

Allahabad High Court

Atul Kumar Singh Tomar And Others vs State Of U.P.And Another on 18 November, 2020

Bench: Suneet Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 15.10.2020

Delivered on 18.11.2020

Court No. - 2

Case :- APPLICATION U/S 482 No. - 37166 of 2010

Applicant :- Atul Kumar Singh Tomar and others

Opposite Party :- State of U.P. and another

Counsel for Applicant :- S.K. Rao, O.P. Singh

Counsel for Opposite Party :- Govt.Advocate, K.M. Tripathi

Hon'ble Suneet Kumar, J.

1. Heard Sri O.P. Singh, learned Senior Advocate, assisted by Sri Indrajeet Singh, learned counsels for applicants, and learned A.G.A. appearing for the State. The learned counsel for the opposite party no. 2 has not put in appearance in the revised call.

2. Applicants, four in number, by means of the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for short "Cr.P.C."), seek the following reliefs:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application and to quash the prosecution of the applicants in Case Crime No. 5 of 2009, U.Sec. 420, 467, 468, 471 & 448 I.P.C. P.S. Naubasta District Kanpur Nagar in pursuance of the Charge Sheet No. 300 of 2009 of dated 1.8.2009 which has been numbered as Crl. Case No. 10342 of 2009 : State Vs. Atul Kumar Singh Tomar & others pending in the Court of 1st ACMM, Kanpur Nagar i.e. (Annexure 2 to the accompanying affidavit).

It is further prayed that this Hon'ble Court may be pleased to quash the entire further proceedings of the Cri. Case No. 10342 of 2009 : State Vs. Atul Kumar Singh Tomar & others U.Sec 420, 467, 468, 471 & 448 I.P.C. in Case Crime No. 5 of 2009 U. Sec. 420, 467, 468, 471 & 448 I.P.C., P.S. Naubasta, District Kanpur Nagar pending in the Court of 1st ACMM, Kanpur Nagar.

It is further prayed that his Hon'ble Court may be pleased to quash the order of cognizance dated 29.9.2009 passed by 1st ACMM, Kanpur Nagar mentioned in the Charge Sheet No. 300 of 2009 of dated 1.8.2009 in Case Crime No. 5 of 2009 U. Sec. 420, 467, 468, 471 & 448 I.P.C. P.S. Naubasta District Kanpur Nagar and quoted in para 12 of the affidavit.

It is further prayed that this Hon'ble Court may be pleased to stay the entire further proceedings of the Cri. Case No. 10342 of 2009 : State Vs. Atul Kumar Singh Tomar & others U. Sec 420, 467, 468, 471 & 448 I.P.C. in Case Crime No. 5 of 2009 P.S. Naubasta, District Kanpur Nagar pending in the Court of 1st ACMM, Kanpur Nagar during the pendency of the aforesaid case and/or be pleased to pass such other and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. The applicants are assailing the charge-sheet, cognizance order and consequential trial pursuant thereof.

4. F.I.R. was lodged on 07.01.2009 alleging that complainant is owner and in possession of Plots No. 239 and 240, Naubasta, Kanpur Nagar, admeasuring 780 sq. meters. It is further alleged that the office bearers of Rooprani Sukhnandan Singh Mahavidyalaya (in short "Degree College") on 30.06.2008 trespassed the plots of the complainant after breaking 90 ft.x10 ft. wall. On 13.12.2008, the complainant approached the revenue authorities; Naib-Tehsildar in report dated 26.12.2008 was of the opinion that the Degree College has encroached upon the plots belonging to the complainant. Applicants are not named in the F.I.R.

5. The first applicant is Manager of the Degree College, second applicant is President of the Degree College, third applicant is father of first applicant and former member of Legislative Council (M.L.C.), and, fourth applicant is Principal of Degree College.

6. It is urged by the counsel for the applicants that on 21.02.1991, the third applicant purchased plots no. 280 and 282, Naubasta, Kanpur Nagar, in a government auction. The sale was confirmed on 14.10.1991 in favour of highest bidder by Commissioner, Kanpur Division, Kanpur. Pursuant thereof, Additional District Magistrate (F&R), Kanpur Nagar, executed sale-deed of the said plots on behalf of the State. The name of third applicant was mutated in the revenue record on 16.12.2002. Thereafter, third applicant executed sale-deed dated 11.06.2003 of part of plots no. 280 and 282 (410 and 450 sq. meters respectively) in favour of the Degree College. By a subsequent sale-deed dated 14.09.2004 the remaining part of the said plots was transferred in favour of the Degree College. The name of the Degree College came to be mutated in Khatauni vide order dated 21.07.2007. It is further submitted that the boundary wall of 90 ft.x10 ft. was not constructed on 30.06.2008, as alleged in the F.I.R., but it was constructed by the Degree College eight years back on the plots separating the the plots of the complainant, i.e., plots. no. 239 and 240, which are

adjacent to plots no. 280 and 282 of Degree College.

