

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1803 of 2021

Appellant :- Ram Saran Verma And Anr.

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Dharmendra Kumar

Counsel for Respondent :- G.A., Mohammad Nauman, Osama Ahmad Abbasi, Vijay Bahadur Yadav

Hon'ble Shamim Ahmed,J.

1. Heard Shri Dharmendra Kumar, learned Counsel for the appellants, Mohammad Nauman, learned Counsel for opposite party No.2 and Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1.

2. This Criminal Appeal has been filed under Section 14 (A) 1 of the Schedule Castes & Schedule Tribes (Prevention of Atrocities), Act, 1989 against the impugned order dated 30.10.2021 passed by learned Special Judge, (SC/ST Act), Barabanki, whereby application for discharge No.-B-53 moved by the appellant/accused in Sessions Trial No.1137 of 2021 arising out of Crime No.424 of 2021 under Sections 419, 420, 467, 468, 471 and 120-B I.P.C. & Section 3(2)(v) of SC/ST Act, relating to Police Station-Kotwali, District-Barabanki has been rejected.

3. Counter affidavit filed today in the Court by learned Counsel for the opposite party No.2 is taken on record.

4. Learned counsel for the appellants submits the appellant No.1 is a practicing lawyer, who has signed the will deed dated 27.10.2016 alongwith appellant No.2 as marginal witness due to non-availability of second witness, which was executed by one Basant Lal in favour of co-accused, namely-Manish Kumar Verma, in respect of land Gata No.23/0.507, Gata No.35/0.315 situated in village-Faijullaganj, Tehsil Nawabganj, District-Barabanki. He further submits that the executor of the said will deed, namely-Basant Lal who was an old age person and had died during treatment on 18.11.2016 and the co-accused Manish Kumar Verma after the death of Basant Lal moved a mutation application before the concerned Tehsildar on 01.12.2016. Thereafter, cousin sibling of opposite party No.2 has filed objection to the aforesaid mutation application on 30.03.2017 claiming the will deed to be forged but the Tehsildar having heard the parties and gone through the record has allowed the

mutation application moved by co-accused Manish Kumar Verma vide order dated 05.04.2019 rejecting the objection filed by the cousin sibling of opposite party No.2. Thereafter, the opposite parties being aggrieved filed a civil suit for cancellation of the said will deed in the court of Civil Judge, Junior Division, Barabanki on 31.08.2019. He further submits that after registration of F.I.R., the appellants have challenged the same by way of W.P. No.13182 (M/B) of 2021, in which this Hon'ble Court having heard the parties has stayed the arrest of the appellants vide order dated 29.06.2021 till filing of charge sheet. Thereafter, the Investigating officer during course of investigation has recorded statement of the complainant, in which he repeated the allegation of first information report but did not disclose fate of civil litigation pending in between the parties with regard to will deed. He next submits that Investigating officer recorded the statement of several witnesses who stated that Basant Lal was residing at Haryana and died forty years ago and they came to know that co-accused, namely-Manish Kumar Verma has got mutation of land on the basis of forged will deed and per the stand of the complainant, his grandfather, namely-Basant Lal who died at Harayana for last forty years ago even his land was not mutated in the name of legal heir and as per case of appellants, they signed the will deed executed by the Basant Lal in their presence on 27.10.2016, who later on died on 18.11.2016 but Investigating Officer without verifying the fact as to whether, the person who executed the said will deed on 27.10.2016 and died on 18.11.2016 and has filed the charge sheet against the appellants.

5. Learned Counsel for the appellants further submits that primarily the dispute between the parties is civil in nature. he has drawn attention of this Court to a civil suit filed by the complainant for a relief of cancellation of the said will deed. He further submits that regarding mutation certain litigation between the parties is pending before the revenue court as well. In light of the aforesaid submissions, it has been argued that dispute between the parties being civil in nature, the offences as mentioned in the entire prosecution of the appellants are not made out against them. He further submits that there is no offence against the appellants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment , thus, he submits that the present appeal may be allowed and the impugned order may be set aside.

6. Learned A.G.A. as well as learned Counsel for opposite party No.2 have opposed the prayer made by learned Counsel for the appellants and submits that a discharge application which was filed by the appellants has rightly been rejected by the court

below vide impugned order dated 30.10.2021. As there are credible evidence available against the appellants, thus, there is no illegality and infirmity made by the court below. It is purely a disputed question of fact. Prima facie, the case is made out against the appellants and if they are not involved in the alleged offence, the trial court is competent to adjudicate the matter. They further submits that there is prima facie evidence available against the accused appellants and only probative value of evidence available on record shall be looked into and no further appreciation can be done by the trial court if there is primary investigation available against the accused appellants and in furtherance of this the present criminal appeal is filed only to use it as shield and abuse the court process as being case of SC/ST to escape arrest and not even today accused appellants have come up before the Learned Magistrate Court either applying for regular Bail and they are even trying to influence the trial by further delaying case by using their influence and tactics to escape law to some how weaken the ample evidence and gravity of covering the deeds conducted by the Accused appellants one who uses legal profession as a shield to escape law while truth lies that Accused appellant No.1 Ram Saran Verma is known land grabber and has always being involved in the property dealings by using forge documents and then using them to gain monetary benefits. There are ample evidence against the accused appellants which came during the investigation and chargesheet submitted before the learned trial court by the police, the accused appellants are charged as co-conspirators for property fraud by forging fake death certificate of informants Grandfather as well as showing Caste of dead Basant Lal not as Dhobi(SC) in state of Uttar Pradesh. They further submits that in the grounds mentioned in the appeal before this Hon'ble Court under section 14-A SC/ST act accused appellants have tried to basically cover their offence by saying that they are only witnesses in the will deed dated 27.10.2016 by one Basant Lal son of Mahabali informant's grandfather who already shifted much earlier to Haryana and has been living there and died on 22.07.1978.

