

Kunwar Mohit Singh And Another vs State Of U.P. Thru. Addl. Chief ... on 31 January, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:6861

Court No. - 12

Case :- APPLICATION U/S 482 No. - 389 of 2025

Applicant :- Kunwar Mohit Singh And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Home Deptt. And Anot

Counsel for Applicant :- Avinash Singh Vishen, Shishir Raj

Counsel for Opposite Party :- G.A., Ritwika Tripathi, Sudhanshu S. Tripathi

Hon'ble Saurabh Lavania, J.

1. Short counter affidavit and supplementary affidavit filed on behalf of opposite party No. 2 in the Court today are taken on record.
2. Better affidavit and the application supported with an affidavit seeking amendment in the prayer clause of the instant application filed on behalf of the applicants in the Court today are also taken on record.

3. Taking note of the prayer sought in the amendment application, which is innocuous in nature and would not change the nature of the proceedings in issue, the application seeking amendment in the prayer of the instant application is hereby allowed.

4. Learned counsel for the applicants is permitted to carry out necessary amendment in the prayer clause of this application during the course of the day.

5. Heard Sri Sudeep Seth, learned Senior Advocate assisted by Sri Avinash Singh Vishen, Advocate, Sri Shishir Raj, Advocate, Sri Nishant Pandey, Advocate, Sri Vedant Srivastava, Advocate, Sri Nikhil Mishra, Advocate & Sri Ravindra Yadav, Advocate, learned counsel for the applicants; Sri Badrul Hasan, learned AGA-I for the State of U.P.; Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Sudhanshu Shekhar Tripathi, Advocate, who has filed Vakalatnama alongwith Ms. Ritwika Tripathi, Advocate, Sri Raghav Bansal, Advocate & Sri Utkarsh Singh, Advocate, on behalf of the opposite party No. 2/Kunwar Raj Singh in the Court today, which is taken on record, as well as perused the record.

6. By means of the instant application, the applicants have sought the following main reliefs:-

"(i) QUASH the impugned order dated 23.12.2024 by means of which the Ld. Trial Court has issued Bailable Warrants to the Applicants without recording the satisfaction of the effective service of summons and that the applicants have willfully escaped the summons.

(ii) QUASH the impugned cognizance and summoning order issued by the Ld. Trial Court dated 04.01.2024. The impugned cognizance and summoning order dated 04.01.2024 is highly mechanical and has been passed by the Ld. Magistrate without considering the order passed by this Hon'ble Court in FAFO No. 105 of 2006 dated 31.01.2007. The aforesaid order has been passed without application of mind and has been passed in a set proforma without any appreciation of the merits of the matter.

(iii) QUASH the impugned Chargesheet dated 07.12.2023 prepared by the Police in Case Crime No. 488 of 2023 u/s 419, 420, 467, 468, 471 of IPC at PS Bhadokhar, District- Raebareli. The aforesaid Chargesheet has been filed in an utmost mechanical and casual manner without ascertaining the true facts and circumstances of the case. Furthermore, the Investigating Officer has filed the chargesheet in an utmost arbitrary manner as the applicants have been chargesheeted even after there is a specific finding as to the invalidity of the will dated 25.11.1994 by this Hon'ble Court in FAFO No. 105 of 2006 dated 31.01.2007. It is also trite to mention here that the aforesaid order was in specific knowledge of the Investigating Officer and he has made it a part of the Chargesheet.

(iv) QUASH the entire criminal proceedings arising out of Case Crime No. 488 of 2023 u/s 419, 420, 467, 468, 471 of IPC at PS Bhadokhar, District- Raebareli."

7. Facts, in brief, which are relevant for proper adjudication of the instant case, are as under:-

(i) Applicant No. 1/Kunwar Mohit Singh was born on 13.05.1981, as per birth certificate.

(ii) Applicant No. 2/Kunwar Shobhit Singh was born on 22.04.1983, as per birth certificate.

(iii) The birth certificate of applicant No. 1/ Kunwar Mohit Singh annexed at page No. 282 of the paper book indicates that it was issued on 13.10.1995. On this date, the applicant No. 1 was about 14 years old. This birth certificate indicates that the applicant No. 1 born out of wedlock of Madhu and K.B. Singh.

(iv) The birth certificate of applicant No. 2/Kunwar Shobhit Singh annexed at page No. 283 of the paper book indicates that it was issued on 16.10.1995. On this date, the applicant No. 2 was about 12 years old. This birth certificate indicates that the applicant No. 2 was born out of wedlock of Madhu and Kunwar Brijendra Singh.

(v) The copy of Pariwar Register annexed at page No. 276 of the paper book indicates that the applicant Nos. 1 and 2 were born out of wedlock of Madhu and Kunwar Brijendra Singh.

