

(2005) 04 AHC CK 0194

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3160 of 2003

Sudama Singh, Prem Prakash alias Om Prakash, Shree
Kishun and Hari Shanker Lal (Munshi)

APPELLANT

Vs

State of U.P., Station Officer and Haribans Singh

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210, 482

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 465, 467

Citation : (2005) 04 AHC CK 0194

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : Durga Tiwari, for the Appellant; Santosh Kumar Mishra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Instant application has been moved to quash the charge sheet No. 261 of 2002 filed u/s 419, 420, 467, 468, 471 I.P.C. in Criminal Case No. 484 of 2002, Harivansh Singh v. Shanker and four Ors., pending in the Court of Chief Judicial Magistrate, Kushinagar.

2. Heard Smt. Durga Tewari, learned counsel for the applicants Sudama Singh, Prem Prakash @ Om Prakash, Shree Kishun and Hari Shanker Lal and Sri Santosh Kumar, learned counsel for the complainant O. P. No. 3 Harivansh Singh and learned AGA for State of U. P. and have gone through the record.

3. The fact as revealed from the record is that O.P. No. 3 Harivansh Singh filed Civil Suit No., 100 of 2002, Harivansh v. Sampurnand and two Ors. in the Court of Civil Judge (Junior Division) Kushinagar, Padrauna, for cancellation of sale deed dated 28.12.2001 alleged to have been executed by Harivansh Singh in favour of Sampurnand, Dev Narayan and Onkar on the ground that Harivansh Singh has no son and has three daughters. Sampurnand and Dev Narain are sons of Shanker, nephew of Harivansh Singh. They have no concern with the land

and in consolidation Harivansh Singh got plot Nos. 304 and 366 of village Harraiya Bujurg, Tappa Pakari, Pargana Harraiya, district Kushinagar. His brother Suraj Narain and Bachchan were allotted their chaks having no concern with Harivansh Singh. These two plots are sole source of living of Harivansh Singh but since Harivansh Singh has no son, therefore, his brothers and nephews wanted to usurp his property and with this intention they got a forged sale deed prepared alleged to have been executed by Harivansh Singh by setting up Bachchan, father of applicant No. 1, Sudama Singh as O.P. No. 3, Harivansh Singh. Later on Sampurnand, Dev Narain and Onkar, defendants of Civil Suit No. 100 of 2002, Harivansh Singh v. Sampurnand and Ors., filed another Civil Suit No. 114 of 2003, Sampurnanand and two Ors. v. Harivansh Singh and two Ors., in the Court of civil Judge (Junior Division), Kushinagar, Padrauna, making prayer that Harivansh singh, Sunil and Indrajeet be restrained from interfering with the possession over the land in dispute bearing plot Nos. 304 and 366 of village Harraiya Bujurg on which they came into possession by virtue of sale deed dated 28.2.2001, which was executed by Harivansh Singh in favour of Sampurnand, Dev Narain and Onkar after obtaining a consideration of Rs. 1,10,000/-. Thereafter the respondent No. 3 lodged FIR against applicants and again respondent No. 3 filed a complaint case in the Court of C.J.M. Kushinagar bearing Crime No. 742 of 2002, Harivansh Singh v. Shanker and 8 Ors., copy of which is Annexure No. 5 to the application. In the complaint name of Bachchan Singh has been included while in the FIR the name of Bachchan Singh does not find place. Therefore, a prayer has been made to quash the charge sheet of Criminal Case No. 484 of 2002 and to stay the further proceedings of the case.

4. Respondent No. 3 Harivansh Singh filed counter affidavit alleging that applicants got the sale deed dated 22.12.2001 executed in favour of Sampurnand son of Shanker and Dev Narain and Onkar sons of Sudama in respect of the above mentioned plots. It is a fact that civil suit No. 100 of 2002, Harivansh v. Sampurnand was filed for cancellation of the fraudulent sale deed and in civil suit No. 114 of 2003, Sampurnand v. Harivansh and Ors. it has been admitted by the applicants that they had obtained the sale deed and only fraud was denied. The Sub Divisional Magistrate Padrauna, district Kushinagar made inquiry and directed the Station Officer to lodge the FIR. After the FIR was lodged inquiry was made and after inquiry charge sheet was submitted against the applicants and the witnesses named in the FIR supported the case of the O. P. No. 3. The allegations of the applicants that since civil proceedings is pending, therefore, criminal case cannot proceed has no force. The complaint was filed by the O. p. No. 3 because when the O. P. No. 3 made effort to lodge FIR it was not written, but the FIR was got registered on the letter of the Sub Divisional Magistrate concerned and charge sheet was submitted.

5. Copy of complaints of both the civil suits, copy of charge sheet, copy of complaint ex. have been filed by the applicants, which are on record. Annexure No. 1 to the application shows that it is a copy of the charge sheet and after investigation the police of police station Kuber, district Kushinagar submitted the charge sheet

against the applicants Sudama, Prem Prakash, Shree Kishun, Hari Shanker Lal (Munshi) and Shanker.

6. In instant case it is not denied that Harivansh is the original tenure holder of the plot No. 304 and 366 of village Harraiya Bujurg, district Kushinagar. Execution of the sale deed dated 28.12.2001 is also not denied in favour of Sampurnand, Dev Narain sons of Shanker, who are real cousins of Harivansh and Onkar son of Sudama. What is In dispute is whether Harivansh Singh had need for money and hence he obtained Rs. 1,10,000/- and executed the sale deed or fraud was committed on him by the applicants and the sale deed obtained in favour of Sampurnand, Dev Narain and Onkar by setting up Bachchan, real brother of Harivansh, as Harivansh in order to usurp his property as he has got no son. It has been alleged by Harivansh that he is a member of Kishan Sewa Sahkari Samiti Harraiya where he has affixed his photo on some record and in collusion with Ram Das Singh one of the employee of the Samiti photo of Harivansh Singh was obtained and the sale deed was got executed. Prem Prakash and Shree Kishun are not the witnesses of the village of Harivansh Singh. Prem Prakash is resident of some other village to whom he had never seen and Shree Kishun is a relation of Shanker, his nephew.

