

ilam Chand and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Feb-01-2013

Judge : Aditya Nath Mittal

Appeal No. : Criminal Revision Nos. 1151 of 2010 & 773 of 2010

Appellant : ilam Chand and Others

Respondent : State of U.P. and Another

Judgement :

Aditya Nath Mittal, J.

Both these criminal revisions have been filed against the order dated 27.11.2009 passed by Judicial Magistrate, Court No. 2, Saharanpur in Complaint Case No. 523 of 2006 (Subheram Vs. Naresh and others), under Sections 218, 420, 467, 468, 471 and 120-B I.P.C.

The complainant had filed an application under Section 156(3) Cr.P.C. against the revisionists alleging that three different suits regarding plot no.1435 area 0.102 hectare situated at Islamnagar under Police Station Rampur, District Saharanpur are pending in different courts and the accused persons have knowledge of interim orders passed therein. The plot no. 1435 was recorded as pits for manure in the year 1410 fasli and prior to it the accused no. 1, who is lekhpal, has no right to change the entries of khasra. The accused persons no. 2 to 15 had filed the copy of khasra in Suit No. 608 of 2000 which has been issued on 27.10.2002 in which

the entries regarding pits of manure has been changed to Ram Leela Sthal and Holika Dahan Sthal. This manipulation has been done by accused no. 1 in conspiracy with accused persons no. 2 to 15 by misusing his post. The accused persons no. 2 to 15 intend to take benefit of this entry in pending suits. The complainant met with accused no. 1 on 28.12.2002 then the accused no. 1 with a view to misguide the complainant again made changes regarding the said plot and entered the pits for manure upon area 0.102 hectare and below that the area 0.068 hectare was entered as Ram Leela Sthal and Holika Dahan Sthal, thereby the total area of aforesaid plot has been enhanced from 0.102 hectare to 0.170 hectare. The accused no. 1 in collusion with other accused persons has forged documents and thereby they have committed offence punishable under Sections 218, 420, 467, 468, 471 and 120-B I.P.C.

After recording the statement of complainant under Section 200 Cr.P.C. and statement of Brajpal S/o Jagdish under 202 Cr.P.C., the impugned order, summoning the accused persons, has been passed.

Heard learned counsel for the revisionists and learned A.G.A.

This revision has been filed on the ground that admittedly the document was produced in the court and only the court has power to take cognizance in respect to the said document. Admittedly, a civil suit being Original Suit No. 608 of 2000 is pending in the competent court of law, in which the question of ownership is involved, as such the complaint filed by the opposite party no. 2 is not maintainable as the dispute between the parties is of purely civil consequences. The revisionists no. 1 to 12 are office bearers of Shiv Mandir Sudhar Samiti and revisionists no. 13 and 14 are not office bearers of the said Samiti. The revisionists have no personal interest over the property in dispute and the opposite party no. 2 has falsely implicated the revisionists in the complaint case. The complaint has been instituted illegally and mala fide. This fact is admitted to opposite party no. 2 that a patta for the residential purpose was issued in favour of Baljeet S/o Mathura, Roshan Lal S/o Baljeet in respect of Plot No. 1436 who made an application for change of plot number, which was allowed by Sub Divisional Officer on 8.11.1993. It is also admitted case of the opposite party no. 2 that he

purchased the disputed land from the previous allottee on 20.10.2003, as such he is the owner of the disputed property. A suit for cancellation of patta was filed and vide order dated 31.7.2003 passed by Additional Collector (Finance and Revenue) the patta was cancelled. This order was challenged before the Board of Revenue and the revision filed by opposite party no. 2 has been dismissed on 18.11.2005. Therefore, opposite party no. 2 is neither the owner of the property in dispute nor he has an interest in the said property. Therefore, the summoning order dated 27.11.2009 is bad in the eyes of law. The land belonging to khasra no. 1435 is the land of public utility and, therefore, no patta of the said land can be granted.

Learned counsel for the revisionists has submitted that by the averments of the complaint as well as by the statements of the witnesses, the offences punishable under Sections 218, 420, 467, 468, 471 and 120-B I.P.C. are not made out. It has further been submitted that the complaint is barred by provisions of Section 195(2) of the Cr.P.C. for want of prosecution sanction. It has further been submitted that complainant has no title or possession over the land in dispute and civil suits regarding the same are already pending, therefore, the criminal complaint was not maintainable.

Learned A.G.A. and learned counsel for the opposite party no. 2 have defended the impugned order.

The opposite party no. 2 had filed the present complaint on the ground of alleged forgery committed in the revenue records regarding plot no. 1435 in collusion with office bearers of Shiv Mandir Sudhar Samiti. Admittedly, the complainant is not recorded tenure holder of the land in dispute.

Learned counsel for the revisionists has relied upon the judgment reported in the case of Mohd. Ibrahim and others Vs. State of Bihar and another [(2009) 8 SCC 751] in which Hon'ble the Apex Court has held as under : -

"16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person

executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

Learned counsel for the revisionists has further relied upon the judgment reported in the case of M/s. Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others [1998 (36) ACC 20] in which it has been held that :-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the

truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Learned counsel for the revisionists has further relied upon the judgment reported in the case of S.W. Palanitkar and others Vs. State of Bihar and another [2002 (44) ACC 168] in which it has been held that :-

"14. In case of a complaint under Section 200 of Criminal Procedure Code or IPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words 'sufficient ground' used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction."

