

(2016) 03 AHC CK 0017

In the Allahabad High Court

Case No : Criminal Procedure Code, 1973 (CrPC) - Section 482Penal Code, 1860 (IPC) - Section 408, Section 419, Section 420, Section 467, Section 471

Mohd. Nadir

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Writ Petition No. 5202 of 2015

Citation : (2017) 99 ACrC 126 : (2017) 173 AIC 925

Hon'ble Judges : Mahendra Dayal, J.

Bench : Single Bench

Advocate : Sanjay Kumar Singh, Advocate, for the Applicant; Govt. Advocate, Ramesh Kumar Srivastava, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Mahendra Dayal, J.—The applicant Mohd. Nadir, by means of the present application under Section 482 Cr.P.C., approached this Court for quashing of the entire proceedings of Criminal Case No. 424 of 2013. under Sections 419, 420, 467, 468 and 471 IPC, relating to Police Station Mohanganj, District Amethi, pending in the court of Judicial Magistrate, Court No.22, Raebareli.

2. The applicant has further prayed for quashing of summoning order dated 31.10.2013 and the judgment and order dated 10.9.2015 passed by the Additional Sessions Judge, Fast Track Court No.2, Raebareli in Criminal Revision No. 227 of 2013.

3. The brief facts of the case are that opposite party no.2 filed a complaint against the applicant and others with the allegation that she was Bhumidhar of land Gata No. 484 Measuring 0.304 Hectare, situate at Village Odari, Pargana Rokha, Tehsil Tiloi, District Raebareli. It was further alleged that the applicant and others got a sale deed executed in respect of the aforesaid land by posing some other woman as opposite party no.2. The sale deed was executed by the

said lady on 16.12.2004. When she came to know about the alleged sale deed after mutation, she obtained a certified copy of the sale deed and gave an application to the Police Station but no action was taken.

4. The learned Magistrate before whom the complaint was filed, examined the opposite party no.2 and his witnesses and by means of the order dated 31.10.2013 passed an order summoning the applicant to face trial.

5. Feeling aggrieved by the aforesaid summoning order the applicant and others preferred Criminal Revision before the Sessions Judge, which was also dismissed.

6. I have heard the learned counsel for the applicant and the learned AGA. No one has appeared on behalf of opposite party no.2 in spite of sufficient service of notice.

7. It has been contended by the learned counsel for the applicant that the opposite party no.2 had initially filed an application under Section 156(3) Cr. P.C. before the Magistrate concerned but the said application was rejected by the order dated 18.1.2012. The revision filed by the opposite party no.2 being criminal Revision No. 35 of 2012 was also dismissed on 11.2.2013. After dismissal of her application under Section 156 (3) Cr.P.C. and the revision, she filed a complaint, in which the learned Magistrate without considering the fact that earlier application under Section 156(3) Cr.P.C. filed by the opposite party no.2 on the same ground had been rejected, proceeded to examine the complainant and his witnesses and also passed the impugned summoning order. It has also been contended that the opposite party no.2 has already filed a Civil Suit for cancellation of sale deed in the court to Civil Judge (Junior Division), Court No.18, Raebareli, which is still pending. The said suit was filed in the year 2011 but in order to harass the applicant and others, she initially filed application under Section 156(3) Cr.P.C. and after its dismissal, she filed complaint against them.

8. It has been contended by the learned counsel that the main ground of challenge of the sale deed by the opposite party no.2 is that some other woman posing herself as opposite party no.2, had executed the sale deed. This controversy can be resolved only after the evidence of the parties and when the matter is subjudice before the Civil Court, the competent Civil Court is the only court which is competent to decide such controversy, after appreciating the evidence of the parties. The criminal proceedings in the nature of compliant case with regard to the same set of facts, are nothing but abuse of process of the law.

9. The learned AGA has opposed the prayer made by the applicant and has submitted that it is settled law that even when a civil suit is pending, Criminal Case is not barred, if any person has committed any offence. The applicant and others are beneficiaries being purchaser of the property. They in order to cheat and defraud, got the sale deed executed in their favour by posing some other woman as Smt. Basheera. The learned Magistrate has therefore, rightly passed the summoning order and the revision filed against the summoning order has

also been dismissed.

10. The power to invoke the provision under Section 482 Cr.P.C. by the court is to be exercised in a case where the allegations leading to criminal prosecution, prima facie do not disclose or constitute offence. Such power can also be invoked where the Court finds that continuation of the criminal proceedings are nothing but an abuse of process of law and the interest of justice requires the court to invoke the power under Section 482 Cr.P.C.

11. In the present case, the case of the opposite party no.2 is that she is the owner of the land in question and the applicant along with others got the sale deed executed by another woman posing herself as Smt. Basheera. It is not in dispute that the application for lodging of FIR by the opposite party no.2 was dismissed on the ground that she could not produce any document to prima facie prove her title in respect of the land in question. The learned Magistrate dismissing the application under Section 156(3) Cr.P.C. also found that nature of dispute was purely of civil nature, in which nothing is required to be investigated. It is also not disputed that the revision filed against the dismissal of the application under Section 156(3) Cr.P.C. was also dismissed. The civil suit filed by the opposite party no.2 for cancellation of sale deed is already pending in which the title of the opposite party No.2 is to be looked into and decided by the civil court. Under these circumstances there was absolutely no justification for the opposite party no.2 to have filed a complaint against the applicant and others for their prosecution. The learned court below ought not to have passed the order summoning the applicant and others.

12. The courts dealing with such matters have a great responsibility while passing the order summoning a person for facing trial. Unless there is a prima facie evidence that they have committed the offence, the summoning order should not be passed. A perusal of the complaint filed by opposite party no.2, a copy of which is on record reveals that she has implicated 9 persons as accused and no specific allegation has been made against any one. There are general allegations that all of them jointly got sale deed executed by some woman producing her as Smt. Basheera. It has also not been disclosed by her as to when she got the knowledge of the said sale deed. She has also concealed the material fact that a civil suit filed by her for cancellation of sale deed is pending. The present application has been filed only on behalf of Mohd. Nadir and it has not been disclosed in the plaint as to what was his role in execution of sale deed.

13. The power under Section 482 Cr.P.C. can be invoked by this Court where it is found that continuation of criminal proceeding is nothing but abuse of process of law and from the allegation made in the complaint, no prima facie offence is made out against the accused. In this case I found that from the allegations made in the complaint, no offence is made out against the present applicant.

14. In view of the above, I find that the order passed by both the courts below are illegal and unjustified, specially in view of the fact that the opposite party

no.2 has already filed a suit for cancellation of sale deed. The continuation of parallel criminal proceeding is nothing but an abuse of process of law.

15. In the result, the application under Section 482 Cr.P.C. is allowed and the summoning order dated 31.10.2013, the judgment and order dated 10.9.2015, passed in Criminal Revision No.227 of 2013, as well as the entire proceedings of Criminal Case No. 424 of 2013, pending in the court of Judicial Magistrate, Court No.26, Sultanpur, so far as they relate to present applicant only, are hereby quashed.