(2013) 09 AHC CK 0141

In the Allahabad High Court

Case No : Criminal Revision No. 2844 of 2011

Surjeet Singh and Others APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 204, 244(1)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 54

Citation : (2013) 09 AHC CK 0141

Hon'ble Judges : Bharat Bhushan, J

Final Decision : Allowed

Judgement

Bharat Bhushan, J.—This revision is directed against the order dated 13.7.2011 passed by Addl. Chief Judicial Magistrate, Court No. 5 Meerut in Complaint Case No. 797 of 2011 (Suresh Kumar Vs Surjeet Singh and others) whereby the discharge application filed by the applicantsrevisionists under Section 245(2) Cr.PC. was rejected.

2. The case in hand has its genesis in the application under Section 156(3) Cr.P.C. filed by the opposite party no. 2 on 20.1.2011 against the revisionists in the court of Addl. Chief Judicial Magistrate, Court No. 5, Meerut alleging therein that the revisionist No. 1 Surjeet Singh being the owner of a shop situated in Village Kishanpur, P.S. Hastinapur, District Meerut had executed a declaration/ unregistered sale deed dated 13.2.2008 of the said shop for a consideration of Rs. 1,50,000/ in favour of the complainant and since then he is in possession over the said said shop and is running a hardware shop under a license issued by the Zila Parishad Kshetra Samiti and is regularly paying the different taxes like water, electricity etc. It is further alleged in the application that the revisionist Surjeet Singh with an intent to grab the said shop in connivance with the co accused namely Gurubachan Singh and Mohan Singh, again sold the same shop to his sons namely Hardas Singh and Sonu Singh through a registered sale deed

dated 14.12.2010 wherein the said co accused Gurubachan Singh and Mohan Singh have been made the witnesses of the sale deed. It is further alleged that on 14.1.2011, all the revisionists came at the shop of the complainant at about 11 a.m. and threatened to have the possession of the said shop over which he is continuing in possession since 13.2.2008 from the date of declaration made by the revisionist no. 1. The complainant made the complaint of the said incident to the DIG, Meerut but of no avail. The application under Section 156(3) Cr.P.C. of the complainant (opposite party no. 2) was treated as complaint by the learned Magistrate and the Magistrate after recording the statement of the complainant under Section 200 Cr.P.C. and of his witnesses namely Vijay Pal Sharma (P.W.1) and Randhir (P.W.2) under Section 202 Cr.P.C. and after considering the over all material available before him summoned the revisionists to face the trial for the offences under Sections 420,467,468,471,120B IPC vide order dated 13.4.2011 passed by learned ACJM 5th, Meerut.

3. Revisionist herein preferred Criminal Misc Application 482 No. 15940 of 2011 (Hardas Singh and others Vs State of UP and another) against the aforesaid summoning order before this Court and this Court vide order dated 17.5.2011 directed the applicants revisionists to move an application under Section 245(2) Cr.P.C. before the trial Court and till the disposal of the said application no coercive action was directed to be taken against the revisionists. Pursuant to the order of this Court, revisionists moved an application under Section 245(2) Cr.P.C., which was dismissed vide order dated 13.7.2011 by the court below. It is this order which is subject matter of challenge before this Court.

4. It is contended by learned counsel for the revisionists that the impugned order is illegal, perverse and is not sustainable in the eyes of law inasmuch as the notarised document filed by the opposite party no. 2 in the complaint case are unregistered document and no reliance can be placed upon the said document. It is further submitted by learned counsel for the revisionists that the whole story as alleged by the complainant is false and baseless. The revisionists no. 1 has never sold the disputed property to the complainant, never executed any declaration in favour of the complainant and has not received the alleged consideration from the complainant. Moreover, Section 49 of the Registration Act 1908 provides that an unregistered document cannot be read as evidence of any transaction affecting such property. It is further submitted by the learned counsel for the revisionists that a Civil Suit being Original Suit No. 403 of 2011 is pending against the opposite party no. 2 in the Court of Civil Judge (SD), Meerut seeking a relief for eviction against the opposite party no. 2, a tenant in the said shop. It is further submitted by the revisionists that it is purely a dispute of civil nature and the genuineness of the alleged documents filed by the complainant can only be decided by the Civil Courts.

5. To the contrary, it is submitted by learned counsel for the opposite party no. 2 that the impugned order is just, legal and does not suffer from any infirmity and is liable to be maintained. It is further submitted by learned counsel for the

opposite party no. 2 that the civil suit is an after thought as the complainant was neither the tenant nor there is any evidence to this effect. The Jurisdiction of the civil Court has only been invoked by the revisionists to save themselves from the clutches of criminal prosecution. It is further submitted by learned counsel for the opposite party no. 2 that the the revisionists had filed the application under Section 245 (2) Cr.P.C. at early stage as the same should have been preferred after the evidence of the prosecution under Section 244(1) Cr.P.C. is closed.

