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Court : Uttaranchal

Decided On : Apr-16-2010

Judge : Dharam Veer, J.

Appellant : Arvind Rawat

Respondent : State of Uttarakhand and ors.

Disposition : Petition dismissed

Judgement :

Dharam Veer, J.

1. By means of this writ petition, the petitioner has prayed to issue writ of certiorari quashing the impugned FIR dated 8.3.2010 lodged by the respondent No. 3 as Case Crime No. 83/2010 under Section 420/467/468/471/504/120-B/507 IPC at P.S. Kotwali, Dehradun.

2. Heard learned Counsel for the parties and perused the entire material on record.

3. Before going into the merits of the case, it is pertinent to mention here that the present petitioner had already filed the writ petition bearing No. 186 of 2010, Arvind Rawat v. State of Uttarakhand and Ors., however after the detailed arguments were advanced by the parties, when the petition was going to be

decided by the Court on merits, learned Counsel appearing for the petitioner sought permission of the Court to withdraw the petition with liberty to expedite his bail application and accordingly, on 18.3.2010 the writ petition was dismissed as withdrawn.

4. The facts of the case are that an FIR was lodged by the respondent No. 3-Kulveer Singh against the petitioner-Arvind Rawat and other accused Gajendra Singh Panwar and Jai Chandra Thakur with the averments that after hatching a conspiracy and by way of cheating, the petitioner with other co-accused sold the property measuring area 2485.76 sq. meter in a sale consideration of Rs. 2,60,00,000/- to the complainant and his partners. The sale deed of the said land was executed by accused Jai Chandra Thakur and the petitioner Arvind Rawat (being power of attorney). Even on 13.10.2008, the petitioner also gave an affidavit to the effect that the land in question is fair and free from all encumbrances. In the month of April, 2009, the complainant received a notice issued by the court of Civil Judge (Junior Division) Dehradun, according to which 1/3rd portion of the said property had already been sold by accused Jai Chand Thakur to one Smt. Sneh Lata Bahakhundi and the civil litigation for partition pertaining to the said land was pending before the court of Civil Judge (Junior Division) Dehradun. The petitioner was having full knowledge about the said facts on the date of execution of sale deed. When the complainant and his partners talked to the petitioner, then the petitioner apologized for the same and said that everything would be settled and they would get the full land, however thereafter the petitioner started avoiding the complainant. On 3.2.2010 at about 8 PM, when the complainant talked to the petitioner, then he uttered filthy abuses and threatened to his life. It was further stated that the petitioner, while knowing that he was not the owner of 1/3rd of the disputed land, sold the entire land to the complainant with the intention to cheat the complainant and executed the sale deed. With the same averments, the FIR was lodged by the complainant-Kulveer Singh.

5. Learned Counsel for the petitioner argued that the petitioner has been falsely implicated in the above case and he has not committed any embezzlement or financial irregularity. Learned Addl. G.A. for the State vehemently opposed the

submission raised by learned Counsel for the petitioner and stated that the petitioner, being a power of attorney, has sold the entire land to the complainant and his partners and executed the sale deed, even it was well within his knowledge that 1/3rd portion of the land in dispute had already been sold to one Smt. Sneh Lata Bahukhandi and even a civil suit for partition was also pending before the court of Civil Judge (Junior Division) Dehradun.

6. It was next argued on behalf of the petitioner that the petitioner was duly authorized by the vendors of the property vide power of attorney dated 21.5.1999 and 25.3.2004. Learned Addl. G.A. per contra submitted that in view of this contention of the petitioner itself, the malafide is proved on the part of the petitioner for the reason that 1/3rd portion of the said land was sold on 5.1.1989 while on 13.10.2008, the petitioner-Arvind Singh Rawat and co-accused executed the sale deed of the entire land in question. Even the petitioner was having the full knowledge of suit filed before the court of Civil Judge (Jr. Div.) Dehradun since 20.8.1999 as his signatures are also shown in the order sheet of the case. He further submitted that in this fraudulent transaction, the petitioner has cheated the complainant by selling the entire property in question though 1/3rd of the property had already been sold and thus, the complainant and his partners have been cheated by the petitioner by defrauding them.

7. It was lastly argued on behalf of the petitioner that the petitioner executed the sale deed on behalf of co-owner for 2/3rd share whereas co-accused Jai Chand Thakur personally executed the sale deed for his 1/3rd share in question. Per contra, learned Addl. G.A. argued that the petitioner in connivance with co-accused, sold the entire land to the complainant and his partners and it is nothing but a hatching of the conspiracy by the petitioner and co-accused. Moreover, it is matter of investigation and the entire picture would be clear on completion of investigation.

8. No other point was argued.

9. After considering the entire facts and circumstances of the case and upon hearing learned Counsel for the parties as well as on perusal of FIR and other documents on record, considering the fact that the petitioner in connivance with

other co-accused, sold the entire property in question while knowing and having the knowledge that 1/3rd portion of the said land had already been sold to one Smt. Snehlata Bahukhandi on 5.1.1989 and that the complainant and his associates have been defrauded and cheated by the petitioner and his associates, I am of the view that at this stage, prima facie offences punishable under Sections 420/467/468/471/504/120-B/507 IPC are made out against the petitioner and he is not entitled for any relief by this Court and the petition is liable to be dismissed summarily.

10. Therefore, the writ petition lacks merits and is accordingly dismissed in limine.

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