(vi) High School Certificate of applicant No. 1 annexed at page No. 279 of the paper book indicates that his date of birth is 13.05.1982. This document also indicates that the father of the applicant No. 1 is 'Kunwar Brijendra Singh' .

(vii) High School Certificate of applicant No. 2 annexed at page No. 278 of the paper book indicates that his date of birth is 22.04.1983. This document also indicates that the father of the applicant No. 2 is 'Kunwar Brijendra Singh'.

(viii) Document annexed as SA-1 with supplementary affidavit of opposite party No. 2 received under Right to Information Act, 2005 from the Community Health Centre, Indira Nagar, Lucknow indicates that Kunwar Mohit Singh (applicant No. 1) was born on 13.05.1981 and this document indicates that his parents name as 'Madhu' and 'Kunwar Brijesh'.

(ix) Another document annexed as SA-2 with supplementary affidavit of opposite party No. 2 indicates that initially in the Register, the name of father of Kunwar Mohit Singh (applicant No. 1) was recorded as 'Kunwar Brijendra' and thereafter, based upon the affidavit, a copy of which has not been placed on record, the name of his father has been indicated as 'dst+h flag'.

(x) The applicants claiming themselves to be the sons/legal heirs of Kunwar Brijendra Singh claimed their right over Gata No. 66 M, Khata No. 60 situated at

Gram- Monai, Tehsil- Sadar, District- Raebareli and got their names mutated in the revenue records related to the said piece of land, which initially was recorded in the name of one Sardar Shamsher Singh. The order favourable to the applicants in mutation proceedings was passed on 02.02.2021.

(xi) Sardar Shamsher Singh was the original recorded tenure holder (Taluqedar) of the land in issue and he executed two 'Wills'. The first registered 'Will' was executed on 26.06.1991. The second unregistered 'Will' was executed on 25.11.1994.

(xii) It would be apt to indicate here that as per the expert report given by the Forensic Science Laboratory, Mahanagar, Lucknow, the 'Will' executed by Sardar Shamsher Singh in the year 1994 was also a genuine 'Will'. In other words, the registered 'Will' dated 26.06.1991 and unregistered 'Will' dated 25.11.1994 both were executed by Sardar Shamsher Singh.

(xiii) It would also be apt to indicate here that Sardar Shamsher Singh died leaving behind his son namely Kunwar Brijendra Singh and his daughters namely Inderjeet Kaur & Daljeet Kaur.

(xiv) From the registered 'Will' dated 26.06.1991 of Sardar Shamsher Singh, it is apparent that Madhu was married to Kunwar Brijendra Singh and according to this 'Will', the rights provided by Sardar Shamsher Singh to his son Kunwar Brijendra Singh would be available to male issues of Kunwar Brijendra Singh from Madhu.

(xv) Gata No. 66, detailed above, was not made part of both the 'Wills' i.e. registered 'Will' dated 26.06.1991 and unregistered 'Will' dated 25.11.1994.

(xvi) The applicants are claiming their rights over the property/land in issue i.e. Gata No. 66 M alleging themselves to be the sons of Kunwar Brijendra Singh and being in line of succession as per Section 108 of U.P. Revenue Code, 2006 (in short "Code of 2006").

(xvii) The informant/opposite party No. 2/Kunwar Raj Singh and other persons similarly situated to him are claiming their rights on the basis of rights provided to them in the 'Will' dated 25.11.1994 executed by Sardar Shamsher Singh.

(xviii) Upon coming to know about the order passed in mutation proceedings based upon the law of succession, the opposite party No. 2/Kunwar Raj Singh made a written complaint and based upon the same, an FIR No. 0488/2023 was lodged on 09.10.2023, under Sections 419, 420, 467, 468, 471 IPC, Police Station- Bhadokhar, District- Raebareli. The contents of FIR, being relevant, are extracted hereunder:-

"udy rgjhj fgUnh oknh VkbZi'kqnk----- lsok esa Jheku iqfyl v/kh{kd] tuin jk;cjsyh] mRrj izns'kA fo"k;% Loo ljdkj 'ke'ksj flag dh xzke eksbZ rglhy lnj jk;cjsyh

