

Court No. - 86

Case :- APPLICATION U/S 482 No. - 42158 of 2023

Applicant :- Prabhu Nath Prasad And 2 Others

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

Counsel for Applicant :- R.K. Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the records.

2. The present application u/s 482 Cr.P.C. has been filed with the prayer to quash charge-sheet dated 14.09.2023 as well as entire proceedings of Criminal Case No. 150980 of 2023 (State of U.P. Vs. Sudha Singh and others), arising out of Case Crime No.64 of 2022, under Sections 420, 467, 468, 471, 120B IPC, Police Station Govind Nagar, District Kanpur Nagar, pending in the court of Additional Civil Judge (Jr. Div.)-9th, Kanpur Nagar.

3. As per the allegations made in the First Information Report, it is alleged that Kamla Devi, mother of opposite party no.2, who died on 20.07.1989, was allotted a residential plot by Kanpur Development Authority, numbered as 685A-LIG-4th Scheme. After the death of his mother, the father of opposite party no.2 married one Sudha Singh on 26.06.1990. It is further alleged that on 03.12.2002, Sudha Singh by affixing her thumb impression and making forged signatures got a free hold deed executed in her name in respect of the aforesaid land allotted to Kamla Devi and thereafter, she surreptitiously sold the said plot to her brother Tribhuvan Singh, Sant Saran Kapoor, Prabhunath Prasad and one Smt Pooja through different registered sale deeds by impersonating her to be Kamla Devi, who had already expired in the year 1989 and got mutated the said lands in their names. It is further alleged that in the said exercise of transfer of plot in question, the applicants had

hatched a conspiracy with her step mother and subsequently got the said plot transferred in their names.

4. In respect of the said incident, an FIR was lodged and the Police after concluding the investigation has submitted the charge-sheet against the applicants under Sections 420, 467, 468, 471 and 120B IPC and on the basis of the said charge-sheet, learned Magistrate has taken cognizance of the offence and summoned the applicants to face trial vide order dated 16.09.2023.

5. Being aggrieved and dissatisfied by the said order, the present application under Section 482 Cr.P.C. has been filed.

6. Learned counsel for the applicants has submitted that the applicants are the bona fide purchasers of the plot in question from Sudha Singh, the step mother of opposite party no.2 and they have absolutely no role to play in the said incident, however, the police without there being any cogent evidence or material against them has illegally submitted the charge-sheet, on the basis of which the learned Magistrate has taken cognizance.

7. Learned counsel for the applicants has next submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicants and the present case has been instituted with a malafide intention for the purpose of harassment. He has pointed out certain documents and statements in support of his contention, as such, impugned charge sheet as well as entire proceedings be quashed.

8. Per contra, learned AGA has vehemently opposed the said prayer and has submitted that from the perusal of the allegations made in the FIR, statement of the witnesses recorded under Section 161 Cr.P.C. and the material collected during the course of investigation, prima facie offence is clearly disclosed against the applicants and as such, impugned charge sheet as well as entire proceedings cannot be quashed. He has further submitted that at this stage only a prima facie case is to be seen against the applicants and it is not necessary to make a roving enquiry into the allegations made in the FIR. It has been further submitted that the disputed defence of the accused cannot

be looked into at this stage.

9. Having considered the rival submissions made by the parties and taking into consideration the allegations made in the FIR as well as statement of the witnesses recorded under Section 161 Cr.P.C., it is evident that after the death of mother of opposite party no.2, the plot in question, which was in the name of his mother was surreptitiously got transferred in the name of his step mother by forging her signatures and impersonating her and subsequently, after the execution of the free hold deed in the name of Sudha Singh, the said plot of land has been sold to Tribhuvan Singh real brother of Sudha Singh and three others, who were in league with her in getting the said free hold deed executed through impersonation and therefore, at this stage, it cannot be said that prima facie, no offence is made out against the applicants.

10. At this stage, only a prima facie case is to be considered, therefore, in view of the law laid down by the Hon'ble Apex Court in the cases of ***R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192*** and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283***, the prayer for quashing the charge-sheet as well as entire proceedings is refused.

11. It is well settled principle of law that at the stage of summoning only a prima facie case is to be seen and a roving enquiry regarding the veracity and genuineness of the allegations cannot be looked into. If the averments made in the FIR along with the statement of the witnesses recorded under Section 161 Cr.P.C. prima facie, make out a case against the applicant, then the entire proceedings cannot be quashed at this stage, when the entire evidence is yet to come.

12. Further in the case of ***Rajesh Bajaj v. State NCT of Delhi reported in (1999) 3 SCC 259***, the Hon'ble Apex Court has held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different

components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint, the court should not hasten to quash criminal proceedings. Such an endeavour may be justified during trial but certainly not during this stage. It has been further held that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

13. Thus, in view of the law laid down by the Apex Court in several of its judgments, the entire proceedings based on the charge-sheet cannot be nipped in the bud at this stage, when the entire evidence is yet to come.

14. In view of the foregoing discussion, I am of the view that the entire proceedings based on the charge-sheet cannot be quashed at this stage in exercise of power u/s 482 Cr.P.C.

15. The present application u/s 482 Cr.P.C. is therefore, devoid of merit and is accordingly **dismissed**.

Order Date :- 15.12.2023
Subham