

SARDAR ALI KHAN

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v.

THE STATE OF UTTAR PRADESH THROUGH PRINCIPAL
SECRETARY HOME DEPARTMENT & ANR.

(Criminal Appeal No. 161 of 2020)

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JANUARY 24, 2020

[MOHAN M. SHANTANAGOUDAR AND

R. SUBHASH REDDY, JJ.]

*Penal Code, 1860 – ss. 418, 419, 420, 467 & 468 and 471 – C
A plot was owned by the father of the 2nd respondent and appellant claimed purchase of such plot by sale deed dated 29.12.1993 which was registered on 05.01.1994 – Father of the 2nd respondent died in the year 1997 – In 2008, the 2nd respondent filed a suit against the appellant and sought cancellation of sale deed – In 2012, 2nd respondent also filed a complaint against the appellant alleging offences u/ss. 418, 419, 420, 467, 468 and 471 IPC – Applications filed by the appellant for discharge were rejected – Subsequently, application u/s. 482 Cr.P.C. was filed for quashing the above proceedings, however, the same was rejected by the High Court – D
On appeal, held: The registered sale deed of the property in question was of the year 1994, the 2nd respondent filed suit in the year 2008 seeking cancellation of sale deed – There was no allegation of impersonation or forgery of signatures in the suit filed by the 2nd respondent – Though the suit was filed in the year 2008, the 2nd respondent filed criminal complaint in the year 2012 alleging forgery and impersonation – When the matter is pending in the Civil Court regarding the validity of the sale deed, it is for the Civil Court to decide whether any fraud was played or not by the appellant, on the late father of the 2nd respondent for obtaining the sale deed – E
When the same issue was seized up before the Civil Court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offences u/ss. 418, 419, 420, 467, 468 & 471 IPC – Having regard to serious factual disputes which were of civil nature, for which civil suits were pending, allowing the 2nd respondent to pursue his complaint in criminal proceedings would F
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- A *amount to abuse of the process of law – Therefore, criminal proceedings quashed.*

Disposing of the appeal, the Court

- HELD:** At the outset it is to be noted that the appellant has purchased the plot in question by sale deed dated 29th December, 1993 which was registered on 5th January, 1994. The father of the 2nd respondent died on 3rd December, 1997. Though the registered sale deed is of 1994, the 2nd respondent filed suit which is pending in O.S. No.160 of 2008, only in the year 2008 seeking cancellation of sale deed alleging that the aforesaid sale deed was got executed by the appellant and his brother, by making use of the acquaintance with his father, in a false and fraudulent manner. There is no allegation of impersonation or forgery of signatures in the suit filed by the 2nd respondent. It is the case of the appellant that even the 2nd respondent is a signatory to the sale deed as a witness. Though the suit was filed in the year 2008, the 2nd respondent has chosen to file the criminal complaint only in the year 2012 alleging forgery and impersonation. With regard to the validity of the sale deed, matter is seized up before the competent civil court and it is for the civil court to decide whether any fraud is played or not by the appellant, on the late father of the 2nd respondent for obtaining the sale deed. When the very same issue is seized up before the civil court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC. Although, it is contended by the 2nd respondent that complaint filed is not barred by limitation but at the same time it appears, there is no reason for lodging private complaint in the year 2012. The sale deed on which basis the title and possession is claimed by the appellant was registered on 5th January, 1994, suit itself is filed nearly after 14 years. Even after filing of the suit on 24th August, 2008 there is further about 4 years' delay in filing the criminal complaint against the appellant herein. Allowing the proceedings to go on against the appellant who is stated to be about 87 years, in the above set of facts, is nothing but abuse of the process. It is to be noted that there is no allegation of impersonation and forgery of the signatures in the suit filed by the 2nd respondent. In any event, when the suit filed by the 2nd respondent is disposed of, the criminal proceeding will stand stayed.

