

(2013) 02 AHC CK 0261
In the Allahabad High Court
Case No : Criminal Revision No. 1950 of 2010

Smt. Prabha Awasthi and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 397, 467, 471
Penal Code, 1860 (IPC) — Section 467, 468, 471
Registration Act, 1908 — Section 17

Citation : (2013) 2 ACR 1578 : (2013) 4 ADJ 384 : (2013) 81 ALLCC 579

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : Surendra Tiwari, Dileep Kumar, Rajiv Gupta, Rajrishi Gupta, Ravi Kant and Surendra Tripathi, for the Appellant; D.P. Singh, Dr. Nisha Richhariya and Vishnu Gupta, for the Respondent

Final Decision : Allowed

Judgement

Aditya Nath Mittal, J.—Heard learned counsel for the revisionists and learned A.G.A. Opposite party No. 2 (in person) has argued her matter.

This Criminal Revision has been filed against the order dated 23.2.2010 passed by III Additional Chief Judicial Magistrate, Gautam Budh Nagar in case No. 1423 of 2009 by which the revisionists have been summoned to face the trial for the offence punishable under Sections 467, 468 and 471 I.P.C.

Learned counsel for the revisionists has submitted that the present dispute is of civil nature and no forgery has been committed by the revisionists but the Court below has committed manifest error in passing the summoning order. It has also been submitted that the opposite party No. 2 had executed power of attorney and an agreement to sell regarding which a civil suit No. 584 of 2005 was filed but because the agreement to sell was unregistered, therefore the relief of specific performance was not granted but the Civil Court vide its judgment dated 27.3.2010 has directed to refund the amount of Rs. 7,64,795/- alongwith

interest of 6%. It has also been submitted that the said judgment of the Civil Court was challenged by both the parties before this Court and the appeal has also been dismissed by Division Bench but now the matter is pending before Hon. Apex Court.

Learned counsel for the revisionist further submitted that there are clear cut finding of the Civil Court that there was no forgery of the signatures. Therefore the alleged criminal offence is not made out.

2. Learned A.G.A. has defended the order. Opposite party No. 2 appearing in person has submitted that the revisionists have committed forgery with her and have forcibly prepared the said power of attorney and an agreement to sell which do not contain her signatures. Therefore there is no illegality in the impugned order.

3. Opposite party No. 2 had lodged an F.I.R. challenging the genuineness of agreement to sell dated 18.5.2005 and in view of the conclusion in civil suit No. 584 of 2005 and considering other evidence, the police submitted final report on 1.3.2007 which was challenged by protest petition. After recording statement u/s 200 and 202 Cr.P.C., the revisionists have been summoned to face the trial for the offence punishable under Sections 467, 468 and 471 I.P.C.

4. The whole controversy is regarding execution of agreement to sell dated 18.5.2005. The revisionists have alleged that said agreement to sell as well as power of attorney was executed by opposite party No. 2 while the opposite party No. 2 alleges that said documents are forged and they do not contain the signature of opposite party No. 2.

5. A civil suit No. 584 of 2005 was filed by revisionist No. 1 before Civil Judge (SD) Gautam Budh Nagar in which it was alleged that whole of the amount regarding disputed plot was deposited by her on the assurance of opposite party No. 2 that the said plot shall be transferred to revisionist No. 1 but due to dishonesty the opposite party No. 2 who was defendant No. 1 in the civil suit denied the execution of sale-deed as well as the power of attorney. The said civil suit was contested by opposite party No. 2 and after considering the evidence of both the parties, the Civil Court came to the conclusion that the agreement to sell dated 18.5.2005 has been executed by defendant No. 1 who is opposite party No. 2 in the present revision and it contains the signature of defendant No. 1. The Civil Court also came to the conclusion that there was no evidence to prove that the power of attorney was a forged document and because it was also not registered, therefore the plaintiff do not get any right over the property in dispute. Learned Civil Court also came to the conclusion that the agreement to sell was not registered in terms of Section 17 of the Indian Registration Act, therefore the plaintiff do not get any right by the said agreement to sell but it was found that whole of the amount regarding the disputed plot was deposited by the plaintiff in the office of Noida authority, therefore the plaintiff was entitled to get refund her money.

6. Admittedly the plaintiff in the civil suit and the defendant No. 1 are real sisters.

During the pendency of civil suit, the opposite party No. 2 had moved an application to the Home Minister, Government of India alleging that she has deposited whole of the amount regarding the disputed plot for which she is a lease deed holder but the accused persons have forged a power of attorney and agreement to sell and want to take her property. The investigation was made in the matter and the Investigating Officer came to the conclusion that parties are real sisters and in the judicial order dated 7.12.2005, it has been found that there is similarity in the signatures. Therefore the allegation of forgery was not proved and the final report was submitted.

7. It appears from the judgment of the civil suit No. 584 of 2005 that both the parties had adduced their evidence and the reports of handwriting and finger print experts were also submitted by both the parties but the defendant Smt. Nisha Richhariya had not examined the handwriting and finger print expert while the plaintiff who is revisionist No. 1 had examined the handwriting and finger print expert Sri R.K. Jaiswal as P.W. 8. Learned Civil Court after considering the evidence-on record has come to the conclusion that the statement of handwriting and finger print expert is supported by the statements of P.W. 3 and P.W. 4 and the defendant No. 1 has not examined any handwriting and finger print expert in her defence and there was similarity in the signatures on the agreement to sell, therefore it was found that said agreement to sell was not a forged document.

