

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15816 of 2023

Petitioner :- Lakhmendra Khurana And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Virendra Singh, Aditya Sharma, Rajneesh Sharma

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Virendra Singh, learned counsel along with Shri Rajneesh Sharma, learned counsel for the petitioners and learned AGA appearing for the State respondents, and perused the record.

2. Present petition has been filed challenging the impugned First Information Report dated 4.9.2023, registered as Case Crime No. 479 of 2023, under Sections 406, 417, 420, 427, 465, 467, 468, 469, 471, 120B IPC, P.S. Nai Mandi, District Muzaffar Nagar.

3. Brief facts of the case are that the impugned FIR has been lodged on the allegation that on 20.8.2008, the first informant executed one trust in the name of Maa Shakumbhari Devi Charitable Trust along with other Trustees. On 26.3.2019 one of the trustee namely Chandan Kapoor gave his resignation and in his place, petitioner no. 4 (Rajiv Kumar Khurana) was inducted as a new Trustee. Soon after registration of trust, accused Lakhwinder Khurana and Rajiv Khurana after making forged documents ousted the first informant and one Manoj Jain from the Trust and inducted Smt. Ranjana Khurana (petitioner no. 2) and Arpit Khurana (petitioner no. 3) as trustees by supplementary trust deed dated 17.8.2017. Thereafter, a suit bearing Suit No. 321 of 2018 was filed by the informant questioning the supplementary trust deed dated 17.8.2017. It is also alleged in the impugned FIR that the accused's have also filed certain applications for mutation of property before the Nayab Tehsildar in defiance of law.

4. Submission of the learned counsel for the petitioners is that the petitioners have been falsely implicated in the impugned FIR and no offence is made out against the petitioners. It is submitted that the petitioner no. 1 is the founder member of the Trust. It is next submitted that the date of registration of trust is wrongly mentioned as 20.8.2008 whereas the actual date of registration of trust deed mentioned in the impugned FIR is 28.8.2008. It is next submitted that no date of incident has been mentioned in the

impugned FIR, and the impugned FIR has been lodged after delay of six years without explaining inordinate delay. It is next submitted that a civil suit bearing Original Suit No. 1307 of 2019 (Lakhwinder vs. Vijay Kumar) is pending before the competent court in which the petitioner no. 1 got stay order on 29.11.2019. It is further submitted that the informant has also filed one Suit No. 321 of 2018 (Vijay Kumar & others vs. Rajiv Kumar Khurana and others) on 25.4.2018 for the same Gatas as mentioned in the impugned FIR challenging the supplementary Trust deed dated 17.8.2017, in which no stay order was granted in favour of the informant. It is further submitted that earlier the informant lodged an FIR dated 18.8.2018 as Case Crime No. 170 of 2018, under Sections 406, 420, 467, 468, 471, 504, 506 IPC, P.S. Fatehpur, District Saharanpur against the petitioners in which final report no. 06 of 2019 dated 3.2.2019 was filed, and another FIR dated 17.4.2019 as Case Crime No. 130 of 2019, under Sections 406, 420, 467, 468, 471, 504, 506 IPC was lodged against petitioner no. 1.

5. Learned AGA opposed the prayer for quashing of the impugned FIR and contends that on plain reading of the impugned FIR commission of cognizable offence is made out. He further contends that the investigation is at the initial stage and petition deserves dismissal.

6. On perusal of records of the case, it transpires that certain suspicious transactions lead to the registration of the impugned FIR between the parties. Both the parties are involved in civil and criminal litigations at the cost of Trust's money. The parties have also relied upon certain court proceedings and documents during the course of argument, and certain documents are also part of the record. If the documents filed by the petitioners is relied upon than it will amount to conduct of mini trial at the stage of investigation which may lead to disastrous and startling consequences in criminal jurisprudence. The inherent power of the Court under Article 226 of the Constitution of India to quash the criminal proceedings cannot be invoked at this stage where *prima facie*, at face value commission of cognizable offence is made out.

7. The petition is devoid of merit and hence dismissed.

Order Date :- 28.10.2023

Abhishek