Ram Ashrey Sharma and Others Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/918097

Court : Allahabad

Decided On : Dec-02-2010

Judge : Vinod Prasad, J.

Appeal No. : Criminal Misc. Application No. 20906 of 2010

Appellant : Ram Ashrey Sharma and Others

Respondent : State of U.P. and Others

Judgement :

1. A family consisting of four applicants viz Ram Asrey Sharma (A1), his brother Ram Bachan Sharma (A2), his mother Prabhawati Devi (A3) and one Smt. Sitabi @ Sitabia (A4) have invoked the inherent jurisdiction of this court U/S 482 Cr.P.C. (in short Code), through instant Criminal Misc Application (in short Application) with the prayer that their prosecution in Case No. 140 of 09, State v. Ram Ashrey Sharma and others, u/s 419, 420, 467, 468, 471 and 120-B IPC, P.S. Rasda, district Ballia,relating to Crime No. 150 OF 09, pending in the court of IV Judicial Magistrate, Ballia, be quashed. They have also prayed for stay of trial court proceedings against them interregnum.

2. Proceeding necessary facts, generating instant 482 Application though chequered are simplifiedly narrated hereinafter. To start with a pedigree involving rival contesting sides is sketched below:-

Janki

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Jagdeo Sharma Ramgati Sharma Daulat Baldev Sharma

(Wife Simrakhi) ! ! !

! Muniya Budhra X Hanuman Kanhaiya

! (Wife Sukrati Devi) (Wife Prabhawati Devi

Lakshan ! (Wife Sitabi Devi @ Sitabia)

! !

(wife alleged Sitabi Devi @ Sitabia) Sitara Pushpa !

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Ram Ashrey Ram Bachan

3. In the above pedigree Sukrati Devi wife of Hanuman is the informant, Ram Ashrey Sharma s/o Kanhaiya is applicant A1, his brother Ram Bachan Sharma is A2 their mother Smt. Prabha Devi is A3 and Smt. Sitabi @ Sitabia, A4 is the person, whose parentage and marital relationship is the apple of discard between rival sides. According to informant's case she is wife of Kanhaiya Sharma and real sister of A3 but according applicant's she is widow of Laxman @ Lakshan Sharma, alleged s/o Jagdeo, eldest son of Janki.

4. Prosecution version as putforth by the informant is that Informant who is a septuagenarian is widow of Hanuman and her father-in-law had four sons out of whom Jagdeo Sharma, Ram Gati Sharma and Daulat Sharma were issueless.

After demise of Jagdeo Sharma his share of property was divided amongst rest of his three brothers Ram Gati, Daulat and Baldeo and their names were mutated in the revenue records. Baldeo Sharma had two sons Hanuman and Kanhaiya. Informant is the w/o of Hanuman. A3 is wife of Kanhaiya where as A1 and A2 are their sons. After demise of Baldeo his property was divided amongst his two sons Hanuman and Kanhaiya. Ram Gati and Daulat, two other brothers of Baldeo Sharma during their life times had already executed wills devolving their property on Hanuman and Kanhaiya and in pursuance to that their share of property also came to Hanuman and Kanhaiya. After the demises of the two brothers mutation was also done accordingly. Informant and her husband had only two female issues Sitara and Pushpa, who were got married and were living in their in-law's house. Finding informant to be a helpless septuagenarian widow, A1 and A2 hankered with dishonest intention of grabbing her entire property threatened her and by coercion on gun point compelled her to sign on blank papers as they intended that she should leave her entire estate for good for all future times. Police was also intimated regarding such criminal intent and attempt by A1 and A2 but in vain. To fulfil their design to lay their hands on the property of the informant, all the applicants in conspiracy and conjunction with each other,executed two shame sale deeds on 3.3.2006 and 27.10.2008. First sale deed was executed favouring Ashok Kumar Gupta and Smt. Sugri Devi where as second one was executed in favour of Sushil Kumar Singh. Both the sale deeds were got registered with Dy. Registrar, Registration, Ballia. What is noticeable and is of importance is that in the former sale deed Sitabi Devi @ Sitabia had described herself as the widow of Kanhaiya, whereas in the subsequent sale deed , she had projected herself as the widow of Laxman @ Lakshan, albeit there was no male member in the family by the name of Laxman @ Lakshan. This is the conspiracy alleged by the informant to cheat her. According to informant's further allegations all the applicants entered into a criminal conspiracy, fabricated and manufactured two sale deeds, utilised it as genuine and got them registered with Dy. Registrar, Rasda, district Ballia and consequently all of them had committed offences of cheating, manufacturing of shame documents and other offences.