7. Learned Counsel for the opposite party No.2 and learned A.G.A. further submits that the accused appellants claim that they have somehow signed the document under an impression that the imposter executant belong to Lodh Community which do not fall under SC/ST category, this shows the defence of meeting the very condition of signing document without proper knowing the executant and appellant No.1 who says himself to be an advocate this document without giving any thought about consequences as he belongs to category of property dealers and not real practitioner. The second accused works for appellant

No.1 as his servant and this has been admitted by appellant No. 2 while giving statement to the police. They further submits that the accused appellant No.1 has also admitted by way of the affidavit filed in support of the application that appellant No.2 know him and he is entrusted to be pairokar for Ram Pratap son of Bhagauti. They further submits that appellant No.1 is land grabber and property dealer who is only engaged in outlook of grabbing properties by using tactics and group of hooligans by making sale deeds will deed forgely and then getting them sold at high rates to another for gaining monetary gain and so far as to prove that the appellant No.1 is regular practitioner he has not placed before this Hon ble court any evidence to support his claim. The claim of non availability of witness is just being said to misguide court and use it as defence for proving their innocence. They next submits that Basant lal Son of Mahabali has died at Kurukshetra,Haryana and a true copy of death certificate is already annexed as CA -1 to the counter affidavit filed on behalf of opposite party No.2 where the date of death is 22.07.1978 and this truly need to be appreciated by the case diary record. They next added that death certificate presented by Manish Kumar Verma who is not an appellant in the present appeal is forged document by way of Annexure CA-3 before the Hon'ble Court Manish Kumar Verma never challenged the impugned discharge rejection and till date still neither taken bail and nor being arrested by the Police although NBW should have been issued by the learned Special Court SC/ST Barabanki. They draws the attention of this Court to look that how a forged will was made pre planned by the accused appellants wherein the statement before the police of co accused, appellant No.2 said that Basant Lal told him that there is boy Manish Kumar who serves me and I shall write will in his favor although to counter the same Manish kumar denies that Basant Lal whom he knows belong to OBC and denies the Claim raised by the informant co-siblings who objected to his mutation entry before the Tehsildar Nawabganj, but the fact is that Basant lal has already died at Haryana by the Death certificate issued by Haryana government is already before the Hon'ble court and part of case diary.

8. Learned Counsel for the opposite party No.2 and learned A.G.A. for the State further submits that the appellants have tried to misguide the Hon'ble Court as the order dated 05.04.2019 was ex-parte order first as objectioner have stopped appearing before the Tehsildar and hence order was passed in favor of Manish kumar Verma who is not party in the present appeal and this very same order was stayed by the Tehsildar when present informant approached for recall and put actual facts before the Tehsildar along with Lekhpal Report, thereafter,

the concerned Tehsildar after going through the material placed on record stayed the order dated 05.04.2019. They next added that statement recorded by independent witnesses which is filed by the appellants it becomes quite clear that independent witness Shareef son of Mohd Shakoor Sunil Kumar son of Puttilal are only persons who have known the family of deponent and all other person are living only for period 20 years and have no knowledge of the Basant lal also the theory of Basant lal being pujari is also claim of accused appellants although they need to prove that by facing trial and not at the stage of Discharge application being moved before Learned Trial court.

9. After considering the arguments advanced by learned counsel for the parties and after perusal of the impugned orders dated 30.10.2021 passed by the court below. The impugned order were rightly passed. The appellants claim that they have somehow signed the document under an impression that the imposter executant belong to Lodh Community which do not fall under SC/ST category, this shows the defence of meeting the very condition of signing document without proper knowing the executant and appellant No.1 who says himself to be an advocate, without giving any thought about consequences as he belongs to category of property dealers and not real practitioner and further considering the fact that the accused appellant No.1 has also admitted by way of the affidavit filed in support of the application that appellant No.2 know him and he is entrusted to be pairokar for Ram Pratap son of Bhagauti and also considering the fact that Basant lal Son of Mahabali has died at Kurukshetra, Haryana and a true copy of death certificate is already annexed as CA -1 to the counter affidavit filed on behalf of opposite party No.2 where the date of death is 22.07.1978 and this truly need to be appreciated by the case diary record. There appears force in the argument of learned Counsel for opposite party No.2 that the claim of non availability of witness is just being said to misguide court and use it as defence for proving their innocence and also taking note of the fact that the appellants have already approached the court below by moving a discharge application but the court below did not entertain the prayer made by the appellants and the court below after considering the entire material, available before it, has rightly rejected the discharge application, thus, I do not find any illegality and infirmity in the impugned order.

10. Accordingly, this appeal lacks merit and substance, which is hereby **dismissed**.

11. However, keeping in view the fact and circumstances of the case, the learned trial court concerned is directed to get the trial

concluded within one year from today with utmost expedition, without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

12. It is made clear that the trial of the aforesaid case shall be conducted without being influenced by any observation made herein above which are confined to the disposal of the instant criminal appeal.

Order Date :- 16.11.2023

Piyush/-