

IN THE HIGH COURT OF
UTTARAKHAND
AT NAINITAL

SRI JUSTICE RAKESH THAPLIYAL, J.

DECEMBER 22, 2023

C482 No. 2469 OF 2023

Yuvraj Talwar & another

.....Applicants.

Versus

State of Uttarakhand, through D.G.C. (Criminal), District Udham Singh
Nagar and Another.

.....Respondents.

Counsel for the applicants:

Mr. Aditya Singh, learned
counsel for the applicants.

Counsel for the State:

Mr. Saurabh Pandey, learned
Brief Holder for the State.

**Upon hearing the learned Counsel, the Court made the following
Order: (per Sri Rakesh Thapliyal, J.)**

1. By the instant application preferred under Section 482 Cr.P.C, the applicants are challenging the order dated 08.05.2023 passed by the Additional Session Judge, Khatima, District Udham Singh Nagar in Criminal Revision No.305 of 2022.
2. In addition to this, the applicants are also challenging the previous order dated 06.10.2022, passed by the Judicial Magistrate 1st, Khatima in Criminal Case No. 1447 of 2021, State of Uttarakhand versus Amarjeet and others, against which the revision was also rejected by order dated 08.05.2023.
3. In addition to both the orders, the applicants are also challenging the order framing charge dated 18.10.2022 passed by the Judicial Magistrate, 1st Class, Khatima, District Udham Singh Nagar.
4. Learned counsel for the applicants submits that there are no allegations against the present applicants and, in fact, on perusal of the charge-sheet, the allegations are against the father of the present applicants, namely, Kiran Talwar.
5. He further submits that the applicants are only shown to be beneficiary of certain deeds committed by their father, for which his father is already charge-sheeted.
6. He further submits that the principle of vicarious liability is not applicable in the criminal prosecution; therefore, implication of the present applicants, in this

proceeding, is totally an abuse of process of law. He further submits that both the Courts below have failed to appreciate the fact that the applicants neither involved themselves in forgery nor there is any allegation against them in the finding recorded by the Investigating Officer in the charge-sheet.

7. Learned counsel for the applicants further submits that there is no allegation of forgery against the applicants and even the applicants are not the beneficiary, as this offence has not been committed by them, and, as per the charge-sheet if the offence had been committed, it was committed by the father of the present applicants.

8. It is further contended that the FIR was lodged by one Kashmir Singh on 07.11.2020 at Police Station Jhankaiyan of District Udham Singh Nagar, bearing FIR No.0136 of 2020, whereby total 15 persons were implicated including the present applicants as well as father of the present applicants.

9. In this FIR, the investigation was carried out, and, thereafter, the charge sheet was filed on 19.09.2021, against all the applicants except those, who died during investigation. Charge sheet was filed in respect of the offences punishable under Sections 120-B, 420, 467, 468 and 471 IPC. In the said charge-sheet, the cognizance was taken, and on 06.10.2022, the order for framing the charge was passed by the learned Judicial Magistrate, 1st Class, Khatima, District Udham Singh Nagar. Thereafter, on 18.10.2022, the charges were framed by the learned Judicial Magistrate, 1st, Khatima. Against framing of charges, a Criminal Revision No.305 of 2022, was preferred before the Additional Sessions Judge, Khatima, and the said revision was dismissed on 08.05.2023. Being aggrieved with the framing of charges, the present C-482 application has been preferred.

10. Learned counsel for the applicants further submits that after submission of the charge-sheet, the applicants applied for bail before this Court, wherein, an undertaking was given by them that they will file an application before appropriate forum for cancellation of the will in-question regarding which the FIR has been lodged. Thereafter, on such undertaking, the applicants were enlarged on bail. The relevant extracts of the order, whereby bail has been granted, are being extracted herein below:-

“The learned counsel for the applicant is ready to give undertaking before the Court that the applicant will file

an application before the appropriate Forum for cancellation of the will executed by Kiran Talvaar (father of the present applicant) within 15 days from the date of her release.

As per the undertaking given by learned counsel for the accused on behalf of his client, the bail application is thus allowed and the applicant is directed to be released on bail on her executing a personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the Court concerned.

The learned counsel for the State and the learned counsel for the informant Mr. M. K. Ray have a right to move a bail cancellation application after completion of fifteen days of release of the accused, in case the applicant will not move any application within the stipulated period from the date of her release.”

11. Since undertaking was given before this Court, the suits were preferred, by the applicant, Yuvraj Talwar, and, another by the applicant, Jeneva Talwar.

12. The Revenue Suit No. 31 of 2022 was filed by the applicant No.2-Jeneva Talwar, plaint of which is also enclosed along with the affidavit, and similarly, the other Revenue Suit No. 16 of 2023 was preferred by applicant no.1-Yuvraj Talwar before the Court of Judicial Magistrate, Khatima.

13. In suit no. 31 of 2022, a relief was sought that an unregistered will dated 18.05.1992 be declared as a null and void document. Similarly, in Suit No.16 of 2023, the present applicant sought a declaration that the Will dated 05.02.1991, be declared as null and void.