dh xzkeh.k lEifRr [krkSuh la[;k 00060 xkVk la[;k% 66 feo dgy {ks=Qy 0-3260 dks eksfgr flag o 'kksfHkr flag iq= e/kq 'kqDyk }kjk QthZ o dwVjfpr nLrkostksa ds vk/kkj ij ukekUrj.k dj; s tkus ds lEcU/k esa izkFkfedh ntZ dj; s tkus gsrq f'kdk;rh izkFkZuk i=A egksn;] lfou; fuosnu gS fd izkFkhZ dqaoj jkt flag iq= Jh tSuh flag fuoklh 9 cVvj jksM+ Mkyh ckh y[kuÅ dk ewy fuoklh gS izkFkhZ ds ukuk Lo ljdkj 'ke'ksj flag iq= ljdkj fugky flag tks fd tuin jk;cjsyh ds iwoZ rkyqdsnkj Fks muds ,d iq= Loo c`tsUnz flag o nks iqf+=;ka Loo nythr dkSj o esjh ekrk Loo bUnzthr dkSj Fkh Loo c`tsUnz flag dh iRuh Jherh ujsUnz dkekjh o ,d ek= iq=h uhrk dkekjh gS ihNys dbZ o"kksZa ls eksfgr flag iq= e/kq 'kqDyk rFkk dFfr iq= dqaoj c`tsUnz flag fuoklh Mh&15@2 ldsUM Q~yksj] vkjMh flVh lsDVj&51 xqMxkao o edku uao 1002 lsDVj&9 cgknqjx<>>j gfj;k.kk] fiu 124507 ,oa ,oa Q~YkSV uao& 583 ikdsV&2 xzhu O;wo vikVZesUV lsDVj&19 }kfjdk ubZ fnYyh] 'kksfHkr flag iq= e/kq 'kqDyk rFkk dFfr iq= dqoj c`tsUnz flag fuoklh xzke&mMok Fkkuk txriq tuin& jk;cjsyh vius dks 'ke'ksj flag ds oa'kt cuus gsrq QthZ o dwVjfpr rFkk tkyh nLrkostks dk iz;ksx Loo c`tsUnz flag ds iq=x.k ,oa Loo 'ke'ksj flag dk ikS= crkus dk dqiz;kl dj jgs gS rFkk eksfgr flag o 'kksfHkr rFkk budh ekrk vc Loo e/kq 'kqDyk }kjk Loo c`tsUnz flag dh e`R;q fnukad% 02-09-1995 ds ckn ls Loo ljdkj 'ke'ksj flag dh lEifRr gM+ius dh uh;r ls QthZ o dwVjfpr nLrkost rS;kj fd;s x;s gS rFkk bu QthZ o dwVjfpr nLrkostksa dk mi;ksx lgh ds #i esa mDr }kjk fujUrj fd;k tk jgk gSA ;gfd eksfgr flag iq= e/kq 'kqDyk rFkk dFfr iq= dqoj c`tsUnz flag ,oa 'kksfHkr flag iq= e/kq 'kqDyk rFkk dFfr iq= dqoj c`tsUnz flag ds }kjk uxj fuxe y[kuÅ ls tkjh dj; s x;s izek.k i=ksa esa dwVjpuk dj vius firk ds uke ds LFkku ij dqoj c`tsUnz flag dk uke firk ds LFkku ij fy[kk dj viuh fojklr fl) djus ds fy, dwVjpuk dh x;h ftldh iqf"V tu lwpuk dk vf/kdkj vf/kfu;e&2005 ds ek;/e ls izkIr i=kad la[;k% uolkoLokodso@2021@673 fnukafdr% 23-10-2021 ls izkIr gqbZ tksfd fpfdRlk v/khf{kdk uxjh; lkeqnkf;d LokLF; dsUnz bfUnj uxj y[kuÅ }kjk tkjh gS ftlds tUe jftLVj esa buds firk dk uke dqaoj c`ts'k vafdr gS u fd dqaoj c`tsUnz flag rFkk 'kksfHkr flag iq= e/kq 'kqDyk RkFkk dFfr iq= dqoj c`tsUnz flag ds lEcU/k esa uxj fuxe y[kuÅ ls izkIr tu lwpuk dk vf/kdkjh vf/kfu;e&2005 ds vUrXZr izkIr i= la[;k&eseks@,poMho@,uo,lo,o@22 fnukafdr% 18-04-2022 ds }kjk lwpuk izkIr gqbZ dh 'kksfHkr flag ds }kjk tkjh dj; s x;s tUe izek.k i= dh ewy i=koyh esa ekrk dk uke e/kw iRuh Jh dth flag vafdr gSA ftlls LIk"V gS fd buds }kjk tUe izek.k i=ksa esa dwVjpuk dh x;h rFkk mDr Hkwfe dk ukekarj.k djkus gsrq buds }kjk dwVjfpr tUe izek.k i=ksa rFkk vU; izek.k i=ksa dk mi;ksx fd;k x;k gS mijksDr dh Nk;kizfr laYkXUkd gSA eksfgr flag o 'kksfHkr flag }kjk fnuakd 02-02-2021 dks Loo ljdkj 'ke'ksj flag dh xzke eksbZ] rglhy lnj jk;cjsyh dh xzkeh.k lEifRr [krkSuh la[;k 00060 xkVk la[;k% 66 feo dgy {ks=Qy 0-3260 dks Loo ljdkj 'ke'ksj flag ds vU; okfjlksa@mRrjkf/kdkfj;ksa dks Nqikrs gq, vius uke QthZ o dwVjfpr nLrkostksa ds cy ij ukekarfjr dj fy;k x;k gS jkTkLo fufj+{kd Hknks[kj dk ukekarj.k vkns'k la[;k% 20201015800825002101 fnukafdr 02-02-2021 i= ds lkFk layXu gS ftlesa Loo ljdkj 'ke'ksj flag ds dgy tks okfj n'kkZ;s x;s gS ,d ek= eksfgr flag o 'kksfHkr flag dks n'kkZ;k x;k gS ftlls Li"V gS fd eksfgr flag o 'kksfHkr flag }kjk Loo ljdkj 'ke'ksj flag ds vly okfjlksa@mRrjkf/kdkfj;ks dks Nqik;k x;k gS tefd lR;r;g gS fd eksfgr flag o 'kksfHkr flag Loo ljdkj 'ke'ksj flag ds oa'k ds ugha gS vxj gksrs rks Loo ljdkj 'ke'ksj flag }kjk fu"ikfnr olh;r o"kZ 1991 o 1994 esa dgh uke vafdr gksrk tefd Loo ljdkj 'ke'ksj flag }kjk

