(2016) 07 AHC CK 0144

In the Allahabad High Court

Case No : Misc. Bench No. 3037 of 2016

Santosh Kumar Sharma APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471

Citation : (2016) 96 ACrC 718 : (2016) 6 AllLJ 291

Hon'ble Judges : Ajai Lamba and Ravindra Nath Mishra-II, JJ.

Bench : Division Bench

Advocate : Lalit Kishore Pandey, Advocate, for the Petitioner; G.A. and Anup Kumar Misra, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Ajai Lamba and Ravindra Nath Mishra-II, JJ.—Order dated 4.3.2016 notices the gist of the issue raised by the petitioner. Order dated 4.3.2016 reads as under :-

1. This petition seeks issuance of a writ in the nature of certiorari quashing F.I.R./ Case Crime No.230 of 2014, under Sections 419, 420, 467, 468, 471 I.P.C., Police Station Vikas Nagar, District Lucknow.

2. Gist of the allegation against the petitioner is that so as to take loan for a house, the petitioner submitted forged sale deed/ documents to the bank as security.

3. Contention of learned counsel for the petitioner is that the allegations are without any relevant basis. The entire loan amount was repaid. No Dues Certificate has already been issued vide Annexure No.2 dated 8.5.2014. The documents submitted with the bank have already been returned. Thereafter on 4.8.2015, impugned criminal proceedings have been initiated.

4. We hereby issue notice to respondent no.3, returnable on 6.4.2016, to file his

affidavit, including in context of contention of the learned counsel, noted above.

5. Investigating officer shall file his affidavit after verifying the document Annexure No.3 from Sub Registrar office. The investigating officer shall also conduct an inquiry as to whether Annexure No.3 is the document that was submitted as security to the bank.

6. List this case on 6.4.2016.

7. Arrest of the petitioner shall remain stayed till the next date of listing. Petitioner shall join investigation.

8. Petitioner shall furnish all the documents to the investigating officer, by way of Registered A.D. Post."

2. Contention of the learned counsel for the petitioner is that he has repaid the loan. No Dues Certificate has already been issued by the respondent no.4/the Bank, as is evident from Annexure No.2. The respondent-complainant Syndicate Bank has returned the papers to the petitioner. Thereafter, impugned criminal proceedings have been initiated. The proceedings be quashed.

3. This court vide above extracted order directed the investigating officer to verify document, Annexure No.3 i.e. the Sale Deed which had been pledged with the Bank for obtaining loan, from the Sub Registrar concerned.

4. In response to query of the court, counter affidavit has been filed on behalf of the investigating agency, in court, which is taken on record. In para 4 to 6, it has been made clear that the petitioner committed the offence. The petitioner deposited the original Sale Deed dated 12.5.2006 with Allahabad Bank, Indira Nagar Branch, Lucknow and on the basis of the said document pledged with the bank, loan in the sum of Rs. 60 lacs has been obtained. The said original Sale Deed is still deposited with the Bank. Allahabad Bank has verified the said fact.

5. It has been further clarified that the petitioner manufactured a duplicate copy of Sale Deed dated 12.5.2006 and on the basis of the said document, obtained loan in the sum of Rs. 15 lacs from Syndicate Bank/ the complainant Branch, Kalyanpur, District Lucknow. Under the circumstance, offence has been committed.

6. We have considered the rival contentions.

7. A perusal of the impugned F.I.R. Indicates that the petitioner Santosh Kumar Sharma obtained loan in the sum of Rs. 15 lacs while pledging Sale Deed dated 12.5.2006 with Syndicate Bank. During scrutiny, it came to light that Sale Deed dated 12.5.2006 is a forged document.

8. It appears that the petitioner repaid the loan and therefore pleads that the impugned F.I.R. be quashed because money is not due to be paid in lieu of the loan obtained from the Bank.

9. In view of the facts and circumstances of the case, this Court is required to

consider whether the petitioner has committed offence by pledging a forged Sale Deed of a property?

10. Forgery has been defined under Section 463 I.P.C., and the provisions read as under :-

"463. Forgery. - Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

11. Sections 467, 468, 471 I.P.C. are to be read in context of the provisions of Section 463 I.P.C. extracted above. Investigation conducted by the investigating agency makes it evident that the petitioner manufactured a false document with intent to cause damage, and to support claim of the petitioner and title of the petitioner to cause the bank to part with the loan amount. Prima facie, therefore, it is evident that the petitioner did forge the Sale Deed which was pledged with the Bank to obtain loan. In case the petitioner had not pledged the sale deed, loan would not have been sanctioned and disbursed. Also in case the respondent Bank was informed that the original Sale Deed has been pledged with another Bank, then also the respondent Bank would not have sanctioned the loan. As a corollary it follows that offence under Sections 467, 468 and 471 I.P.C. have been committed.

12. Apparently, the petitioner utilised some stamp papers and manufactured Sale Deed dated 12.5.2006. The purpose of such manufacture appears to be that the petitioner did not want to disclose to the complainant bank that he had obtained loan or was to obtain another loan from Allahabad Bank while pledging the same property/Sale Deed dated 12.5.2006.

13. It is evident that the original Sale Deed was pledged with the Allahabad Bank, while forged sale deed, which is an exact copy of the original, was pledged with the Syndicate Bank. Possibly, in case the petitioner had disclosed to the Syndicate Bank that the original Sale Deed had been pledged for obtaining loan from another bank, loan would not have been sanctioned and disbursed to the petitioner by Syndicate Bank. It is in prosecution of such modus operandi, eventually the petitioner forged a document and pledged it with the Syndicate Bank.

14. We find that neither equity nor law favours the petitioner. In such circumstances, the fact that the petitioner returned the loan amount would not be a circumstance sufficient to be taken into account to invoke the extraordinary writ jurisdiction to quash the impugned proceedings.

15. The issue of quashing of criminal proceedings has been considered in some depth by the Hon''ble Supreme Court in AIR 1992 SC 604 : State of Haryana and others v. Ch. Bhajan Lal and others.

16. Hon''ble Supreme Court of India while taking notice of various judgments on the issue in Ch. Bhajan Lal''s case (supra), has summed up the conditions on the basis of which the proceedings can be quashed in the following terms (paragraph 108). The said para when extracted reads as under :

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such powers should be exercised.

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 F.I.R. do not disclose a cognisable 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 F.I.R. do not constitute a cognisable offence but constitute only a non-cognisable 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 concerned Act (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 concerned Act, 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."

17. Perusal of the counter affidavit furnished by the investigating agency establishes prima facie that offence of serious nature has been committed by the petitioner. In such circumstances, we find no reason to quash the proceedings.

18. The contention of learned counsel for the petitioner to the effect that the loan has been repaid therefore the proceedings be quashed, cannot be accepted in writ jurisdiction. Writ court is also a court of equity. Equity does not favour a person who indulges in fabrication of documents and illegal activities for profit purpose.

19. We are also of the considered opinion that prosecution of persons such as the petitioner is required to send appropriate message to the society so that others do not indulge in such criminal activities. Loan disbursed by a bank involves public money and the issue cannot be treated lightly. The petitioner so as to obtain loan on the basis of a manufactured document had criminal intent/mens rea. It is not an accidental act, rather a premeditated criminal action.

20. In view of the above, this petition is dismissed.

21. Anything said herein above would not be considered a finding of fact. The investigation is going on. Let investigation be concluded and appropriate conclusion be drawn as is warranted on the basis of evidence collected.

22. Let a copy of this order be forwarded to the Senior Superintendent of Police, Lucknow by Senior Registrar of the Court so that effective investigation is concluded at the earliest.