14. The reason for filing the suit is that there was inordinate delay in filing the suit and it has been pleaded that in the year 2020, when a dispute was raised by one Kashmir Singh by lodging the First Information Report, she came to know that in this FIR, the charge sheet has been filed. Thereafter, she immediately surrendered and was enlarged on bail by the High Court, wherein, an undertaking was given that she will file a suit for cancellation of Will. Subsequently, thereafter, the suit was filed.

15. Learned counsel for the applicants, after arguments at length, submits that there is no allegation against the present applicants and, at the most, the applicants may be treated as beneficiary, even otherwise, they are not the beneficiary, since they already had filed a suit for cancellation of the Will-in-question.

16. He further submits that since there is no evidence collected by the Investigating Agency during investigation

against the present applicants, the learned Magistrate, without any material, in a mechanical manner, framed charges against the present applicants.

17. Learned State Counsel argued that, in fact, the will was executed in the year 1991 and the reason for the institution of the suit in the year 2022 for challenging the will is nothing but a deliberate attempt in order to scape themselves from the criminal prosecution.

18. Learned State Counsel further submits that it is further wrong to say that there are no allegations against the present applicants and this fact came into knowledge for the first time after filing of the charge-sheet that there is a will in their favour and, immediately thereafter, they filed the suit.

19. Learned State Counsel also submits that this argument is thoroughly misconceived because, as per the charge-sheet, pursuant to that will, their names were recorded in the Revenue Records on 06.02.2009.

20. It is also submitted by learned State Counsel that this fact was in the knowledge of the present applicants that the will is in their favour and that is the reason their names were recorded in the Revenue Records in the year of 2009, but now, by filing a suit, they are giving this reasoning that this fact came into knowledge when the FIR was lodged, investigation was carried out and the charge-sheet was filed.

21. The State Counsel further submits that since their names were recorded in the year 2009, the applicants cannot say that they are not the beneficiaries and, in fact, they are the beneficiaries of the said Will.

22. I have also gone through the Charge-sheet and after examining the charge-sheet and the other factors, including the averments as made in the plaint in respect of suit, which was filed by the present applicants, it appears that the initiation of the Civil Suit is nothing but an attempt to scape themselves from the crimination prosecution.

23. This fact has not been disclosed in the affidavit that the names of the applicants were entered in the revenue records on 06.02.2009, which has been pointed by the State Counsel from the FIR and Charge-sheet.

24. Learned State Counsel submits that since there is no disclosure of the fact that the name of the applicants entered in the revenue record in the year 2009 nor there is any denial to this effect from the applicants, which amounts to a suppression of facts and as such the

present C482 application is liable to be dismissed, as the applicants have not approached with clean hands. Their names were recorded in the year of 2009 and since 2009 nothing has been done either challenging the will or to challenge their entry in the revenue records. Only when criminal proceedings were initiated, they give an undertaking to seek bail to challenge the will, which itself reveals that to get enlarge on bail such an undertaking has been given. Though as a matter of fact since 2009 uptill date their names still recorded in the revenue records, which itself reveals that since 2009 they are the beneficiary. Apart from this there is no whisper in the petition whether at any point of time they approach to the revenue authorities by making complaint that these revenue entries are wrong.

25. At this juncture, a reference is being made of the statement, as given in the OS. No.31 of 2022 in paragraph No.5, which is being extracted herein as below:

“5- यह कि यहां यह उल्लेखीय है कि वादनी द्वारा भूमि अपने नाम दर्ज करने बावत कोई दाखिल खारिज प्रार्थना पत्र किसी न्यायालय में प्रस्तुत नहीं किया गया, तथ उसकी जानकारी के वगैर भूमि वादनी के नाम जोगेन्द्र कौर के हिस्से से काटकर अपंजीकृत वसीयत दिनांक-19-05-1992 के आधार पर दर्ज की गयी।

Similar statement has been given in Para No.5 of OS No.16 of 2023 which is also being extracted herein-below:

यह कि यहां यह उल्लेख करना आवश्यक है कि वादी द्वारा न तो बालकिशन के नाम की भूमि अपने नाम करवाने हेतु कोई कार्यवाही अमल में लाई गयी ना ही कोई कागजात उक्त सम्बन्ध में तैयार किये गये ना ही किसी न्यायालय में प्रस्तुत किये गये। जिस कारण अपने नाम गलत रूप से दर्ज भूमि के सम्बन्ध में लिखी गयी अपंजीकृत वसीयत दिनांक 05.02.1991 को शून्य घोषित कराया जाना वादी के लिए आवश्यक है।

26. The statements, as given in both the suits, itself reveal that despite the fact that the names of the applicants were recorded in the revenue record in the year 2009, no such remedial steps were taken against these entries.

27. This fact itself reveals that since 2009, the applicants are taking the benefits pursuant to these entries and only when the criminal proceedings were launched, they came up with the case that these entries are wrong.

28. I do not find force on the arguments of the learned counsel for the applicants, particularly, keeping in view of the fact that the names were recorded in the Revenue

Records in the year 2009 and only after initiation of the criminal proceedings, the civil suits were filed against these entries.

29. I also perused the orders under challenge, and, I do not find any illegality in the order under challenge, whereby, the charges were framed against the applicants.

30. Therefore, the instant C482 application is devoid of merits and is dismissed, accordingly.

31. No order as to costs.

Reena Bisht

RAKESH THAPLIYAL, J.