fu"ikfnr fdlh Hkh olh;r esa budk uke vafdr ugha gS rFkk buds }kjk nkSjku ukekarj.k Hkw&[kkrs/kkj Loo ljdkj 'ke'ksj flag dh e`R;q dh fnuakd 02-09-1995 gSA tefd Loo ljdkj 'ke'ksj flag dh okLrfod e`R;q dh fnuakd 28-11-1994 gS buds }kjk ukekarj.k ds nkSjku Loo ljdkj 'ke'ksj flag dk okLrfod fltjk Nqik;k x;k gS rFkk okLrfod fltjs dh Nk;kizfr layXud gSA vr% Jheku th ls vuqjks/k o izkFkZuk gS fd eksfgr flag o 'kksfHkr flag }kjk dwVjfpr o QthZ vfHkys[k rS;kj fd;s x;s mijksDr izek.k i=ksa dks lgh dh Hkkafr ;g tkurs gq;s fd vfHkys[k QthZ o dwVjfpr gS dk iz;ksx LoykHk gsrq dj jgs gS rFkk Loo ljdkj 'ke'ksj flag ds okfjlksa o mRrjrf/kdkfj;ksa dks Nqikdj Loo ljdkj 'ke'ksj flag dh lEifRr;ksa dks gM+idj [kqnZ&cqnZ dj jgs gS blfy;s eksfgr flag o 'kksfHkr flag ds fo#) lqlaxr /kkjvkksa esa eqdnek ntZ djds mfpr dkuwuh dk;Zokgh djus dh d`ik djsaA izkFkhZ vkidk lnSo vkHkkjh jgsxkA izkFkhZ- go vaxzsth dqaof jkt flag fuoklh 9 cVyj jksM Mkyhckx ekso uao 9795401200 fnuakd% layXud% mijksDRkkuqlkjA uksV% eSa gsoeqo jkosUnz dqekj ;kno ih,uvks 062400738 izekf.kr djrk gwa fd rgjhj dh udy eq> gsoeqo }kjk 'kCn o 'kCn dko mes'k pUnz ls dEI;wVj ij Vkbi dh x;hA"

(xix) From a bare reading of the above quoted FIR, it is apparent that the allegations against the applicants, in nutshell, are to the effect that they obtained their birth certificates, wherein the name of Kunwar Brijendra Singh is shown as their father, from Nagar Nigam, Lucknow, by playing fraud so as to get certain benefits based upon the law of succession in relation to the property of late Sardar Shamsher Singh, father of Kunwar Brijendra Singh, and to establish the allegations levelled in the FIR, the documents which have been referred above annexed as Annexure Nos. SA-1 & SA-2 to the supplementary affidavit have been relied upon.

(xx) Before proceedings further, it would also be relevant/necessary to indicate here certain facts related to the instant case, as appear from the record, which are as under:-

(a) On coming to know about the heirship/succession certificate dated 12.10.1995 issued from the Office of District Magistrate, Lucknow in favour of Madhu, mother of the applicants, a complaint was made by Smt. Narendra Kumari claiming herself to be the wife of Late Kunwar Brijendra Singh, which was entertained, and after enquiry, it was found that succession/heirship certificate dated 12.10.1995, favourable to Madhu, was not issued from the Office of District Magistrate- Lucknow and thereafter, succession/heirship certificate was issued to Smt. Narendra Kumari, as appears from Annexure Nos. SCA-1 and SCA-2 of the short counter affidavit filed on behalf of the opposite party No. 2.