It is admitted case of the parties that litigations regarding the said piece of land are pending before different courts including the revenue court. In the complaint itself, the complainant has not alleged any infringement of his individual right over the plot in dispute. It is also not clearly stated in the complaint that as to when aforesaid criminal conspiracy of accused persons no. 2 to 15 took place with accused no. 1. There are no details of alleged fraud. The complainant has stated in his statement that he had purchased the said plot no. 1435 area 0.102 hectare by a sale deed, but no such details of any sale deed has been given by the complainant in his statement. Moreover, admittedly the total area of 0.102 hectare was recorded as pits for manure and nowhere the name of complainant was recorded. Regarding remaining area 0.068 hectare, if it has been shown as Holika Dahan Sthal then also there appears to be no infringement of any valuable right of the complainant. The Shiv Mandir Sudhar Samiti in Suit No. 608 of 2000 pending before Civil Judge (Senior Division), Saharanpur has alleged in the complaint that the plot no. 1435 area 0.102 hectare was recorded as pits for manure which was levelled with the help of villagers and which is being used for religious purposes

and Ramleela. It is also admitted that the complainant was granted patta upon plot no. 1436 and subsequently, the plot no. 1435 was changed then also the said patta has been cancelled by the competent authority and the revision has also been dismissed by the Board of Revenue. There were sufficient provisions in the U.P. Zamindari Abolition and Land Reforms Act regarding safeguard of public land and for declaration of rights. Certainly if any manipulation has been done by the lekhpal concerned, the revenue authorities have the power to initiate proceedings against such lekhpal. Even the alleged change in the nature of land is taken into consideration, then also it is not a case to show that such change has been done in collusion or conspiracy with accused persons no. 2 to 15 or that accused persons no. 2 to 15 have been benefited personally in any way.

Perusal of the impugned order reveals that learned lower court has simply narrated the contents of complaint and has mentioned the statements of the witnesses and has summoned the accused persons.

The complainant in his statement under Section 200 Cr.P.C. has given the details of pending litigation. It is admitted that the entries regarding plot no. 1435 area 0.102 hectare is still mentions as pits for manure, but no entry regarding area 0.068 hectare has been entered as Holika Dahan Sthal. It is a matter of record that what is the total area of plot no. 1435 and the revenue authorities are best judge to see the entries of revenue records and the total area of the disputed plot no. 1435. Admittedly, there is no change in the original area of the said plot. It is also admitted that suits before various authorities are still pending regarding the same plot, hence the dispute appears to be a dispute of civil nature.

In *Khurram Siddiqui Vs. State of U.P. and others* [2010 (9) ADJ 599], this Court has held that whether or not the sale deed is a forged document, can only be decided by the civil court and when a litigation is also pending in the revenue court, then the criminal proceedings with regard to a civil dispute should not be permitted to proceed.

For the criminal proceedings the court while summoning the accused for trial has to see whether any prima facie case is made out or not. The words 'sufficient ground' used under Section 202 Cr.P.C. have to be construed to mean the

satisfaction that a prima facie case is made out against the accused and no sufficient ground for the purpose of conviction.

In the present case the date, time and place of alleged offence has not been given by the complainant and admittedly there are civil and revenue proceedings pending before different court, hence there was no prima facie evidence to show that the alleged copy of khasra which the complainant alleges to have been given by accused no. 1 (Naresh Kumar, lekhpal).

Learned counsel for the revisionists has submitted that Section 195 Cr.P.C. also debars from taking of cognizance against government servant except upon a written complaint of the competent person.

Hon'ble the Apex Court in the case of Sachidanand Singh Vs. State of Bihar [1998 AIR (SC) 1121] and this Court in the case of Bahadur Vs. Chandra Bhushan and another (2000 All JIC 362) have held that Section 195 (1)(b)(ii) Cr.P.C. was not applicable to a case where forgery of documents was committed before it was produced before the court.

Admittedly, in the present case no forgery in the court has been committed, but allegedly a forged document has been issued. None of the courts has yet come to the conclusion that forged entries have been made in the khasra regarding plot no. 1435. Therefore, simply by statement of the complainant and the witnesses it cannot be said that the alleged khasra is a forged document prepared by Naresh Kumar, lekhpal in collusion with other accused persons. In this case it is clear that learned Magistrate has not carefully scrutinised the evidence brought on record and has set the criminal proceedings into motion without judicial scrutiny. I am of the view that main ingredients for making out the offences punishable under Sections 218, 420, 467, 468, 471 and 120-B I.P.C. are lacking in the instant case and the instant complaint appears to have been without any sufficient evidence.

For the aforesaid facts and circumstances, both the revisions are allowed. Impugned summoning order passed in Complaint Case No. 523 of 2006 is set aside.