

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16273 of 2023

Petitioner :- Moin Khan @ Moin Miyan

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

Counsel for Petitioner :- Shahabuddin

Counsel for Respondent :- G.A.,Imran Syed

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri O.P. Singh, learned Senior Counsel assisted by Shri Shahabuddin, learned counsel for the petitioner, Shri Imran Syed, learned counsel for the respondent no. 3, and learned A.G.A. for the State.

2. The prosecution case, in brief, is that the petitioner in connivance with some other unknown persons mutated the land admeasuring 0.1260 and 0.1430 hectares falls in Gata Nos. 385 and 386, situated at Village Saijani Nankar, Police Station Ganj, District Rampur on the basis of a forged and fabricated Hibbanama (oral gift deed). There are also allegations that on the basis of forged Nikahnama, the petitioner was elected as Mutawalli of the land in question by the Sunni Waqf Board, Lucknow, U.P. In the set of above said allegations, the impugned FIR was registered as Case Crime No. 0211 of 2023, under Sections 420, 467, 468, 471, 406 I.P.C. at P.S. Ganj, District Rampur on 28.09.2023 by respondent no. 3 and the petitioner has been arrayed as one of the accused.

3. Aggrieved by the registration of the impugned FIR, the petitioner has challenged the impugned FIR by way of instant writ petition for quashing and stay of arrest.

4. Learned counsel for the petitioner submits that he has been falsely implicated in the instant case on the basis of a concocted story. He has contended that an Original Suit bearing no. 166 of 2015 is pending trial

before the Civil Court, wherein the Hibbanama was challenged by the complainant. The written statement and rejoinder have also been filed in the civil suit. It is further contended that the complainant has challenged the Nikahnama of the year 1935 on the basis of which, the petitioner has been appointed as Mutawalli by the Sunni Waqf Board, Lucknow. The appointment of Mutawalli by the Sunni Waqf Board has been challenged by the respondent no. 3/complainant before this Court in Writ Petition No. 13935 of 2023 and the same is also pending consideration. It is also contended that in the light of the pending civil cases between the parties, the registration of the impugned FIR is misuse of process of law and the same is liable to be quashed.

5. *Per contra*, learned A.G.A. submits that there are serious allegation of forgery and cheating against the petitioner. During investigation by the Circle Officer, its revealed that the alleged Nikahnama is a fictitious document and no record was available in the office of Maulvi, from where the alleged Nikahnama was stated to be prepared. It is further contended that the allegations are of serious nature and the case is at initial stage of investigation, and therefore no interference is called for at this stage.

6. Learned counsel for the complainant has also appeared and stated that the petitioner has in fact changed the complete family tree of the complainant by making a forged and fictitious Nikahnama. No such marriage, as alleged by the petitioner, has contracted, and respondent no. 3 is the real descendant of Banney Khan.

7. This Court is of the opinion that in the facts and circumstances of the case mere pendency of a civil suit by itself is not sufficient to quash the proceedings.

8. This aspect of the matter has been considered by us in our judgement and order dated 23.8.2023 passed in Criminal Misc. Writ Petition No. 11789 of 2023 (Tuphail Ahmad and 5 others vs. State of UP and 3 others).

9. Be that as it may, without going into the correctness of the factual aspect, *prima facie*, commission of a cognizable offence is made out against the petitioner. The enquiry conducted by the Circle Officer also indicates that a forged Nikahnama was prepared by the petitioner in connivance with other accused persons, and there are certain other incriminating evidence have also been revealed during investigation against the petitioner. The petitioner has failed to bring its case within the parameters of *State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335*. Therefore, the extra-ordinary power vests with this Court cannot be invoked in the facts-circumstances of the case.

10. Consequently, the writ petition is devoid of merits and hence **dismissed**.

Order Date :- 29.11.2023

Shafique