

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6303 of 2024

Applicant :- Madhumati

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home Lko. And 3 Others

Counsel for Applicant :- Vinod Kumar, Anand Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard Sri Anand Pratap Singh, learned counsel for the applicant and Sri S.P. Tiwari, learned AGA for the State of U.P.

The present applicant has been filed for the following main relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned Judgment and order dated 15.06.2024, passed by the Session Judge, Gonda, in Criminal Revision No.298/2023 and order dated 18.07.2023 passed by learned Civil Judge(Jr.Div.)/Judicial Magistrate/F.T.C.-IInd, Gonda in Case No.1174/2023 upon the application Under Section 156(3) Cr.P.C. parties "Madhumati Versus Poonam Devi and others" and pleased to direct for registration of First Information Report and fair and proper investigation in the matter."

Relevant brief facts of this case are to the effect that vide order impugned dated 18.07.2023, the Civil Judge (J.D.)/F.T.C. (Second)/Judicial Magistrate, Gonda (hereinafter referred to as the "trial court") rejected the application preferred by the applicant under Section 156(3) Cr.P.C. registered as Misc. Case No. 1174 of 2023 (Madhumati vs. Poonam Devi and others). The order dated 18.07.2023 on reproduction reads as under:-

"पत्रावली आदेश हेतु पेश हुई। प्रार्थिनी के विद्वान अधिवक्ता को प्रार्थना पत्र अन्तर्गत धारा 156(3) दण्ड प्रक्रिया संहिता पर पूर्व में सुना गया।

प्रार्थिनी मधुमती पत्नी केदारनाथ निवासी ग्राम-इमिलिया, कस्बा व थाना खरगपुर, जिला गोण्डा की तरफ से विपक्षीगण पूनम देवी शुक्ला पत्नी श्री दिनेश कुमार, दिनेश कुमार पुत्र खूबचन्द्र, निवासीगण ग्राम-देवरिया खास, थाना खरगपुर, जिला गोण्डा व रामगोपाल पुत्र राजा राम, निवासी पूरे हरवाहन, कस्बा व थाना खरगपुर, जिला गोण्डा के विरुद्ध प्रार्थना पत्र अन्तर्गत धारा-156(3) दण्ड प्रक्रिया संहिता इस कथन के साथ प्रस्तुत किया गया है कि प्रार्थिनी के पति केदारनाथ पुत्र गंगाप्रसाद के नाम से भूमि 332/2-9500 हे० के 1/6 भाग स्थित मौजा खरगपुर टाउन एरिया में स्थित है। प्रार्थिनी के पति अपने स्वेच्छा से दिनांक 16.09.2022 को प्रार्थिनी के पक्ष में दाननामा लिखने गोण्डा रजि. कार्यालय आये, विपक्षी सं. 2,3 को गवाह बनाने के लिए बुलाकर लाए थे तथा विपक्षी संख्या 3 साथ में अपनी पत्नी विपक्षी सं. 1 को भी लेकर आए कि इनका गोण्डा में इलाज कराना है। प्रार्थिनी के पति ने प्रार्थिनी के पक्ष में अपने उक्त गाटा सं० में 44.30 हे. का दाननामा लिखाया और उसी दाननामा विलेख पर विपक्षी सं. 2,3 में अपने-अपने बतौर हासिया गवाह के रूप में हस्ताक्षर बनाया। विपक्षीगण जो आपस में पूर्व से षडयंत्र किए हुए थे, प्रार्थिनी के दाननामा के लिखाई के दौरान उक्त गाटा सं. 332 में से 0.0490 हे० भूमि का बैनामा विपक्षी सं० 1 पूनम देवी के पक्ष में दस्तावेज को पहले पेश करके पूनम देवी के पक्ष में पंजीकृत करवा लिया तथा साथ ही साथ दाननामा को प्रार्थिनी के पक्ष में पेश हुआ। जो प्रार्थिनी के नाम दाननामा विलेख का

