

**Arvinder Singh Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** Sep-30-2010

**Judge :** Shri Kant Tripathi, J.

**Appeal No. :** CRIMINAL MISC. WRIT PETITION No. - 13661 of 2010

**Appellant :** Arvinder Singh

**Respondent :** State of U.P. and Another

**Advocate for Def. :** Govt. Advocate; R.C. Kandpal, Advs

**Advocate for Pet/Ap. :** Sandeep Saxena, Adv

**Judgement :**

1. Heard Mr. O.P. Singh, the learned senior counsel for the petitioner and the learned AGA for the respondent no.1 and perused the record.
2. This is a writ petition under article 226 of the Constitution of India for quashing the order dated 28.4.2010 passed by the Chief Judicial Magistrate, Bareilly (Annexure no.14) and the order dated 18.6.2010 passed by the Incharge Sessions Judge, Bareilly (Annexure no.16).
3. It appears that the respondent no.2, M/s Typical Tones Pvt. Ltd., which is a private limited company, through its Managing Director Mahesh Yadav, filed a criminal complaint against the petitioner in the court of Chief Judicial Magistrate,

Bareilly, which was registered as complaint case no.1286 of 2008. The learned Chief Judicial Magistrate examined the complainant under section 200 Cr PC and also recorded the statements of PW-1 Ajay Kumar and PW-2 Hori Lal. Copies of the sale deed dated 30.7.1999 and other relevant documents were also produced by the respondent no.2. The learned Chief Judicial Magistrate found that there were sufficient materials to make out a prima facie case against the petitioner under sections 420, 467, 468 and 471 IPC. Accordingly, he passed the summoning order dated 28.4.2010 against the petitioner. The criminal revision no. 237 of 2010 preferred by the petitioner was dismissed by the Incharge Sessions Judge on merit and also on the ground that the revision was not maintainable.

4. In view of the fact that the learned Sessions Judge had dismissed the revision on merit, the question regarding the maintainability of the revision against the summoning order has no relevance in the present matter, therefore, it seems to be just and expedient to consider the case on merit.

5. Mr. O.P. Singh, the learned senior counsel submitted that the allegations made in the complaint do not make out any criminal charge against the petitioner. The dispute is of civil nature and a suit for cancellation of subsequent sale deed has been filed and is pending, therefore, the proceedings of the complaint case is liable to be quashed. Mr. Singh further submitted that the criminal proceedings in respect of a civil dispute is nothing except an abuse of the process of the court. In support of this submission, he placed reliance on *Inder Mohan Goswami v. State of Uttaranchal & others* (2007) 12 SCC-1. In that case, the Apex Court has held that a dispute of civil nature can not be dragged into the criminal prosecution.

6. The facts of the present case are altogether different, therefore, the principles of law propounded in the case of *Inder Mohan* (Supra) are not attracted in this case. According to the complaint allegations, the petitioner, acting as attorney of Imam Bux and Karim Bux, executed a sale deed in favour of the respondent no.2 in respect of the plot no. 26-D of khasra no. 896, measuring 246 square meter and received the sale consideration of Rs. 49,200/-. The respondent no.2 remained busy in connection with his business in Bangalore and Gurgaon. When Mr. Mahesh Yadav, the Managing Director of the respondent no.2 came back in

February 2008, he found that a building had already been constructed on the plot of respondent no.2, then he got inspected the records in the office of the Sub Registrar, Bareilly and found that the petitioner had executed a second sale deed in favour of Anil Prakash Agarwal, which was registered on 16.12.2009. In this way, the second sale deed was without authority and therefore, the petitioner committed a forgery.

7. The allegations made in the complaint have to be taken at their face value for considering the question whether or not any offence is made out. At this stage, the defence version can not be looked into nor any inquiry for finding out truth in the allegation can be made. Prima facie, where the petitioner had already transferred the land in favour of the respondent no.2, he had no title or right to execute the second sale deed, therefore, the second sale deed is nothing except a false document within the meaning of section 464 I.P.C., which was executed knowing well that the first sale deed in favour of the respondent no.2 was in existence, therefore, by executing the subsequent sale deed, the petitioner caused a wrongful loss to the respondent no.2. In this view of the matter, the allegations made in the complaint make out a criminal charge against the petitioner. Therefore, the contention that the dispute is only of civil nature, has no substance. In case any civil litigation is pending for cancellation of subsequent sale deed, it does not affect the criminal case launched against the petitioner.

8. It is well settled that where allegations made in the complaint make out cases both of civil and criminal nature, the proceedings of the Criminal case can not be quashed on the ground of pendency of the civil case. In that situation both civil and criminal cases can go on simultaneously and primacy to the criminal case has to be given. It is well settled that a civil as well as criminal proceeding in regard to same act may be launched and continued simultaneously. If certain acts constitute an offence, the criminal proceeding can not be held up or kept in abeyance till the finalization of the civil proceeding.

9. In the case of Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Admn.), (2009) 5 Supreme Court Cases 528, the Apex Court has held that indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed

simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. ....It is now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought on record therein and not in terms of the evidence brought in the criminal proceeding.

10. The aforesaid principles have been reiterated by the Apex Court in the case of *Devendra & others vs. State of U.P. and another*, (2009) 7 SCC 495 (para 13).

11. In view of the aforesaid settled principles, I do not consider it proper to interfere with the summoning order, which seems to be perfectly correct. However, keeping in view the facts and the circumstances of the case, it is provided that if the petitioner Arvinder Singh appears before the courts below and applies for bail within one month, his bail prayer in complaint case no.1286 of 2008, *M/s Typical Tones Pvt. Ltd. through its Managing Director Mahesh Yadav vs. Arvinder Singh*, under section 420, 467, 468 and 471 IPC, pending in the court of the Chief Judicial Magistrate, Bareilly, shall be considered and disposed of by the courts below on the same date.

12. Till the surrender of the petitioner Arvinder Singh before the Court or expiry of the aforesaid period of one month, whichever is earlier, he shall not be arrested.

13. With the aforesaid observations, the writ petition is dismissed.

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