

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 14945 of 2023

Petitioner :- Arun Prakash Rathore And 7 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rakesh Kumar Gupta,Akhilesh Kumar Gupta

Counsel for Respondent :- G.A.,Ajay Dubey

Connected with

Case :- CRIMINAL MISC. WRIT PETITION No. - 14860 of 2023

Petitioner :- Basant Lal Verma And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rakesh Kumar Gupta,Akhilesh Kumar Gupta

Counsel for Respondent :- G.A.,Ajay Dubey

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Both the petitions raise an identical controversy and are therefore being decided by a common order.
2. Heard learned counsel for the petitioner, learned counsel for the opposite party and learned AGA for the State.
3. The instant writ petitions seek quashing of the FIR dated 06.09.2023 giving rise to Case Crime No.787 of 2023, under Sections 420, 406, 427, 467, 468, 471, 471, 506, 120-B IPC, Police Station- Tazganj, District- Agra.
4. Contention of counsel for the petitioners is that there are two allegations in the impugned first information report; first that will has been forged. This is factually incorrect. The second allegation in the first information report is of a fabricated trust having been

created and property been gifted to the trust even this is eventually incorrect. On the contrary, informant trust is non-existing trust. The next contention is that the property which is claimed by the informant trust does not belong to it as it does not mentioned in the returns filed by the said informant society in its returns before the Registrar Firms Society in question. These submissions are the defence of the petitioners which cannot be looked into while dealing with a writ petitions which is seeking quashing of the first information report. Despite repeated observations/ oral directions by the Court to the petitioners' counsel to produce the some document of title which would even *prima facie* shows their title in the property in question. Nothing has been submitted or filed till date.

5. A supplementary affidavit filed today in court annexes thereto a plaint of Judge Small Causes, which is suit for eviction, arrears of rent and mesne profit. It is settled law that such proceedings can be maintained by the landlord, who is person to whom rent is payable. There is no requirement that JSC suit is to be filed only by the owner. Under the circumstances, the document that has been filed along with supplementary affidavit does not even *prima facie* mean that the petitioners have any title in the property in question.

6. Stringent argument of counsel for the petitioners is that the petitioners have been in possession of property in question for more than 20 years. However mere possessory title will not entitle of a person to either gift or sale of any property which does not belong to them. Under the circumstances and since submissions of counsel for the petitioners do not impress the Court and because of the allegation in the first information report contain ingredients of cognizable offence against the petitioners.

7. Both the writ petitions are, therefore, **dismissed** without prejudice to the right of the petitioners to apply for bail/ anticipatory bail.

Order Date :- 5.12.2023

A.Kr.