

SMT. REKHA JAIN AND ANR.

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v.

THE STATE OF UTTAR PRADESH AND ORS.

(Criminal Appeal No. 136 of 2022)

FEBRUARY 03, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Criminal proceedings u/ss.406, 420, 467, 468, 471 and 120-B IPC – Six accused including appellants-accused –Allegation in FIR that one co-accused had misappropriated complainant's and other persons' monies whereafter the property in question was attached in the year 1998-199 against the amounts due; and in the year 2019, the property was purchased by the appellants – High Court declined to quash criminal proceedings against the appellants – Justification of – Held: Not justified – Main allegations were against the co-accused – Only allegation against the appellants was that they purchased the property in question – Even from the averments and allegations in the FIR, no prima facie case made out against the appellants – To continue criminal proceedings against the appellants would be an abuse of process of law and the Court, and unnecessary harassment to the appellants – Criminal proceedings quashed insofar as appellants are concerned – IPC – ss.406, 420, 467, 468, 471 and 120-B.

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Allowing the appeal, the Court

HELD:1. Having perused the allegations in the complaint/F.I.R., it can be seen that the main allegations are against the other co-accused. The only allegation against the appellants is that they have purchased the property in question, which was attached in the year 1998-1999 against the amounts due and payable to the depositors, who had deposited in Kuber Mutual Benefits Ltd. between 1998-1999. It is to be noted that the property has been purchased by the appellants in the year 2019. Nothing is brought on record that at the time when the property was purchased by the appellants, the attachment was continued and/or any attachment was registered. There are no allegations

- A that the appellants are related to the other co-accused. Even from the averments and the allegations in the F.I.R., it cannot be said that there is any *prima facie* case made out against the appellants for the offences under Sections 406, 420, 467, 468, 471 and 120-B IPC. The main allegations are against other co-accused.
- B Therefore, to continue the criminal proceedings against the appellants would be an abuse of process of law and the Court and unnecessary harassment to the appellants, who seem to be the purchasers of the property on payment of sale consideration. In the above facts and circumstances of the case, the High Court ought to have exercised its powers and discretion under Section
- C 482 Cr.P.C. and ought to have quashed the criminal proceedings against the appellants. [Para 6][512-G-H; 513-A-D]
 - 2. The criminal proceedings for offences under Sections 406, 420, 467, 468, 471 and 120-B IPC, including the charge sheet are hereby quashed and set aside in so far as the appellants
- D are concerned. [Para 7][513-D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 136 of 2022.

From the Judgment and Order dated 03.01.2020 of the High Court of Judicature in Allahabad in Application U/s 482 No.47634 of 2019.

- E Ashok Kumar Sharma, Pramod Kumar Dubey, Sr. Advs., Parmanand Gaur, Vikalp Mudgal, Ekansh Bansal, Vaibhav Mishra, Ajay Singh, Amit Kumar, Anurag Andley, Rahul Pratap Singh, Ms. Alka Sinha, Abhishek Atrey, Advs. for the Appellants.
- F R. K. Raizada, AAG, Sarvesh Singh Baghel, Shreesh Kumar Mishra, Santosh Kumar, Ms. Priya Puri, Mukesh Rana, Ms. Mamta, Ms. Smriti Sinha, Ranjay Dubey, Yati Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- G 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.01.2020 passed by the High Court of Judicature at Allahabad in an Application under Section 482 No. 47634 of 2019 by which the High Court has dismissed the said application and has refused

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to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C., original accused Nos. 2 and 3 – appellants herein – Smt. Rekha Jain and Smt. Minakshi Jain have preferred the present appeal.

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2. That on the basis of complaint under Section 156(3) Cr.P.C. submitted by the respondent No.2 herein – original complainant, on the diections of the learned Additional Chief Judicial Magistrate, Hapur, F.I.R. dated 21.01.2019 bearing Case Crime No. 48 of 2019 was registered under Sections 406, 420, 467, 468, 471 and 120-B IPC, P.S. Hapur Nagar, District Hapur against six accused persons including the appellants herein.

