

Court No. - 92

Case :- APPLICATION U/S 482 No. - 43901 of 2023

Applicant :- Nasir And 2 Others

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

Counsel for Applicant :- Ashish Agrawal

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Ashish Agrawal, learned counsel for the applicants and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 28.04.2022 as well as impugned summoning/cognizance order dated 27.06.2023 and entire proceeding in Criminal Case No.88 of 2022 (State of U.P. vs. Nasir), arising out of Case Crime No. 88 of 2022 u/S 420, 467, 468, 471, 323, 504, 506 I.P.C., P.S.- Nagina, District- Bijnor, pending in the court of learned Additional Chief Judicial Magistrate, Nagina, Bijnor.

3. Learned counsel for the applicant submits that the opposite party no.2 had executed a *Hibanama* in respect of Khasra Plot No. 50 and 92/84, in favour of the applicant no.1 and, since then, the applicants no.1 was in continuous possession of the aforesaid property. Subsequently, in the year 2021, some dispute between the applicant no.1 and the opposite party no.2 arose, with regard to the said property, for which a civil suit was filed by the applicant no.1 against the opposite party no.2, being Civil Suit No. 1337 of 2021 for declaration of the ownership of the property, which was gifted by *Hibanama* executed by the opposite party no.2 on 14.02.2013 and the permanent injunction against the opposite party no.2. It is further stated that opposite party no.2 also filed a civil suit being Original Suit No. 1349 of 2021, which he subsequently withdrawn by moving an application on 25.02.2022, which was allowed vide order dated 28.09.2022. The opposite party no.2, in the meantime filed the counter claim in the suit filed by the applicants herein, seeking injunction against the applicants herein and also filed the instant F.I.R. on 22.03.2022, disputing the execution of the *Hibanama*, which the applicant no.1 alleged that the same has been executed by the opposite party no.2. Therefore, learned counsel for the applicants submits that the instant F.I.R. has been lodged by the opposite party no.2 to give a criminal color to the civil dispute with regard to the property between the parties.

Therefore, learned counsel for the applicants has prayed for quashing of the entire proceedings of the said case.

4. Per contra, learned A.G.A for State submits that opposite party no.2, on receipt notices of the civil suits filed by the applicant no.1 herein, first time came into the knowledge of the allegedly fabricated *Hibanama*. Thereupon, he withdraws the earlier suit for injunction and filed his counter claim in the civil suit itself, and simultaneously, he lodged the present F.I.R. against the applicants herein and denying the execution of said *Hibanama* and also signature thereof. Therefore, there was no delay on the part of the opposite party no.2, in filing the instant F.I.R. against the applicants, after realising that the applicants has fabricated and forged some *Hibanama* and had used the same against the opposite party no.2, by filing a civil suit. After registration of the F.I.R., the Investigation Agency has properly investigated the matter and recorded the statements of various witnesses and thereupon the charge-sheet was filed against the applicants herein u/S 420, 467, 468, 471 I.P.C., against the applicant nos. 2 & 3 and u/S 420, 467, 468, 471, 323, 504, 506 I.P.C., against the applicant no.1, on the basis of the material collected during the investigation. Subsequent thereto, vide order dated 27.06.2022, the learned Magistrate, on the basis of the material available before him has taken cognizance for the aforesaid offences against the applicants herein. Therefore, there is no illegality either in the charge-sheet against the applicants or in the summoning order. Therefore, learned A.G.A. seeks dismissal of the instant application.

5. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. From the record of the case, it is apparent that applicant no.1 herein had filed a Civil Suit No. 1337 of 2021 on 14.12.2021 and the opposite party no.2 had also filed the Civil Suit No. 1349 of 2021, against the applicant no.1, for seeking permanent injunction against the applicants, restraining the applicant no.1 from interfering with the peaceful possession of the property in question. After receiving the notices in the civil suit filed by the applicant no.1, he filed the counter claim in the civil suit filed by the applicants herein and thereafter, the opposite party no.2 moved an application for withdrawal of his Civil Suit no. 1349 of 2021, on 25.02.2022, which was allowed, vide order dated 28.09.2022 and the suit was dismissed as withdrawn and the instant F.I.R. was lodged by the opposite party no.2, on 22.03.2022, after realizing and coming to knowledge about the disputed *Hibanama*, which is alleged by the applicant no.1, to have been allegedly executed by the opposite party no.2. When the opposite party no.2 realizes that the same is the forged and fabricated documents and which has

been utilized by the applicant no.1, in the civil proceedings, taking benefit out of the said forged and fabricated *Hibanama*, then, instant F.I.R. has been lodged, which has been duly investigated by the Investigation Agency and after finding a *prima facie* case against the applicants, the charge-sheet was filed on 28.04.2022, against the applicants herein, upon which the learned Additional Chief Judicial Magistrate, Nagina, has taken cognizance, vide order dated 27.06.2022, on the basis of the material available before him. It is undisputed in the case that the opposite party no.2, was the owner of said property before the execution of alleged *Hibanama*, which is disputed by the opposite party no.2.

6. Therefore, in the considered opinion of this Court, there is no illegality either in the charge-sheet or in the cognizance order passed by the learned Additional Chief Judicial Magistrate as from the material available on record, it cannot be said that no offence as alleged against the applicants herein. Therefore, the instant application lacks merit and is hereby ***dismissed***.

Order Date :- 14.12.2023

Shubham Arya