6. Learned counsel for the State on the other hand has submitted that on the basis of the allegations made in the complaint and the statements of the complainant and his witnesses examined at the enquiry stage, the offence is clearly made out against the revisionist.

7. Heard Mr. Shodan Singh, learned counsel for the revisionists, Mr Ved Byas Mishra, learned counsel for the opposite party no. 2 and learned AGA for the State.

8. It may be mentioned that the complaint cases triable by Magistrate can be divided into two categories; warrant cases and summons cases. The present case is admittedly triable as a warrant case instituted otherwise than on a police report, therefore, the provisions contained in sections 244, 245 and 246 of the Code seem to be relevant for resolving the controversy involved in the present matter.

9. According to the scheme of Cr.P.C., it is crystal clear that when the accused appears or is brought before a Magistrate in pursuance of the process issued under section 204 of the Code, the first requirement is that the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the complaint. This requirement of law has been provided in section 244 of the Code. If a prayer for summoning any witness is made by the complainant, the Magistrate may summon the witness either to give evidence or to produce a document or thing. Section 245 (1) of the Code empowers the Magistrate to discharge the accused and that power is exercisable only after taking all the evidence referred to in section 244 of the Code. If upon considering such evidence the Magistrate considers that no case against the accused has been made out which, if unrebutted, would warrant of conviction of the accused, he shall discharge the accused. In other words, the accused has to be discharged in a case where the evidence collected under section 244 of the Code, if unrebutted, makes out no case against the accused and his conviction would not be possible on that evidence. Therefore, the discharge of the accused under section 245 (1) of the Code can be passed only after taking all the evidence referred to in section 244 of the Code and not before that. As such before discharging the accused under section 245 (1) of the Code, it is obligatory for the Magistrate to take all such evidence as may be produced by the complainant in support of the prosecution. However, there is an exception to this general principle and that is contained in section 245 (2) of the Code, which provides that the Magistrate may discharge an accused at any previous stage of the case

if he considers the charge to be groundless. In other words, the discharge of the accused under section 245 (2) of the Code can be made only when the Magistrate finds the charge to be groundless at any previous stage of the case, i.e. before conclusion of the evidence under section 244 of the Code.

10. Coming back to the facts of present dispute, it is apparent that opposite party no. 2/complainant claims that disputed property was obtained by him on 13.2.2008 on payment of Rs.1,50,000/ as consideration. A document purported to be a declaration, is said to have been executed on same day which was attested by notary on 16.2.2008. A receipt was also prepared which was attested by notary on 16.2.2008. Both documents are not registered. Learned counsel for the revisionist has drawn the attention of this Court to Section 17 of the Registration Act 1908 (hereinafter referred as Registration act) which provides for the registration of document including sale deeds.

11. It would also be appropriate to refer Section 54 of Transfer of Property Act 1882 which provides:

Section 54. "Sale" defined. Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

12. A bare perusal of aforesaid provision reveals that the disputed transaction, involving sale of immoveable property for consideration of Rs.1,50,000/, could have taken place only by a registered document. Yet alleged declaration deed and receipt dated 13.2.2008 were not registered.

13. In Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana and another 2012 (1) CRC 6 S.C., hon''ble Supreme Court has held thus:

"The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of nonregistration.

Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property."

14. The Apex Court has held that any contract of sale which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immoveable property (except to the limited right granted under section 53A of TP Act). It further held that sale of immoveable property can only be made by registered instrument whereas, the alleged instrument dated 13.2.2008 on the basis of which opposite party no. 2/complainant is claiming ownership right over property in dispute is unregistered document.

15. Section 49 of the Registration Act provides for effect of non registration of document required to be registered which is reproduced as below:

"Effect of non registration of documents required to be registered.

No document required by section 17 1[or by any provisions of the Transfer of Property Act, 1882 (4 of 1882)]. to be registered shall

(a) affect any immovable property comprised therein or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 1[Provided that an unregistered document affecting immovable property and required by this act or the transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument."

16. Section 49 contemplates that any document which is required to be registered if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property.

17. The complaint of opposite party no.2 talks of two commercial transactions, first involving declaration deed and receipt dated 13.2.2008 on the basis of which complainant claims to have acquired ownership rights over property in dispute. These documents are unregistered but on careful examination of the complaint, few additional things are evident. Opposite party no. 2/complainant claims that subsequent to the execution of declaration deed and receipt dated 13.2.2008 for the alleged consideration of Rs.1,50,000/ he was given possession over the disputed property, therefore, he had acquired ownership rights over property in dispute. It is another matter that revisionists claim that the disputed property, a shop was given to opposite party no. 2/complainant on tenancy and civil suit is pending for eviction of opposite party no. 2/complainant but as far as the allegations contained in complaint are concerned, the alleged first transaction does not disclose any ingredients of Section 420 IPC. The essential ingredient of

Section 420 IPC are Cheating and dishonest inducement to deliver property or to make, alter or destroy any valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, and mens rea of the accused right at the beginning of transaction. The making of false representation is also one of the ingredients for cheating under Section 420 I.P.C. But all such ingredients are absent from the said transaction. Secondly, the complainant has contended that previous owner i.e. Surjeet Singh, revisionist no. 1 executed another sale deed (registered) after two years on 14.12.2010 in favour of Hardas Singh and Sonu Singh, revisionists no. 2 and 3. Gurbachan Singh and Mohan Singh, revisionists no. 4 and 5 acted as witnesses.

