
(2014) 02 UK CK 0013

In the Uttarakhand High Court

Case No : Criminal Misc. Application (C-482) No. 754 of 2008

Seema Bakshi

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 482
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2014) 1 UC 782

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Neelima Mishra and Vivek Shukla, Advocate for the Appellant; Suhail Ahmad Siddiqui, A.G.A. and Parikshit Saini, Advocate for the Respondent

Judgement

Umesh Chandra Dhyani, J.—The applicants, by means of present. Application u/s 482 Cr.P.C., seek to quash the summoning order dated 16.09.2008 passed by the Chief Judicial Magistrate, Haridwar in Criminal Case No. 6196 of 2008 titled as State vs. Smt. Seema Bakshi, under Sections 420, 467, 468 & 471 IPC The applicants also see to quash the proceedings of the aforementioned criminal case pending before the said court.

2. Taking recourse to Section 156(3) Cr.P.C., respondent no. 2 (Ravi Dutt Dhiman) got lodged an FIR against 4 named accused persons, including the present accused-applicants on 05.11.2006 at Police Station Jwalapur, District Haridwar for the offences punishable under Sections 420, 467, 468 & 471 IPC. After the investigation, a charge-sheet was submitted against the accused-applicants for the selfsame offences. The cognizance was taken by the Chief Judicial Magistrate, Haridwar vide order dated 16.09.2008 and accused-applicants were summoned to face the trial. Aggrieved against the same, present application u/s 482 Cr.P.C. was filed by the accused-applicants.

3. According to the FIR, respondent no. 2 purchased a piece of land bearing-khasra no. 2430 measuring 4400 sq.ft. on 17.08.2001 by registered sale deed

from Smt. Samiran for a consideration of Rs. 1.89 lakhs. He continued to remain in possession after registration of the sale deed. The adjoining plot of khasra no. 2430 was khasra no. 2424. Smt. Seema Bakshi and Smt. Sunita Bakshi purchased a piece of adjoining land on 12.02.2004. An agreement to sell was executed in respect of the said land on 09.09.2003. The area of the land was shown to be 2200 sq.ft., but, deliberately the length and breadth of the land was not disclosed. Smt. Anita Sharma and Madhu Sharma also purchased a piece of land on 12.02.2004 from khasra no. 2424. In the said sale deed, the area of the land was shown to be 2200 sq. ft., but the length and breadth of the plot" was not disclosed.

4. It was further alleged by the informant in the FIR that in order to grab the property, the accused-applicants instituted a civil suit no. 6/2005, Smt. Anita and others vs. Ravi Dutt Dhiman, in the court of Civil Judge (S.D.), Haridwar. A photocopy of the sale deed was filed to show that the land measured 57.71/2 ft. in East-West and 38.019 in the North-South. In other words, the measurement of land as shown in the original sale deed was not depicted in the photocopy of the same. The same was done fraudulently in order to grab the property. When the informant came to know of the same, he obtained a copy of the sale deed from Sub Registrar office. Accused persons knowingly fully that the same was a forged document used the same in the judicial proceedings. When the informant went to the police station concerned to lodge the FIR, the police told him to approach the civil court. The informant thereafter moved an application to the Superintendent of Police, Haridwar, but since no action was taken by the police, therefore, the informant took recourse to Section 156(3) Cr.P.C. Statement of Ravi Dutt Dhiman as also other documents, which include the copies of agreement to sell, a plaint filed before the Civil Judge (S.D.), Haridwar, have been filed to show that there was difference in the measurement of plot in order to grab the property.

5. On a bare reading of the FIR, the factual foundation of the offences complained of against the accused-applicants is laid. Narrow inspection hole through which this Court is expected to examine the matter u/s 482 Cr.P.C. is whether a prima facie case is made out against the accused-applicants on the basis of FIR and other documents or not?

6. It is a well settled law that the factual aspects of the case need not be gone through by this Court in exercise of it's inherent jurisdiction. It is the contention of learned counsel for the applicants that the respondent no. 2 has filed an application u/s 340 Cr.P.C. alleging therein that the applicants have filed a forged copy of the sale deed before the court below. The said application is still pending before the court below. By concealing the said fact, respondent no. 2 filed an application-under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, Haridwar alleging that the applicants have committed forgery by producing a forged copy of the sale deed before the court below. In other words, an application u/s 340 Cr.P.C. was filed by concealing the fact that application u/s

156(3) Cr.P.C. is pending before the civil court. According to learned counsel for the applicants; the action initiated by respondent no. 2 is nothing but an abuse of the process of the court. Learned counsel for the applicants further submitted that the investigating officer of the case has not annexed any supporting evidence in order to show as to how he examined the documents which were in the custody of the learned Magistrate. Respondent no. 2 is pressurizing the applicants with whom he is fighting a legal battle through a number of cases. Respondent no. 2 is trying to take the land of the applicants and he is taking advantage of the applicants being housewives and therefore, the proceedings initiated against them should be quashed by this Court in exercise of inherent jurisdiction u/s 482 Cr.P.C. Learned counsel for the applicants relied upon the rulings of Hon'ble Apex Court in Mahindra and Mahindra Financial Services Ltd. and Another Vs. Rajiv Dubey, and Minu Kumari and Another Vs. The State of Bihar and Others, in support of his submissions.

7. The Hon'ble Apex Court in Amit Kapoor Vs. Ramesh Chander and Another, has laid down certain principles in respect of exercise of jurisdiction u/s 482 of Cr.P.C. One of the principle is that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently ?absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

8. The Hon'ble Supreme Court in Rajiv Thapar and Others Vs. Madan Lal Kapoor, , held as follows:

28. The High Court, in exercise of its jurisdiction u/s 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness

or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

9. The Hon''ble Apex Court has provided the guidelines as regards the exercise of jurisdiction u/s 482 Cr.P.C. in the pronouncement of Rajiv Thapar's case (supra), wherein the Hon''ble Apex Court has desired the High Courts to follow the following steps while dealing with applications u/s 482 of Cr.P.C. The same reads as under:

? Step one Whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

? Step two Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

? Step three: Whether the material relied Upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

? Step four: Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

10. The Hon''ble Supreme Court has provided guideline that if the reply to the aforesaid four steps is in the affirmative, then only proceedings u/s 482 of Cr.P.C. should be allowed. In the instant case, the reply to the aforesaid questions is not in the affirmative in respect of present applicants. Ingredients of offences complained of against them were, prima facie, made out.

11. It is a well settled law that the inherent powers of this Court u/s 482 Cr.P.C. should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section. In the

instant case, the accused-applicants are unable to pass those tests and it is not a fit case where such jurisdiction should be exercised, It is also well settled law that the factual aspects of the case need not be gone into by this Court in exercise of its" inherent jurisdiction. Liberty is, therefore, granted to the applicants to raise all the factual issues before the trial court for obtaining their discharge/acquittal at an appropriate time.

12. As a consequence thereof, application u/s 482 Cr.P.C. is liable to be dismissed and is hereby dismissed. It is provided that if the applicants, who are housewives, surrender before the Chief Judicial Magistrate, Haridwar and seek bail, their bail application(s) shall be decided sympathetically by the Magistrate concerned as expeditiously as possible and without unreasonable delay.