5. Attempt by the informant to get her FIR registered yielded no result and her that endeavour went in vain. Having no other option left for redressal of her grievance

informant approached ACJM, I, Ballia, U/S 156 (3) of the Code seeking a direction for registration of her FIR and investigation of crime on 8.12.2008. Learned Magistrate on 3.2.2009, finding cognizable offences being disclosed, directed for registration of FIR and in compliance thereof FIR of Crime No. 150 of 09,for offences U/Ss 419, 420, 467, 468, 471 and 120-B IPC was registered at P.S. Rasda, district Ballia, on 1.4.2009,vide Annexure No.1.

6. During the investigation statement of informant u/s 161 Cr. P.C., vide Annexure No. 2 was recorded in which she supported her levelled charges. Concluding investigation I.O. charge sheeted the applicants on 10.4.2009, vide Annexure 3, on the basis of which ACJM I, took cognizance of the offences on 17.11.2009 and summoned the applicants. Hence present Application by the accused applicants to thwart informant's attempt to prosecute them.

7. At the time of admission of the instant application informant respondent no. 2 appeared in court through Sri Kameshwar Singh Advocate and contested the claim by the applicants and objected to the admission. Along with AGA for the State both were granted time to file counter affidavits, which they have done and to which rejoinder affidavit has also been filed by the applicants.

8. Since pleadings were complete, in agreement with both the sides instant 482 Application was heard finally.

9. Sri I.K. Chaturvedi, advocate appearing for the applicants contended that prosecution of the applicants on the basis of impugned charge sheet, Annexure No. 3 is malafide, vexatious, and deserves to be quashed. According to his submission entire allegations in respect of marital status of Sitabi Devi @ Sitabia as alleged by the informant are false. It was submitted that Jagdeo and Simrakhi had a son Laxman @Lakshan, who was married to the said woman and from their nuptial tie a girl child Tara Devi was also born. Laxman @ Lakshan died intestate leaving four surviving persons in the family viz his parents, widow and a daughter. After demise of Jagdeo, his share of property devolved on Simrakhi and in turned, after Simrakhi's heavenly abode, name of Sitabi Devi was mutated over the said portion of property. Sitabi Devi @ Sitabia by exercising her legal and de-facto right, executed a sale deed on 3.3.2006 in favour of Ashok Kumar Gupta and Smt.

Sugri Devi but due to the error instead of referring her as widow of Laxman @ Lakshan, her widowhood was mentioned as widow of Kanhaiya in that sale deed. Detection of the said mistake was endeavoured to be corrected by Sitabi Devi by moving a Correction Application before S.D.M., Rasda, district Ballia on which Case No. 12 of 07, u/s 229 B, U.P. Z.A. and LR Act, Sitabi v. Ram Ashrey and others, was registered and in that case notices were issued, and ultimately, inspite of service when none of the respondents in that case appeared to contest the correction of record, claim application by Sitabi Devi @ Sitabia was decided exparte in her favour on 16.7.2008 vide Annexure 4 and Sub Divisional Magistrate , Rasda, Ballia ordered correction of record by deleting name of Kanhaiya as husband of Sitabi Devi @ Sitabia and substituting it by the name of Laxman@ Lakshan. Sri Chaturvedi in his endeavour to support above referred submissions relied upon voter's list, issued by Election Commission, Kutumb Register, Vide Annexure No. SA7 to the supplementary affidavit and SA5, extract of Khatauni. According to his contention these documentary proofs without any ambiguity unerringly established marital status of Sitabi Devi @ Sitabia as wife and widow of Laxman @ Lakshan and not of Kanhaiya. It was next argued that there was a partition of ancestral property in a convened conclave, in between the sons of Janki on 24.7.2005, in which, informant and all other relatives participated and signed the family settlement arrived in that meeting, a copy of which is Annexure SA2 and in that settlement note Sitabi Devi @ Sitabia is referred as wife of Laxman @ Lakshan and hence no other contrary view can be taken than as pleaded by the applicants. Attour it was submitted that informant had executed her sale deed favouring one Suman Devi on 22.9.2005 and on other dates she had sold off other portion of her share of property and while executing those sale deeds she also sold the portion of property not falling in her share. Aforesaid sale deed executed by the informant was challenged by Sitabi Devi alias Sitabia along with her daughter Tara Devi as plaintiffs in O. S. No. 1068 of 08, before Civil Judge (JD) West, Ballia, vide Annexure SA3 and in that suit it is specifically pleaded that Sitabi Devi alias Sitabia is the widow of Laxman @ Lakshan Sharma,son of Jagdeo and Simrakhi. It was additionally submitted that after charge sheet, crime was further investigated and concluding further investigation, I.O. had opined that entire prosecution of the applicants is malicious, and therefore, had requested the charge sheet to be cancelled vide annexure SA6.

