Kanwar Singh and anr. Vs. State of Uttarakhand and anr.

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Court : Uttaranchal

Decided On : Dec-03-2009

Judge : Alok Singh, J.

Appellant : Kanwar Singh and anr.

Respondent : State of Uttarakhand and anr.

Advocate for Def. : Mr. Vinod Sharma

Advocate for Pet/Ap. : Mr. Sandeep Tandon

Disposition : Petition allowed

Judgement :

Alok Singh, J.

1. Mr. Sandeep Tandon, learned Counsel for the applicants/petitioners.

2. Mr. Prabhakar Joshi, learned Brief Holder for the State of Uttarakhand/respondent No. 1.

3. Mr. Vinod Sharma, learned Counsel for the respondent No. 2.

4. Heard.

5. Present petition is filed invoking Section 482 of Code of Criminal of Procedure assailing the cognizance order dated 30.12.2003, chargesheet dated 12.10.2003 in case crime No. 124 of 2002 (30 of 2003) under Section 420, 467, 468, 471, 120B, 504, 506 IPC. Further prayer was made by the petitioners to quash the entire criminal proceedings on the file of Chief Judicial Magistrate, Dehradun in criminal case No. 2728 of 2003 (State v. Kanwar Singh and Ors.).

6. Brief facts of the present case are that petitioner No. 2 is son of petitioner No. 1. Name of petitioner No. 1 was mutated in the revenue record vide order dated 07.01.1992 passed by the Record Officer. Respondent No. 2, co-owner of the petitioner No. 1, moved an application for recalling the mutation order in favour of the petitioner No. 1 vide order dated 07.01.1992. Learned Record Officer, Dehradun vide its judgment dated 30.08.1994 rejected the application for recall of respondent No. 2 herein saying that petitioner No. 1 name was mutated in place of Preetu. It is further observed by the Record Officer that petitioner No. 1 name was never recorded/mutated for any share of the respondent No. 2 herein. Petitioner No. 1 vide registered sale deed dated 26.02.2001 transferred/sold the land in favour of Dharam Singh and Vishal Vohra (third party of this petition).

7. After the aforesaid sale deed respondent No. 2 herein moved an application under Section 156(3) Code of Criminal of Procedure against the present petitioners and Dharam Singh and Vishal Vohra (Purchasers of land from Kanwar Singh) and Ganga Prasad Uniyal. Learned Chief Judicial Magistrate, Dehradun vide order dated 23.10.2002 directed the P.S. - Vikas Nagar to register First Information Report and investigate the matter. Pursuant to order of Chief Judicial Magistrate, First Information Report case crime No. 124 of 2002 was registered on 25.10.2002 against the petitioners and three others, as mentioned in the application under Section 156(3) Code of Criminal of Procedure.

8. The main contention in the First Information Report is that petitioner No. 1 Kanwar Singh is the co-owner with the complainant over the property in dispute having half share therein, however, he with the intent to grab the property of respondent No. 2 herein sold the property in favour of Dharam Singh and Vishal Vohra vide sale deed dated 26.02.2001. It is further alleged in the First Information

Report and application under Section 156(3) that in the mutation proceedings pursuant to the sale deed executed by the petitioner No. 1 herein purchasers and sellers (petitioner No. 1 herein) with the collusion of Ganga Prasad Uniyal prepared affidavits of no objection in the name and under signature of respondent No. 2 and his brother. It is further alleged that neither respondent No. 2 nor his brother ever signed no objection/affidavits, hence, petitioners and purchasers are guilty of fraud, forgery and preparation of false papers (affidavits).

9. Police/Investigating Agency, after investigation, submitted impugned chargesheet dated 12.10.2003 against the sellers/petitioners herein and opted not to challan the purchasers. Chargesheet was submitted under Sections 420, 461, 468, 471, 120B, 504, 506 IPC. Learned Magistrate vide impugned order dated 30.12.2003 took cognizance thereon against the petitioners. Feeling aggrieved from the chargesheet and order taking cognizance petitioners have approached this Court by invoking Section 482 of Code of Criminal of Procedure.

10. First argument of Mr. Sandeep Tandon, learned Counsel for the petitioners is that this is a case of civil nature given colour of criminal offence, hence, entire criminal proceedings should be quashed. His second argument is that it is the purchaser, who has to get mutation done in his favour, hence, petitioners are nowhere involved in moving mutation application and filing of so called fabricated affidavits of respondent No. 2 and his brother containing no objection on their behalf in the mutation proceedings.

11. Mr. Vinod Sharma, learned Counsel appearing for the respondent No. 2 and Mr. Prabhakar Joshi, learned Brief Holder appearing for respondent No. 1 contended that in the present case offence of fraud is not pertaining to the execution of sale deed rather offence of fraud is pertaining to the preparation of the false and fabricated affidavits/no objection on behalf of complainant (respondent No. 2 herein) and his brother, hence, even if main dispute is pertaining to the sale deed, however, preparation and filing of the affidavits of no objection containing false and fabricated signatures of respondent No. 2 and his brother is a criminal offence for which proceedings should not be quashed.