(b) As per the applicants, Smt. Narendra Kumari was/is not the wife of Kunwar Brijendra Singh. It is for the reason that registered 'Will' dated 26.06.1991 indicates that Madhu is the wife of Kunwar Brijendra Singh.

(c) Kunwar Jaini Singh in relation to property belonging to Sardar Shamsher Singh i.e. Plot No. 99/11 area 9 Bigha, 2 Biswa, 16 Biswanshi and 8 Kachwanshi situated at 9 Bulter Road, Lucknow filed a Regular Suit No. 928 of 2005, in which, the trial court i.e. Civil Judge (Senior Division), Lucknow vide order dated 18.01.2006 rejected the

prayer to grant temporary injunction.

(d) Being aggrieved by the aforesaid, Kunwar Jaini Singh filed FAFO No. 105 of 2006 before this Court impleading M/s Viraj Constructions Pvt. Ltd. and M/s S. Gupta Build Tech. Ltd., the applicants and Special Nazool Officer as respondents. This Court vide a detailed order dated 31.01.2007 dismissed the said appeal and affirmed the order dated 18.01.2006 passed by trial court. The Regular Suit No. 928 of 2005 is still pending.

(e) Without dwelling into other facts of the case, it would be appropriate to indicate that in relation to the rights over the property of Sardar Shamsher Singh, civil and criminal litigations were instituted. Amongst the civil cases, some have been decided and some are pending, as would appear from paragraph 36 of the instant application, which is extracted hereunder:-

"36. THAT Opposite Party No. 2 and his family members (kin of Inderjeet Kaur) have contested various litigations relating to properties based on the unregistered will deed dated 25.11.1994. The entire list of cases pending between the parties have been tabulated below for the perusal of this Hon'ble High Court. Revenue And Civil Cases Between Complainant And Accused S. No. Case Details Plaintiff Defendant Property Description Result

1. Mutation Case Nagar Palika Raebareli (Decided) Kunwar Mohit Singh Kunwar Shobhit Singh Ruchi Singh Raj Singh, Jagit Singh, Surendra Singh & Others House situated at Mohalla Khatrana, Raebareli city Mutation order dated 28-01-2010 passed in favour of plaintiffs. Defendants have not challenged the mutation order till date.

2. Mutation Case No. T201910580100194 Tehsildar Maharajganj (Decided) Raj Singh, Jagit Singh, Surendra Singh Kunwar Mohit Singh, Kunwar Shobhit Singh Agricultural Properties Situated At Village Undwa Tehsil Unchahar, Raebareli And Village Akbarpur Kachhwah, Tehsil & District Raebareli On 13-09-2022.

Petitioners were declared heirs and successors of Late Sardar Shamsher Singh. Raj Singh & others have not assailed the order till date.

3. Civil Court Senior Division Lucknow (Pending) Jaini Singh (Father of Op No. 6) Kunwar Mohit Singh, Kunwar Shobhit Singh & 2 Others 09 Butler Road, Hazratganj, Lucknow Application For Temporary Injunction Rejected On 18-01-2006. Finding that defendants were legal heirs and successors of Sardar Shamsher Singh.

3. Hon'ble High Court at Lucknow (Decided) Jaini Singh (father of OP No. 6) Kunwar Mohit Singh, Kunwar Shobhit Singh & 2 Others 09 Bulter Road, Hazratganj, Lucknow Appeal Rejected.

Order refusing injunction passed by Civil Court upheld.

Finding that defendants were legal heirs and successors of Sardar Shamsher Singh.

4. Civil Court Senior Division, Lucknow (Pending) Raj Singh, Jagit Singh, Surendra Singh Application For Temporary Injunction Rejected On 11-05-2007.