10. Primarily, basing his submissions on the order passed by Sub Divisional Magistrate for correction of the entry in respect of marital status of Sitabi Devi alias Sitabia, it was submitted that the entire dispute is primarily of civil nature with out any criminal texture and hence be quashed, as no offence is made out as it is conspicuously clear that Sitabi Devi alias Sitabia is widow of Laxman @ Lakshan Sharma. Pulling down the curtain of the argument learned counsel canvassed that the prayer of the applicants be accepted and their prosecution be quashed.

11. Refuting applicants case and contentions raised, per contra, Sri Kameshwar Singh, learned counsel for the informant, submitted that entire 482 Application is based on disputed questions of facts, which cannot be adjudicated upon u/s 482 Cr. P.C., as the aforesaid contention requires evidences to be led in trial by both the sides. Whether Sitabi Devi alias Sitabia is the widow of Laxman@Lakshan Sharma or she is the widow of Kanhaiya, can be decided only after affording opportunity to establish it in a proper trial. Learned counsel relied upon Annexure CA1, which is the photocopy of the sham sale deed executed by the applicants to contend that on the first page of the sale deed alleged Sitabi Devi @ Sitabia is described as widow of Laxman @ Lakshan but in middle pages of the same sale deed, name of her husband is mentioned as Kanhaiya Sharma. Learned counsel submitted that the said sale deed is a totally sham document executed to grab the property belonging to the informant and prosecution cannot be quashed, as the informant must be afforded opportunity to establish the levelled charges. Sri Kameshwar Singh further submitted that the order passed by S.D.M. vide Annexure No.4, dated 16.7.2008 was an ex-parte order, which was got obtained without service of notice to the informant and other defendants and when they came to know of it, they have already instituted Miscellaneous Case No.2 of 2008 on 15.10.2008, before S.D.M. Rasda, district Ballia praying therein that earlier order dated 16.7.2008 passed in aforesaid Case No.13 under Section 229 B be annulled and in the subsequent case instituted by the informant that earlier order dated 16.7.2008 was stayed on 20.10.2008 by same S.D.M. with further direction that in pursuance of previous order dated 16.8.2008, no sale deed be got executed. S.D.M. had also fixed 22.10.2008 for hearing of that case. It was

