
(2007) 06 AHC CK 0011
In the Allahabad High Court

Satish Kumar and Rajeev Kumar

APPELLANT

Vs

State of U.P. and Smt. Kanti Rani Madan

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 395, 397, 482
Penal Code, 1860 (IPC) — Section 114, 420

Citation : (2007) 06 AHC CK 0011

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—The two applicants Satish Kumar and Rajeev Kumar, in Criminal Misc. Application No. 15212 of 2006 and Sudesh Bhagat lone applicant in Criminal Misc. Application No. 15188 of 2006 have prayed for the quashing of complaint case No. 516 of 2005 Kanta Rani v. Rajeev Kumar and others pending in the Court of Judicial Magistrate 1st, Allahabad for offences u/s 420/114 I.P.C Police Station Attarsuiya district Allahabad, hence both the above noted Criminal Miscellaneous Applications were clubbed together vide order dated 29.11.2006 and are being disposed of by this common order.

2. Before advertng to the facts of the case and merits of the matter I deem it essential to refer that on an earlier occasion two applicants Rajeev Kumar and Satish Kumar in Criminal Misc. Application No. 15212 of 2006 had filed Criminal Revision No. 449 of 2006 challenging their summoning order dated 28.10.2005 in the aforesaid case. In the aforesaid Criminal Revision initially they got a stay order on 30.01.2006. The said order dated 30.1.2006 was got extended on 16.5.2006, 18.7.2006, 25.7.2006, 4.8.2006, 25.9.2006 and 9.10.2006. The aforesaid revision in the ordinary course was listed before me. After hearing the counsel for the revisionist in the aforesaid case when the revision was going to be dismissed, learned Counsel in the aforesaid revision Sri Madhur Prasad, prayed for withdrawal of the revision to take recourse in the appropriate forum

and, hence got the aforesaid revision dismissed. Similarly Sudesh Bhagat applicant in Criminal Misc. Application No. 15188 of 2006 had also filed Criminal Revision No. 391 of 2006 in this Court and got a stay order on the same date i.e. 30.01.2006 and got it extended from time to time and ultimately the same counsel Mr. Madhur Prasad got the aforesaid revision also dismissed to seek relief in the appropriate forum. It was after the dismissal of the aforesaid two Criminal Revisions have filed the present two Criminal Misc. Applications u/s 482 Cr. P.C. for quashing of the proceedings, as mentioned above.

3. At the very outset the question which came up for consideration is that whether the accused can be permitted to take recourse to unscrupulous methodology of filing a revision against the summoning order and getting it dismissed and then again taking the recourse to another forum through another counsel for the same relief. I may remind here that earlier two revisions were filed challenging the summoning order which, if allowed, would mean quashing of the summoning order and thereby the proceedings would have come to an end against the applicants in the lower court. The prayer which has been made in the present two Criminal Misc. applications were also for the quashing of the proceedings of the case and, therefore, in essence the subsequent prayer of quashing would have meant the same thing which prayer was sought for in the earlier two revisions. In such a view, after getting the stay order extended to many months and then getting the revisions dismissed for filing an application u/s 482 Cr. P.C. when the respondents had appeared in the earlier two revisions to contest the case is, without any doubt, an unfair practice which has been resorted to by the applicants. Such type of unscrupulous and unethical practice has to be curbed strictly. No unfair litigant should be allowed to saddle this Court with loathsome petitions by his dexterity. If such a practice is permitted it would burden this Court to an unimaginable load of work and to an unending process of litigation. Let me remind here the Latin phrase "*interest reipublicae ut sit finis litium*" (It concerns the state that there should be an end to litigation). In *flagrant delicto* (act of committing crime) there is hankered motive to escape the clutches of law and therefore such libidinous practice must be interdicted. Such actions are certainly not *damnum*. Such unethical practices have also attracted the attention of the Supreme Court when it observed as follows in the case of *Rajinder Prasad Vs. Bashir and Others*, as follows:

7. WE are of the opinion that when the earlier revision-petition filed u/s 397 of the Code had been dismissed as not pressed, the accused-respondents could not be allowed to invoke the inherent powers of the High Court u/s 482 of the Code for the grant of the same relief. We do not agree with the arguments of the learned Counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence u/s 395 of the Code and arraying four persons as accused persons by way of subsequent petition u/s 482 of the Code. The object of criminal trial is to render public justice and to assure punishment to the criminals keeping in view that the trial is concluded expeditiously. Delaying

tactics or protracting the commencement or conclusion of the criminal trial are required to be curbed effectively, lest the interest of public justice may suffer....

8. We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court u/s 482 of the Code and the impugned order is liable to be set aside on this ground alone.

4. In such a view I am of the opinion that the two Criminal Miscellaneous Applications filed by the applicants is an unfair practice and since the earlier two revisions were got dismissed by them, after getting stay order extended for many months, the order in those revisions will operate as estoppel against them and, therefore, the applicants are bound by the orders passed in the aforesaid two criminal revisions. They can now seek remedy only in the trial court.

5. On the merits of the matter also the complaint can not be quashed as the allegations levelled in the complaint are that the applicants by manufacturing of the documents purchased and sold the property which belonged to the complainant's mother, namely, Shrimati Durga Devi. It is specifically averred in the complaint that not only the two step brothers, Kishori Lal and Trilok Chandra illegally sold the property by putting a forged thumb impression of Durga Devi, but in connivance with other socio criminises they also got the names of the purchasers mutated on the basis of such forged documents. On such facts the complainant must get a fair chance to substantiate the allegations levelled by her and establish the guilt of the offenders.

6. It is contended by Sri Raj Kumar Khanna, learned Counsel for the applicant that in criminal matters no resjudicata applies and since the revisions were not dismissed on merits, the application u/s 482 Cr. P.C. is maintainable. I have considered the submission raised by the learned Counsel for the applicants. I do not find any force in the said submission because the same contentions and arguments, which were advanced in in these Criminal Miscellaneous Applications were advanced in the criminal revisions as is clear from the grounds mentioned in the aforesaid two criminal revisions. If the applicants were so confident of their said contention, they could have argued the revisions filed by them on its merits. The fact of the matter is that on those very grounds they got their revisions dismissed as not pressed and, therefore, they cannot be allowed to raise those very submissions in another forum i.e. Present Criminal Miscellaneous Applications u/s 482 Cr. P.C.

7. In view of the aforesaid discussion the present two Criminal Miscellaneous Applications filed by Sri Satish Kumar and Rajeev Kumar as well as by Sri Sudesh Bhagat are dismissed with exemplary cost of Rs. 20,000/- to be imposed on each of them. They are allowed one month's time to deposit the said cost with the trial court. In the event of their failure to deposit the costs within the time allowed. C.J.M. Concerned is directed to realize the same from them as arrears of land revenue within a period of one month thereafter.

8. With the aforesaid directions the aforesaid two Criminal Miscellaneous

Applications being Criminal Miscellaneous Application No. 15212 of 2006 filed by Satish Kumar and Rajeev Kumar and Criminal Miscellaneous Application No. 15188 of 2006 filed by Sudesh Bhagat are dismissed.

9. Let a copy of this order be sent to the trial court within a period of one week from today.