

(2011) 09 AHC CK 0050

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 16497 of 2009

Wing Cdr. Surendra Nath Agnihotri and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 420, 447, 448, 467, 468

Citation : (2012) 1 ACR 217

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—By means of the present application, the applicants have invoked inherent jurisdiction of this Court u/s 482, Cr.P.C. with a prayer to quash the entire proceeding of Case No. 8345 of 2009, initiated pursuant to the summoning order dated 18.6.2009 passed by the Chief Judicial Magistrate, vide Case Crime No. 1788 of 2008, under Sections 420/467/468/471/447/448 and 506, I.P.C. Police Station Sector 20, N.O.I.D.A. District Gautam Budh Nagar pending in the Court of Chief Judicial Magistrate Gautam Budh Nagar.

2. Heard Sri Ravi Kant Senior Advocate assisted by Sri S. Ali Murtaza learned counsel for the applicants and Sri V. P. Srivastava, learned Senior Advocate assisted by Sri Nitin Gupta, learned counsel for the complainant and have taken through the record.

3. Brief facts giving rise to the instant case is that the first information report was lodged by the opposite party No. 2 that a residential plot No. A-12, Sector 31, N.O.I.D.A. District Gautam Budh Nagar, measuring 450 Sq. yard was allotted in his favour. The applicant No. 1 on the basis of forged and fictitious documents has taken illegal possession over the said plot and tried to evict him. They had obtained electric connection in connivance with officials of electricity department and they are staking their claim over the property in question on the basis of

agreement to sell which is a non-registered document dated 16th October, 1990 for a consideration of Rs. 14,50,000 showing that the possession was given to Smt. Vijay Laxmi Gupta wife of late Sri R. K. Gupta, whereas the applicants were involved in the murder of Smt. Vijay Laxmi Gupta. The applicant was charge-sheeted on 29.1.2002. In respect of the same plot in question, registered sale deed was executed by him in favour of his son Prabal Agnihotri where payment of Rs. 13,50,000 was shown. No power of attorney was executed by the complainant opposite party No. 2 in favour of Prabal Agnihotri, the son of the applicants. The complainant had given house to the applicants to live therein in good faith but in order to grab the house, they had prepared the forged documents. The complainant had executed an agreement to sell to Ashok Kalra of the property in question on 25.4.2008, which was got cancelled by the applicant S. N. Agnihotri on 1.10.2008 and the complainant was threatened danger to life by the applicant and other accused persons thus the applicants had committed breach of trust by manipulating forged and fictitious documents so as to grab the property in question. After registration of the first information report on 23.12.2008, the police came into action and started investigation. After collecting clinching and material evidence against the applicants, the Investigating Officer submitted charge-sheet against them on 4.6.2001. The Magistrate concern took cognizance of the matter against the applicants and Prabal Agnihotri. It is contended on behalf of applicants that the land in question belonged to Moti Lal Jain which was allotted to him on 3.11.1985 and lease deed was executed by N.O.I.D.A. authority in favour of opposite party No. 2 on 3.11.1985. On 20.11.1987, the applicant No. 2 executed a registered agreement to sell in favour of Bharat Bhushan Goel for a consideration of Rs. 1,35,000. Thereafter the land was given to Bharat Bhushan Goel. Bharat Bhushan Goel executed an agreement to sell in favour of Raj Kumar Gupta for consideration of Rs. 2,25,000 and the possession was handed over to him in 1987. Sri R. K. Gupta executed a Will in favour of the applicant No. 1 on 15.11.1990 and according to the Will, the applicant No. 1 was entitled to execute the sale deed. A civil suit No. 372 of 2008 was filed by the applicants and the opposite party is the party to the suit. Pursuant to the registered sale deed, the applicants came in possession of the plot in dispute. Thereafter the applicants had raised certain constructions over the plot. No objection was ever raised by the opposite party No. 2 or any one else in respect of raising of construction over the house. The opposite party No. 2 had sold the land to Ashok Kumar Kalra who was party to the suit as defendant No. 2. The opposite party No. 2 and Ashok Kumar Kalra are contesting the suit by filing objection against injunction granted in favour of the applicants vide order dated 2.5.2008 in respect of the same dispute in order to cause harassment. The opposite party No. 2 has launched frivolous prosecution against the applicants. It is contended by learned counsel for the applicants that the complainant himself had executed a forged sale deed in favour of Ashok Kumar Kalra on 26.4.2008, when once he had already executed sale deed in favour of Bharat Bhushan Goel on 20.11.1987 for consideration of Rs. 1,35,000. The first appeal from order is also pending before this Court in respect of the