5. Hon'ble High Court at Lucknow (Decided) Raj Singh, Jagit Singh, Surendra Singh Kunwar Mohit Singh, Kunwar Shobhit Singh & 2 Others 09 Butler Raod, Hazratganj, Lucknow Disposed of

6. Civil Court Raebareli (Decided) Surendra Singh Kunwar Mohit Singh Kunwar Shobhit Singh & 6 Others Agriculture Land situated at Village Akbarpur Kachhwah, Tehsil & District Raebareli Suit Dismissed In Default On 15-04-2023

7. Appeal No. T202310580300 SDM Raebareli (Pending) Kunwar Mohit Singh, Kunwar Shobhit Singh Raj Singh, Jagit Singh, Surendra Singh Agriculture Property Situated At Village Akbarpur Kachhwah, Tehsil & District Raebareli

(f) So far as the criminal cases are concerned, the details of criminal cases have been indicated in paragraph 16 of the instant application, which is extracted hereunder:-

"THAT it is imperative to bring to the knowledge of this Hon'ble Court that the present FIR is the eighth FIR filed by the Opposite Party /or associates, wherein the same/similar false allegations have been levelled against the applicants without any iota of proof. It is further submitted that since 2005, The Opposite Party No. 2, his family members and associates have registered a total of 8 FIRs including the present Impugned FIR, against the Applicants levelling the same allegations. After detailed investigation, the Police Authorities have submitted Final report in 7 cases including the present case, and further the Applicants have been discharged by the Ld. Trial Court in 1 Case. Copy of the previous FIRs registered against the Applicants by the Opposite Party No. 2 and his associates along with corresponding order of Discharge and Final Reports filed by the Police Authorities have marked herewith and annexed herein as ANNEXURE NO. A11 (COLLY) to this Application. A table of the previous F.I.R and thir outcome is listed below:

FIR FILED BY RAJ SINGH, HIS FAMILY MEMBERS AND HIS ASSOCIATES Sr. No. F.I.R No. & DISTRICT COMPLAINANT ACCUSED OUTCOME FIR no 373/2005 P.S Wazirganj, District Lucknow U/s 420, 467, 468, 471, 506 IPC Dated 08.12.2005 Jaini Singh (Father of Raj Singh) Kunwar Mohit Singh & Kunwar Shobhit Singh & 2 others Discharge Order dated 18.06.2019 passed by ACJM (A.P) C.B.I Lucknow FIR no 427/2016 P.S Kotwali, District Raebareli U/s 419,420, 467, 468, 471, 427, 506 IPC Dated 25.07.2016 Surendra Singh (Brother of Raj Singh) Kunwar Mohit Singh, Kunwar Shobhit Singh, & Ruchi Singh Final report dated 02.02.2017 U/s 173 Cr.P.C

filed after investigation. FIR no 778/2016 P.S Kotwali, District Raebareli U/s 419, 420, 506 IPC Dated 24.12.2016 Surendra Singh (Brother of Raj Singh) Kunwar Mohit Singh, Kunwar Shobhit Singh, & unnamed person Final report dated 30.09.2020 U/s 173 Cr.P.C filed after investigation. FIR no 710/2017 District Lucknow U/s U/s 420, 467, 468, 471 IPC Dated 26.08.2017 Raj Singh @ Alias Kunwar Mohit Singh, Kunwar Shobhit Singh Final report dated 18.12.2018 U/s 173 Cr.P.C filed after investigation. FIR no 364/2020 P.S Hazratganj District Lucknow U/s 420, 467, 468, 471 IPC Dated 21.11.2020 Raj Singh @ Alias Kunwar Mohit Singh, Kunwar Shobhit Singh Final report dated 22.01.2021 U/s 173 Cr.P.C filed after investigation. FIR no 008/2021 P.S Kotwali District Raebareli U/s 147, 148, 149, 504, 506 IPC Dated 03.01.2021 Jitendra Singh & Sanjai Singh (Associates of Raj Singh) Kunwar Mohit Singh, Kunwar Shobhit Singh & 8-10 Unnamed persons Final report dated 13.04.2022 U/s 173 Cr.P.C filed after investigation. FIR no 84/2021 P.S Jagatpur District Raebareli U/s 419, 420, 467, 468, 471, 504, 506 IPC Dated 22.03.2021 Ramesh Misra (Associates of Raj Singh) Kunwar Mohit Singh, Kunwar Shobhit Singh Final report dated 27.12.2021 U/s 173 Cr.P.C filed after investigation. (xxi) Now, reverting to the facts of the instant case, the Investigating Officer (in short "IO") after completion of investigation filed the charge sheet against the applicants only under Sections 419, 420 IPC. The contents of charge sheet, being relevant, are extracted hereunder:-