8. Learned counsel for the revisionists has relied upon Devendra and Others Vs. State of U.P. and Another, , in which Hon. Apex Court has considered the civil wrong and criminal wrong and has held as under:

We may, however, notice that the said decision has been considered recently by this Court in Mahesh Choudhary Vs. State of Rajasthan and Another, , wherein it was noticed:

Recently in R. Kalyani Vs. Janak C. Mehta and Others, , this Court laid down the law in the following terms:

9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the 15 provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

16. The charge-sheet, in our opinion, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, in our opinion, no exception thereto can be taken.

We, therefore, do not find any legal infirmity in the impugned orders.

9. Learned counsel for the revisionists has further relied upon *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, , in which Hon. the Apex Court has held as under:

The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a Civil Court of competent jurisdiction. The dispute in question is purely of civil nature and respondent No. 3 has already instituted a civil suit in the Court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the Court.

10. Learned counsel for the revisionists has further relied upon *Hira Lal and Others Vs. State of U.P. and Others*, , in which Hon. the Apex Court has held:

The question as to whether the transactions are genuine or not would fall for consideration before the Civil Court as indisputably the respondent No. 3 has filed a civil suit in the Court of Civil Judge, Gautam Budh Nagar wherein allegedly an interim injunction has been granted. What was the share of the respective co-sharers is a question which is purely a civil dispute; a criminal Court cannot determine the same.

11. Learned counsel for the revisionists has relied upon *Harshendra Kumar D. Vs. Rebatilata Koley Etc.*, , in which Hon.ble the Supreme Court has held that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstances, can be looked into by the High Court. In exercise of its jurisdiction u/s 482 or for that matter in exercise of revisional

jurisdiction u/s 397 of the Code.

Hon"ble Apex Court has further held that it is clearly settled that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction u/s 397 of the Code in a criminal case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations.

12. Learned counsel for the revisionists has further relied upon Indian Oil Corporations. Indian Oil Corporation Vs. NEPC India Ltd. and Others, , in which Hon"ble Apex Court considering the judgment of Hridaya Ranjan Prasad Verma has observed as follows:

In Hridaya Ranjan Prasad Verma, this Court held:

On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest.

In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

13. In Md. Ibrahim and Others Vs. State of Bihar and Another, , the Hon. Apex Court has held that if what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

14. In the present case, admittedly the application to Home Minister, Government of India was moved during the pendency of the aforesaid civil suit No. 584 of 2005. In the aforesaid civil suit the parties were given full opportunity to adduce their evidence and it was proved by the evidence of the plaintiff who is revisionist No. 1 that the said agreement to sell and the power of attorney are not forged documents. The opposite party No. 2 who was defendant No. 1 in the

said civil suit had filed the report of handwriting and finger print expert but the said expert was not examined in the evidence. Learned Civil Court after considering the evidence on record as well as the handwriting and finger print expert report came to the conclusion that the agreement to sell contains the signature of defendant No. 1 Smt. Nisha Richhria who is complainant in the present case.

The first appeal of both the parties has already been dismissed by Division Bench of this Court and now SLP is pending before the Hon. Apex Court.

15. In view of the above decisions of the Hon"ble Apex Court it is clear that the purely civil dispute has been admitted to give the cloak of criminal offences which cannot be permitted to settling the scores or to pressurise the parties to settle civil dispute. In the present case it is a pure civil dispute in which the agreement to sell and the power of attorney were challenged and after considering the evidence of both the parties, it has been held that signatures on the power of attorney and the agreement to sell are not forged. It clearly indicates that prima facie the signatures of Smt. Nisha Richharia are not forged and thus no forgery has been committed upon her.

Hon"ble Supreme Court in Indian Oil Corporation Vs. NEPC India Ltd. and Others, has further held that any effort to settle the dispute and claim which do not involved any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged.

In criminal proceedings, the complainant had filed the report of Hand Writing and Finger Print expert which was also produced in civil proceedings but which has not been proved in the civil proceedings while she had full opportunity to prove the said report to prove her case as well as to rebut the handwriting and finger print expert report submitted and proved by the revisionists. In this way, the opposite party No. 2 has relied upon such a document which she was having opportunity to prove but has failed to prove without any plausible reason and thus also concealed this fact from the Court which passed the impugned order. While on the other hand, the Civil Court has found that power of attorney and the agreement to sell have been executed by the complainant. The findings of Civil Court have been affirmed by Division Bench of this Court in First appeals, filed by both the parties.

For the aforesaid reasons, I am of the opinion that the civil dispute between the parties has been given a criminal colour and in the complaint sent to the Home Minister, Government of India and this fact has been concealed that civil suit regarding the said plot is also pending in a competent Court. The pendency of the civil suit has also not been brought into the notice of the Court which has passed the summoning order.

In the circumstances the revision is allowed and the order dated 23.2.2010 passed by III Additional Chief Judicial Magistrate, Gautam Budh Nagar in complaint case No. 423 of 2009 summoning the revisionists for the offence

punishable under Sections 467, 468 and 471 I.P.C. is set aside.