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2.1 That it was stated in the F.I.R. that one Arun Kumar Maheshwari (co-accused) had earlier misappropriated complainant's and other persons' monies ostensibly towards deposit in one Kuber Mutual Benefits Ltd. (in the year 1998-1999), and fled from Hapur without returning the monies back due to which, the property in question was attached by and was given in custody to the complainant - Pradeep Singhal and one Bijendra Maheshwari, and now the accused have fraudulently sold the property in question to the co-accused Smt. Rekha Jain and Smt. Minakshi Jain (appellants herein).

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2.2 That the appellants herein and other co-accused approached the High Court by way of the present application to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C. By the impugned judgment and order, the High Court has dismissed the said application. Hence the accused, Smt. Rekha Jain and Smt. Minakshi Jain have preferred the present appeal.

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3. Learned counsel appearing on behalf of the appellants – accused has vehemently submitted that in the facts and circumstances of the case, the High court has committed a grave error in not quashing the criminal proceedings against the appellants.

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3.1 It is further submitted by learned counsel appearing on behalf of the appellants that the main allegations are against one Arun Kumar Maheshwari and others and that too for the offences of misappropriation of the amount deposited between 1995-1999. It is submitted that the appellants are the bona fide purchasers of the property in question, which was neither an attached property nor a subject matter of any dispute at the time it was purchased by the appellants.

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3.2 It is submitted that on a bare reading of the allegations in the F.I.R./complaint, no case is made out against the appellants for the

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- A offences alleged except the allegation that the appellants have purchased the property, which is alleged to be an attached property. It is submitted that neither any attachment was registered nor any attachment was in existence at the time when the appellants purchased the property.

- 3.3 It is submitted that except the allegation that the appellants B have purchased the so called alleged attached property, there are no further allegations at all by which it can be said that the appellants have committed the offences under Sections 406, 420, 467, 468, 471 and 120-B IPC.

- 3.4 It is therefore submitted that the criminal proceedings against C the appellants are nothing but an abuse of process of law and an unnecessary harassment to them. Therefore, it is prayed to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

4. Shri R.K. Raizada, learned Additional Advocate General appearing on behalf of the State tried to oppose the present appeal by D submitting that after the investigation, the charge sheet has been filed and therefore the present criminal proceedings be not quashed at this stage. However, when a pointed question was asked to the learned counsel appearing on behalf of the State about the actual role assigned to the appellants and to point out any material against the appellants for the offences alleged and other allegations, except the allegation that the E appellants have purchased the property, learned counsel appearing on behalf of the State was not in a position to point out any other material against the appellants by which, it can be said that any *prima facie* case is made out against the appellants for the offences alleged.

5. Learned counsel appearing on behalf of the original complainant F – respondent No.2 has filed a counter affidavit submitting that having come to know the true facts, he has no objection if the criminal proceedings against the appellants are quashed.

6. Having heard the learned counsel appearing on behalf of the respective parties and having perused the allegations in the complaint/ G F.I.R., it can be seen that the main allegations are against the other co-accused – Arun Kumar Maheshwari and others. The only allegation against the appellants is that they have purchased the property in question, which was attached in the year 1998-1999 against the amounts due and payable to the depositors, who had deposited in Kuber Mutual Benefits H Ltd. between 1998-1999. It is to be noted that the property has been

purchased by the appellants in the year 2019. Nothing is brought on record that at the time when the property was purchased by the appellants, the attachment was continued and/or any attachment was registered. There are no allegations that the appellants are related to the other co-accused Arun Kumar Maheshwari and others. Even from the averments and the allegations in the F.I.R., it cannot be said that there is any *prima facie* case made out against the appellants for the offences under Sections 406, 420, 467, 468, 471 and 120-B IPC. The main allegations are against other co-accused. Therefore, to continue the criminal proceedings against the appellants would be an abuse of process of law and the Court and unnecessary harassment to the appellants, who seem to be the purchasers of the property on payment of sale consideration. In the above facts and circumstances of the case, the High Court ought to have exercised its powers and discretion under Section 482 Cr.P.C. and ought to have quashed the criminal proceedings against the appellants.

7. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The criminal proceedings arising out of Case Crime No. 48 of 2019 for the offences under Sections 406, 420, 467, 468, 471 and 120-B IPC, P.S. Hapur Nagar, District Hapur including the charge sheet are hereby quashed and set aside in so far as the appellants herein – Smt. Rekha Jain and Smt. Minakshi Jain are concerned.

Present appeal is accordingly allowed.

Bibhuti Bhushan Bose

Appeal allowed.