

(2005) 04 AHC CK 0180

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1706 of 2000

Kamil, Akil, Sajit, Intjar and Babu

APPELLANT

Vs

State of U.P. and Sona

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 420, 467, 471
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Citation : (2005) 04 AHC CK 0180

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : R.N. Rai and A.K. Rai, for the Appellant; N.I. Zafri and R.K. Sharma and A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Poonam Srivastava, J.—Heard Sri Ravindra Nath Rai, learned counsel for the applicants, Sri N.I. Zafari for the contesting opposite party and learned A.G.A.

2. This application has been filed to quash the entire proceedings in case No. 62 of 2000, State v. Akil and Ors., pending in the court of Civil Judge (Junior Division), Garhmukteshwar, Ghaziabad. The facts giving rise to the dispute is that one Khushmudi did not have any male child, therefore, she executed a sale deed in favour of the applicants, who are the sons of sister of Khushmudi. Subsequently the daughter of the vendor Khushmudi filed a Civil Suit No. 11 of 1989 against the applicants for cancellation of the sale deed. The suit was contested by the applicants. The trial court decreed the suit vide judgment and decree dated 22.8.1998. The applicants filed Civil Appeal No. 176 of 1998 in the court of District Judge, Ghaziabad. The memo of appeal is annexed as Annexure-1 to the affidavit. Annexure-2 is the stay order passed in the first

appeal against the original decree in civil suit No. 11 of 1989. During the pendency of this application in this Court, the first appeal was allowed and now the second appeal is pending in this Court. The criminal proceedings were initiated u/s 156(3) Cr.P.C. after the suit was decreed by the trial court and during the pendency of the appeal. On the basis of aforesaid application, a First Information Report was registered at case Crime No. 16 of 1998, under Sections 420, 467, 471 I.P.C., Police Station Garhmukteshwar, District Ghaziabad. The arrest of the applicants was stayed by this Court in Criminal Misc. Writ Petition No. 5091 of 1999 on 16.9.1999, This application was filed after the charge sheet was submitted and this Court stayed further proceedings Counter and rejoinder affidavits have been exchanged and it has come up for final hearing today before this Court.

3. I have heard learned counsel for respective parties. Sri Ravindra Nath Rai, Advocate has cited a decision of the Apex Court in he case of Suresh v. Mahadevappa Shivappa Danannava and Anr., J.T. 2005(2) S.C. 462 It has been argued on the basis of the aforesaid decision that the matter, which came up before the Apex Court, was regarding an application filed u/s 156(3) Cr.P.C. for registering a case. The basis of the allegation was an agreement to sale which was the subject matter of civil suit and the Apex Court ailed that since the nature of the allegations in the complaint was civil in nature and the learned Magistrate failed to apply his mind by summoning the accused which was confirmed by the High Court, and was set aside by the Hon"ble Supreme Court in the said judgment.

4. In the present case, this judgment is distinguishable on account of the fact that not only the application u/s 156(3) Cr.P.C. was filed but the first information report was registered and investigation was completed and the Investigating Officer came to a conclusion that prima facie case is made out and charge sheet was submitted. This charge sheet and proceedings initiated on the basis of the same, is sought to be quashed in exercise of inherent powers. Bare reading of the report and statements clearly discloses the offence though it is also a fact that the civil proceeding in respect of the same sale deed is pending in this Court and the lower appellate court has arrived at a finding that the sale deed was not forged. In the circumstances, the submission of the counsel for the applicants that the dispute is one of the civil nature, which is pending adjudication, is well found. It is correct that the judgment of the lower appellate court is in favour of the applicants and second appeal has been fled in this Court.

5. After perusal of the record and looking to the entire facts and circumstances of the case, I am not inclined to quasi the entire proceedings in exercise of inherent powers as the entire evidence collected during investigation is not before me. It is not proper to sift the evidence collected at this level. However, it is the jurisdiction of the trial court and I permit the applicants to appear before the Magistrate through their counsel and seek discharge at the appropriate stage. In the event, such an application is filed, the court shall pass a reasoned order

taking into consideration the decision of the Apex Court in the case of Suresh (Supra) and also other circumstances regarding the judgments in the civil suit. The court shall decide the matter after affording an opportunity of hearing to the contesting parties. The applicants are permitted to move their bail application and in case the applicants apply for bail, the same shall be considered and disposed of expeditiously, if possible on the same day.

6. With the aforesaid observations, this application is finally disposed of.