

Court No. - 92

Case :- APPLICATION U/S 482 No. - 20965 of 2013

Applicant :- Keshav Prasad Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sanjay Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Sanjay Singh, learned counsel for the applicant and Shri Sandeep Chaudhary, learned A.G.A learned counsel for the State.
2. Despite of service of notice nobody is appearing on behalf of opposite party no.2.
3. The instant application has been filed seeking quashing of the entire proceedings of Complaint Case No.Complaint Case No.67 of 2007 (J.P. Singh Advocate Vs. Keshav Prasad Singh), as well as summoning order dated 26.09.2007, under Section 406 IPC, Police Station- Cantt. City District- Varanasi pending in the Court of Judicial Magistrate-III, Varanasi.
4. Learned counsel for the applicant submits that in the instant case it is alleged by the opposite party no.2 in his complaint stated that agreement to sale dated 03.09.1990 was executed between the parties with regard to portion of land in Arajai No.344 of situated at Mauja Shivpur, Pargana Shivpur District-Varanasi. However, the instant complaint has been filed by the opposite party no.2 after expiry of about 17 years.
5. Learned counsel for the applicant further submits that the applicant herein was the Secretary of the Ram Janki Sahkari Awas Samiti Limited, Varanasi at the relevant time, however, on 25.10.1991 the applicant had already resigned from the said society as Secretary, therefore, the instant complaint against the applicant herein was not maintainable after his resignation from the said society as Secretary more than 16 years ago. Ultimately, this is the dispute with regard to agreement to sell between the society and the opposite party no.2 and, since the year 1991 after his resignation the applicant has no concern with the said society. Therefore, the complaint case against him is not maintainable.
6. Learned counsel for the applicant further submits that since it was a dispute with regard to the agreement to sell executed by the society, therefore, this was a purely a civil dispute between

the parties for which the appropriate remedies are available in civil law. The criminal prosecution is uncalled for and this is the malicious prosecution by the opposite party no.2 to which an appropriate remedy can be sought under the civil proceedings.

7. Learned A.G.A for the State submits that since this is dispute arising out of a agreement to sell executed by the society for which civil remedies are available with the opposite party no.2, therefore, the criminal complaint is nothing but malicious prosecution on behalf of the opposite party no.2.

8. Having heard the rival submissions made by learned counsel for the parties this court has carefully gone through the record of the case and from the record of the case it appears that, as has been stated by the opposite party no.2 in his statement under section 200 that the said agreement to sale was executed between the parties on 03.09.1990, and the instant complaint has been filed by the opposite party no.2 after about 17 years from the date of execution of agreement to sale between the parties. However, the agreement to sell was executed by the applicant herein on behalf of the society as Secretary of the said society and since the applicant herein had already resigned in the year 1991 itself, therefore, the complaint against the applicant herein is not maintainable in the eye of law.

9. Otherwise also, the opposite party no.2 has the civil remedies with regard to the agreement to sale executed between the parties against the society itself, therefore, the instant complaint against the applicant is nothing but the abuse of process of law. Therefore, the instant application deserves to be allowed in terms of the judgment of the the Apex Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315.**

10. This application under Section 482 is allowed and the proceedings qua the applicant in Complaint Case No.67 of 2007 (J.P. Singh Advocate Vs. Keshav Prasad Singh), under Section 406 IPC, Police Station- Cantt. City District- Varanasi, are hereby quashed.

Order Date :- 30.10.2023

A Gautam