
(2007) 08 AHC CK 0144
In the Allahabad High Court

Smt. Parminder Kaur

APPELLANT

Vs

State of U.P. and Hargur Saran Singh

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 482
Penal Code, 1860 (IPC) — Section 420, 466, 467, 468, 471

Citation : (2007) 08 AHC CK 0144

Hon'ble Judges : G.P. Srivastva, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.P. Srivastva, J.—Heard learned Counsel for the parties.

2. This is an application u/s 482 Cr.P.C. for quashing the proceedings arising out of charge sheet of case No. 3045/04 under Sections 420/467/468/471 I.P.C. pending in the court of Chief Judicial Magistrate, Rampur.

3. Opposite party No. 2 lodged F.I.R. on 27.2.04 against the applicant under Sections 420/466/467/468/471 I.P.C. at P.S. Bilaspur district Rampur alleging that one Colonel Hargovind Singh and Amrinder Kaur were bhumidhar of agricultural land khata No. 40 and 2. They were unable to look after the land therefore they appointed opposite party No. 2 as their attorney by executing a general power of attorney in his favour. Opposite party No. 2 by virtue of power of attorney sold the aforesaid land and delivered possession to the purchasers. The applicant claiming herself as wife of Colonel Hargovind Singh filed two civil cases suit No. 266 of 2002 and 267 of 2002 for cancellation of sale deed against Prabhajeet Singh which are still pending. While instituting the suit on 27.5.02 the applicant filed a false affidavit that she came to know regarding the sale deed on 16.5.02 and obtained the certified copy on 27.5.02 whereas actually the applicant moved application for certified copy of Khatauni on 6.5.02 and received copy on 7.5.02. After investigation a charge sheet has been filed. Feeling aggrieved with the summoning order and the charge sheet this application has

been moved by the applicant.

4. I have heard learned Counsel for the parties and gone through the record of the case.

5. Learned Counsel for the applicant has argued that the cognizance of the matter is barred by Section 195 Cr.P.C. because no private complaint is maintainable. In this connection opposite party No. 2 relied upon Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, where it was held that if an offence mentioned in Section 195(1)(b) is committed after filing of document then only bar of Section 195(1)(b)(ii) would apply and not otherwise. In other cases private complaint is maintainable.

6. Learned Counsel for the applicant has argued that the aforesaid view of the Supreme Court is distinguishable because the alleged forgery has been done during the course of judicial proceedings. The argument has no force as it is against the record. The F.I.R. shows that the applicant has sworn false affidavit and thereafter the said affidavit was submitted in the court. The F.I.R. itself shows that the applicant has submitted false affidavit in the court. Therefore the law laid down in Iqbal Singh Marwah case by the Apex Court is fully applicable in the instant case.

7. Learned Counsel for the applicant has further argued that no offence as alleged was committed by the applicant because the applicant applied for certified copy of the record of the land on 6.5.02 which was made available to her on 7.5.02 and she gave the same copy to her counsel to proceed with the matter. The applicant also signed on about 40 blank papers at the instance of her counsel which was misused by her own counsel. It has further been submitted that a bare perusal of the application and affidavit reveals that she did not sign when the matter was typed. On the contrary she had signed the pages before the same get typed. It has further been submitted that she lodged proceedings against her counsel.

8. In this connection learned Counsel for opposite party No. 2 has argued that Annexure to the petition u/s 482 Cr.P.C. cannot be termed as evidence hence should not be acted upon. In this connection he has placed reliance on M. Narsinga Rao Vs. State of Andhra Pradesh, where the Apex Court has held that Exercise of power u/s 482 of the Code in a case of this nature is an exception and not the rule.

9. It was not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It was erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

10. The Court should not act on annexures to the petitions u/s 482 of the Code, which cannot be termed as evidence without being tested and proved.

11. Reliance has further been placed on State of Bihar and Another Vs. P.P. Sharma, IAS and Another, wherein it was held that it is thus obvious that "the annexures" were neither part of the police reports nor were relied upon by the investigating officer. These documents were produced by the respondents before the High Court along with the writ petitions. By treating "the annexures" and affidavits as evidence and by converging itself into a trial court the High Court pronounced the respondents to be innocent and quashed the proceedings. The least we can say is that this was not at all a case where High Court should have interfered in the exercise of its inherent jurisdiction. This Court has repeatedly held that the appreciation of evidence is the function of the criminal courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law. Since the High Court strongly relied upon "the annexures" in support of its findings, we may briefly examine these documents.

12. I have gone through these rulings carefully and found them fully applicable in the instant case. Therefore the argument of learned Counsel for the applicant cannot be considered in this proceeding which is based on the annexures and required analysis of evidence.

13. The Apex Court has defined the scope of Section 482 Cr.P.C. in K. Ramakrishna and Others Vs. State of Bihar and Another, "The inherent powers of the High Court u/s 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any Court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the F.I.R. or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the F.I.R. or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved."

14. In the instant case there is no legal bar against the institution or continuance of criminal proceedings in respect of alleged offence and it is not the case where allegations in the F.I.R., even if they are taken at their face value do not constitute the offence alleged nor in the instant case it can be said that without appreciating the evidence only merely by looking at the complaint or the F.I.R. the offence alleged is not disclosed.

15. In the circumstances I am of the view that the application has no force and is

hereby dismissed. Stay order, if any, is vacated.