submitted that inspite of the stay order dated 20.10.2008, sale deed was executed by the accused persons on a subsequent date 26.10.2008 when the matter for cancelling the order for correction of entry dated 16.7.2008 by S.D.M. Rasda, Ballia was still subjudice, therefore, the entire sale deed is a fabrication and a sham document. Learned counsel further contested the prayer for quashing by relying upon Annexure CA-4, which is the photocopy of the kutumb register dated 18.7.2008 wherein Smt. Sitabi @ Sitabia has been described as wife of Kanhaiya Sharma at serial no.2. Learned counsel submitted that copy of the kutumb register filed by the applicants is not a genuine document. Further buttressing his contentions Sri Singh referred to Annexure CA-5, which is the certificate issued from the school where Tata Sharma, daughter of Smt. Sitabi @ Sitabia was studying and pointed out that in scholar's register also name of father of Tara Sharma is mentioned as Kanhaiya Sharma. Respondent No. 2 further relied upon Annexure CA-6 and CA-7, which are the documents from the bank wherein also Smt. Sitabi @ Sitabia has been described as wife of Kanhaiya Sharma. Cementing his contention further informant's counsel referred to Annexure CA-8 and CA-9, which are extracts of khatauni and voter list wherein also it is mentioned that Smt. Sitabi @ Sitabia is the wife of Kanhaiya Sharma. On the strength of aforesaid documents, it was submitted that two sale deeds executed by Smt. Sitabi @ Sitabia describing herself as widow of Kanhaiya in one sale deed and as widow of Laxman @ Lakshan Sharma in the other sale deed, is totally malicious and fraud and therefore, the charge sheet submitted against the applicants should not be quashed and the informant be given an opportunity to substantiate the levelled allegations. It was also pointed out on the strength of averments made in paragraph-6 of the counter affidavit dated 30.7.2010 that the alleged family settlement dated 24.7.2005 is a forged and manufactured document and more over it is also unregistered and therefore, the same can not be looked into nor can be relied upon. Concludingly, it was prayed that the instant 482 Cr.P.C. application being bereft of merits be dismissed.

12. I have considered rival submissions and have perused the entire record of instant Application. Before adverting to the merits of the controversy a brief resume of legal aspect is penned down. Power under Section 482 Cr.P.C. has been preserved with this Court to do ex-debito justice. Starting with non obstante

clause this section preserves inherent power of this court to be utilised for imparting complete and substantial justice for which this court exist. It is the wholesome power with enormous magnitude and hence the wider the power, the scrutiny has to be much stricter. The very plenitude of the power requires a careful exercise thereof within the parameters of law. This aspect of the matter no longer remains res integra. It has been subjected to many binding precedents by the apex court and by this court. Without volumenising this judgement some of the decisions by the apex court on this aspect of the matter are referred to below. In the decision of State of Haryana versus Ch. Bhajan Lal :AIR 1992 SC 604 it has been held by he apex court as follows:-

> **"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.**
>
> **1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**
>
> **2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers**

under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the oncerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations

made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

12. In State of A. P. v. Aravapally Venkanna: AIR 2009 SUPREME COURT 1863 apex court has observed as follows:-

"8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the

inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence of offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

8A. Keeping in view the principles of law as enunciated above, the action of the High Court in quashing the FIR cannot be maintained so far as Criminal Appeal arising out of SLP (Crl.) No. 677 of 2004 is concerned.

9. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very

exceptional circumstances as held in R.P. Kapoor's case supra.

10. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases."

13. In the backdrop of aforesaid legal pronouncements the precipitated residue which emerges is that prosecution launched after due investigation on the basis of a charge sheet cannot be quashed by looking into the defence of the accused, which has to be pleaded at the appropriate stage by them. For scuttling the prosecution at it's inception and nipping it into the bud, the case has to be cogitated and analysed from the angle of the prosecution allegations and supporting evidences. It is on the basis of those materials that the case is to be judged to come to a finding as to whether any offence is disclosed or not and whether there are chances of termination of the proceedings either way or there is sufficient evidence for launching a successful prosecution. While judging so, the question of malafidy and vexatious prosecution can also be looked into. As noted above deliberating on the said aspect of the matter, the Apex Court in the case of State of Haryana v. Bhajan Lal (Supra) has laid down various categories for exercise of power to scuttle the prosecution at its very inception. Those categories have been mentioned by way of illustration and were not exhaustive as the hands of the High Courts cannot be tied within the strict corners and situation. A case has to fall within the parameters of no offence being disclosed or prosecution being malicious ex facie or there are no chances of conviction at all and the outcome is determined that power under Section 482 Cr.P.C. to quash the prosecution is to be exercised.