पंजीयन किया गया। इस प्रकार विपक्षीय ने आपस में साठ-गांठ कूटरचना करते हुए प्रार्थिनी के दाननामा में गवाह बनने के आड़ में विपक्षी सं० 1 के पक्ष में कूटरचित ढंग से बैनामा का पंजीयन करवा लिया है जो एक कूटरचित दस्तावेज है। प्रार्थिनी के पति जो नशीली दवा का अधिक सेवन करते हैं, जिससे वे अक्सर बीमार रहते हैं जिस कारण प्रार्थिनी यह प्रार्थना पत्र दे रही है। घटना की सूचना दिनांक 29.09.2022 को थाना कोतवाली नगर, गोण्डा में दिया था तथा दिनांक 01.10.2022 को पुलिस अधीक्षक महोदय गोण्डा 10.10.2022 को डी०आई०जी० महोदय देवीपाटन मण्डल गोण्डा एवं पुनः दिनांक 16.11.2022 को एस०पी० साहब से मुलाकात एवं दिनांक 01.03.2023 को रजि० सूचना दिया लेकिन आज तक कहीं से कोई कार्यवाही नहीं हुई है इसलिए न्याय हेतु श्रीमान जी को प्रार्थनापत्र देना पड़ा।

उपरोक्त मामले में संज्ञेय अपराध का गठन हो रहा है और जालसाजी से संबंधित है इसलिए मुकदमा दर्ज करवाकर विवेचना कराये जाने की याचना की गयी है।

प्रार्थिनी मधुमती के प्रार्थना पत्र के सम्बन्ध में थाने से आख्या आहूत की गयी। थाने की आख्यानुसार प्रस्तुत मामले के संबंध में थाने पर अभियोग पंजीकृत नहीं है। प्रार्थिनी/आवेदक द्वारा अपने प्रार्थना पत्र के समर्थन में दाननामा दिनांकित 16.09.2022 एवं बैनामा दिनांकित 16.09.2022 की छायाप्रति तथा पुलिस अधीक्षक, गोण्डा को जरिये रजिस्टर्ड प्रेषित पत्र की रजिस्ट्री रसीद दाखिल किया गया है।

सुना तथा पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन एवं प्रार्थिनी/आवेदक द्वारा दाखिल दाननामा दिनांकित 16.09.2022 एवं बैनामा दिनांकित 16.09.2022 के अवलोकन से प्रस्तुत मामला सिविल प्रकृति का होना परिलक्षित होता है। उक्त वाद प्राकृतिक प्रवाह में प्रस्तुत नहीं किया गया है। ऐसी स्थिति में निम्नलिखित विधि व्यवस्था अवलोकनीय है-

In Priyanka Srivastava & Anr vs State Of U.P.& Ors on 19 March, 2015, CRIMINAL APPEAL NO 781 OF 2012, Hon'ble Supreme Court held that:

....19 In Anil Kumar v. M.K. Aiyappa[3], the two-judge Bench had to say this: "The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind.

....After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted.

माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि व्यवस्था *Mitesh Kumar vs State of Karnatka* 26 October, 2021, Cr. Appeal No. 1285 of 2021 में यह अभिकथन किया है कि इस अदालत ने अनगिनत उदाहरणों में एक सिविल विवाद के लिए आपराधिक रंग प्रदान करने के लिए अपनी अस्वीकृति व्यक्त की है तथा माननीय उच्चतम न्यायालय द्वारा एक और विधि व्यवस्था *Devendra Nath Bhattacharjee & Ors. Vs State of West Bengal & Anr* 1972 AIR 1607, 1972 SCR(3) 937, 1972 SSC(3) 414 में माननीय उच्चतम न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया गया कि *"if a bare perusal of complaint show that the essential ingredients of offence alleged are absent or that the dispute is a only in civil nature that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then these will constitute sufficient ground to dismiss the complaint under Section 203 Crpc."*

न्यायालय की राय में प्रार्थनापत्र के कथनों से किसी संज्ञेय अपराध का होना प्रकट नहीं होता है। चूंकि प्रस्तुत मामला सिविल प्रकृति का है। अतः आधार पर्याप्त नहीं है। उपरोक्त विधि व्यवस्थाओं,

थाने से प्राप्त आख्या व विवेचन के आलोक में न्यायालय की राय में प्रार्थिनी द्वारा प्रस्तुत प्रार्थना पत्र अंतर्गत धारा 156(3) दं०प्र०सं० में निरस्त किये जाने योग्य है।

