

**Court No. - 13**

**Case :-** APPLICATION U/S 482 No. - 7409 of 2024

**Applicant :-** Jiyaul Islam And Another

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

**Counsel for Applicant :-** Anil Kumar Gupta, Smt. Ruchi Gupta

**Counsel for Opposite Party :-** G.A., Dharendra Pratap Sahi, Kunwar Rav, Kunwar Ravi Prakash

AND

**Case :-** APPLICATION U/S 482 No. - 2292 of 2022

**Applicant :-** Riyazul Islam And Another

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

**Counsel for Applicant :-** Ayodhya Prasad Mishra A.P. Mishra, Divya Tripathi, Kunwar Ravi Prakash

**Counsel for Opposite Party :-** G.A., Anil Kumar Gupta, Smt. Ruchi Gupta

**Hon'ble Saurabh Lavania, J.**

1. Heard learned Counsel for the parties and gone through the record.
2. In the Application U/s 482 No. 7409 of 2024, the applicants namely Jiyaul Islam S/o Late Jalaluddin and Smt. Roshan Bano wife of Jiyaul Islam have sought the following main relief:-

*"Wherefore it is most respectfully prayed that this Hon'ble court may graciously be pleased to quashed the entire criminal proceedings of criminal case number 94876/2022, State versus Jiyaulislam and one other arising out of First information report number 0120 of 2022 under section 420/504/506 of I.P.C. relating to Police station Wazirganj Lucknow now pending in the court of additional chief judicial Magistrate seventh Lucknow as well as impugned charge sheet dated 17.08.2022 submitted by the investigation officer against the*

*petitioners in aforesaid first information report as contained in annexure number -1 to this petition in the interest of justice.*

3. The above quoted relief, has been sought on the following grounds:-

*"(A)-BECAUSE prior to lodging F.I.R. against the petitioners and other three person, a civil suit is pending before the competent court of law between the petitioner number-01 and opposite party number- 02, in which those registered documents are under challenged, which are fraudulently executed by the complainant in favour of her younger son namely Riyazulislam.*

*(B)-BECAUSE petitioners are innocent and they have falsely been roped in the present case by the opposite party number-02 due to ulterior motive and just to exert pressure over the petitioner number- 01 to withdraw all the civil suits, which has been filed by the petitioner number-01 in respect of the land in question mentioned in the first information report annexed as annexure number -02 as stated above before the court of civil judge Hawali (J.D.) Lucknow and such type of evidence also collected by the investigation officer.*

*(C)-BECAUSE opposite party number 02 also falsely executed a gift deed and agreement to sale in favour of her younger son Riyazul Islam , therefore aggrieved person i.e. petitioner number-01 had filed a civil suit as well as lodged F.I.R. against the opposite party number-02 as well as other accused person at police station Wazirganj Lucknow, in which charge sheet has been submitted before the court concerned but present F.I.R. is nothing but it is a part of counterblast to exert pressure over the petitioners to withdrawal of civil suit and criminal case also.*

*(D)-BECAUSE firstly opposite party number-02 and her younger son namely Riyajulislam had tried to make pressure over the petitioner number-01 to withdraw all the civil suits as well as criminal proceeding but when they did not succeeded in their evil design work then opposite party number-02 had lodged after thought first information report through the application under section 156 (3) of Cr.P.C. contained as annexure number 03 to this petition.*

*(E)-BECAUSE civil litigation between petitioner number-01 and complainant /opposite party number-02 are going on before the competent court of law, i.e. since 26.03.2021 and opposite party number 02/complainant also contested the same. she had filed her written statement in civil suit bearing number 837/2021 & 840/2021 on 09.09.2021.*

*(F)-BECAUSE investigation officer had recorded the statement of complainant/opposite party number-02 under section 161 of Cr.P.C., in which she had admitted this fact that in respect of alleged Fake gift deed, a civil suit is pending since 2021 before the competent court of law but without recording any finding of fake gift deed by the civil court, commission of alleged offence cannot be presumed.*

*(G)-BECAUSE during investigation, investigation officer also perused the civil suit record in the concerning court and collected all the documentary evidence from the court of additional civil judge (J.D.) /Court number-48, Lucknow and made part of his report in case dairy parcha number-03 but in spite of this, investigation officer wrongly submitted charge sheet before the court and further learned magistrate also did not perused the record of prosecution properly and in arbitray manner he had taken cognizance.*

*(H)-BECAUSE there is no evidence against the petitioners, which could show that the petitioners are guilty or committed the crime in question, despite this fact the investigation officer submitted impugned charge sheet, under section 420/504/506, I.P.C. against them, only under the influence of opposite party number-02.*