14. Now turning towards present Application summation of facts and analysis thereof leads to conclude that the version of the informant is that she is a widow and a septuagenarian having only two daughters, namely, Sitara and Puspa, who are married and are living in her in laws houses and because of this reason that her two nephews A-1 and A-2 in conspiracy with their mother A-3 wanted to grab

her property. In their such a nefarious design, they executed two shame sale deeds and contrary to each other in both those sale deeds one and the same person has been described as widow of two separate husbands. In one sale deed Smt. Sitabi @ Sitabia has been described as widow of Laxman @ Lakshan Sharma whereas in the other she has been described as widow of Kanhaiya. If we look to the pedigree mentioned above, it will be clear that the relationship between Kanhaiya and Laxman @ Lakshan Sharma is that of being cousin brothers, as they are the sons of Jagdev and Baldev, who were real sibling brothers both being sons of Janki. If Kanhaiya was alive, Smt. Sitabi @ Sitabia could not have been wife of Laxman @ Lakshan Sharma. It is the case of the informant that Prabhawati Devi was the wife of Kanhaiya and subsequently, Smt. Sitabi @ Sitabia was got married with Kanhaiya for generating the family tree as Prabhawati Devi was issueless. Thus two real sisters were married to the same individual to generate and foster a family. From the perusal of material on record, existence of Laxman @ Lakshan Sharma seems to be a dicey fact. But for alleged order by S.D.M., which is under challenged and yet to attain finality and the disputed family settlement , there is no other credible document to support his existence. So far as the family settlement document dated 24.7.2005 is concerned, the same has been specifically denied by the informant, as to have never been accorded and executed. Since the genuineness of the said document is disputed, on the basis of that document a legally instituted prosecution could not be quashed. Another reason for not relying upon the said alleged agreement is that on the right thumb impression of Smt. Sitabi @ Sitabia, it is no where mentioned whose widow she was. Further, it is to be noted that the informant along with her daughter had moved to the S.D.M. for scoring out the order dated 16.7.2008 wherein the marital status of Smt. Sitabi @ Sitabia was altered from widow of Kanhaiya to widow of Laxman @ Lakshan Sharma. The said suit vide annexure CA-3 is still pending. In such a view, on affidavit a contrary opinion can not be formed by this court to reject the claim of one of the parties to the suit. In such a view, it cannot said that the dispute between the parties is purely civil in nature. If consciously and knowingly sham sale deeds have been executed, it cannot be said that no offence has been committed, as in that eventuality there is existence of mens-rea to commit cheating, forgery and fraud by fabricating documents. Perusal of the annexures appended along with counter affidavit per se negates the contention of the applicants that Smt. Sitabi @ Sitabia was the widow of Laxman @ Lakshan Sharma. In this respect, it is pointed out that photocopy of the family register submitted by the rival contesting sides also contradicts each other. So far as the copy of the family register filed by the applicants, Annexure No. SA-7 is concerned, that seems to be a manufactured document, as the entries made therein are self contradictory and irreconcilable. In the aforesaid entry, Kumari Devewati, Ram Ashrey, Ram Bachan, Sadhana, Sangita, Prabhawati have been shown belonging to the family of Kanahiya Sharma, which fact is not culled out from the pleadings made by the applicants in the instant Application. On the other hand, the photocopy of the kutumb register annexed along with the counter affidavit, as CA-4 gives out a correct picture by pointing out that Sangita is the wife of Ram Bachan, Sadhan is the wife of Ramashrey and his three issues are Aman Kumar, Abhaya Kumar and Neha. In the said kutumb register, it is also recorded that under the order of S.D.M., order dated 16.7.2008 has been stayed.

15. In view of above discussion, I do not find any reason to quash proceedings of Case No. 140/09 arising out of Crime No.150 of 2009 (State Versus Ram Ashrey and others) under Sections 419, 420, 467, 468, 471, 120B IPC, P.S. Rasda, District Ballia, pending in the court of Civil Judge (Junior Division) IV/Judicial Magistrate, Ballia. Hence, this Criminal Misc Application stands is dismissed.

16. Interim order granted by this Court dated 28.7.2010 stands vacated.