

Reserved on 06.11.2023

Delivered on 08.11.2023

Court No. - 90

Case :- APPLICATION U/S 482 No. - 3707 of 2022

Applicant :- Mohammad Atif

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

Counsel for Applicant :- Satya Prakash Pandey, Ashish Pandey

Counsel for Opposite Party :- G.A., Pradeep Kumar Upadhyay

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant, learned counsel for respondent no. 2 and the learned A.G.A.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the charge-sheet dated 19.10.2021 and the entire proceedings of Criminal Case No. 62 of 2021 (State vs. Mohammad Atif) arising out of Case Crime No. 421 of 2019 under Sections 420, 467, 468, 471 I.P.C., Police Station Sikandra Rau, District Hathras pending in the Court of Judicial Magistrate, Sikandra Rau, District Hathras.

3. As per F.I.R. version, the present applicant along with co-accused has fraudulently executed a registered sale deed dated 26.02.2016 in favour of the first informant with respect to measuring area 343.07 sq. mtrs. showing it to be part and parcel of his bhumidhari land i.e. plot no. 5, 120 and 125, however, location of plot as depicted in the sketch map appended with the sale deed is different than that of the original /exact location which has been shown to the present applicant at the time of execution of sale deed. When the present applicant has gone for digging foundation over there, some villagers raised objection with respect to identity of the plot and informed that plot in question, which has been shown to the applicant, is a government property, whereas, original plot (subject matter of sale deed) is situated far away. On purposive interaction, accused persons have confessed their overt act and despite giving assurance, they are not returning consideration money. Vendors (accused) are working as organized gang for long period of time and looting money from people on the pretext of execution of sale deed.

4. Learned counsel for the applicant has advanced three folds submissions. First, that the civil litigation has been dragged into the criminal proceeding. In the sale deed specific assertion has been made that possession of the land has been handed over to the vendee, therefore, he cannot raise any objection qua possession. Second point raised with respect to the timings of the F.I.R.; sale deed was executed on 26.02.2016, however, F.I.R. has been lodged on 23.08.2019. Third submission has been advanced questioning the validity of the summoning order dated 13.01.2022 which has been passed in a very perfunctory manner without discussing the case of the parties and simply charge-sheet has been considered while passing the order impugned.

5. Per contra, learned counsel for respondent no. 2 has vehemently opposed the submissions as raised by learned counsel for the applicant and contended that the applicant has deliberately sold the different land, which is a government property, showing it as his bhumidhari land. It is further contended that possession of the another land has been given to the present applicant than what was referred in the sale deed. It is next contended that title of present applicant over the land, which has been shown to be sold, is itself doubtful, in respect of which F.I.R. has been lodged on behalf of respondent no. 2 on the basis of the order passed by the court competent in an application under Section 156 (3) Cr.P.C. It is further submitted that dispute regarding the plot in question, which is a subject matter of sale deed dated 26.02.2016, has been concealed and suppressed by the applicant herein (accused) and illegally executed a registered sale deed with respect to the land which is a government property and was never in possession of the present applicant. It is further submitted that some more litigation is still going on with respect to the property in question between the present applicant and previous tenure holders and the State authorities. It is also contended that the Investigating Officer, in the charge-sheet, has recorded the statement of witnesses showing the previous dispute relating to the plot in question and also questioning the conduct of the present applicant.

6. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that the first informant has unequivocally narrated his ordeals showing the offence of cheating and fraud allegedly committed by the present applicant while executing registered sale deed dated 26.02.2016 in favour of respondent no. 2 with respect to measuring area 343.07 sq. mtrs. (equivalent to 0.034307 hectare). While executing the sale deed, the present applicant has shown himself as

a Bhumidhar of the said land. As per allegations made in the F.I.R., at the time of execution of sale deed, the present applicant has shown some other land which, in fact, belongs to the Government, however, sale deed has been executed with respect to the other land which are mentioned as plot no. 5, 120 and 125. Consideration money has fraudulently been received from respondent no. 2 in lieu of the said sale deed. After about two months of the said sale deed when the first informant went to the spot for digging foundation he has been stopped by the co-villagers on the ground that the land belongs to the Government. While submitting the charge-sheet, the Investigating Officer has taken statement of several persons as witnesses including respondent no. 2, namely, Abdul Jalil, Saira Bano, Kunwar Pal Singh (Revenue Inspector), Akram Khan, Israil, Ishrat Hussain etc. As per statement of Abdul Jalil (C.D. No. 26), he is also victim of the present applicant in whose favour Government land has been sold by Mohd. Atif (present applicant) by registered sale deed dated 30.11.2015. Plight of Abdul Jalil is similar to that of the case of respondent no. 2. In his sale deed dated 30.11.2015 as well same plot no. i.e. 5, 120 and 125 are mentioned, as mentioned in the sale deed dated 26.02.2016 executed in favour of respondent no. 2. Remaining witnesses have supported the case of respondent no. 2 with respect to the offence of fraud and cheating commissioned against him, wherein subject matter of sale deed dated 26.02.2016 (land) has been shown/identified by the present application at some other place, however, registered sale deed has been executed with respect to some other plot which is situated/located far away from the land shown to respondent no. 2. In light of the fact that the witnesses have unequivocally narrated the conduct of the present applicant who has committed fraud and cheating while executing the sale deed, this Court did not find any substance in the first submission advanced by learned counsel for the applicant with respect to dragging the case of civil nature into the criminal proceedings. Facts and circumstances of the case, as emanates from the record cannot be said to be, prima facie, pure civil in nature, therefore, in my considered opinion there is no illegally or irregularity in initiating a criminal proceeding against the present applicant with respect to his conduct who, prima facie, appears to be a habitual offender and his complicity in the commission of crime cannot be ruled out.

