
(2011) 10 UK CK 0054

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 12 of 2006

Kameshwar Prasad Kala

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 423

Citation : (2011) 10 UK CK 0054

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesch Kumar Gupta, J.—By way of this Criminal Miscellaneous Application, the prayer has been made to quash the order of cognizance dated 26.11.2005, passed in Criminal Complaint Case No. 1212/2005, Smt. Meenakshi Bhatnagar v. Kameshwar Prasad Kala S/o Purs Ram Kala. The said cognizance order was passed by the learned Chief Judicial Magistrate, Nainital asking Kameshwar Prasad Kala to stand trial for the offence of Section 420, 423 IPC.

2. The background facts, as appear after having heard the arguments of learned Counsel for the parties, are that a plot of land ad measuring 40" x 50" i.e. 2000 sq. ft., situated within the territorial limits of Nagarpalika Nainital at the place Vernan Cottage Compound, Tallital was purchased by the daughter of Kameshwar Prasad Kala for a sale consideration of rupees fifty thousand on 27.12.1991 from Tara Chand S/o Bihari Lal. Smt. Rekha Panchbhaiya, wife of Naveenchandra Panchbhaiya is resident of district Pauri Garhwal and she is daughter of Kameshwar Prasad Kala, who resides at Nainital town itself. The same piece of land was sold by Smt. Rekha Panchbhaiya through his father Kameshwar Prasad Kala rendering the Power of Attorney in his name. Mr. Kala sold that plot on 17.3.2004 for the sale consideration of rupees five lakhs fifty thousand to the complainant Smt. Meenakshi Bhatnagar, wife of N.K. Bhatnagar. That sale deed

has been annexed as Annexure I to the petition.

3. Smt. Meenakshi Bhatnagar, when raised the construction upon the said piece of land, Smt. Rajuli Nagyal, the owner of neighbouring plot no. 16, objected to the same alleging that the constructions were being raised on her plot no. 16. So, Smt. Meenakshi Bhatnagar brought this objection of Smt. Rajuli Nagyal to the notice of Kameshwar Prasad Kala. Mr. Kala in order to clear the location moved an application to the SDM for getting done the measurement of the plot in question. After the measurement, the Revenue Amin submitted the report on 15.11.2004 to the effect that plots no. 12, 13, 14, 15 & 16, all are adjoining. The owner of the plot no. 12 transgressed certain marginal area of plot no. 13, and the owner of plot no. 13 transgressed marginal area of plot no. 14, and so is the situation for the rest of the adjoining plots up to plot no. 15. This way, the area of plot no. 16, owned by Smt. Rajuli Nagyal, was transgressed to the tune of 375 sq. ft. The sale deed made in favour of Smt. Rekha, which she purchased on 27.12.1991, was having an area of 2000 Sq. ft. and this measurement finds place in the said sale deed itself. So, the sale deed, subsequently made in favour of Smt. Meenakshi Bhatnagar, also mentions the area of the plot, in question, to be of 40" x 50" with the clause therein that Smt. Meenakshi Bhatnagar had taken the possession over the said land. That apart, Smt. Meenakshi Bhatnagar applied for the mutation in Nagarpalika, Nainital and that mutation was effected on 2.5.2006 on the basis of the said sale deed.

4. The complaint of Smt. Meenakshi Bhatnagar that Mr. Kala misrepresented her by telling the area of the land as 2000 sq. ft., whereas on the spot, it was found only 1625 sq. ft. So, he committed the offence of Section 420, 423 IPC. This contention of Smt. Meenakshi Bhatnagar is quite unsubstantial and utter baseless because Kameshwar Prasad Kala was conversant that the land which he was going to sold on the basis of the Power of Attorney was 2000 sq. ft., and this fact was specifically mentioned in the sale deed giving the ownership to his daughter over the plot of land. Smt. Meenakshi Bhatnagar was supposed to examine meticulously (and in all probabilities she must have seen the title deed of the land in question) that the land, in question, was 2000 sq. ft. The contents of the sale deed also explicitly reveal that Smt. Meenakshi Bhatnagar accepted taking possession of 2000 sq. ft of the land. So, there was no question of cheating and executing the sale deed fraudulently with any dishonest motive.

5. Learned Counsel for Smt. Meenakshi Bhatnagar contended that the copy of impugned order of cognizance has not been filed by the petitioner. He has relied upon a precedent rendered by the Hon'ble Apex Court in case of Surinder Singh Vs. Central Government and Others, as well as a precedent delivered by the Allahabad High Court in the case of Pramod Kumar & Others v. Sub-Divisional Officer, Khaga, Fatehpur & Others in C.M.W.P. No. 15904 of 1988.

6. Undoubtedly, it was in the fitness of things that the copy of the impugned cognizance order must have been filed so that this Court may assess the impelling reasons for passing such an order by the court concerned, but where

after having heard the arguments of learned Counsel for the parties and on going through the papers available on record, it appears to the Court that there is a patent abuse of the process of Court, then the Court should not wait and ask the party concerned to file the certified copy of the said impugned order, and to unnecessarily delay the disposal of the petition. Therewithal, the prayer has been made in the petition not only to quash the order of cognizance, the copy of which has not been filed, but also to quash the entire proceedings of the Criminal Complaint Case No. 1212/2005. When the Court finds it a fit case to exercise its powers u/s 482 CrPC and to quash the entire proceedings of the said case, then there remains no need to ask the party concerned to file the certified copy of the cognizance order.

7. In view of the above, this petition has force and the same is liable to be allowed. Petition is, accordingly, allowed. The impugned order of cognizance dated 26.11.2005 as well as the entire proceedings of the Criminal Case No. 1212/2005, Smt. Meenakshi Bhatnagar v. Kameshwar Prasad Kala, are hereby quashed.

8. Registry is directed to inform the court concerned accordingly.