subject-matter of claim of civil suit filed by the applicants against the opposite party No. 2 who has been restrained from dispossessing the applicants. The present prosecution is a counter blast to the complaint lodged by the applicant by moving an application u/s 156 (3), Cr.P.C. against the opposite party No. 2, whereto the Chief Judicial Magistrate Gautam Budh Nagar treated as complaint case and summoned the respondents vide order dated 2.1.2009. The allegations with regard to murder case of Vijay Laxmi Gupta, the applicant No. 1 has already been acquitted by the court below vide order dated 10.9.2007. The applicant No. 1 is the bonafide purchaser of the property in question and is in lawful possession over the same since 15.12.1990. The charge-sheet submitted pursuant to the first information report against the applicants is nothing but to tarnish the image of the applicants in the society. The applicant No. 1 is a retired army officer. The investigation was done by the police in very perfunctory and flimsy manner which culminated into charge-sheet. The entire prosecution story is replete of concoction and fabrications therefore, it may be quashed in the interest of justice as prima facie no offence is made out against the applicants.

4. Learned counsel for the applicant has relied upon the decision pronounced by the Apex Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , wherein the dispute in civil nature was sneered at holding that criminal prosecution should not be used as an instrument of harassment or for seeking personal vendetta in the matter of civil nature. The institution of criminal proceedings with regard to the dispute of civil nature is a clear abuse of process of Court and the Apex Court had quashed the proceedings emanating from the first information report. In support of his contention, learned counsel for the applicants has relied upon the decision of the Apex Court pronounced in Hira Lal and others v. State of V. P.. 2009 (66) ACC 28 : 2009 (2) ACR 1669 (SC), where the Hon'ble Court held that allegation in the complaint that Will purported to have been executed was forged and fabricated whether it is surrounded by suspicious circumstances or not is a matter which will properly fall for determination in a testamentary proceedings and further as to whether transaction is genuine or not would fall within the domain of civil court which is purely a civil dispute. The criminal court cannot determine the same. It was stressed that the case of the applicants is squarely covered by the aforesaid decision pronounced by the Apex Court. Since the allegations from the first information report prima facie discloses civil dispute. The applicants are absolutely Innocent and have been subjected to prosecution and humiliation on the basis of the false and wholly untenable allegations, therefore, the cognizance taken by the court below is nothing but an abuse of process of law and may be quashed.

5. Per contra learned Sri V. P. Srivastava, learned Senior Advocate contended that there was only an agreement to sell between the parties, but no actual sale had taken place between them. Since the N.O.I.D.A. Authority is the lessor of the disputed plot and the Society is the lessee of plot whom the opposite party No. 2 in the year 1985 purchased the aforesaid plot. In such circumstances the

opposite party No. 2 is sub-lessee of the disputed plot and if any agreement to sell has been executed, no further agreement to sell could be executed by Dr. Bharat Bhushan Goel. The registered agreement to sell was made but the amount was not paid to the seller, therefore, transfer-cum-sale deed of the property could not be executed in favour of B. B. Goel and therefore, B. B. Goel had no right to execute agreement to sell in favour of R. K. Gupta. The agreement to sell and the alleged Will was procured on the basis of agreement to sell in favour of B. B. Goel. The agreement to sell made on 15.12.1990 in favour of the applicant is a forged document. The applicants have forged the agreement to sell, the possession letter and cash receipt dated 15.12.1990 for Rs. 14.05 Lacs purported to have been sold by Vijay Laxmi. The applicant No. 1 was charged for murder and the first information report was lodged against him. The applicants are in illegal possession of the property in question on the basis of forged and fictitious documents. They had concealed material evidence of the case that twice they had purchased the property for consideration of Rs. 14.5 Lacs and 18.05 Lacs. After collecting material and clinching evidence against the applicants, the Investigating Officer submitted the charge-sheet against them. On the basis of which court below has taken cognizance against the applicants and had obtained interim order staying the further proceedings which has resulted into delay of trial.

