
(2019) 05 UK CK 0083

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 439 Of 2014

Raj Mohan Nischal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 200, 202, 482
Indian Penal Code, 1860 — Section 34, 120B, 420, 456, 463, 468

Citation : (2019) 05 UK CK 0083

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Yogesh Pacholia, Dinesh Chauhan, N.S. Negi

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has been filed by the petitioner challenging the order dated 15.06.2013, passed by learned 2nd Additional Civil Judge (S.D.)/ Judicial Magistrate, Haridwar in Complaint Case No. 1098 of 2012, Raj Mohan Vs. Vijay Kumar Nischal & others (hereinafter referred to as "the Case") and order dated 06.02.2014 passed by 3rd Additional Sessions Judge, Haridwar in Criminal Revision No. 272 of 2013, Raj Mohan Vs. State and others (hereinafter referred to as "the Revision").

2. Heard learned counsel for the parties and perused the record.

3. The proceedings in the instant case were initiated by the petitioner by way of filing a complaint against respondent nos. 2 and 3 and one more person for the offence under Sections 120-B, 420, 463, 456, 468 of I.P.C. read with Section 34 I.P.C.

4. In a nutshell, according to the complaint, the grandfather of the petitioner was

granted lease of a property, which after his demise was partitioned amongst his five sons including father of the petitioner. The respondent no.2, 15 years after the death of his grandfather, who happens to be uncle of the petitioner, moved an application on 20.01.1976 for renewal of the lease. The application was moved with a false averment by the respondent no.2, stating therein, that the lease was granted in favour of his grandfather alone and he is the only heir of his grandfather, therefore, lease may be renewed for another 30 years. Respondent no.2 also filed an affidavit on 21.12.1978, in support of his contention, which was objected to by the father, uncle of the petitioner and others. The statements were also recorded but based on the application and affidavit of respondent no.2, the lease was renewed in the name of respondent no.2 only. The basis for filing a complaint is an application dated 22.03.1976 and an affidavit dated 26.12.1978 filed by the respondent no.2 for renewal of the lease in his name.

5. After conducting inquiry under Sections 200 and 202 of the Code, vide impugned order dated 15.01.2013, the complaint was dismissed with the observation that the matter is essentially civil in nature. Learned court below had also called a report from the Police. A reference has been made in the impugned order dated 15.06.2013, as to what the Police has reported. Aggrieved by it, a revision was preferred by the petitioner, which was also rejected vide order dated 6.02.2014 passed in the revision. Hence, the petition.

6. Learned counsel for the petitioner would argue that respondent no.2 had submitted a false application and filed a false affidavit to get the lease renewed in his name. Although, according to the learned counsel, the respondent no.2 knew that the property does not belong to him alone and it had already been partitioned amongst five sons of the grandfather of the petitioner. It is also argued that learned court below, in the case, as well as in the revision has committed an error in holding that the matter is essentially civil in nature; though the matter has flavour of civil case but it has an element of criminality also. In support of his contention, learned counsel has placed reliance upon the principle of law, as laid down by the Hon'ble Supreme Court in the case of Anun Bhandari Vs. State of Uttar Pradesh and others, (2013) 2SCC 801. In para 26 of it, the Court, inter alia, has held as under:-

"26. At this stage, we may usefully note that sometimes a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from Mohd. Ibrahim v. State of Bihar. (SCC p.754, para 8)

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not

used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. and Indian Oil Corpn. V. NEPC India Ltd.)"

7. Therefore, it is argued that impugned order deserves to be set aside and the petition be allowed.

8 On the other hand, learned counsel for the respondent no.2 would argue that no misrepresentation has been done by the respondent no.2. In the impugned order dated 15.06.2013, passed in the case, learned court below has categorically observed, on the basis of the Police report, that it is the grandfather of the respondent no.2, who was the owner of the property and based on the will, the property was mutated in the name of respondent no.2. On behalf of respondent no.3, learned counsel would argue that respondent no.3 is the bonafide purchaser of the property and he has not committed any offence.

9. Dispute is within a very narrow compass. The question is whether on the basis of the averments, as made in the case, order for investigation is required to be given under Section 156 (3) of the Code?" As stated, the allegations are that on 22.03.1976, an application on false grounds was submitted by respondent no.2 for renewal of the lease and it is further alleged that in support of it, an affidavit dated 21.12.1978 was also filed.

10. There is no doubt that a case may be civil in nature but may still have an element of criminality and under the facts and circumstances of such cases, the criminal prosecution may definitely be launched. But if the case is purely civil in nature, with no element of criminality, definitely the law on this point is also settled that in such cases, criminal proceedings cannot be launched.

11. No doubt, this case is also of civil in nature but there is another aspect of the matter. An application was filed by the respondent no.2 before the Authority for renewal of lease and this application is alleged to have been filed on 26.03.1976 and thereafter, it was alleged in the year 1978 that an affidavit has also been filed in its support.

12. In para 11 of the complaint, the petitioner has also categorically stated that his father, uncle and others had filed objections against the application filed by the respondent no.2. It was contested. Statements were recorded. In para 12 of the complaint filed in the case, it is also stated by the petitioner that vide order dated 01.10.1980, lease was renewed in the name of respondent no.2. Most importantly, today, it is stated by learned counsel for the petitioner that the order dated 01.10.1980, which was passed by the Collector, Haridwar for renewal of the lease in favour of the respondent no.2 has never been challenged by the petitioner or any other person. The order renewing the lease in favour of the respondent no.2 has attained finality. It has been passed by the statutory authority. What is being alleged is that the order so obtained was passed on false

affidavit and application. The application and affidavit on the basis of which, now the petitioner wants to launch criminal prosecution were in issue before the Collector, Haridwar, in the proceeding for renewal of lease and finally lease was renewed in favour of the respondent no.2 based on his application and affidavit. An application on the basis of which, such order is passed cannot be a ground to launch a criminal prosecution, therefore, this Court is of the view that the complaint has been rightly rejected by the learned court below and no interference is warranted in the case and the petition deserves to be dismissed.

13. Accordingly, the petition under Section 482 of the Code is dismissed.