

(2015) 04 AHC CK 0079

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 9818 of 2015

Raj Kumar and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 200, 202
Penal Code, 1860 (IPC) — Section 423

Citation : (2015) 4 ALJ 783

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : V.D. Ojha and Sushil Jaiswal, for the Appellant

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J.—The petitioners, by means of this writ petition, has moved this Court praying for the following reliefs:--

"a) Issue a writ, order or direction in the nature of certiorari quashing the Criminal Complaint Case No. 3341 of 2012 Vijay Kumar v. Raj Kumar and others pending before the Additional Chief Judicial Magistrate, Room No. 2, Allahabad.

b) Issue a writ, order or direction in the nature of certiorari quashing the summoning order dated 21.5.2012 passed by Additional Chief Judicial Magistrate, Room No. 2, Allahabad in Criminal Complaint Case No. 3341 of 2012 Vijay Kumar v. Raj Kumar and others (Annexure-5) and Revisional Order dated 20.2.2015 (impugned) passed by Additional District and Sessions Judge, Room No. 9 Allahabad in Revision No. 266 of 2014, Raj Kumar and others v. Vijay Kumar and others (Annexure-7).

c) Issue a writ, order or direction in the nature of mandamus directing the respondents not to take any coercive action against the petitioners in pursuance of Criminal Complaint No. 3341 of 2012 Vijay Kumar v. Raj Kumar and others pending before the Additional Chief Judicial Magistrate, Allahabad.

d) Issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the nature and circumstances of the present case; so that justice may be done.

e) Award the cost of the petition in favour of the petitioners."

2. Heard learned counsel for the petitioners; learned A.G.A. representing State of U.P. and perused the record.

3. At the very outset it may be mentioned that the petitioner Nos. 1 and 4 and the respondent No. 2 are real brothers and the petitioner Nos. 2 and 3 are the wives of the petitioner Nos. 1 and 4.

4. The facts in brief are that an application under Section 156(3) Cr.P.C. was moved by the respondent No. 2 against the petitioners alleging that his father Manik Chandra was suffering from physical and mental illness. Taking advantage of his illness, the accused persons/writ petitioners No. 1 and 4 on the pretext of taking him to hospital, took him to District Handia and fraudulently got a sale deed executed by him in favour of their wives Ranno Devi and Pushpa Devi (the petitioner Nos. 2 and 3). Thereafter, they sent him back. When the condition of their father got deteriorated, the complainant took him to Allahabad for treatment. At the time of admission in the hospital, when the nurse asked the complainant's father to sign on some papers, his father refused to sign on any paper stating that on the last occasion he had signed on many papers and he would not sign on any more papers. On 22.6.2012, the complainant went to Tehsil and from Registrar's Office he came to know that the accused persons/petitioners had fraudulently got a sale deed executed in their names by playing fraud on complainant's father. A Civil Suit No. 353 of 2009 Vijay Kumar v. Manik Chandra was filed for cancellation of that sale deed and an application under Section 156(3) Cr.P.C. was also moved for lodging criminal case against the petitioners.

5. The aforesaid application was ordered to be registered as a complaint case by the learned Magistrate, who after recording the statements under Sections 200 and 202 Cr.P.C. passed the impugned order dated 21.5.2014 whereby summoning the petitioners under Section 423 I.P.C.

6. A criminal revision was filed against the aforesaid summoning order which was dismissed by the revisional court's order dated 20.2.2015.

7. Both the aforesaid orders have been challenged by the petitioners in the instant petition stating that the complainant/respondent No. 2 had earlier filed Suit No. 353 of 2009 Vijay Kumar v. Manik Chandra against the petitioners' father for restraining him to transfer or to alienate the property in dispute. In the said suit, the father of the petitioners had filed his written statement denying the plaint allegations. In fact their father Manik Chandra had sold his property in favour of his daughter-in-law out of his free will and without any pressure but respondent No. 2 lodged a wholly false and frivolous complaint with mala fide

intention to harass the petitioners and to grab the property. The disputed property is not ancestral property but it was purchased by deceased Manik Chandra. It has further been contended by learned counsel for the petitioners that since the matter is pending before the civil court the same relief cannot be claimed in criminal proceedings. Once the validity of a disputed sale deed is sub judice in civil court the criminal proceedings are not maintainable.

8. Learned counsel has placed reliance on the law laid down by the Apex Court in the case of Hira Lal and Others Vs. State of U.P. and Others, AIR 2009 SC 2380 : (2009) CriLJ 2849 : (2009) 5 JT 327 : (2009) 5 SCALE 418 : (2009) 11 SCC 89 : (2009) 5 SCR 567 and Ram Sumer Puri Mahant Vs. State of U.P. and Others, AIR 1985 SC 472 : (1984) 2 SCALE 1014 : (1985) 1 SCC 427 .

9. Per contra, learned A.G.A. has submitted that the criminal proceedings are not barred even if a civil suit is pending in respect of the same property. He has submitted that the allegations made in the applications under Section 156(3) Cr.P.C. find support with the statement of the complainant and the witnesses recorded under Sections 200 and 202 Cr.P.C.. Therefore, learned Magistrate has rightly summoned the petitioners and the summoning order cannot be quashed only on the ground that a civil suit is pending between the parties. Learned A.G.A. has contended that the Magistrate has judicially exercised his discretion after finding a prima facie case against the accused petitioners, which has been ratified by the revisional court. This Court cannot substitute its own discretion for that of the Magistrate and the summoning order or the criminal proceedings cannot be quashed.

10. In State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , the Hon'ble Apex Court has laid down certain principles, on which a Court can quash the criminal proceedings. Hon'ble Supreme Court has held that the criminal proceedings may be quashed only on the following grounds:--

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." Principle Nos. 6 and 7 are clearly applicable in the present case."

11. So far as the facts of the case in hand is concerned, it is quite evident that this case does not fall in any of the categories recognized by the Apex Court. It is true that if civil litigation is pending, normally the court should avoid entertaining the criminal complaint in the said matter, but it depends on the peculiar facts and circumstances of each case. Keeping in view the facts and circumstances of the present case, it cannot be said that no prima facie case is made out against the petitioners.

12. Both the courts below have come to the conclusion that the petitioners/accused persons should be summoned to face trial under Section 423 I.P.C. because a prima facie case was found against the accused persons. The law regarding sufficiency of material which may justify the summoning of accused and to proceed against them in a given case is well settled that at the initial stage of summoning, a court has to stay away from embarking upon a roving enquiry into the factual details of the case. It is also not advisable to adjudicate whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ground to proceed in the matter is required, while summoning a person to face trial.

13. In the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, AIR 1976 SC 1947 : (1976) CriLJ 1533 : (1976) 3 SCC 736 : (1976) SCC(Cri) 507 : (1976) SCR 123 Supp the Hon"ble Apex Court had held as follows:

"The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if

proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code."

14. In wake of above discussion, I do not find any justification to interfere in the matter and to quash the complaint or the summoning order or the proceedings against the petitioners. Hence, prayer for quashing the impugned order is refused.

15. Accordingly, the writ petition stands dismissed with no order as to cost.