

Court No. - 11

Case :- APPLICATION U/S 482 No. - 11847 of 2023

Applicant :- Mohd. Ilyas Kha And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil
Sect. Lko. And Another

Counsel for Applicant :- Onkar Nath Pandey, Devendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard learned counsel for the applicants, Sri Aniruddh Kumar Singh, learned AGA-I alongwith Sri Pooshan Upadhyaya, learned counsel appearing for the State of U.P. and perused the record.

By means of instant application under Section 482 Cr.P.C., the applicants have assailed the summoning order dated 08.11.2023 as also the charge sheet No. 01/2022 dated 21.08.2023 arising out of Case Crime No. 0097/2023, under Sections 379, 504, 506 IPC and Section 2/3 of Prevention of Damages to Public Property Act, 1984, Police Station- Jaisinghpur, District- Sultanpur in Criminal Case No. 12875/2023 (State of U.P. vs. Mohd. Ilyas and others) and also challenged the entire proceedings of the said case, which is pending before Civil Judge (Senior Division)- Ist, /Additional Chief Judicial Magistrate, Sultanpur.

For the purposes of reliefs sought in this application, learned counsel for the applicants stated that wife of applicant No. 1 namely Shayra Nisha is recorded tenure holder of Gata No. 753-Ka situated at Village Pindoran, Jainsinghpur, District Sultanpur and Gata No. 753-Ka is adjacent to Gata No. 752, which is recorded as pond (Talab) in revenue records and with regard to demarcation, an application under Section 24 of U.P. Revenue Code, 2006 (in short "Code of 2006") was preferred, which was registered as Case No. 2272 of 2023, Computerized Case No. T202304680702272 (Shayra Nisha vs. Gaon Sabha and others), in which, a report was called and thereafter, based upon the report dated 30.05.2023 submitted by the Revenue Inspector concerned, the final order of demarcation was passed on 13.06.2023.

It is also indicated that an FIR was lodged by the Village Pradhan on 07.04.2023 alleging therein that the applicants forcibly cut the eucalyptus trees situated over Gata No. 752 and

in this regard, the Investigating Officer conducted the investigation and after completing the investigation submitted the charge sheet under Sections 379, 504, 506 IPC and Section 2/3 of Prevention of Damages to Public Property Act, 1984, Police Station- Jaisinghpur, District- Sultanpur ignoring the report(s) dated 08.05.2023 and 30.05.2023 prepared by one Santosh Kumar Shukla (SI), Police Station- Jaisinghpur, District- Sultanpur and the Revenue Inspector, respectively. As per report dated 08.05.2023, the eucalyptus trees were found over Gata No. 753-Ka and not over Gata No. 752, which is recorded as Talab in the revenue records.

To substantiate the aforesaid, attention of this Court has been drawn to Annexure No. 6 to this application, which is a certified copy of site plan prepared by one Santosh Kumar Shukla (SI), Police Station- Jaisinghpur, District- Sultanpur. This site plan indicates that about 9 years old eucalyptus trees were found over Gata No. 753-Ka, which belong to the wife of applicant No. 1 and to prove the ownership of Gata No. 753-Ka, the attention has been drawn to the copy of Khatauni of Fasli year 1430-1435 (01 July, 2022 to 30 June, 2028), Annexure No. 4 to this application.

It is submitted that in these circumstances, no case is made out against the applicants. Moreover, the FIR lodged is nothing but an abuse of process of law because the offence as indicated in it are not attracted in the present case.

Further submission is that this Court in the judgment dated 06.08.2020, facts involved in the said case are almost akin to that of instant case, passed in the case of ***Munshi Lal and another vs. State of U.P. and another*** reported in ***2020 SCC OnLine All 903***, observed that the criminal proceedings initiated against the applicants cannot but be said to be an abuse of the process of law or the Court and after observing the same, this Court in exercise of power under Section 482 Cr.P.C., interfered in the matter by quashing the criminal proceedings against the applicants therein.

Learned AGA opposed the present application. He says that Gata No. 753-Ka, of which, as per the case set up, the wife of applicant No. 1 is owner in possession and the same is adjacent to Gata No. 752, which is recorded as Talab in revenue records and over Gata No. 752, as per the case of prosecution, eucalyptus trees were situated, which were cut down by the applicants and accordingly, the applicants are not entitled to the reliefs sought as prayed for in this application.

He further submitted that after investigation, the charge sheet

has been filed in the present case and thereafter, the trial court after due application of mind passed the summoning order dated 08.11.2023. Thus, no interference is required in the matter.

Heard learned counsel for the parties and perused the record.

As per the allegations levelled in the FIR, the case of the prosecution is to the effect that the applicants had cut the trees situated over Gata No. 752, which is recorded as Talab in the revenue records. Entry with regard to Gata No. 752 in revenue record is not in issue. It is also not in issue that Gata No. 753-Ka is near to Gata No. 752.

Further the site plan prepared by the Investigating Officer namely Santosh Kumar Shukla (SI), Police Station- Jaisinghpur, District- Sultanpur, certified copy of which is annexed as Annexure No. 6 to this application, is also not in issue. A bare perusal of this site plan indicates that about 9 years old eucalyptus trees were found over Gata No. 753-Ka and not over Gata No. 752, which is recorded as Talab in revenue records.

In view of aforesaid undisputed position, this Court is of the view that the proceedings in issue are nothing but an gross abuse of process of law.

Taking note of aforesaid as also the observations made by this Court in the judgment passed in the case of **Munshi Lal (supra)**, this Court is of the view that interference is required in the matter. Accordingly, the entire proceedings including the summoning order dated 08.11.2023 as also the charge sheet No. 01/2022 dated 21.08.2023 arising out of Case Crime No. 0097/2023, under Sections 379, 504, 506 IPC and Section 2/3 of Prevention of Damages to Public Property Act, 1984, Police Station- Jaisinghpur, District- Sultanpur in Criminal Case No. 12875/2023 (State of U.P. vs. Mohd. Iliyas and others), in issue, are hereby **quashed**.

The instant application under Section 482 Cr.P.C. is hereby **allowed** in above terms.

Order Date :- 6.12.2023

Arun/-