
(2016) 09 AHC CK 0146

In the Allahabad High Court

Case No : Criminal Misc. Application No. 27383 of 2016

Virendra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 10 ADJ 4

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Sanjay Kumar Dwivedi, Advocate, for the Applicant; G.A, for the Opposite Party

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J. - Heard learned counsel for the applicants, learned AGA and perused the records.

2. The prosecution case in brief is that the Mahesh had impersonated him as Harish (complainant) and executed registered agreement to sell of property of Harish without information to complainant. Only this much is written in complaint that applicants Virendra, Sanju and Amar Singh are friendly with him and had been involved in doing such acts in past.

3. This contention of learned counsel for the applicants Virendra, Sanju and Amar Singh is apparently correct that no overt act had been committed by them in execution of alleged forged registered agreement to sell which was executed on behalf of Harish by co-accused Mahesh. This contention is acceptable that not being marginal witness of the document in question and no evidence against these applicants, no case of commission of any offence or any overt act is made out by these applicants.

4. From perusal of record, it is found that there is evidence that Mahesh had posed himself as Harish and executed registered deed of agreement for sale of

property of Harish. There is no allegation or averment that at the time of execution of said registered document, applicants Virendra, Sanju and Amar Singh were present. No evidence in that regard had surfaced during the statements under section 200 and 202 CrPC showing that at the time of execution of said forged document the applicants Virendra, Sanju and Amar Singh had been helpful or were involved in any manner. The names of applicants were mentioned in complaint and statement under section 202 Cr.P.C. only on the basis of speculation without mentioning their involvement or even conspiracy.

5. The trial court had not properly appreciated the evidences at the time of passing of order dated 11.5.2016. It had discussed the evidences, in which evidences of alleged overt act by Mahesh is mentioned, but it had passed order of cognizance and summoning of applicants only on the ground that they are friend of co-accused Mahesh. In absence of any evidence, direct or remote, against applicants for their involvement in incident in question, their prosecution is not legally unacceptable. These points were not considered by trial court at the time of passing of impugned order.

6. These facts are so apparent and prominently clear that this Court finds no sufficient reason to issue notice to OP No.- 2/complainant in this matter. As a rule the OP no.-2 should have been afforded opportunity of hearing, but in present case, when it is found that if prosecution case mentioned in complaint and the statement of complainant is taken to be true in its entirety, even then the applicants cannot be said to be guilty of any over act relating to incident for which the complaint has been filed, then there is no propriety in issuing notice to OP No.-2 in this matter. For saving the precious time of this Court and of trial court, as well as of the parties concerned, and for protecting them from harassment during unnecessary legal proceedings, it appears appropriate that in this particular case the proceedings against applicants should be quashed.

7. It is made clear that, in future, there would be no restriction on powers of court to exercise its right of taking cognizance against any person in accordance with law, if evidences/ facts for the same are available before it. But at this stage, there is no justification for permitting the proceedings being carried out by trial court against applicants, without any satisfactory reason.

8. In view of the above, this application is allowed. The proceedings of complaint case no. 1851/2015 (Harish v. Mahesh and others), under sections 420, 467, 468, 471 IPC, P.S. Nauhjhil, District Mathura pending before the court of Judicial Magistrate, Mathura are quashed only against the applicants Virendra, Sanju and Amar Singh.

9. It is observed that proceeding against co-accused Mahesh shall be carried out by trial court in accordance with law.