

Court No. - 27

Case :- APPLICATION U/S 482 No. - 706 of 2024

Applicant :- Jagendra Kumar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Sectt. Lko And 2 Others

Counsel for Applicant :- Ravi Shanker Singh,Amit Singh,Kirti Veer Singh

Counsel for Opposite Party :- G.A.,Dwijendra Mishra

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Ravi Shanker, learned counsel for the applicant, Sri Gyanendra Singh, learned A.G.A. and Sri Dwijendra Mishra, learned counsel for opposite party no.3.

2. By means of the instant application filed under Section 482 Cr.P.C, the applicant has sought quashing of the charge sheet dated 06.07.2023, under Sections 406, 420 IPC submitted in furtherance of FIR No. 496 of 2022, Police Station Vibhuti Khand, District Lucknow East, under Sections 419, 420, 467,468, 471, 406 IPC and the order dated 17.11.2023 passed by the Additional Chief Judicial Magistrate-II, Court No. 26, Lucknow taking cognizance of the offences and summoning the applicant to face trial of the offences, along with the entire proceedings of the aforesaid case.

3. The F.I.R was lodged by the opposite party no.3 on 25.07.2022 against six persons, including the applicant alleging that he had purchased a property through a sale deed dated 18.02.2020 from co-accused Vijay Shankar Rai and all the five co-accused persons, including the applicant, had acted as brokers. On 05.04.2022 a news item was published in a news paper that the land belonged to the Government, from which he came to know that he had been duped by the accused persons.

4. In the statement of the informant recorded by the investigation officer, he reiterated the F.I.R version. Although, the F.I.R alleged commission of offences under Section 419, 420, 467, 468, 471 I.P.C after investigation a charge sheet has been submitted for commission of offences under Section 406 and 420 I.P.C only against all the accused persons and the trial court has taken cognizance of

the offence and summoned the accused persons by means of an order dated 17.11.2023.

5. The learned counsel for the applicant has submitted that even as per the allegation of the opposite party no.3, the applicant had merely acted as a broker in settlement of the deal between the opposite party no.3 and co-accused Vijay Shankar Rai. The applicant has not executed the sale deed or verified the title of the seller.

6. The learned counsel for the applicant has also submitted that there is no allegation of any conspiracy having being entered into between the accused person.

7. Sri Dwijendra Mishra, learned counsel for opposite party no.3 has filed a counter affidavit on behalf of the opposite party no.3, which is taken on record. It has *inter alia* been stated in the counter affidavit that the opposite party no.3 wanted to buy a land in Gomti Nagar for construction of his office and one Bhupendra Singh, who was known to the opposite party no.3, met him along with Mohd Zaki, Jagendra Kumar (the applicant), Shiv Bhawan Singh, and Ram Asrey Singh in January, 2020 and they showed the land of Vijay Shankar Rai. All the aforesaid persons showed the chain of three title deeds in respect of a particular plot of land, the first one being a sale deed dated 03.01.1985 executed by Indira Awas Society in favour of Sri Ram Asrey Singh. Sri Ram Asrey Singh had sold the property to one Suresh Giri by means of a sale deed dated 01.08.2018 and Suresh Giri had sold the land to Vijay Shanker Rai through a sale deed dated 22.10.2018. The applicant and co-accused Shiv Bhawan Singh had witnessed execution of sale deed dated 01.08.2018 executed by Ram Asrey Singh.

8. It is further stated in the counter affidavit that the opposite party no.3 had made inquiries from the concerned Lekhpal and also from the office of the Sub-Registrar and after being satisfied about the title of the seller, he had agreed to purchase the land for Rs.1.5 crore in total, including the price of land, expenses for mutation, charges for obtaining NOC from Lucknow Development Authority, map sanction charges and the development charges. The opposite party no.3 paid the amount of Rs.22,00,000/- only through cheque to the seller Vijay Shanker Rai, he claims to have paid Rs.63,00,000/- in cash to Mohd Zaki

and Rs.5,00,000/- are said to have been transferred in the account of each of the other accused persons, including the applicant. A copy of the sale deed in question has been annexed with the counter affidavit, which mentions the amount of sale consideration to be Rs.22,00,000/-.

9. The learned counsel for the opposite party no.3 has submitted that all the accused persons have cheated the opposite party no.3 by selling a land, regarding which the seller-co-accused Vijay Shanker Rai had no title. He has further submitted that the FIR has been lodged by the Deputy Commissioner of Police but a copy of the FIR annexed with the affidavit mentions the name of the informant as Sri Anoop Singh-opposite party no.3 and it appears that the FIR has been lodged by opposite party no.3 himself and not by any officer of the police.

10. Sri Dwijendra Mishra, learned counsel for opposite party no.3 has relied upon the following passages from the judgement of Hon'ble Supreme Court in the case of **Indian Oil Corporation vs. NEPC India Ltd and others, reported in (2006) 6 SCC 736:-**

"11. The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :

(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 [IPC](#) ?