12. Hon'ble Apex Court in the matter of G. Sagar Suri v. State of U.P. reported in : 2000 (2) SCC 636 in paras 7 and 8 has observed as under:

7. It was submitted by Mr. Lalit, learned Counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference, may be made to two decisions of this Court in Pepsi foods Ltd. v. Special Judicial Magistrate and Ashok Chaturvedi v. Shitul H. Chanchani wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. 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.

13. Yet again Hon'ble Apex Court in the matter of Mohd. Ibrahim v. State of Bihar reported in 2009 (3) SCC (Cri) 929 in para 8 has observed as under:

8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the

accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. See G. Sagar Suri v. State of U.P. and Indian Oil Corporation v. NEPC India Ltd. Let us examine the matter keeping the said principles in mind.

14. Hon'ble Apex Court in the matter of CBI v. Ravi Shankar Srivastava reported in : 2006 (7) SCC 188 has observed in para 7 as under:

7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Court. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle 'quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipase esse non potest' (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by test specifically laid down in the Section itself. It is to be exercised ex

debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if allegations are accepted in toto.

15. Hon'ble Apex Court in the matter of Dhariwal Tobacco Products Limited v. State of Maharastra reported in 2009 (1) SCC (Cri) 806 and in the matter of Mohd. Ibrahim (supra) has placed reliance on the earlier judgment of G. Sagar Suri (supra).

16. In view of the dictum of Hon'ble Apex Court the settle law would be if court finds that dispute of civil nature is given colour of criminal offence to harass the accused and to apply pressure on the accused for settling the score then High Court must come forward invoking power under Section 482 Code of Criminal of Procedure to prevent the abuse of process of law and must quash such proceedings.

17. Keeping in mind the ration laid down by the Hon'ble Apex Court, now I proceed to find out as to whether present is the case where civil dispute is given colour of criminal offence and as to whether present criminal proceeding would amount to abuse of process of law.

18. Admittedly, complainant/respondent No. 2 first of all tried his luck by moving recall application getting the mutation in favour of the petitioner No. 1 recalled. Recall application moved by respondent No. 2 was rejected way back in the year 1994 as mentioned hereinabove vide order dated 30.08.1994.

19. Respondent No. 2 thereafter could have filed suit for declaration or partition. However, he did not take any appropriate legal action. Even thereafter when sale deed in question was executed by petitioner No. 1 in the year 2001, respondent No. 2 could have filed suit for cancellation of sale deed executed by petitioner No. 1 but he did not do so. Instead respondent No. 2 filed application under Section 156(3) resulting in the impugned First Information Report and chargesheet. Hence, present is the clear case where civil dispute is given colour of criminal offence. Criminal case pending in the court below seems to be for settling the score with the petitioners.

20. From the contents of First Information Report and from the argument of learned Counsel for the respondents as mentioned hereinabove the only grievance is pertaining to the filing of no objection affidavits in the mutation case pursuant to the sale deed of 2001. It is a common practice that mutation is always applied and sought by the purchaser and not by the seller. Purchaser of the sale deed of 2001 were not chargesheeted/challaned who could be said having filed forged no objection in the mutation case. However, in any event seller i.e. petitioners herein were not required to file any no objection in the mutation case. Hence, it could not be said that alleged false no objection/affidavit was filed by the petitioners (seller).

21. Sections 415 and 463 of IPC reads as under:

415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'

463. Forgery - whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury to public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to

commit fraud or that fraud may be committed, commits forgery.

22. Cheating is defined as when someone induces other for wrongful gain to himself and wrongful loss to that particular person.

23. As per definition of forgery if someone makes any false documents with intent to cause any damage to any person or to claim or title to part of property.

24. By way of mutation in favour of the purchaser, seller (petitioners) would have not gained anything. Not only this, as per admitted case petitioner sold his half share in the property. Petitioners have not sold any share of the complainant/respondent No. 2. In view of this, there can be no wrongful loss to the complainant/respondent No. 2. Moreover, by preparing the alleged false no objection/affidavit, petitioners never claimed any title over the property of the complainant nor caused any damage to the respondent No. 2. Hence, in my opinion there can be no offence under Sections 420, 467, 468, 471 IPC.

25. Police/Investigating Officer has not challaned purchasers. In the absence of purchasers, there can be no question of Section 120B IPC.

26. The allegations in the First Information Report do not make out the ingredients of an offence under Section 504 IPC. Contents of First Information Report do not show that petitioners ever intended to insult the complainant with intent to provoke breach of peace. Likewise ingredients of an offence under Section 506 IPC are also missing. No specific words utter by the petitioners giving life threat are mentioned in the First Information Report. Entire allegations are casual in nature.

27. In view of the above discussion I do not think it would be proper to direct the petitioners to face trial pursuant to the chargesheet in question. If petitioners are directed to face trial it would amount to harassment to the petitioners and would also amount to abuse of process of law.

28. I, therefore, allow the present petition and quash the cognizance order dated 30.12.2003, chargesheet dated 12.10.2003 in case crime No. 124 of 2002 (30 of 2003) under Section 420, 467, 468, 471, 120B, 504, 506 IPC and the entire criminal proceedings pending in the court of Chief Judicial Magistrate, Dehradun in

criminal case No. 2728 of 2003 (State v. Kanwar Singh and Anr.).