18. The opposite party no. 2/complainant has stated that at the time of transaction dated 14.12.2010, revisionist no. 1 did not have tile over the property in dispute, therefore, he was not entitled of executing the sale deed (registered) dated 14.12.2010. Hence, the complainant claims that revisionist no. 1 along with four other revisionists committed the offence of Section 420 IPC. But it is the buyers through sale deed dated 14.12.2010, Hardas Singh and Sonu Singh who should feel aggrieved because the record discloses that they purchased the property in dispute from revisionist no. 1. after paying the consideration of Rs.2,27,000/ on payment of stamp duty of Rs.11,350/. Apparently, the buyers of property through registered sale deed dated 14.12.2010 should be treated as victims rather than accused. They have not acquired possession over the property despite executing registered sale deed on payment of substantial amount of consideration.

19. So far as revisionist no. 4 and 5 are concerned they are merely attesting witnesses of transaction dated 14.12.2010. Complainant has no where alleged that transaction dated 14.12.2010 was fake and that Surjeet Singh, revisionist no. 1 did not execute the registered sale deed. There is no evidence that somebody impersonated either seller Surjeet Singh or buyers Hardas Singh and Sonu Singh (revisionists no. 1, 2 and 3). If witnesses have correctly identified the vendor and vendees, then they cannot be held guilty of offence under Section 420 IPC. There are no allegations of cheating against the vendees and their witnesses as far as transaction dated 14.12.2010 is concerned. On the other hand, if the allegations of entire complaint are accepted at their face value, then the vendees of transaction dated 14.12.2010 could claim that revisionist no. 1 sold his property without disclosing fact of alleged previous sale to the complainant.

20. Learned Magistrate has also summoned all revisionists under Sections 467,468 and 471. Sections 467 and 468 contemplate forgery of a document or electronic record for different purposes. Similarly, Section 471 also contemplates use of forged document or electronic record as genuine which any accused knows or has reason to believe to be forged. A bare perusal of complaint filed by complainant/opposite party no.2 would reveal that he has not levelled allegation of forgery of any document. The complainant himself contends that both

transactions were done by Surjeet Singh, revisionist no. 1. Therefore, it is apparent that the contents of complaint do not constitute any offence of Section 467, 468 and 471 IPC.

21. The gist of offence under Section 120B is an agreement between the parties to do an illegal act. Association or relation between parties is not enough to establish the charge of conspiracy within the ambit of Section 120 B. It is necessary to establish that there was an agreement between the parties for doing an unlawful act. There is no allegations that there was any prior agreement between the accused persons for committing illegal act. The opposite party no. 2/ complainant himself contends that alleged first transaction was valid one. Hence, ingredient of criminal conspiracy are absent in said first transaction. Even if it is accepted for the moment that second transaction was conducted by revisionist no. 1 after loosing property rights over disputed property then the vendees of sale deed dated 14.12.2010 are the obvious victims of Surjeet Singh. They alone can bring criminal action against Surjeet Singh. As far as the attesting witnesses of sale deed dated 14.12.2010 are concerned they correctly identified the vendor and the vendees. Complainant has not levelled any allegations of impersonation. In any case, law is well settled that recitals in a deed do not bind the attesting witnesses. (L. Suraj Bhan and others Vs Hafiz Abdul Khaliq, AIR(31) 1944 Lahore 1; Pandurang Krishnaji Vs M. Tukaram and others, AIR 1922 PC 20; Banga Chandra Dhur Biswas and another Vs Jagat Kishore Acharjya Chowdhuri and others, AIR 1916 PC page 110.

22. The revisionists have not accepted that they executed declaratory deed and receipt dated 13.2.2008. The contents of the complaint do not disclose that any criminal offence was committed. Entire dispute is of civil nature. Ordinarily no criminal proceedings can be initiated for enforcement of contractual obligation by invoking Sections 415 or 420 IPC. The facts reveal that a civil suit is already pending in the court of law. The matter can only be decided by the civil court of competent jurisdiction. The impugned order of Magistrate is not legally sustainable and is liable to be quashed.

23. In view of the aforesaid discussion, the Criminal Revision is allowed. The impugned order dated 13.7.2011 passed by Addl. Chief Judicial Magistrate, Court No. 5 Meerut in Complaint Case No. 797 of 2011 (Suresh Kumar Vs Surjeet Singh and others) is hereby quashed.

Copy of the order be sent to the court below within a fortnight.