
(2018) 07 UK CK 0098

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 299 of 2018

Smt. Ritu Jhamb and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code, 1860 — Section, 420, 467, 468, 471
Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 — Section 169

Citation : (2018) 07 UK CK 0098

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Lalit Sharma, Manisha Rana Singh, Sangeeta Bhardwaj, Gopal K. Verma

Final Decision : List this case on 14.08.2018

Judgement

LOK PAL SINGH, J.

1. Present Criminal writ petition under Article 226 of the Constitution of India has been filed by the petitioners for quashing the F.I.R No. 56 of 2018,

lodged by respondent no. 3, under Sections 420, 467, 468, 471 of I.P.C, at Police Station Sitarganj, District Udham Singh Nagar.

2. Brief facts of the case are that Late Vishwanath Kakkar (father of respondent no. 3 and petitioner no. 1) was the owner of the land situated at

Sitarganj. The land was purchased by him in the year 2005. Thereafter, late Vishwanath Kakkar constructed a hotel in the name of M/s Sitar. Late

Vishwanath Kakkar was the resident of Bareilly whereof petitioner no. 1 and her family members are residents of Sitarganj. Petitioner no. 1 &

Petitioner no. 2 are also running the hotel in the name of Yuvraj Palace. Since, the husband of the petitioner no. 1 was having the experience of

running the hotel, late Vishwanth Kakkar entered into a partnership with the petitioner no. 1, vide order dated 17.05.2008. Petitioner no. 1 became partner of 50 percent of the income and loss of the running of hotel. Thereafter, loan was taken by late Vishwanath Kakkar and petitioner no. 1, father of petitioner no.1 executed a Will in her favour on 26.02.2013 whereby the entire property owned and possessed in the name of the Hotel Sitar was given to the petitioner no. 1. The father of petitioner no. 1 died on 16.10.2013. The names of the respondent no. 3 Rohit Kakkar, and Smt. Kulwant Kakkar, wife of Late Vishwanath Kakkar and Jay Kakkar (son of the deceased) were recorded in Chapter Pa-Kha II Kha of the Revenue record. Thereafter, an application was filed by the petitioner no. 1 claiming rights over the property purchased by Late Vishwanath Kakkar in the year 2005 on the basis of Will dated 26.02.2013 and he took possession over the property. The petitioner no. 1 filed an application on the strength of registered Will dated 26.02.2013.

3. State of Uttarakhand made amendment in Section 169 of UP.ZA and LR Act which is extracted hereunder:

â??169. Bequest by a bhumidhar.-(1) A [bhumidhar with transferable rights may by will bequeath his holding or any part thereof, except as provided in [sub-section (2-A)].

[(2-A) In relation to a [bhumidhar with transferable rights] belonging to a Scheduled Caste or Scheduled Tribe, the provisions of [sections 157-A and 157-B] shall apply to the making of bequests as they apply to transfer during lifetime.]

(3) Every Will made under provisions of sub-section (1) shall, notwithstanding anything contained in any law, custom or usage, be in writing and attested by two persons.

4. Admittedly at the time of filing the mutation application, the Will was not registered but, subsequently, when the petitioners noticed that alleged Will dated 26.02.2013 allegedly executed by Late Vishwanath Kakkar is not registered she moved an application before the Sub-Registrar for registration of said will. Will was registered in favour of the petitioner no. 1 and, therefore, mutation was carried out in her favour. Notices were issue to the respondent no. 3 inviting the objections. Petitioner preferred the writ petition no. 1717 of 2018(M/S), Smt. Ritu Jhamb and others vs. State of

Uttarakhand and others.

5. High Court vide order dated 18.06.2018 dismissed the writ petition with the following observation:

“Petitioner no. 1 has received a show cause notice from the Additional District Magistrate (Administration/Nazul), Udham Singh Nagar, wherein it

has been alleged that petitioner no. 1 has prepared a forged and fabricated Will after four years of death of one Mr. Vishwanath Kakkar and in

the said case, the Sub-Registrar, Sitarganj, Udham Singh Nagar and the then Tehsildar, Sitarganj are also prime suspects that they had connived with

the petitioner no. 1.

In view of this Court, this is only a show cause notice to which the petitioner no. 1 also replied. No interference is called for by this Court at this

Stage.

Consequently, the writ petition stands dismissed in limine.”

6. The Co-ordinate Bench in its order dated 18.06.2018 has recorded the findings that Sub-Registrar Sitarganj Udham Singh Nagar and the Tehsildar,

Sitarganj are also bribe suspects that they connived with the Petitioner no. 1 in preparing the forged and fabricated Will.

7. The FSL report has been filed by the State which depicts that the signature on the alleged Will dated 26.02.2018 of Late Vishwanath Kakkar are

forged.

8. Investigating Officer of the case shall apprise this Court within two weeks from the date of production of this order as what action has been taken

by the Investigating Officer against the Sub-Registrar and the then Tehsildar of Sitarganj.

9. Counter affidavit be filed within two weeks from today, in case, counter affidavit in regard to the progress of the investigation against the Sub-

Registrar and the then Tehsildar, Sitarganj is not filed, the Investigating Officer shall remain present before this court.

10. Interim order granted earlier shall continue till the next date of listing.

11. List this case on 14.08.2018.