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respondent for cancellation of sale deed, is pending consideration before the competent court of law, the 2nd respondent cannot pursue his complaint in criminal proceedings by improving his case. Having regard to serious factual disputes which are of civil nature, for which civil suits are pending, allowing the 2nd respondent to pursue his complaint in criminal proceedings is nothing but abuse of the process of law. For the aforesaid reasons this Court is of the considered view that the criminal proceedings are fit to be quashed by allowing this appeal. [Para 9] [149-F-H; 150-A-F]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 161 of 2020.

From the Judgment and Order dated 12.03.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 5684 of 2016.

Prashant Bhushan, Omanakuttan K.K., Cheryl D'Souza, Advs. for the Appellant.

Ankit Goel, R.K. Gupta, Sudarshan Rajan, Mahesh Kumar, Md. Quamar Ali, Vijay Kumar Sharma, Adfs. for the Respondents.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J. 1. Leave granted.

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2. This Criminal Appeal is filed by the accused in Complaint Case No.708 of 2012, registered in Police Station, Kaimganj, District Farrukhabad, Uttar Pradesh, for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC, aggrieved by an order dated 12th March, 2018 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.5684 of 2016. By the aforesaid impugned order, application filed by the appellant herein under Section 482 Cr.P.C. is dismissed by the High Court.

3. We have heard Sri Prashant Bhushan learned counsel assisted by Sri Omanakuttan K.K. and Sri Cheryl D'Souza, Advocates, for the appellant and Sri Sudarshan Rajan, learned counsel for the 2nd respondent/complainant.

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4. The dispute relates to plot No.102 (measuring 0.101 hectare) which has been renumbered as plot No.102/2 situated in Yahiyapur, Post Kaimganj, Pargana Kampil, Tehsil Kaimganj, District Farrukhabad, U.P.

- A Originally, the aforesaid plot was owned by the father of the 2nd respondent late Faheem Ali Khan and the appellant claims purchase of such plot by sale deed dated 29th December, 1993, registered on 5th January, 1994. Faheem Ali Khan died on 3rd December, 1997 and the 2nd respondent is one of the heirs of late Faheem Ali Khan. For the properties which were inherited upon 2nd respondent on the death of Faheem Ali Khan, mutation was effected on 16th November, 1998.
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5. The 2nd respondent herein has filed Original Suit No.160 of 2008 which is pending on the file of Judicial Magistrate, Kayamganj in Farrukhabad district in case No.160 of 2008. In the above said suit the 2nd respondent has claimed the following relief:-

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 - (A) That the suit of the applicant should be declare by granting the permanent injunction against the defendant with the directions that the defendant is restrained from illegally and forcibly everything the applicant from the disputed property or any of its part and should not interfere with the peaceful ownership and possession of the applicant.
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 - (AA) The decree of cancellation of the sale deed dated 29/12/1993, which was presented for registration on 25/01/1994 and the photocopy of which was entered on page number 65 of the book at people 111-252 at serial number 22 in the office of the sub registrar Kayamganj in the letter number 1, cover number 1156 at page number 85/93 at serial number 22 on 20/01/1994, Chile ordered against the defendant and in favour of the applicant and the sub registrar office should be directed to make the entries accordingly.
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 - (B) That the defendant should pay the suit expenses to the applicant.
 - (C) That any other relief which is deemed appropriate may be granted to the applicant.”

- G 6. With regard to very same plot, the appellant herein also filed a suit in Original Suit No. 474 of 2008 for permanent injunction restraining the 2nd respondent from demolishing the constructions made by the appellant on the aforesaid plot. The said suit is also pending in Case No.474 of 2008 on the file of Judicial Magistrate, Kayamganj in Farrukhabad district. The aforesaid suits were clubbed and in
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interlocutory applications filed by the parties, a common order to maintain *status quo* in respect of land in dispute was passed. Against the interim order, matters were carried in Civil Misc. Appeal Nos. 30 and 27 of 2009 filed by the appellant whereas the respondent no.2 had filed Misc Appeal Nos. 28 and 29 of 2009. It is stated that all the said appeals were decided by a common order by the Additional District Judge and application for injunction filed by the appellant was allowed and application filed by the 2nd respondent was dismissed, against which matters were carried further by way of Civil Miscellaneous Writ Petitions which are stated to be pending before the High Court and no interim order is passed therein.