"Jhekuth fuosnu gS fd eqdnek mijksDRk Fkkuk Hknks[kj esa iathd`r gksdj foospuk oomofuo n;kuUn frokjh ds }kjk xzg.k dj izkjEHk dh x;h ftuds }kjk c;ku oknh] voyksdu mRrjkf/kdkjh fjksVZ ,oa vU; dkxtkrksa dk voyksdu fd;k x;k gSA muds }kjk dqioj eksfgr flag o dqioj 'kksfHkr flag ds tUe izek.k i= ,oa e`R;q izek.k i= Hkh fy;k x;k gSA fnukad 01-11-2023 dks Jheku iqfyl v/kh{kd jk;cjsyh ds vkns`k ls Fkkuk dksrokyh esa vfrfjDRk fujh{kd vijk/k Jh larks`k dqekj flag dks vkoafVr dh x;h ftuds }kjk foospuk xzg.k dj mDRk fookfnr Hkwfe dk ukekarj.k djus okys ys[kiky 'kf'kdkUr voLFkh ,oa jked`".k ik.Ms jktLo fujh{kd dk c;ku vafdr fd;k x;kA ftlesa ;g crk;k x;k fd dqioj eksfgr flag o dqioj 'kksfHkr flag }kjk Loo dqioj c`tsUnz flag dk mRrjkf/kdkj crkrs gq;s Loo dqioj c`tsUnz flag ds e`R;q izek.k i= ,oa ifjokj jftLVj dh Nk;kizfr miyC/k dj;k x;h rFkk ekSf[kd #i ls crk;k x;k fd xzke eksbZ ls lEcU/kr fdllh olh;r o fdllh U;k;ky; esa okn fopkjk/khu ugha gSA buds }kjk miyC/k dj;k x;s izi=ksa ds vk/kkj ij esjs }kjk ukekarj.k dh dk;Zokgh dh x;h FkhA ml le; ges 'kelsj flag }kjk c`tsUnz flag dh lEifRr ls csn[kyh ds lEcU/k esa olh;r dh tkudkjh ugha FkhA dqioj eksfgr flag o dqioj 'kksfHkr flag us lR; dks fNikdj /kks[kk/kM+h djrs gq, ukekarj.k djkus gq;s vkosnu tkucw>dj fn;k x;kA ;fn ml olh;r dh tkudkjh eq>s feys gqbZ gksrh rks ukekarj.k dh dk;Zokgh esjs }kjk ugha dh tkrhA foospuk ds nkSjku iwoZ esa 'kelsj flag dh jftkLVMZ olh;r o"KZ 1991 esa vafdr gLrk{kjksa dk feyku lafnX/k olh;r 1994 ls dj;k x;k rks fof/k foKku iz;ksx`kkyk egkuxj y[kuÅ }kjk nksuks olh;rksa ij vafdr gLrk{kj leku ik;k x;k ftlls ;g iqf"V gqbZ fd 'kelsj flag }kjk rS;kj dh x;h vfUre olh;r 1994 fu%lansg lgh gSA ftldks tkucw>dj vkjksihx.k eksfgr flag o 'kksfHkr falag iq=x.k Loo c`tsUnz flag fuoklh mijksDr }kjk ukekarj.k dh dk;Zokgh ls fNikdj oknh eqdnek dh Hkwfe dks Nydj vius uke ukekarfjr dj;k x;kA vc rd dh foospuk ls 1994 dh olh;r 'kelsj flag }kjk l`ftr 1994 dh olh;r QthZ ugha ik;h x;hA fygktk eqdnek mijksDr esa

467@468@471 Hkknfo dk vijk/k gksuk ugha ik;k x;kA vr% /kkjk 467@468@471 Hkknfo dk yksi fd;k tkrk gSA eqdnek mijksDr esa ukfer vfHk;qDr dqioj eksfgr flag o dqioj 'kksfHkr flag iq=x.k Loo c`tsUnz flag fuoklh mijksDRk dk 'kelsj flag }kjk l`ftr olh;r dks jktLo dfeZ;ksa ls fNikdj /kks[kk nsdj] NyiwoZd tehu vius uke ls oS/k O;fDr;ksa ds vius vf/kdkjksa ls oafpr dj vius uke ukekarfjr dj;k;k x;k tks /kkjk 419@420 Hkknfo dk vijk/k izekf.kr gSA vfHk;qDrx.k mijksDr dh fxjQ~rkjh ij ekuo mPp U;k;ky; us LFkxu vkns'k izkIr gSA vr% vfHk;qDrx.k mijksDRk dk pkyku vUrXkZr /kkjk 419@420 Hkknfo tfjs vkjksi i= la[;k 472@2023 fnukad 07-12-2023 ekuo U;k;ky; fd;k tk jgk gSA Jhekuth ls fuosnu gS fd lk{; dk ijh{k.k dj vfHk;qDrx.k dks nf.Mr djus dh d`ik djsaA eqdnek mijksDRk esa vc dksbZ foospukRed dk;Zokgh 'ks"k ugha gS foospuk lekIr dh tkrh gSA"

(xxii) From a bare reading of above quoted charge sheet, this Court finds that the IO has filed the charge sheet under Sections 419, 420 IPC without collecting the evidence related to the allegations levelled in the FIR, as per which, the applicants by playing fraud, obtained birth certificates from Nagar Nigam, Lucknow to get certain benefits on the basis of law of succession. For the purposes of filing the charge sheet, the IO observed that the applicants did not produce the 'Will' dated 25.11.1994, referred as 'l`ftr olh;r' in the charge sheet, executed by Sardar Shamsher Singh and concealing this document, they got their names recorded in the revenue records.