आदेश

प्रार्थिनी मधुमती द्वारा प्रस्तुत प्रार्थना-पत्र अन्तर्गत धारा-156 (3) दण्ड प्रक्रिया संहिता निरस्त किया जाता है। पत्रावली दाखिल दफ्तर हो।"

The order dated 18.07.2023 was challenged by the applicant by means of a Criminal Revision No. 298/2023 (Madhumati vs. State of U.P. and others), which was dismissed by the Sessions Judge, Gonda (hereinafter referred to as the "revisional court") vide order dated 15.06.2024, under challenge. The relevant portion of the order dated 15.06.2024 on reproduction reads as under:-

"05- Grounds taken by the revisionist are as follows:-

It is submitted that while passing the impugned order, the learned trial court did not pass the impugned order in light of the observations made in case law Maksud Saiyed 2008 5 SCC 668, which was mentioned by it in the impugned order. Learned trial court did not apply his legal mind and wrongly interpreted that the whole matter covers in civil nature. The impugned order is not tenable. Hence, liable to be quashed.

06- After the issuance of notice, opposite party no.-2, 3 & 4 appeared before the court and filed objection paper no.-13 kha & 16 kha respectively mentioning therein that applicant/revisionist moved alleged application u/s 156(3) Cr.P.C. with the intention to harass them. After taking consideration of Rs. 2,50,000/-, husband of applicant/revisionist executed the alleged sale deed in favour of Poonam Devi. The alleged case is of civil nature and therefore revision against the same is not maintainable. A regular suit regarding cancellation of alleged sale deed is also pending before the court of Civil Judge, Gonda. Several other submissions have been made which are touched upon at length through objection paper no. 13 kha & 16kha. On the above grounds, it is urged to dismiss the instant revision.

07- Learned DGC (Crl.) for State/O.P. no.-1 also opposed the instant criminal revision and argued that there is no illegality in the impugned order. Learned Court below has passed the impugned order within its jurisdiction after going to the evidence and material available on record. Accordingly, urged for rejection of the instant revision.

08- I, have heard the learned counsel appearing for opposite parties and perused the record.

09- On perusal of record, it reveals that that an application U/s 156(3) of Cr.P.C. was moved by the applicant/revisionist before the learned Sub-ordinate Court stating that opposite parties in connivance to each other got executed a sale deed of land measuring area 0.0490 hect. of gata no. 332 in favour of opposite party no.-1 by way of forgery and cheating. The act done by opposite parties comes in the category of heinous offence.

10- On that very application learned sub-ordinate court called for report from the police station concerned and after perusal of the report and averments made in the application, the court observed that the averment made in the application are purely civil in nature for which applicant can seek the remedy before the proper

forum. It is also observed that applicant/revisionist has given civil matter the color of criminal case in light of the observations made by the Hon'ble Apex Court in the case of **Mitesh Kumar Vs State of Karnatka, Cr. Appeal No.-1285 of 2021 and Devendra Nath Bhattacharya & Ors Vs State of West Bengal & Anr, 1972 AIR 1607**. Consequently, rejected the application moved by applicant/revisionist u/s 156(3) Cr.P.C.

11- This Court has also gone through the contents enumerated in the application and found that the colour of criminal case is given to a civil dispute.

12- In case of **Usha Chakraborty & Anr. Vs. State of West Bengal & Anr. 2023 AIR 688 SC**, the Hon'ble Apex Court held that- "if the contents of allegation attract the civil dispute only then no criminal case could be continued." The similar view is expressed by the Hon'ble Apex Court in the case of **Commissioner of Police & Ors. Vs. Devender Anand & Ors. 2019 (4) CCSC 1955 (SC)**.

13- On the premise of law mentioned above, the facts mentioned in the application under Section 156(3) Cr.P.C. moved by the applicant/revisionist are scrutinized and from careful marshelling of the facts, it clearly transpires that the dispute only attracts a civil dispute.