7. It is further submitted that the allegations in the F.I.R. is false and malicious; applicants have no concern with the affairs of the Degree College and have not encroached upon any portion of plots no. 239 and 240, as alleged. At the most it is a case of demarcation on the spot; the boundary wall was constructed eight years back without the complainant raising any objection. It is further contended that it is not disclosed in the F.I.R. or the statements recorded under Section 161 Cr.P.C. as to which part of plots no. 239 and 240 has been occupied forcefully; the dispute raised by the complainant is purely of civil nature and several suits inter-se parties are pending much before lodging of F.I.R. The details of suits are as follows:

(i) Original Suit No. 843 of 2007 (Smt. Manorama Devi Vs. Lal Singh Tomar) in respect of plot no. 239, Naubasta, Kanpur Nagar in the Court of Civil Judge (Senior Division), Kanpur Nagar, seeking permanent injunction,

(ii) Original Suit No. 844 of 2007 (Vijay Kumar Shukla Vs. Lal Singh Tomar) in respect of Plot No. 239, Naubasta, Kanpur Nagar in the Court of Civil Judge (Senior Division), Kanpur Nagar, seeking permanent injunction,

(iii) Original Suit No. 845 of 2007 (Sankatha Prasad Tiwari Vs. Lal Singh Tomar) in respect of Plot No. 239 and 240, Naubasta, Kanpur Nagar in the Court of Civil Judge (Senior Division), Kanpur Nagar, seeking permanent injunction,

(iv) Original Suit No. 1674 of 2008 (Sameer Mehrotra Vs. Rooprani Sukh Nandan Singh Mahavidyalaya) in respect of Plots No. 239 and 240, Naubasta, Kanpur Nagar, a declaratory suit seeking declaration as owner and landlord,

(v) Original Suit No. 1880 of 2008 (Rooprani Sukh Nandan Singh Mahavidyalaya Vs. Sameer Mehrotra and others), filed by third applicant against complainant and prosecution witnesses i.e. Sankatha Prasad, Smt. Manorama Devi and Vijay Kumar, seeking permanent injunction restraining them from causing any obstruction or creating any nuisance in the peaceful possession and running of Degree College pertaining to Plots No. 280 and 282, Naubasta, Kanpur Nagar.

8. The F.I.R. came to be lodged subsequently in January' 2009 on same allegations which is subject matter of dispute in the pending suits inter-se parties instituted in 2007-08.

9. The allegation in the F.I.R. is that complainant filed an application on Thana Divas on 26.07.2008 alleging encroachment and trespass on plots no. 239 and 240, upon enquiry the concerned Police authority submitted report that civil dispute is pending between the parties and Naib-Tehsildar has also submitted a report to that effect but opined that trespass has been made in the plots.

10. The State has not filed any objection. The opposite party no. 2/ complainant, has filed counter affidavit, wherein it is admitted that Degree College is situated on plots no. 280 and 282; whereas

complainant is owner of plots no. 239 and 240M. i.e. part of the plot. It is further alleged that under the garb of the alleged sale-deed encroachment/trespass was made by the officials of the Degree College on other plots including that of the complainant. It is further alleged that applicants on the strength of muscle power and forged documents have encroached upon the plots of complainant which is situated on the south of plot no. 282.

11. I have considered the rival submissions and perused the material brought on record.

12. The Supreme Court in State of Haryana and others Vs. Bhajan Lal and others¹, has elaborately considered the scope and ambit of Section 482 Cr.P.C. Paragraph 102 enumerates 7 categories of cases, by way of illustration, where power can be exercised under Section 482 Cr.P.C. The relevant category for the purposes of the instant application is extracted hereinbelow:

"(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) xxx (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) xxx (5) xxx (6) xxx (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."

13. The inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case the process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold.

14. A three-Judge Bench of this Court in State of Karnataka Vs. L. Muniswamy and others², held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. (Refer: State of Karnataka Vs. M. Devenderappa and another ³).