8. In the aforesaid background of the case, the instant application has been filed before this Court.

9. Sri Sudeep Seth, learned Senior Advocate, for the purposes of seeking reliefs sought in this application, in nutshell, submitted that to a purely civil dispute, criminal colour has been given by the side opposite and also that there is no evidence available with the prosecution so as to prove the complicity of the applicants in the offences as indicated under Sections 419 and 420 IPC.

10. On the contrary, Sri Vivek Raj Singh, learned Senior Advocate, in nutshell, submitted that in fact the applicants are not the sons of Kunwar Brijendra Singh rather one is the son of 'Kunwar Brijesh' and another is the son of 'dst+h flag' and as such, the birth certificates of the applicants are the forged documents and being so and also that during the mutation proceedings related to Gata No. 66 M, the applicants intentionally did not place on record the subsequent 'Will' dated 25.11.1994, which would prevail, and also did not disclose themselves as legal heir of Sardar Shamsher Singh, the offence against the applicants is made out.

11. Considered the aforesaid and perused the record.

12. Upon due consideration of the aforesaid facts of the case, this Court finds that indulgence of this Court is required in the matter. It is for the following fact(s)/reason(s):-

(i) Indisputedly, Madhu is the mother of the applicants.

(ii) The parties are claiming their rights over the property of Late Sardar Shamsher Singh and in the registered 'Will' dated 26.06.1991 of Sardar Shamsher Singh,

genuineness of which is not in dispute, Smt. Madhu has been recognized as the wife of Kunwar Brijendra Singh.

(iii) Sardar Shamsher Singh died leaving behind his son namely Kunwar Brijendra Singh and his daughters namely Inderjeet Kaur & Daljeet Kaur.

(iv) At the time of issuance of birth certificates in issue, the applicant No. 1 was about 14 years old and applicant No. 2 was about 12 years old and accordingly, it cannot be inferred that the applicants were instrumental in getting/obtaining the birth certificates in issue.

(vi) According to Section 108 of the Code of 2006, the applicants being male lineal descendants in the male line of descent would get the rights over the Gata No. 66 M, which is not covered under the 'Wills' aforesaid, if not proved otherwise in civil proceedings. Accordingly, in not placing the 'Wills' by the applicants in mutation proceedings would not attract the offence under Section 420 IPC. In this regard, observations of the Hon'ble Apex Court made in the following judgments have been taken note of.

(a) Anil Kumar Bose v. State of Bihar, (1974) 4 SCC 616.

(b) Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751.

(c) Samir Sahay v. State of U.P., (2018) 14 SCC 233.

(d) R.K. Vijayasathay v. Sudha Seetharam, (2019) 16 SCC 739.

(e) Deepak Gaba v. State of U.P., (2023) 3 SCC 423.

(f) Vipin Sahni v. CBI, 2024 SCC OnLine SC 511.

(g) Ramandeep Singh v. State of U.P., 2024 SCC OnLine All 7500.

(h) Jit Vinayak Arolkar v. State of Goa, 2025 SCC OnLine SC 31.

(v) As per the allegations levelled in the FIR, the applicants obtained their birth certificates from Nagar Nigam by playing fraud indicting therein the name of Kunwar Brijendra Singh as their father to get certain benefits based upon the law of succession and to establish the same, the IO has not collected any evidence.

13. In view of above, to the view of this Court, to a purely civil dispute, criminal colour has been given by initiating the proceedings in issue, which according to pronouncement(s) of Hon'ble Apex Court including in the case(s) of Sunil Bharti Mittal Vs. C.B.I., AIR 2015 SC 923; State of Gujarat Vs. Afroz Mohd. Hasanfatta; AIR 2019 SC 2499; Gulam Mustafa vs. State of Karnataka and another;

2023 SCC online SC 603 and Deepak Gaba and others Vs. State of U.P.; 2023 LiveLaw (SC) 3, should not be allowed to continue.

14. For the reasons aforesaid, the present application U/S 482 Cr.P.C. is allowed in above terms. The entire criminal proceedings arising out of Case Crime No. 488 of 2023, under Sections- 419, 420, 467, 468, 471 IPC, P.S.- Bhadokhar, District- Raebareli are hereby quashed.

15. Office/Registry is directed to send the copy of this order to concerned court forthwith.

Order Date :- 31.1.2025 Arun/-