7. On 10th April, 2012, brother of the appellant, Wasim Ali Khan filed a complaint under Section 200 Cr.P.C. against the 2nd respondent herein alleging that he had stolen the original sale deed from the mutation file. On 20th September, 2012, the 2nd respondent has filed a complaint against the appellant and Wasim Ali Khan. On such complaint, a case was registered against the appellant and another for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC. Initially, the appellant filed an application for discharge which was rejected. Subsequently, he has filed application under Section 482 Cr.P.C for quashing of the above said proceedings and the summoning order issued by the Magistrate. On such application filed, the impugned order is passed by High Court rejecting the same.

8. Having heard learned counsel for the parties, we have perused the impugned order and other material placed on record.

9. At the outset it is to be noted that the appellant has purchased the plot in question by sale deed dated 29th December, 1993 which was registered on 5th January, 1994. The father of the 2nd respondent died on 3rd December, 1997. Though the registered sale deed is of 1994, the 2nd respondent filed suit which is pending in O.S. No.160 of 2008, only in the year 2008 seeking cancellation of sale deed alleging that the aforesaid sale deed was got executed by the appellant and his brother, by making use of the acquaintance with his father, in a false and fraudulent manner. There is no allegation of impersonation or forgery of signatures in the suit filed by the 2nd respondent. It is the case of the appellant that even the 2nd respondent is a signatory to the sale deed as a witness. Though the suit was filed in the year 2008, the 2nd respondent

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- A has chosen to file the criminal complaint only in the year 2012 alleging forgery and impersonation. With regard to the validity of the sale deed, matter is seized up before the competent civil court and it is for the civil court to decide whether any fraud is played or not by the appellant, on the late father of the 2nd respondent for obtaining the sale deed. When the very same issue is seized up before the civil court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC. Although, it is contended by the learned counsel for the 2nd respondent that complaint filed is not barred by limitation but at the same time it appears, there is no reason for lodging private complaint in the year 2012. The sale deed
- B on which basis the title and possession is claimed by the appellant was registered on 5th January, 1994, suit itself is filed nearly after 14 years. Even after filing of the suit on 24th August, 2008 there is further about 4 years' delay in filing the criminal complaint against the appellant herein. Allowing the proceedings to go on against the appellant who is stated to be about 87 years, in the above set of facts, is nothing but abuse of the process. It is to be noted that there is no allegation of impersonation and forgery of the signatures in the suit filed by the 2nd respondent. In any event, when the suit filed by the 2nd respondent for cancellation of sale deed, is pending consideration before the competent court of law, the 2nd respondent cannot pursue his complaint in criminal proceedings by improving his case. Having regard to serious factual disputes which are of civil nature, for which civil suits are pending, allowing the 2nd respondent to pursue his complaint in criminal proceedings is nothing but abuse of the process of law. For the aforesaid reasons we are of the considered view that the criminal proceedings are fit to be quashed by allowing this appeal.
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- G 10. For the aforesaid reasons, this criminal appeal is allowed and the impugned order dated 12th March, 2018 passed in Criminal Miscellaneous Application No.5684 of 2016 by the High Court of Judicature at Allahabad is set aside, consequently, the application filed by the appellant under Section 482, Cr.P.C. stands allowed by quashing the proceedings in Complaint Case No.708 of 2012 for offence under Sections 418, 419, 420, 467, 468 and 471 IPC on the file of Police Station Kaimganj, District Farrukhabad, Uttar Pradesh and consequential orders passed by the Magistrate also stand quashed.
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11. It is made clear that the observations and findings recorded in this order are only for the purpose of disposal of this appeal arising out of application filed under Section 482 Cr.P.C. It is open for the civil court to decide the various issues in the pending suits on their own merits, uninfluenced by this order.

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Ankit Gyan

Appeal disposed of.

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