15. The principles enumerated in Bhajan Lal and others (supra) was considered and reiterated by Supreme Court in Vineet Kumar and others Vs. State of U.P. and another⁴ and Ahmad Ali Quraishi and others Vs. State of U.P. and others ⁵.

16. The substance of the allegations constituting the ingredients of the offence is relevant and must be asserted in the complaint. Merely applying the expression "fraud", "forged" or "forgery" is not enough to constitute the offence.

17. In Anil Mahajan Vs. Bhor Industries Ltd. and others⁶, the Supreme Court observed as under:

"The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence."

18. Applying the law on the facts of the case in hand, the allegation in the F.I.R. primarily is of trespass on the strength of forged revenue records. The statement recorded by the Investigating Officer (for short "I.O.") under Section 161 Cr.P.C. of owners, they have stated that their plots were trespassed by the Degree College. There is no evidence of forgery or the nature of forgery committed by the applicants. Mere assertion of forgery is not sufficient, substance of forgery is missing. Admittedly, suits on allegations and counter allegations of trespass have been filed by the parties, either seeking injunction or declaration. The question of ownership and possession on the spot by the respective parties is purely of civil nature and can be determined either by civil court or by revenue authorities upon demarcation on the spot. It appears that under the garb of civil suits, present prosecution was lodged to create pressure upon applicants to either free the plots from the alleged trespass/ encroachment or not to encroach the plot of the complainant and/or of the applicants.

19. It would be appropriate to first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under Section 467, Section 468 or Section 471 of IPC. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 468 provides that whoever commits forgery, intending that the document shall be used for the purpose of cheating. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

20. The term "forgery" used in these sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defines "making a false document".

21. The condition precedent for an offence under Sections 467, 468 and 471 is forgery. The condition precedent for forgery is making a false document. This case does not relate to any false electronic record. Therefore, the question is whether the third applicant, in executing and registering the two sale deeds purporting to sell a property, duly purchased in government auction, can be said to have made and executed false documents, in collusion with the other applicants.

22. An analysis of Section 464 IPC shows that it divides false documents into three categories:

(i) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was

not made or executed.

(ii) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

(iii) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

23. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

24. The sale deeds executed by third applicant, clearly and obviously do not fall under any of the categories of 'false documents'. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the IPC. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the IPC are attracted. (Refer: Md. Ibrahim and others Vs. State of Bihar and others⁷).

25. The next question that arises is whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

26. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale

consideration. But in this case the complaint is not by the purchaser. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Therefore, it cannot be said that the third applicant by the act of executing sale deeds in favour of the Degree College deceived the complainant in any manner. The purchase of the property by the third applicant in government auction and thereafter transferring it to the Degree College, do not constitute the ingredients of the offence of forgery.

27. Insofar as the criminal prosecution with regard to the offence under Sections 420, 467, 468, 471 I.P.C. is not made out on taking the allegations and the evidence in support thereof on face value. The respective parties agree that they are owners and in possession of their respective plots. The nature of cheating or forgery is not spelled out by the witnesses nor there is evidence to that effect. The prosecution of the applicant for the offence under the abovenoted sections if continued is abuse of the process of the court, accordingly unsustainable.

28. The allegations of the offence under Section 448 I.P.C. is based on the statements recorded by I.O. under Section 161 Cr.P. C. and report of Naib-Tehsildar, would prima facie make out a case against the applicants. The plots no. 280 and 282 purchased in public auction was finally transferred to the Degree College in 2004, until then no suit or complaint was filed alleging trespass. It is only after mutation in 2007, the suits came to be filed on the complainants side seeking injunction against the applicants. A complaint was filed on Thana Divas alleging trespass on plots no. 239 and 240 by the Degree College. The nature of the plot/premises alleged to have been trespassed/encroached upon is a 'house' or not is a subject matter of evidence and cannot be gone into in proceedings under Section 482 Cr.P.C.

29. The criminal prosecution insofar it relates to offence under Sections 420, 467, 478 and 471 I.P.C. is quashed. Accordingly charge framed under those Sections are also quashed. The trial shall proceed against the applicants for offence under Section 448 I.P.C., in accordance with law.

30. The application is accordingly allowed in part.

31. The party shall file computer generated copy of this order downloaded from the official website of High Court Allahabad.

32. The computer generated copy of the order shall be self attested by the counsel of the party concerned.

33. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 18.11.2020 P. Sri.