*(I)-BECAUSE the impugned charge sheet has been submitted without conducting the investigation in fair and proper manner and on the impugned charge sheet the learned court below has taken cognizance and initiated criminal proceedings against the petitioners, passing summoning order dated 20.09.2022 without considering the evidence, available on record in totally illegal, arbitrary manner as well as without application of judicial mind.*

*(J)-BECAUSE at the time of taking cognizance the learned court below did not consider this fact that no any false representation has been made by the petitioner with intent to deceive to any body and also no any evidence is available to delivery of immovable property by dishonest manner, meaning thereby no ingredient of section 420 of I.P.C. is attracted as per evidence available on record but despite this fact the impugned charge sheet has been submitted against the petitioners only under the influence of opposite party number-02.*

*(K)-BECAUSE while taking cognizance, the learned magistrate did not consider this fact the matter in question is of purely civil in nature and civil suits are pending in this regard, in which opposite party number-02 is contesting the same and every witness of prosecution has given statement under*

*section 161 of Cr.P.C. that the civil dispute between the petitioners and opposite party number-02 is pending before the civil court.*

*(L)-BECAUSE neither the petitioners have committed the alleged offence in question nor such incident has taken place as alleged by the prosecution. This fact is itself clear from perusal of the evidence available on record and they have falsely been roped in the present case by the opposite party number-02 due to ulterior motive and in lure of land in question.*

*(M)-BECAUSE from perusal of the evidence, available on record, it is clear that no any offence under section 420/504/506 of I.P.C. is made out against the petitioners.*

*(N)-BECAUSE the entire proceedings, initiated against the petitioners on the basis of impugned charge sheet are clear cut abuse of process of law and also not sustainable in the eyes of law, as such the same are liable to be quashed.*

*(O)-BECAUSE from perusal of annexure mentioned above, no any alleged offence is made out against the petitioners but false charge sheet has been submitted by the investigating officer before the learned court below and learned court below also did not perused the evidence attached with charge sheet and summoning order has been passed as cyclostyle in nature. which is abuse of process of law.*

*(P)-BECAUSE learned court below unnecessary directing the petitioners/accused person to face the trial, which amount to miscarriage of justice and abuse of process of law."*

4. In the Application U/s 482 No. 2292 of 2022, the applicants namely Riyazul Islam S/o Late Jalaluddin and Aman S/o Riyazul Islam, have sought the following main relief:-

*"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the entire proceedings of Criminal Case No.60343 of 2021; State Versus Riyazul Islam and others, arising out of Case Crime No.147 of 2021, under sections- 419, 420, 467, 468, 471, 504, 506 I.P.C., relating to Police Station- Wazirganj, District- Lucknow, pending in the Court of learned Special Chief Judicial Magistrate, C.B.I. (Ayodhya Prakaran), Lucknow, as well as impugned chargesheet dated 4.6.2021, submitted by the Investigating Officer against the petitioners in aforesaid Case Crime number, as contained in Annexure no. 1 to this petition, so far as the same relate to the petitioners, in the interest of law and justice."*

5. The above quoted relief, has been sought on the ground that to a dispute of civil nature, as Civil Suit(s), for cancellation of registered agreement to sale dated 31.07.2019 and registered gift deed dated 31.07.2019 filed by opposite party no.2/Sri Jiyaul Islam are pending and in the same Smt. Kaiser Jahan (mother of applicant no.1/Riyazul Islam and opposite party no.2/Jiyaul Islam) is opposing the claim of opposite party no.2/Jiyaul Islam.

6. Thus, both the aforesaid applications have been filed challenging the pending criminal proceedings, indicated hereinabove, on the ground to the effect that to a civil dispute a criminal colour has been given.

7. It would be apt to indicate that applicant no.1 Jiyaul Islam and applicant no.2 namely Smt. Roshan Bano wife of Jiyaul Islam/applicant no.1, in the Application U/s 482 No. 7409 of 2024 are son and daughter-in-law of opposite party no.2/Smt. Kaiser Jahan, respectively.

8. In Application U/s 482 No. 2292 of 2022, the opposite party no.2/Jiyaul Islam, who is applicant no.1 in Application U/s 482 No. 7409 of 2024, is real brother of applicant no.1/Riyazul Islam and real uncle of applicant no.2/Aman.

9. Brief facts of the case, as stated in Application U/s 482 No. 7409 of 2024, are as under:

(i) Opposite party no.2/Smt. Kaiser Jahan, as per Muslim Personal Law, had gifted 0.6376 Hect. land of Gata No. 322, situated at Village Maleshia Mau, District Lucknow, way back

in the year 1999 i.e. on 02.06.1999 and thereafter the opposite party no.2/Smt. Kaiser Jahan, executed a registered gift deed as well as agreement to sale with possession in favour of her son Riyazul Islam/(applicant no.1 in Application U/s 482 No. 2292 of 2022) on 31.07.2019, and as such the applicants have not committed any crime as alleged in the FIR registered as FIR/Case Crime No. 0120/2022 under Sections 419/420/467/468/471/120-B IPC, Police Station Wazirganj, District Lucknow.

