

Court No. - 88

Case :- APPLICATION U/S 482 No. - 27980 of 2023

Applicant :- Nitin Yadav

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

Counsel for Applicant :- Swati Agrawal Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mrs. Swati Agrawal Srivastava, learned counsel for the applicant and Mr. Deepak Mishra, learned Additional Government Advocate assisted by Mr. Kamal Kumar, learned Brief Holder for the State of U.P./opposite party no.1.

2-This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the charge-sheet dated 04.08.2019 as well as proceedings of Case No. 12825 of 2019 (*State Vs. Pushpraj and others*) arising out of Case Crime No. 0119 of 2019, under Sections 420, 467, 468, 471, 506 I.P.C., Police Station-Kankarkhera, District-Meerut pending in the court of learned Additional Civil Judge (J.D.), IVth, Meerut.

3-Brief facts of the case, which are required to be stated are that the opposite party no. 2 lodged a First Information Report on 14.02.2019 against Pushpraj @ Guddu, Tarun and the present applicant-Nitin for the alleged offence under Sections 420, 467, 468, 471 and 506 I.P.C. alleging inter-alia that in the month of July, 2013, he met Pushpraj alias Guddu and gradually Pushpraj alias Guddu and his associates made their influence on him. In the second week of December, 2014, Pushpraj told him that he intends to purchase 50 bighas of land in Daurala, in which he offers him partnership, on which the opposite party no. 2 said that he does not have money to invest, then Guddu said that you have a plot, we will sell that plot and the said money will be invested in the land of Daurula. Guddu also showed him the land and at that time, Nitin was also with him who was a partner with Pushpraj in the land of

Dabaka. Seeing the whole thing, he was convinced that the land had been bought by Guddu. Thereafter Guddu took him into confidence and told that Nitin's son Gajraj is ready to buy his plot and deal of the said plot was finalized with him for Rs. 34,88,000/- at the rate of Rs. 16,000/-per yard. On 24.12.2014, opposite party no. 2 got a sale deed of the plot executed by his brother Deepesh Rastogi in favour of the applicant-Nitin without taking any money. After the said sale deed, opposite party no. 2 did not get any partnership in that land nor did he get any money till date. Later on opposite party no. 2 came to know that no land was purchased by Guddu. When he asked for his money, then Guddu told that he will not give any money and threatened to kill him.

4-It is argued by the learned counsel for the applicant that the applicant got the sale deed in question executed by Deepesh Kumar Rastogi after giving sale consideration amount to the vendor in cash and taken possession over the land. In the said sale deed, opposite party no. 2 was the witness. In this case, co-assused Pushpraj alias Guddu was the main accused who had promised opposite party no. 2 to become his partner in his real estate business and he died on 04.11.2020 and another co-accused Tarun has become prosecution witness.

5-It is next argued that the instant matter is civil in nature but the applicant has been falsely implicated in criminal case. Relying upon the judgments of the Apex Court in the case of **Usha Chakraborty & Another vs. State of West Bengal & Another**, 2023 SCC OnLine SC 90 and **R. Nagender Yadav vs. State of Telangana and Another**, (2023) 2 SCC 195, learned counsel for the applicant submits that no offence is made out against the present applicant.

6-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicant submitted that upon perusal of F.I.R. and on the basis of the allegations made therein as well as material against the applicant, as per prosecution case, the

cognizable offence against the applicant is made out. The criminal proceedings against the applicant cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

7-Having examined the matter in its totality, I find that the main grievance of opposite party no. 2 is that Pushpendra alias Guddu and present applicant-Nitin, in collusion with each other and in a pre-planned manner promising the opposite party no. 2 to become his partner in real estate business, got the sale deed of the plot of the opposite party no.2 in favour of the applicant-Nitin without paying any money and later neither made him partner in real estate business nor return his money. I also find that there is nothing on record to prove that sale consideration amount has been transferred in the account of opposite party no. 2 from the account of the applicant. So far as the judgments relied upon on behalf of the applicant is concerned, there is no dispute about the proposition of law laid down by the Hon'ble Apex Court, but the same is not helpful to the applicant as the same is distinguishable on the facts of this case.

8-I find that in **Usha Chakraborty (Supra)**, the facts of that case was that the complainant had filed title suit against the accused in the year 2015 but he could not get interim relief, thereafter he lodged F.I.R. in the year 2017 through an application under Section 156(3) Cr.P.C. during pendency, his title suit was used as a weapon of harassment against the defendants of the suit. Similarly, in the case of **R. Nagendra Yadav (Supra)**, the facts of that case was that the civil remedy was in fact adopted by the complainant, but in the case on hand no civil litigation between the parties has been filed or is pending. It is well settled that every case turns on its own facts. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect. The allegation of civil transaction may also have a criminal texture depends upon the nature of act alleged in the F.I.R. or the complaint. It is also relevant to mention that

summoning order dated 04.08.2019 has been challenged by the applicant by means of this application dated 21.07.2023 after inordinate delay of about four years. The explanation given by the applicant that he was not aware about the summoning order and proceeding of this case is also not convincing, because during investigation applicant had preferred the Criminal Misc. Writ petition No. 5721 of 2019 for quashing the F.I.R., in which he was granted interim protection vide order dated 01.03.2019 till the submission of police report under Section 173(2) Cr.P.C. In paragraph no. 13 of the affidavit, it is mentioned that as soon as non-bailable warrant dated 22.06.2023 was served upon the applicant, he has preferred this application, whereas no such non bailable warrant dated 22.06.2023 was issued to the applicant, hence, there was no question of service of the same upon the applicant. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put to an end to the process of trial provided under the law. It is well settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

9-This Court does not find that this case fall in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial Court at

pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicant in this case, the cognizable offence is made out. At this stage it would not be appropriate to adjudge whether the case shall ultimately end in conviction or not. Only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

10-The relief as sought by the applicant through the instant application is hereby refused.

11-This application under Section 482 Cr.P.C. lacks merit and is, accordingly, ***dismissed***.

12- Copy of this order be sent immediately to the informant / opposite party no-2 as well as to the concerned Court below for information.

Order Date :- 16.11.2023

Saurabh