, filed by the Petitioner M. K. Sharma, the informant and the Additional Chief Judicial Magistrate was directed to appear before this Court on 25.4.2009 before this Court. He thereafter, tendered his unconditional apology and withdrew the said order and issued non-bailable warrants against the accused-Respondents, when the Investigating Officer moved an application for issuing non-bailable warrants. But when another application was moved by the Investigating Officer for withdrawing the non-bailable warrants he withdrew the same without giving any proper reasons.

9. The learned Government advocate who appeared today stated that the judicial officers and the police agencies concerned are acting in a fair manner, and the three main office bearers of the society (who are the main accused of this case) have even been arrested but so far as the accused Respondents No. 5 to 14 are concerned, as it was still being probed as to whether they had actually made payments by cheques and also by cash and the source from where they had obtained funds, and the society's accounts had been frozed meanwhile. In case actual payments had been made that could indicate the bona fide nature of the transaction and could have shown the Respondents No. 5 to 14 to be bona fide purchasers, who had purchased the property for value. It was also submitted by the learned Government Advocate that the estimated present value of the land that was put at Rupees 50 crores by the informant appeared to be an inflated figure. But these issues needed to be investigated. It was for these reasons that for the time being the police had not arrested the purchasers, the Respondents No. 5 to 14. Learned Counsel for accused Respondents No. 5 to 14 also submitted that essentially there was a dispute between the office bearers of the society and the Petitioner informant who now claims to be the officiating secretary of the society, and the F.I.R. was lodged in mala fide manner. In this connection a civil suit for cancellation of the sale deed was also pending and recourse to criminal proceedings was not proper.

10. We are of the opinion that the F.I.R. cannot be quashed against the accused-Respondents but it can also not be unequivocally stated at this stage that investigation has been conducted in a mala fide manner or that the judicial officers concerned had come under the influence of the Respondents No. 5 to 14 or the police. Therefore, we do not find a good ground to transfer the investigation of this case at this stage to any other zone or to a different agency.

11. This Court in its writ jurisdiction under Article 226 cannot pass any order for arresting the accused. This is the prerogative of the investigating agency. The investigation is already being monitored by the Judicial Magistrate concerned. He is empowered to do so in view of the decision of the Apex Court in Sakiri Vasu Vs. State of U.P. and Others,

12. We, therefore, find no good ground for interfering with the first Writ Petition No. 12316 of 2009, which is accordingly dismissed. However, it is provided that as far as possible the investigating agency shall conclude the investigation within three months.

13. So far as the other Petition No. 13459 of 2009, preferred by the Respondents Devi Dutt, Rajesh Yadav and Ors. is concerned, as they have preferred an earlier Writ Petition No. 5941-2009, but mentioned in paragraph 1 of the present petition that it is the first writ petition (although they have clarified about filing the earlier Writ Petition No. 5941 of 2009, in subsequent paragraphs), and as we cannot hold that no prima facie case whatsoever is disclosed, or that the matter does not need further investigation we are not inclined to grant any relief to these Petitioners (Respondents No. 5 to 14 in Writ Petition No. 12316 of 2009)

also. We therefore, dismiss this writ petition as well. Both the writ petitions are accordingly dismissed. The interim orders granted earlier are vacated.