

Court No. - 69

Case :- APPLICATION U/S 482 No. - 668 of 2002

Applicant :- Ram Lubhaya And Others

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

Counsel for Applicant :- K.K. Srivastava,A.K.Gupta,Dinesh Mishra,Kamla Prasad Tiwari

Counsel for Opposite Party :- Govt. Advocate,A.R. Singh,Pradeep Kumar,S.P. Yadav,U.N. Pandey

Hon'ble Samit Gopal,J.

1. Heard Sri Kamla Prasad Tiwari, learned counsel for the applicants, Sri Ajay Singh, learned A.G.A-I for the State and perused the record.
2. Sri S.P. Yadav, Sri U.N. Pandey, Sri Pradeep Kumar and Sri A.R. Singh, learned counsel for opposite party no. 2 are not present.
3. Notice was issued to the legal heirs of opposite party no. 2 to ascertain whether they wish to defend and proceed with this application or not vide order dated 17.07.2023.
4. As per the office report dated 25.10.2023 notice has been served on the legal heirs of the opposite party no. 2 as reported vide report dated 20.09.2023 of the Chief Judicial Magistrate, Pilibhit.
5. Despite service of notice on the legal heirs of opposite party no. 2 no one appears on their behalf even in the revised list.
6. The present petition under 482 Cr.PC has been filed by the applicants Ram Lubhaya, Satish Singh @ Gogi and Satvendra Kumar with the prayer to allow the present application under 482 Cr.PC and quash the proceedings of Complaint Case No. 238 of 2001, under Sections 420, 467, 468, 471 IPC, (Prithvi Raj Vs. Ram Lubhaya and Others) pending in the court of Chief Judicial Magistrate, Pilibhit.
7. The facts of the case in brief are that a complaint dated 31.01.2001 was filed by Prithivi Raj the opposite party no. 2 (now dead) against the applicants and Dev Sharma, Advocate with the allegation that Ram Lubhaya is his real brother whereas Satish Singh @ Gogi and Satvendra Kumar are the son of his real

brothers whereas accused Dev Sharma is the friend of the 3 accused persons and is a visitor to their house and also an Advocate. All the 4 accused persons in conspiracy prepared a forged will and got a case filed on behalf of it, on 31.07.1999 in the court of S.D.M. Pilibhit by Ram Lubhaya under section 229 (b) U.P. ZA&LR Act, police station Rasula Amriya. Pargana Jahanabad, district Pilibhit against the complainant in which Dev Sharma Advocate the accused no. 4 filed a forged vakalatnama on his behalf and a forged written statement on his behalf was also filed, whereas he never met Dev Sharma Advocate and never signed any papers with him. Dev Sharma had forged his signature on the said written statement and vakalatnama and had filed it in the court of S.D.M. in which it was written that he has no objection for getting a decree passed in the said matter. On the basis of the said document a decree was passed by the court concerned due to which he suffered loss in lacs. The accused persons cheated him and the court. When he came to know of it he got the certified copy of his written statement and vakalatnama issued and was surprised to see that his signatures are forged. He immediately went to the police station but in spite of his telling them no report was lodged. He met the Superintendent of Police but he did not help him. The accused persons then exhorted him. It is further stated that the act of the accused is an offence under sections 420, 467, 468, 471 IPC and they are guilty of it. They may be summoned and punished accordingly. On the said complaint the statement of the complainant under section 200 Cr.P.C. was recorded. The statement of his witnesses Gurnam Singh and Jaspal Singh were recorded under section 202 Cr.P.C. The present application under 482 Cr.P.C. has thus been filed with the aforesaid prayers.

8. Learned counsel for the applicants argued that proceedings against the applicants are not maintainable and are barred by section 195 Cr.P.C. It is further argued that the alleged documents being a written statement and vakalatnama of the complainant were filed in court and as such it was for the court to take appropriate action under law and punish the accused persons accordingly. It is argued that the complainant has a remedy to agitate the issue primarily before the court concerned and seek redressal of his grievance therein. It is argued that the dispute between the parties was a civil dispute relating to property which even travelled up to this court in Civil Misc. Writ petition No. 1105 of 2001. It is argued that the proceedings as such be quashed.

9. Learned counsel for the State oppose the prayer for quashing.

10. After having heard learned counsels for the parties and perusing the record it is evident that the dispute is with regards to certain documents filed in court which are stated to be forged. The said issue should have been agitated under appropriate forum before the concerned court. The present proceedings at the first instance are not maintainable and barred under section 195 (1) (b) Cr.PC. The proceedings against applicants thus are quashed.

11. The present application under Section 482 Cr.P.C. is allowed.

Order Date :- 26.10.2023

Vikram

(Samit Gopal,J.)