6. Learned counsel for the complainant has relied upon the judgment of the Apex Court rendered in the matter of P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu. AIR 2008 SC 1984 : 2008 (2) ACR 1661 (SC), wherein criminal proceedings were initiated for the commission of forgery and the Apex Court observed that civil proceedings and criminal proceedings can go simultaneously which depends on the facts and circumstances of each case. The filing of a criminal proceeding is not barred under any statute. Learned counsel for the complainant has further placed reliance upon M. Krishnan v. Vijay Singh and another, 2001 (43) ACC 967 : 2001 (3) ACR 2740 (SC), in that case, the Magistrate had taken cognizance and proceeded against the accused persons. The opposite party approached the High Court u/s 482, Cr.P.C. with a prayer to quash the criminal proceedings initiated against them. The High Court quashed the proceedings in view of the pendency of the civil dispute between the parties where genuineness of the document was in dispute. No criminal proceedings can be initiated against the aggrieved persons. The complainant approached the Apex Court. The Apex Court held that it cannot be said that complaint filed by the appellant did not disclose commission of any offence which can be made basis for quashing the proceedings. The allegations made in the complaint require adjudication and the complaint could not be aborted in the manner which was done by the High Court. The Apex Court upheld the order of the Magistrate and set aside the judgment passed by the High Court directing the trial court to proceed in the matter in accordance with law. Further learned counsel for the complainant has placed reliance upon the decision of the Apex Court pronounced in the matter Kamla Devi Agarwal v. State of West Bengal and others, 2001 (43)

ACC 1106 : 2002 (1) ACR 228 (SC). where same question had arisen before the Apex Court. The Apex Court held that the criminal cases have to be proceeded in accordance with procedure as provided under the Code of Criminal Procedure. The pendency of civil suit would not be a ground for quashing the criminal proceedings because the onus of proving the allegations beyond reasonable doubt in criminal case is not applicable in civil proceedings which can be decided merely on the basis of probabilities with respect to the acts complained of otherwise unscrupulous litigants apprehending criminal action against them would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after initiation of criminal proceedings.

7. Having considered the submissions advanced by the learned counsel for the parties and taking into account proposition of law that inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report even if taken at their face value and accepted in its entirety, do not prima facie constitute any offence or where the incontroverted allegations made in the first information report or complaint and the evidence relied in support of the same do not disclose commission of any offence against the accused. The controversy in respect of the sale deed and the Will is a disputed question of fact which cannot be made basis for quashing the proceedings in exercise of inherent power u/s 482, Cr.P.C. The standard of proof in two proceedings are different, the civil proceedings can be decided on the basis of probabilities, while the criminal cases has to be decided by adopting standard of proof beyond reasonable doubt. Both proceedings may run simultaneously. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, ; State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426, disputed defence of the accused cannot be considered at this stage. At this stage it cannot be said from the bare perusal of the first information report that no offence is made out against the applicants. Now after investigation the charge-sheet was submitted by the Investigating Officer against the applicants. The applicants have ample opportunity to raise objection before the court below at the appropriate stage. This court cannot quash the criminal proceedings at the very threshold as the quashing of proceeding is an exception that a rule and the instant case is not one of those rarest of rare case to thwart the legitimate prosecution at its inception.

8. In the result, this application fails and is accordingly dismissed. The interim order is hereby vacated. The court below is directed to conclude the trial in accordance with law as expeditiously as possible preferably within six months.