14- The Hon'ble Apex Court in **State of Gujarat Vs. Afroz Mohammed Hasanfatta 2019 (107) ACC 295 (SC)** observed in Pare 49 that - "while hearing revision under Section 397 Cr.P.C., the Court does not sit as an Appellate Court and will not reappreciate the evidence unless the judgment of the Lower Court suffers from perversity. Based on the materials produced, when the Magistrate satisfied that there are sufficient grounds for proceeding. It would not be justified in examining the merits and demerits of the case and substitute its own view. When the satisfaction of the Magistrate was based on the materials placed before him, the satisfaction cannot be said to be erroneous or perverse and the satisfaction ought not to have been interfered with."

15- On the premise of law mentioned above, this Court has scrutinized the impugned order and found no legal or jurisdictional error in the impugned order. In connection with the impugned order any perversity is neither cited in the revision nor it emerges itself from the circumstances of the case. It is further noteworthy here that the re-appreciation of evidence is not required in the jurisdiction of revision. Thus, the revision is liable to be dismissed and the impugned order dated 18.07.2023 is liable to be affirmed.

Order

Criminal Revision 298/2023 is hereby rejected.

Order passed by learned Civil Judge (Jr. Div.)/Judicial Magistrate/ FTC-II, Gonda dated 18.07.2023 is hereby affirmed.

Consign as per law."

Learned counsel for the applicant stated that in passing the impugned orders dated 18.07.2023 and 15.06.2024, the trial court as also the revisional court committed manifest error of law and fact both because from a bare reading of the application under Section 156(3) Cr.P.C., the offence is made out against the opposite party Nos. 2 & 3, as such, indulgence of this Court is required in the matter.

Learned AGA, on the other hand, stated that the present application has no force and the same is not liable to be entertained by this Court for the reason that the trial court as also the revisional court considered the entire aspects of the case while passing the impugned orders including the facts pertaining to sale deed which according to the applicant was got executed and registered by playing fraud by the opposite party No. 3 in favour of the opposite party No. 2 and also the pending civil proceedings before the trial court and proposition settled in this regard. The prayer is to reject the instant application.

Considered the aforesaid and perused the record.

Undisputedly, as appears from the record, in Gata No. 332 area 2.9500 hectare situated at Khargupur Imiliya, Gonda, Kedarnath is the co-sharer of 1/6 share and accordingly, prior to deeds in issue, he was the owner of 0.4910 hectare of Gata No. 332.

The husband of the applicant namely Kedarnath executed a sale deed of 0.048 hectare of Gata No. 332 in favour of opposite party No. 2/Poonam Devi w/o Dinesh Kumar s/o Khub Chandra on 16.09.2022 registered at Serial No. 15048 from Page No. 173 to 188 of Zild Sankhya 12990.

A gift deed executed and registered by the husband of the applicant namely Kedarnath on 16.09.2022, a copy of which is on record as Annexure No. 9 to this application, shows that the same was registered at Serial No. 15049 from Page No. 173 to 188 of Zild Sankhya 12990. This gift deed is in favour of the applicant, as per which, the applicant became owner in possession of remaining 0.4430 hectare of Gata No. 332. This gift deed indicates that 0.048 hectare of Gata No. 332 has already been sold.

Both the aforesaid documents/deeds indicate that the witnesses who are common are Dinesh Kumar s/o Khub Chandra and Ram Gopal s/o Rajaram.

From the aforesaid documents/deeds, it is further evident that the applicant was present at the time of execution and registration of sale deed favourable to the opposite party No. 2 and accordingly, this Court is of the view that the story setup in the application under Section 156(3) Cr.P.C. is concocted.

After the aforesaid transfer, the applicant filed a civil suit bearing No. 2913 of 2022 before the Civil Judge (Junior Division), Gonda on 22.10.2022 for cancellation of sale deed.

It further appears from the record that after filing of suit, which was filed in the month of August, 2022, the applicant preferred the application under Section 156(3) Cr.P.C. dated 23.03.2023.

Upon due consideration of the aforesaid facts, this Court is of prima facie view that the trial court and also the revisional court have not committed any illegality or irregularity by passing the orders impugned dated 18.07.2023 and 15.06.2024.

To the view of this Court, the application under Section 156(3) Cr.P.C. was filed by the applicant only to create pressure upon the opposite party Nos. 2 & 3 so as to get some undue benefits and it is settled principle of law that the frivolous cases of such nature should not be entertained.

In view of aforesaid, the present application is ***dismissed***. Cost made easy.

Order Date :- 19.7.2024

Arun/-