
(2009) 03 AHC CK 0026
In the Allahabad High Court

Khoob Chand and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420

Citation : (2009) CriLJ 4778 : (2010) 6 RCR(Criminal) 668

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Judgement

Ravindra Singh, J.—Heard Sri Vashistha Tiwari, learned Counsel for the applicants, learned A.G.A. for the State of U.P. and Sri P.K. Singh, learned Counsel for O.P. No. 2.

2. This application has been filed by the applicants Khoobchand, Ram Pal, Mahesh, Manak Chand and Sardar Singh with a prayer to quash the proceedings of criminal case No. 120/9 of 2003 under Sections 419, 420 IPC, P.S. Koshi Kalan, District Mathura arising out of charge-sheet submitted in case crime No. 624 of 2002 under Sections 419, 420 IPC, P.S. Kosi Kalan, District Mathura.

3. The fact in brief of this case are that the FIR of this case has been lodged by O.P. No. 2 Shiv Ram at P.S. Kosi Kalan on 31-10-2002 at 12.30 p.m. in respect of the incident which had occurred on 17-8-1994 alleging therein that by impersonation of Bhoddhar a forged Will has been prepared in favour of co-accused Khoob Chand, the forged will is having the photo and signature of the applicant Sardar Singh. The applicants Mahesh and Manak Chand are witnesses of the alleged forged Will. The case was investigated by the I.O. who submitted the charge-sheet dated 31-12-2002 after completing the investigation. In the list of the witnesses of the charge-sheet names of the ten witnesses have been mentioned.

4. It is contended by learned Counsel for the applicants that the allegations made against the applicants are false and frivolous which have been made for

the purpose of harassment. No cheating has been committed by the applicants. One Bhoodar and Keshav Ram son of Ghosiram were joint holders of Khatauni No. 58 in Khasra Nos. 1216-A, 1216-B and 1293 and both the brothers were unmarried who were residing along with applicant No. 1 who executed the registered Will in favour of applicant No. 1 during his life time on 17-8-1994. The alleged unregistered Will as claimed by respondent No. 2 that Keshav Ram has executed a registered Will of his share in the property in question on 31-5-1993. Whereas on 11-6-1993 Keshav Ram also executed a registered Will deed in favour of respondent No. 2 for share of his younger; brother namely Bhoodar considering therein that since his brother is not traceable for the last ten years, by virtue of real brother he became sole tenure holder over the entire property in dispute. Later on Keshav Ram died on 13-3-1993. One Smt. Batri wife of Prasadi was sister of Keshav Ram and Bhoodar. Sri Raghubar son of Smt. Batri raised his claim before the revisional court and his name was got mutated over the property in dispute. It was objected by O.P. No. 2 on the basis of unregistered Will, thereafter his name was got mutated against which appeal has been filed by applicant No. 1, the same is still pending. It is further contended that till date the title in respect of the property in dispute has not been claimed by any of the parties on the basis of registered or unregistered Will. The matter is purely of civil in nature. The proper remedy is available before the civil court or revisional court but for the purpose of the harassment the FIR has been lodged and on which the investigation has been done and charge-sheet has been submitted without doing proper investigation. Therefore, the proceeding pending in the above mentioned case may be quashed.

5. In reply of the above contention, it is submitted by learned A.G.A. and learned Counsel for O.P. No. 2 that on the basis of allegation made against the applicants and evidence collected by the I.O. prima facie offence under Sections 419, 420 IPC is made out. There is no illegality in filing the charge-sheet and learned Magistrate has also not committed any error in taking the cognizance. The allegation made against the applicants are purely of criminal in nature for which the applicants are liable. On the basis of pendency of civil or revenue litigation the criminal proceeding pending against the applicants may not be quashed. The present application is devoid of merit, the same may be dismissed.

6. Considering the submissions made by learned Counsel for the applicants, learned A.G.A., learned Counsel for O.P. No. 2 and from the perusal of the record it appears that in the present case I.O. has submitted the charge-sheet after collecting the cogent evidence which disclose the commission of the offence, there is no illegality in submission of the charge-sheet and taking the cognizance against the applicants/The allegations are constituting the offence which are of criminal in nature, in such cases the pendency of civil/ revenue proceedings in respect of different issues are having no adverse effect on the criminal proceedings. This pleas raised by the applicant may be considered at the stage of the trial. There is no illegality in prosecution of the applicants., Therefore, the prayer for quashing the same is refused. The interim order dated 3-9-2003 is

hereby vacated.

7. However, it is directed that applicants shall appear before the court concerned within 30 days from today, till then the N.B.W. issued against the applicants shall be kept in abeyance. In case they apply for bail, the same shall be heard and disposed of on the same day by the courts below.

8. With this direction, this application is finally disposed of.