17. The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings."

11. Sri Gyanendra Singh, learned A.G.A. has also opposed the application and he has submitted that while deciding the application for quashing of charge sheet and proceedings under Section 482 Cr.P.C., this Court cannot hold a mini trial and examine the defence set up by the accused persons. This Court can also examine whether on the basis of allegations levelled in the FIR/complaint

and the material collected during investigation, the case for trial of the accused persons is made out or not. He has further stated that as this Court cannot conduct a factual inquiry, the State does not propose to file a counter affidavit and the matter may be decided finally as counter affidavit has already been filed by the private respondent.

12. I have considered the facts and circumstances of the case and the submissions advanced by learned counsel for parties.

13. As per the averments made in the counter affidavit itself, the land had initially been sold by Indira Awas Society to Ram Asrey Singh through a sale deed dated 03.01.1985. Ram Asrey Singh had in turn sold the land to Suresh Giri through a sale deed dated 01.08.2018 and the applicant was one of the witnesses of the execution of this deed. During investigation, no allegation could be established against Ram Asrey Singh and his name has not been included in the charge sheet. Therefore, the Investigating Officer has not found that Ram Asrey had no title to transfer the land and he has cheated by any person by transferring the land further.

14. The opposite party no.3 has categorically stated in the counter affidavit that he had purchased the land after making due inquiries from the Lekhpal and from the office of Sub-Registrar and he had purchased the land after being satisfied about title of the seller.

15. Co-accused Shiv Bhawan Singh, who is also said to be involved in commission of offence and against whom similar allegations have been levelled by opposite party no.3, has filed Application under Section 482 Cr.P.C. No.183 of 2024 wherein an interim order has been passed in his favour on 10.01.2024.

16. The conduct of the opposite party no.3 is also very relevant to be taken into consideration by this Court while exercising its inherent power under Section 482 Cr.P.C. He claims to have purchased the land for a sum of Rs.1.5 crores and in the sale deed he has disclosed the sale consideration to be merely Rs.22,00,000/- and he has paid stamp duty and registration fee accordingly. Although the applicant claims that some of the difference amount was paid towards mutation charges and charges for obtaining NOC from the Lucknow Development Authority and charges for sanction of building plan but neither

any building plan has been prepared by any person nor the extent of covered area or map sanction charges is mentioned. Therefore, the allegations of opposite party no.3 are too vague and in any case, it appears that the opposite party no.3 admits that for a transaction shown in the sale deed to be worth Rs.22,00,000/- only, he paid Rs.1.5 crores, out of which Rs.63,00,000/- were paid in cash. It appears that the opposite party no.3 has himself evaded payment of taxes, stamp duty and registration fee and he has thereby cheated the public at large.

17. The opposite party no.3 has alleged that he had purchased the land from co-accused Vijay Shanker Rai. The applicant was neither executant nor witness of the sale deed dated 18.02.2020 executed by Vijay Shanker Rai. Only allegation against the applicant is that he had acted as a broker in the deal and the opposite party no.3 had paid Rs.5,00,000/- to the applicant. It is not alleged that the broker was responsible for certifying title of the seller and the opposite party no.3 has himself stated that he had purchased the land after making due inquiries from the concerned Lekhpal and from the office of the Sub-Registrar and it is not the case of the opposite party no.3 that he had purchased the property from Vijay Shanker Rai acting on any misrepresentation made by the applicant regarding title of Vijay Shanker Rai. Therefore, allegations levelled by the opposite party no.3 against the applicant do not make out a case for trial of the applicant for commission of any offence under Sections 406 and 420 IPC. There is no allegation that the applicant had entered into a criminal conspiracy with any other accused persons and therefore, the applicant cannot be said to be responsible for any act committed by any other accused persons.

18. In the case of ***Indian Oil Corporation (supra)*** relied upon by learned counsel for applicant, the Hon'ble Supreme Court has taken notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. The observations of the Hon'ble Supreme Court in this regard are being reproduced below:-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an

impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636] this Court observed:

“ It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.”

19. In **State of Haryana and others vs. Bhajan Lal and others, reported in 1992 supplement (1) SCC 335**, the Hon’ble Supreme Court had mentioned the following categories by way of illustration where the proceedings can be quahsed in exercise of power under Section 482 Cr.P.C:-

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

20. The present case falls within the category (3) mentioned above and the criminal prosecution against the applicant is an abuse of process of law and the same deserves to be quashed.

21. Accordingly, the application is **allowed** and the summoning order dated 17.11.2023 passed by the Additional Chief Judicial Magistrate, Court No. 26, Lucknow in Criminal Case No. 124787 of 2023 as well as the charge sheet dated 06.07.2023 are hereby quashed.

Order Date :- 29.1.2024

Renu/-