

Court No. - 12

Case :- APPLICATION U/S 482 No. - 4314 of 2021

Applicant :- Chandreshwar Mishra

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home. Lko And Others

Counsel for Applicant :- Rajeev Narayan Pandey, Vinod Kumar

Counsel for Opposite Party :- G.A., Ankit Pande, Mohammad Yusuf Siddiqui, Rajesh Kumar Pandey

Hon'ble Rajeev Singh, J.

1. Heard Sri R.N. Pandey, learned counsel for the applicant, learned counsel for the private respondent and Sri Ranvijay Singh, learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the order dated 24.8.2021 passed by the Additional Sessions Judge, Court No.3, Faizabad, by which, learned revisional court rejected the revision of the applicant in very illegal and arbitrary manner against the provisions of law as well as against the order dated 25.9.2012 passed by the Sub Divisional Magistrate, Sohawal, Faizabad in Case No.5/5/5/8/9/20/24, "Chandreshwar Vs. Keshri Prasad" under Section 145 Cr.P.C.

3. Learned counsel for the parties conceded this fact that order in question was challenged in Application U/S 482 No.1105 of 2013, which was allowed by this Court vide order dated 13.11.2019 and the present application may also be disposed of in terms of the order dated 13.11.2019 passed in the aforesaid application.

4. Learned A.G.A. has no objection, in case, the present application under Section 482 Cr.P.C. is disposed of in terms of order dated 13.11.2019.

5. The order dated 13.11.2019 passed by co-ordinate bench of this Court in Application U/S 482 No.1105/2013 is as under:-

"The present petition under Section 482 Cr.P.C. has been filed impugning the order dated 13.02.2013, passed by the learned Additional Sessions Judge, Court No.2, Faizabad in Criminal Revision No.229 of 2012 which was preferred by

the petitioners herein against the order dated 25.9.2012 passed by the learned Sub-Divisional Magistrate, Faizabad in Case No.4/5/5/8/9/20/24. Learned Magistrate vide order dated 25.9.2012 while dropping the proceedings under Section 145(1) read with section 146(1) CrPC had given the land in question from supardari of Advocate Ram Singh to the Tehsildar. The learned revisional court has said that the aforesaid order passed by the learned Sub Divisional Magistrate is valid inasmuch as the learned Magistrate is empowered to give the property in question in supardari till the decision of the competent court regarding the ownership of the said property.

The question before this Court is that once the proceedings are dropped by the learned Magistrate under Section 145, 146 CrPC, can the order of attachment still be passed and the property be given on supardari.

Once the proceedings are dropped, the learned Magistrate becomes functious-officio which means that he has no power or authority to pass any order in respect of the dispute. The learned Magistrate can pass the order for attachment in respect of the property in question only in case the proceedings are still pending. Here the learned Magistrate himself has dropped the proceedings.

In view of the dropping of the proceedings nothing was pending before the learned Magistrate on which he could have passed the order of attachment to give the property/ land in dispute in supardari of the Tehsildar Sohawal. I find that the order passed by the learned Magistrate as well as learned Revisional Court are unsustainable and therefore set-aside.

In view of the aforesaid order the order of attachment and Supardari of the land in question in favour of the Tehsildar Sohawal also goes. The property should revert back to the person(s) from whom the property was taken when the order of attachment was passed initially giving in supardari of Advocate Ram Singh. This order would however be subject to any other order passed by the competent Civil/ Revenue Court where the dispute(s) regarding the ownership/ title is/ are pending.

The application under section 482 CrPC is allowed and the orders of the revisional court and the order passed by the learned Magistrate are set-aside."

6. With the consent of the parties, the present application under Section 482 Cr.P.C. is **allowed** in terms of the order dated 13.11.2019, "Amar Nath & Ors. Vs. The State of U.P. & Anr."

Order Date :- 20.12.2023
Gaurav/-