

Court No. - 92

Case :- APPLICATION U/S 482 No. - 9383 of 2008

Applicant :- Triveni Sahai And Others

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

Counsel for Applicant :- K.B. Dixit

Counsel for Opposite Party :- Govt. Advocate, Arun Kumar

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri K.B. Dixit, learned counsel for the applicants, Sri Arun Kumar, learned counsel for the opposite party no.2 and Sri Prem Prakash Tripathi, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings of Case No. 399 of 2008 (Arvind Kumar vs. Triveni Sahai and Others), P.S.- Govind Nagar, District- Mathura, pending in the court of learned Chief Judicial Magistrate, Mainpuri.

3. On 23.04.2008, this Court passed the following order:

"Heard learned counsel for the applicants and learned A.G.A.

It is contended by the learned counsel for the applicant that the applicants have taken away the ten shed but according to the Commissioner Report the ten shed was not in existence. In this case the final report has been submitted but the same was protested and the learned magistrate has taken cognizance and summoned the application to face the trial.

Issue notice to O.P. 2 returnable within a period of four weeks.

In view of the submissions made by the learned counsel for the applicants and the learned A.G.A. further proceedings in case no. 399 of 2008 pending in the court of Chief Judicial Magistrate, Mianpuri shall remain stayed till the next date of listing. List after four weeks."

4. After the said order, the counter affidavit was filed by the opposite party no.2 as well as by the State.

5. On 08.08.2023, this Court has passed the order:

"1. Learned counsel for the opposite party no.2 is not present.

2. List peremptorily on 17-08-2023.

3. It is made clear that in case counsel for the opposite party no.2 is not present on the next date fixed, the matter will be heard finally in his absence."

6. Learned counsel for the applicants relying upon the Commission's report

dated 05.02.2004, in Suit No. 26 of 2004 (Triveni Sahai Bhatnagar vs. Arvind Kumar and Others), the learned counsel for the applicants informs that the applicant nos. 1 & 2 have already died. Therefore, the learned Trial Court below may abate the proceedings against the applicant nos. 1 & 2, after verifying the factum of death of applicant nos. 1 & 2. The learned counsel for the applicants submits that in the instant case, the applicants have filed the instant F.I.R., on the vague facts without describing any plot from where the alleged theft has taken place. So far as the civil suits are already pending with respect to Plot Nos. 167, 168 & 170 between the parties and in pursuance of the order dated 30.01.2005, the opposite party no.2 was permitted to raise construction of the boundary wall of the disputed property.

7. Learned counsel for the applicants further submits that after due investigation of the case, the police has submitted the final report, which was protested and on the protest of the opposite party no.2, the said case was directed to be treated as a complaint case. Subsequently, vide order dated 30.01.2008, the applicants herein were summoned for trial by the Magistrate in the said complaint case. Therefore, learned counsel for the applicants have prayed for quashing of the entire proceedings of the said complaint case as no description of the plot from where the theft has taken place has been described by the opposite party no.2, either in the F.I.R. or in the complaint.

8. Learned counsel for the opposite party no.2 submits that in the counter affidavit, the description of the plot has already been given from where the theft has taken place and which was not a disputed plot in the civil suit between the parties. Therefore, there was no mention of any tin-shed in the Plot No. 169, in the Commissioner's Report in the said civil suit as the said plot no. 169 was exclusively owned by the opposite party no.2 herein and there was no dispute with regard to said plot no. 169 and the same was not the subject matter of the said civil suit.

9. Learned counsel for the opposite party no.2 has further submitted that in the instant F.I.R. itself the eye witnesses have been described and the police has also recovered part of the material stolen by the applicant herein. Therefore, learned counsel for the opposite party no.2 submits that there is no ground for interference by this Court as prima facie case is made out against the applicants herein.

10. Learned counsel for the State submits that in the instant case, vide order dated 30.01.2008, the learned Magistrate has taken cognizance in the matter and summon the applicants herein on the basis of the material available before him. It is undisputed that the part recovery of the material has been done by the police during the investigation and after recording the Statements u/S 200 and 202 Cr.P.C., having found prima facie case against the applicants, the learned Magistrate had summoned the applicants for trial. Therefore, there is no illegality in the impugned order summoning the applicants herein.

11. Having heard the rival submissions made by learned counsels for the parties and this Court has carefully perused the record of the case. The reliance, which

has been placed by the applicant on the reports of the Commission which relates to the Plot Nos. 167, 168 & 170, that is not in dispute in the instant case. That civil dispute is with regard to the said plots and the theft which has taken place as per the opposite party no.2 has taken place from the plot no. 169, which was exclusively owned by the opposite party no.2. Therefore, the reliance placed by the applicants on the Commissioner's Report, is baseless.

12. Therefore, from the perusal of the F.I.R., as well as from the counter affidavit, submitted by the opposite party no.2, a prima facie case is made out against the applicants. Therefore, the instant application is devoid of merits and hereby ***dismissed***.

Order Date :- 16.10.2023

Shubham Arya