

Court No. - 91

Case :- APPLICATION U/S 482 No. - 24948 of 2013

Applicant :- Anil Singh

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

Counsel for Applicant :- Uma Nath Pandey, Ajit Kumar Singh Solanki, Ishir Sripat, Rahul Sripat, Rajiv Gupta

Counsel for Opposite Party :- Govt. Advocate, Mukesh Kumar Jha

With

Case :- APPLICATION U/S 482 No. - 25846 of 2008

Applicant :- Anil Singh

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

Counsel for Applicant :- Sunil Kumar, Manvendra Nath Singh, Rahul Sripat, Uma Nath Pandey

Counsel for Opposite Party :- Govt. Advocate, Jitendra Singh, Sharad Mandhyan

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party no.2, learned A.G.A. for the State and perused the record.

2. Both the applications under Section 482 Cr.P.C. have been filed by the sole applicant with the prayer to quash the entire proceedings of Case No.1238 of 2010 (State vs. Anil Singh) arising out of charge-sheet dated 18.12.2007 filed in Case Crime No. 367 of 2007, under sections 406, 420, 506 IPC, Police Station Link Road, District Ghaziabad pending in the Court of Additional Chief Judicial Magistrate, Court No.8, Ghaziabad together with impugned order dated 27.05.2013 and further prayer to stay the proceedings of the aforesaid case has been made.

3. It is submitted by the learned counsel for the applicant that it is a case of civil dispute and no document/ evidence was considered by the trial Court while passing the impugned order. Further submission is that the learned Magistrate has no jurisdiction of taking cognizance on the charge-sheet and there is lack of territorial jurisdiction as the informant and the applicant resides in District Gautam Budh Nagar and the property in question is situated in District Ghaziabad. Several other contention in order to demonstrate the falsity of the impugned order has been touched upon at length. Contention is that if the proceedings against the applicant are allowed to go on, it will result in nothing but abuse of process of law.

4. On the other hand, learned counsel for the opposite party no.2 submits that the transaction took place in Ghaziabad and the payment was made at Ghaziabad. Therefore, the Magistrate concerned has the power to take cognizance in the matter. He further submits that an objection was filed on the same cause of action which was rejected as not maintainable under law. Further, learned counsel for the opposite party no.2 and learned AGA have vehemently opposed the prayer and submitted that there is no illegality, infirmity in the impugned order. A prima facie case is made out against the applicant.

5. From perusal of the record, it is apparent that the applicant is alleged to be guilty of doing fraud of Rs.45 lakhs by way of deal booked between the applicant and the opposite party no.2 for the sale of certain property in which the consideration was settled for Rs.88 lakhs and the payment of Rs.45 lakhs was made to the applicant by the opposite party no.2. When the opposite party no.2 enquired about the property, he came to know that the applicant is not the owner of the property in question rather he was only the

tenant of the property in dispute. As he was not the owner and he has represented himself as the owner of the property in question and has maliciously obtained partly payment of the consideration which shows that he has the intention to deceive/ defraud the opposite party no.2 since from the very beginning. An application under section 482 Cr.P.C. for the quashment of the entire proceedings was moved in which following order was passed :

"Hon'ble S.N.H. Zaidi,J.

Heard the learned counsel of the applicants and the learned AGA for the State and perused the material on record.

It has been contended on behalf of the applicant that a false F.I.R. was lodged against the applicant and the dispute is purely of civil nature.

Issue notice to opposite party no. 2 returnable at an early date.

AGA prays for and is granted 4 weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within 2 weeks thereafter. The applicant may raise the objection taken in respect of the chargesheet before the trial court at the appropriate stage and the trial court is directed to dispose of the objection, if filed, by the applicant before proceeding with the trial.

List on 15.12.2008

Date : 20.10.2008

SR/25846/2008"

In pursuance of the aforesaid order, objection/ application was filed which was heard and decided by the trial court vide order dated 27.05.2013. During the pendency of the application, another application under section 482 Cr.P.C. was filed with the prayer for the quashment of the impugned order as well as the entire proceedings.

As the impugned order has passed by the trial court in which the entire case has been disclosed and the order is reasoned one, I find no illegality or impropriety in the impugned order. Moreover, counsel for the appellant has not been able to point out any such

illegality much less than any abuse of court's process which may persuade this Court to interfere in the impugned order or the entire proceedings. There appears no good ground to castigate the impugned order which reflects judicial application of mind. The view taken by the court below seems to be correct and even this Court does not have reason to take a different view in the matter.

6. Having regard to the facts and circumstances of the case, after perusing the impugned order as well as the materials brought on record and having considered the submissions made by the learned counsel for the parties, I do not find any good ground to quash the impugned order or the entire proceedings. Hence, the prayer made in the application is refused.

7. With the aforesaid observations, both the applications filed u/s 482 Cr.P.C. are hereby, **dismissed**.

Order Date :- 12.10.2023

Shiv