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Court : Allahabad

Decided On : Jan-21-2011

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Misc. Writ Petition No. 11746 of 2009

Appellant : Sohrat

Respondent : State of U.P. and Others

Advocate for Def. : Sri. Mahendra Pratap Yadav

Advocate for Pet/Ap. : Sri. Balram Mishra

Judgement :

1. This petition under Article 226 of the Constitution of India has been filed with a prayer to issue a writ, order or direction in the nature of certiorari quashing the order dated 2.9.2005 passed by the Ist Addl. Civil Judge (Junior Division), Basti in criminal complaint case no. 297 of 2004 (Ram Samujh v. Sohrat & others), under Sections 419, 420, 467, 468 IPC and judgment and order dated 2.8.2008 passed by the Sessions Judge, Basti in Criminal Revision No. 746 of 2005 (Sohrat & others v. State of U.P. & others).

2. The facts are that respondent no. 2 filed a criminal complaint in the court of J.M. Sadar against the petitioner and co-accused Ajmat Ali, Ram Kewal, Hari Prasad and Ram Sagar alleging therein that he had executed a gift deed in favour of his

nephew Ram Bariksha son of Paras Nath on 1.11.2003 and had also executed will in favour of Ram Bariksha, respondent no. 3. His action was not liked by his brothers Chaitu and Sohrat, and they, with intention to grab the property of the complainant, prepared a forged ante-dated document of 15.7.1999, which was not actually executed by the complainant, nor bears his thumb impression, nor the complainant borrow any money from Sohrat and Cahitu and did not deliver the possession of the property in their favour. This document was prepared with the help of Ajmat Ali, Ram Kewal, Hari Prasad and Ram Sagar. This forged document came to knowledge of the complainant on being filed in the civil suit. The complainant examined himself under Section 200 Cr.P.C. and also examined Paras Nath, Ram Bilas and Ajmat Ali under Section 202 Cr.P.C. Learned Addl. Civil Judge (J.D.)/Judicial Magistrate, Basti vide order dated 2.9.2005 summoned the accused Sohrat, Ram Kewal and Hari Prasad to face trial under Sections 419, 420, 467, 468 IPC. Feeling aggrieved, the accused persons including the petitioner filed criminal revision no. 746 of 2005, which was dismissed vide judgment and order dated 2.8.2008 passed by the Sessions Judge, Basti. Subsequently, after creation of district- Sant Kabir Nagar, the case was transferred and is now pending in the Court of C.J.M., Sant Kabir Nagar and has been registered as criminal case no. 1090 of 2004. Both the aforesaid orders are under challenge in this writ petition.

3. Counter and rejoinder affidavits have been exchanged between the parties.

4. I have heard Sri Balram Mishra, learned counsel for the petitioner, learned AGA for the State and Sri Mahendra Pratap Yadav, learned counsel for respondent nos. 2 and 3.

5. Learned counsel for the petitioner submits that petitioner, respondent no. 2 and Chaitu are brothers. Respondent no. 2 took a loan of Rs. 20,000/- from the petitioner and late Chaitu and in lieu thereof mortgaged his bhumidhari land in favour of the petitioner and Chaitu and handed over possession of the same. For this purpose, respondent no. 2 also executed a written document (mortgage deed) on 15.7.1999 (Annexure no. 1). Surprisingly, respondent no. 2 executed a gift deed in favour of respondent no. 3 regarding the same land. Coming to know

about the gift deed, the petitioner and his brother late Chaitu filed civil suit no. 164 of 2004 in the court of Civil Judge (J.D.), Khalilabad, Basti for cancellation of gift deed as well as for permanent injunction and as a counter blast, this complaint has been filed by respondent no. 2. It is further submitted that learned Magistrate passed the impugned summoning order without applying his judicial mind. Neither the trial court, nor the revisional court considered the fact that a civil suit is pending in respect of the land in question and the respondents had full opportunity to put his case before the Civil Court and no criminal offence is made out. It was contended that dispute is of a civil nature and no criminal offence is made out.

6. Per contra, learned AGA as well as learned counsel for respondent nos. 2 and 3 submit that the disputed mortgage deed dated 15.7.1999 was forged and fictitious. Respondent no. 2 transferred land in dispute in favour of his nephew Ram Bariksha son of Paras Nath through gift deed dated 1.11.2003 and also executed a registered will in his favour and feeling aggrieved, the petitioner and his another brother Chaitu with intention to grab the land of the respondent no. 2, forged and anti-dated mortgage deed, which was not even registered and therefore the petitioner is guilty of forgery and cheating and has been rightly summoned by the Magistrate; and the orders passed by the Magistrate and the revisional court do not require any interference by this Court.

7. Civil suit filed by the petitioner has been dismissed. In revenue court also the mutation has been done in favour of respondent no. 3 on the basis of gift deed. Rejoinder affidavit, however reveals that restoration applications have been moved for setting aside ex-parte orders passed in the civil suit as well as in mutation proceedings.

8. The case of petitioner depends on alleged forged mortgage deed which is not even registered. The complainant, (respondent no. 2) in his statement under Section 200 Cr.P.C. specifically mentioned that he had not taken any loan from Sohrat and Chaitu and forged documents have been executed by Sohrat and Chaitu. Ajmat Ali one of the alleged witness of the gift deed was also examined by respondent no. 2 as a witness under Section 202 Cr.P.C. and he also deposed that no such document was executed by respondent no. 2 in favour of petitioner or

Chaitu and Chaitu had got his (Azmat Ali's) thumb impression on a blank papers.

9. The instant dispute is not a purely civil dispute. The complainant specifically claimed that he did not executed any mortgage deed and the same was forged. The marginal witness of the mortgage deed also denied its execution. Both the courts below have found sufficient grounds for proceedings with the case. In these circumstances, I am not inclined to take a different view. There are sufficient grounds to proceed against the petitioner and he has been rightly summoned to face trial. Learned Magistrate as well as learned Sessions Judge did not commit any error or illegality in passing the impugned orders, which do not require any interference by this Court.

10. I do not find any merit in the writ petition and it is accordingly dismissed.

11. However, in the facts and circumstances, it is directed that if the petitioner surrenders before the Magistrate concerned within three weeks from today and applies for bail, his prayer for bail be considered by the courts below on the same day keeping in view Full Bench decision of this Court in the case of Amrawati and another v. State of U.P. 2004 (57) ALR 290 as affirmed by Hon'ble Apex Court in Lal Kamlendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 (SC).

12. For a period of three weeks, no coercive process shall be executed against the petitioner.

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