(ii) Thus, the case of the applicants is based upon the oral Gift/Hibanama.

(iii) The aforesaid is evident from the copy of the plaint of Regular Suit No. 837 of 2021 filed by applicant no.1/Jiyaul Islam impleading opposite party no.2/ Smt. Kaisar Jahan, Riyazul, Maser, Nighat, Johara, Ishrat, Hashmi and Sanno, as defendants, which was instituted seeking decree of declaration in relation to registered agreement to sale dated 31.07.2019 executed by opposite party no.2/Smt. Kaisar Jahan in favour of her son Riyazul Islam/applicant no.1 in (Application U/s 482 No. 2292 of 2022) as also seeking decree of perpetual injunction and a copy of plaint of Regular Suit No. 840 of 2021 filed by applicant no.1/Jiyaul Islam impleading opposite party no.2/ Smt. Kaisar Jahan, Riyazul, Maser, Nighat, Johara, Ishrat, Hashmi and Sanno as defendants seeking decree of declaration related to registered gift deed dated 31.07.2019 executed by opposite party no.2/Smt. Kaiser Jahan in favour of

her son Riyazul Islam (in Application U/s 482 No. 2292 of 2022).

11. It would be apt to indicate that there is no document on record from which it can be deduced that after the alleged oral Gift/Hibanama as per Muslim Law the name of applicant was recorded in the revenue records i.e. Khasra or Khatauni (called as "record of rights" in the Land Revenue Act, 1901 as also U.P. Revenue Code, 2006) or the record of municipality/municipal corporation.

12. Brief facts of the case, as stated in Application U/s 482 No. 2292 of 2022, are as under:-

(i) Recorded tenure holder namely Smt. Kaiser Jahan on her own volition/free will executed a gift deed dated 31.07.2019 and agreement to sale dated 31.07.2019, which is apparent from the contents of Gift deed as also the registered agreement to sale, in favour of her son i.e. applicant no.1 namely Riyazul Islam in application 482 No. 2292 of 2022 and the same are registered document. As such the offence under Sections 419/420/467/468/471/120-B IPC, indicated in the FIR/Case Crime No. 147 of 2021, as also in the charge-sheet submitted by Investigating Officer, Police Station Wazirganj, District Lucknow, are not made out.

(ii) Two suits i.e. Regular Suit No. 837 of 2021 and Regular Suit No. 840 of 2021 filed by opposite party no.2/informant namely Jiyaul Islam, are pending consideration. As such indulgence of this Court is required.

13. Considering the aforesaid and perused the records.

14. From the aforesaid facts in brief, indicated above, it is crystal clear that dispute relates to a property belonging to Smt. Kaiser Jahan (mother of Jiyaul Islam and Riyazul Islam, who are claiming the rights over the property of Smt. Kaiser Jahan).

15. In the case of *Paramjeet Batra Versus State of Uttarakhand and Others; (2013) 11 SC 673*, Hon'ble Apex Court has observed that a complaint disclosing civil transactions may also have a criminal texture, but the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

16. Thus, taking note of aforesaid facts of the case, wherefrom it is apparent that the dispute between the parties relates to a piece of land i.e. 0.6376 Hect. land of Gata No. 322, situated at Village Maleshia Mau, District Lucknow and also that Jiyaul Islam/applicant no.1 in Application U/s 482 No. 7409 of 2024, has already filed two suit Nos. 837 of 2021 and 840 of 2021, detailed above, and the original owner of the said land i.e. opposite party no.2/Kaisar Jahan, mother of applicant no.1 in Application U/s 482 No. 7409 of 2024, is opposing the claim, this Court is of the view that dispute between the parties, who are blood relatives, is essentially of a civil nature and also the observations of Hon'ble Apex Court in

the judgments in the case of *Usha Chakraborty and another Versus State of West Bengal and another; 2023 SCC OnLine SC 90, Naresh Kumar and another Versus State of Karnataka and another; 2024 SCC OnLine SC 268.*, this Court is of the view that interference in the matter is required.

17. Accordingly, the present application is ***allowed***. Consequently, the entire proceedings of FIR No 0120 OF 2022(Supra) subject matter of Application U/s 482 No. 7409 of 2024 and Case Crime No. 147 of 2021 (Supra) subject matter of Application U/s 482 No. 2292 of 2022, indicated in the prayer(s) sought in these Application(s), quoted above, are hereby quashed.

18. Office/Registry is directed to send the copy of this order to the court concerned through email/fax for necessary compliance.

**Order Date :- 27.09.2024**

Jyoti/-