7. So far as the second submission regarding timing of filing the F.I.R. is concerned, perusal of record reveals that when the applicant went on the plot in question after two months from the date of sale deed dated 26.02.2016, he has been restricted by the

co-villagers from digging foundation over the plot which has allegedly been shown as a subject matter of sale deed. Having been aggrieved with the conduct of the present applicant and other co-accused, respondent no. 2 has moved an application under Section 156(3) Cr.P.C. which was ultimately allowed by the court competent and on the basis thereof F.I.R. has been lodged on 23.08.2019. On this premise, F.I.R. cannot be said to be filed at a belated stage. Even assuming for the sake of argument that F.I.R. has been lodged at a belated stage, same cannot mitigate the severity of the occurrence of offence, as mentioned in the F.I.R. It is no more res integra that fraud vitiates everything. The conduct of the present applicant in this respect is required to be examined.

8. So far as the third submission, questioning the validity of the cognizance order dated 13.01.2022, is concerned, I am of the view that the learned Magistrate, while passing the cognizance/summoning order on the basis of the charge-sheet submitted by the Investigating Officer, is not expected to pass a detailed order. Concerned Magistrate is benefited with the investigation conducted by the Investigating Officer and the material collected and submitted by him along with the charge-sheet. There is no need to reiterate all the documents intending to deep scrutiny of occurrence of offence, as mentioned in the F.I.R., while passing the cognizance/summoning order. So far as the passing of the cognizance order on the printed proforma is concerned, I am of the view that the instant matter is arising out of police case, therefore, it is distinguishable from the complaint case. In the police case, the learned court is benefited with the investigation conducted by the Investigating Officer and the material filed along with the police report. In the matter of **Om Prakash and Another Vs. State of UP and another in Application U/S No. 3041 of 2022 reported in 2022 (8) ILR (ALLD) 222** cited by the learned A.G.A., the co-ordinate Bench of this Court, after considering the decision of Hon'ble Supreme Court in the matter of **State of Gujarat Vs. Afroz Mohammad Hasanfatta** reported in **(2019) 20 SCC 539** and **Pradeep S. Wodeyar Vs. The State of Karnataka** reported in **2021 SCC OnLine SC 1140**, expounded that in the matter arising out of police case issuing an order of cognizance on the printed proforma does not warrant any indulgence of this Court. It is further observed by the co-ordinate Bench that such cognizance order cannot be treated to be illegal. The relevant paragraph Nos. **13, 14, 15, 16 and 17** of the order passed in the case of Om Prakash and another (supra) is quoted herein below:-

"13. The next argument advanced by learned counsel for the applicants is that

cognizance order was passed by the court below on printed proforma in cryptic manner, which reflects non-application of judicial mind.

14. The present case is a State case, in which, after investigation charge-sheet has been submitted and court below took cognizance on the basis of police report.

15. The Apex Court in case of **State of Gujarat Vs. Afroz Mohammad Hasanfatta (2019) 20 SCC 539** observed as:-

"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/S.H.O. collects the necessary evidence during the investigation conducted in compliance with the provisions of the Code of Criminal Procedure and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) Code of Criminal Procedure, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process.

In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the Accused. Such an order of issuing summons to the Accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the Accused. In a case based upon the police report, at the stage of issuing the summons to the Accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

16. Recently, three judge Bench of the Apex Court in the case of **Pradeep S. Wodeyar Vs. The State of Karnataka 2021 SCC OnLine SC 1140** after considering the matter in detail observed in paragraph no. 75 as:-

"75. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under Section 173 Code of Criminal Procedure and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in Afroz Mohammed Hasanfatta (supra). The Special Judge took note of the FIR, the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate that an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous."

17. Further, the Apex Court in para 85 (viii) summarized as:-

"85 (viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;"

9. In this conspectus as discussed above, I do not find any justifiable ground to entertain the instant application against the charge-sheet as well as cognizance/summoning order. I neither found any abuse of the process of law to the proceeding which has been challenged before this Court nor any justifiable ground to pass any order for the purposes of securing the ends of justice, therefore, there is no justification to exercise inherent power of this Court under Section 482 Cr.P.C. Instant application, moved on behalf of the applicant (accused) is misconceived and devoid on merits. As such, instant application is **dismissed**.

Order Date :- 8.11.2023

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