

Court No. - 92

Case :- APPLICATION U/S 482 No. - 38614 of 2023

Applicant :- Nanhi Devi And 2 Others

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

Counsel for Applicant :- Sanjeev Mishra Gana

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Sanjeev Mishra Gana, learned counsel for the applicants and Sri Pankaj Srivastava, learned AGA for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceeding of Case No. 3384 of 2021 (State vs. Omkar and others) arising out of Case Crime No. 834 of 2020 (State vs. Omkar and others) under Sections 406, 420 IPC, P.S. Tilhar, District Shahjahanpur, pending in the Court of Civil Judge
3. Learned counsel for the applicants submits that applicant no.1 is the bonafide purchasor of the land in question who had purchased the land from the original owner Omkar after paying the full consideration of the said land in question and since Omkar continued to be the recorded owner in the revenue records, therefore, after due verification, the applicant no.1 had purchased the said land in question. Therefore, he has prayed for quashing of the entire proceeding claiming that the applicants herein had no relations with the opposite party no.2 and has not committed any act of cheating or breach of trust against the opposite no.2.
4. On the other hand, learned counsel for the State submits that from the FIR itself, it is apparent that Mr. Thaneshwar, the husband of the applicant no.1 was well aware about the previous sale of the said land in question in favour of the opposite party no.2 and despite the aforesaid fact, the applicant no.1, who is the wife of said Thaneshwar had subsequently purchased the same land in question. The applicant no.1, being fully aware about the sale of the land in question previously in favour of the opposite party no.2, through her husband, had purchased the land in question. Subsequently, therefore, it

cannot be said that applicant no.1 herein is a bonafide purchaser of the land and was not aware about previous sale of the land in question.

5. In support of the instant application, an affidavit has been filed by the husband of the applicant no.1 and it has not been denied that the applicant no.1 is residing with her husband Thaneshwar, who has filed the instant application on behalf of the applicant no.1.

6. In view thereof, it is apparent that the applicant no.1 was well aware about the previous sale in favour of the opposite party no.2 and has deliberately and intentionally had got executed the sale deed in her favour with intent to cheat the opposite party no.2. Therefore, at this stage of the matter, it cannot be said that prima facie no case is made out against the applicants.

7. The learned counsel for the State submits that no interference is called by this Court while exercising the jurisdiction under Section 482 Cr.PC. in favour of the applicants herein, who themselves have the malafide intention and, therefore, he has prayed for dismissal of the instant application.

8. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the instant case. From perusal of the FIR itself the prima facie allegation is that the husband of the applicant no.1 was previously aware of the sale of the land in favour of the opposite party no.2 and despite the aforesaid fact, the applicant no.1 has purchased the land in question subsequent being fully aware about the previous sale of the said land in favour of the opposite party no.2. The matter has been duly investigated by the police. The charge sheet has been filed having found a prima facie case on the basis of the material available before the learned Magistrate and the learned Magistrate has taken cognizance in the matter against the applicants.

9. In the considered opinion of this Court, it cannot be said that there is no material available against the applicants herein in the instant case, therefore, no interference is required in exercise of power under Section 482 Cr.P.C. and the instant application is devoid of merits and is accordingly **dismissed** in the light of judgments of Apex Court in **R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika**

Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others :
2021 SCC OnLine SC 315.

Order Date :- 3.11.2023

Ashish Pd.