7. In instant case it has been submitted that when civil suit is pending between the parties criminal case cannot proceed and the charge sheet, which has been submitted by the police concerned after investigation be quashed.

8. The charge sheet is at Annexure No. 1, which shows that it has been submitted under Sections 419, 420, 467, 468, 471 I.P.C. Section 419 provides punishment for cheating by personation, Section 420 I.P.C. a provides punishment for cheating and dishonestly inducing delivery of property, Section 467 provides punishment for committing forgery of valuable security, will, etc., Section 468 I.P.C. provides punishment for committing forgery for purpose of cheating and Section 471 I.P.C. provides punishment for fraudulently and dishonestly using as genuine a forged document, which a person knows or has reason to believe to be a forged document. In this case the prosecution witnesses are victim Harivansh Singh, Indrajeet, Raj Pratap Singh, Pradhan, Ram Nagendra Singh, Kamrendra Pratap Singh, Chandrabhan Singh, Balram Kushwaha, lekhpal of the area, Virendra Kumar Srivastava, head clerk of the office of Registrar Padrauna, district Kushinagar.

9. The case of the complainant is that he had no need for money. He has no son, therefore, his brothers and their family members want to usurp his property, which is his only source of livelihood by hook or crook and for this purpose they anyhow managed to obtain an old photo of the complainant O. P. No. 3 and got the forged sale deed prepared. In order to prove this fact the witnesses mentioned above are to be examined.

10. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, Hon''ble the Apex Court has laid as below:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegation made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects such as want of sanction or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

11. In *L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others*, it has been laid down by Hon''ble the Apex Court that the power u/s 482 Cr. P. C. is meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen.

12. In 1985 SCC 180 *Pratibha Rani v. Suraj Kumar*, it has been held by Hon''ble the Apex Court that the High Court should very sparingly exercise its discretion u/s 482 Cr.P.C. to quash the proceedings of the case.

13. Thus in instant case it is to be ascertained as to whether the allegation made by the O. P. No. 3 makes out absolutely no case or are patently absurd and inherently improbable that no prudent person can ever reach a conclusion that forgery was committed or the proceeding is capricious and arbitrary and there is any fundamental defect and the case cannot proceed. When the case of the opposite party is that he has no son and therefore in order to usurp his property forgery has been committed by setting up Bachchan as Haribansh Singh and sale deed was got executed while neither any consideration was given nor there was any need to the opposite party for money to execute the sale deed. These are such circumstances, which can be ascertained after evidence is led as to whether really the sale deed was executed or forgery has been committed. The allegations made by opposite party no0. 3 prima-facie discloses ingredients of the commission of the offence and therefore, the Criminal proceeding / charge sheet cannot be quashed on this ground.

14. Next it is contended by the learned counsel for the applicant that since civil suit is already pending between the parties, therefore, the criminal case cannot proceed. The law is clear on this point as is evident from the following rulings:

15. In *XLIII 2001 ACC 1106 Urmila Devi Agrawal v. State of West Bengal*, it has been laid down by Hon''ble the Apex Court that standard of proof in two

proceeding i.e. civil and criminal are different. Even if civil proceeding is pending, criminal proceedings u/s 465, 467, 468, 471 and 120B I.P.C. cannot be quashed at the initial stage.

16. Thus position of law is clear that Criminal proceedings cannot be quashed due to pendency of civil proceedings. Civil proceeding is distinguished from criminal action and they have to be adjudicated and concluded by adopting separate yardstick. Onus of proving the allegations made beyond reasonable doubt is not applicable in the civil proceedings. Thus it is not proper for this Court to hasten to quash criminal proceedings.

17. In *Vitoori Pradeep Kumar v. K. Dharmaiah and Ors.*, 2004 SCC 440 it has been laid down by Hon^{ble} the Apex Court that pendency of a civil suit in respect of the matter concerned would not be a bar to resort to criminal proceeding initiated against the accused for offence u/s 420 I.P.C. merely on the ground of pendency of civil suit was wrong.

18. In 2002(2) JIC 13 (SC) *Medchi, Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd. and Ors.*, it has been laid down by Hon^{ble} the Apex Court that both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequences. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred.

19. In 2000(2) JIC 43 (SC), *Maratt Rubber Ltd. v. J. K. Marattukalam*, it has been laid down by Hon^{ble} the Apex Court that mere pendency of civil proceedings could not warrant quashing of criminal proceeding.

20. Thus the position of law is clear that a criminal case can proceed even if civil case is pending between the parties because yardsticks in both the cases are different.

21. In view of these observations this Court is of the view that the criminal proceeding against the applicants cannot be said to be an abuse of process nor does it suffer from any fundamental defects. If the prosecution proves that forgery has been committed the applicants are liable to be punished but if it is not proved they are to be exonerated. This fact can be ascertained only when prosecution is allowed opportunity to adduce evidence and not at the initial stage when the charge sheet has been submitted after making investigation.

22. So far as the complaint case is concerned it can merge into the State case in respect of which, there is specific provision provided u/s 210 Cr.P.C.

23. Thus it is not a fit case in which inherent jurisdiction should be exercised by this Court u/s 482 Cr.P.C.

24. The application u/s 482 Cr.P.C. is devoid of merit and it is rejected.