

Om Prakash Saluja vs State Of Uttarakhand And Another on 20 September, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No.1667 of 2022

Om Prakash Saluja

Vs.

.....Appli

State of Uttarakhand and another

.....Respon

Advocate: Mr. Vipul Sharma, Advocate for the applicant.

Mr. Siddhartha Bisht, Brief Holder for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J.

The brief facts which engages consideration in the proceeding of the present C482 application where the present applicant has put a challenge to the proceedings of Criminal Case No.1577 of 2022 State of Uttarakhand vs. Surjeet Singh; as well as that to the Charge Sheet No.1 dated 29.09.2021; which was submitted as a consequence of the culmination of the investigation to the FIR No.59 dated 09.02.2020, which was registered as against the present applicant for his alleged involvement in the commission of offence under Sections 420, 467, 468 and 471 of I.P.C. which was got at P.S. Rudrapur District Udham Singh Nagar. The charge sheet has been submitted in relation to the offence under Sections 420, 120-B I.P.C. only and the cognizance accordingly has been taken by the learned court of Chief Judicial Magistrate, Udham Singh Nagar vide its order dated 24.02.2022 as rendered in Criminal Case No.1577 of 2022 State vs. Surjeet Singh and others.

2. The argument of learned counsel for the applicant and its tenacity in fact was confined upon in order to bring the case within the ambit, as if it engages consideration of a civil dispute in relation to the property, which was subject matter of the deed of conveyance referred to therein, in relation to Khet No.188, Khet No.182 and Khet No.203 having a total area of 17.23 hectares, situated in Village Kolra, Rudrapur, District Udham Singh Nagar. Secondly, he attempted to extend his argument from the prospective, that the registration of the FIR in fact is malafidely oriented owing to the fact, that it was nothing but an attempt made overcome the report of the CIT dated 24.01.2020, because the FIR has been registered subsequent thereto on 09.02.2020 and thirdly that the FIR No.59 of 2020, which was got registered on 09.02.2020, was even much after the registration of the earlier FIR No.641 dated 08.12.2019, which was got registered by the present applicant at P.S. Rudrapur District Udham Singh Nagar, as against the named accused person therein, for their alleged involvement in the commission of offence under Sections 420, 467, 468, 471, 406 and 120-B IPC. Lastly, he submitted that the dispute would be of a civil nature for the reason being that there already happens to be a pending civil suit being Suit No.102 of 2019, which is presently pending

consideration before the court of Civil Judge (Jr. Div.), Rudrapur District Udham Singh Nagar, where the present applicant is a plaintiff as against the opposite party/complainant, as well as, as against 23 other defendants, whereby he is seeking a decree of declaration as well as grant of decree of permanent injunction in relation to the property, which was described therein in para 3 of the plaint. The nature of relief, which was modulated in the suit, if on its simplicitor reading, it was a suit for grant of decree of permanent injunction to the effect that the defendants may be restrained from interfering over the exclusive possession, over the property in dispute, which was the subject matter of the suit.

3. In fact the confusion which has been attempted to be drawn is that as a matter of fact, that the pendency of the suit, would have a bearing on the criminal proceedings which has been drawn by way of an FIR No.58 of 2020 dated 08.02.2020, because it may be clouded by a prior instituted proceedings of the suit, which was filed before the competent civil court on 21.08.2019, in fact if the suit in question is read in its totality, the property which was subject matter therein was Khasra No.188 M having an area of 3.2020 hectares, which was alleged to be a bhoomidhari land, which was constituting as to be the part of an oral agreement dated June 2013. The property which was a subject matter of criminal investigation, was entirely different to the one, which was being considered for the grant of declaration in the civil suit for the reason being that if para 6 and 7 of the suit is taken into consideration it only pertains to the claim, in relation to the Khasra No.188, having an area of 27x40.59 meters i.e. equivalent to about 1096 meters, which is said to be constituting as to be a part of the property, which was sold, as well as in para 6 it was referred to yet again Khasra No.188 a part of the property, which was a subject matter of consideration therein was having an area of 27x29.60 meter i.e. approximately about 800 square meter.

4. If the pleadings raised in para 5, 6 & 7 of the application are taken into consideration and if it is read in relation to the contents of the FIR No.58 of 2020, in fact the subject matter of the FIR, was only with regards to part of Khet No.188 having an area of 83.64 square meters, but the allegations levelled therein, will have no nexus as far as the pendency of the civil suit is concerned, because that was altogether an independent relief inter-se between the parties to the proceedings qua the grant of decree of declaration and permanent injunction and it cannot be said that it was absolutely in relation to the same, property, which was a subject matter of the FIR and which is subject matter of the Suit No.102 of 2019, was a similar subject matter, as it was under consideration, in the trial of the Criminal Case No.1577 of 2022.

5. Reverting back to the contents of the FIR and if it is to be read in relation to the Final Report No.1 dated 29.09.2021, is taken into consideration it has been argued by the learned counsel for the applicant, that only reason for attracting Section 420 and 120-B IPC, is only because of the reason that in the charge sheet it has been observed that the possession of the land was not handed over, which taken as reason for taking cognizance, which he contends that it is contrary to the registered deed of conveyance, which finds specific reference that the land lying in Khasra No.188, which was the subject matter referred to in FIR, the sale deed in relation to it specifically has shown that the possession was handed over.

6. This Court cannot be oblivious of the fact that the jurisdiction under Section 482 Cr.P.C., is not akin to the proceedings as if a trial is being conducted, in relation to the disputed subject matter, that is the property. In order to appreciate the evidence and rival contentions, and to come to a conclusion as to whether at all in pursuance to the sale deed, whether the possession has been handed over or not, or whether the solitary alleged act of not handing over of the possession, could at all be a subject matter for registration of the FIR No.59 of 2020 dated 09.02.2020 is concerned, these are all issues which are required to be gone into in a regular civil suit, if at all the same property is subject matter of consideration and if not then in the trial of Case No.1577 of 2020 State of Uttarakhand vs. Surjeet Singh.

7. The blend, which is being attempted to be given to the present C- 482 application, by the tenacity of arguments extended by the learned counsel for the applicant is as if, it is absolutely a civil dispute, because the factum of handing over of possession and it's with regards to as to who is in actual possession of property in question this aspect cannot be appreciated by this Court by scrutinizing the evidence in the exercise of its powers under Section 482 of Cr.P.C. because that will exclusively falling to be within the domain of learned trial court before whom the trial of Case No.1577 of 2020 for the offences under Sections 420 and 120-B IPC is pending consideration.

8. There is another limb of argument, which has been extended by the learned counsel for the applicant, that he himself has registered the FIR, even much prior in time i.e. on 08.12.2019. In case if the FIR, which is said to have been registered by him, which finds place on record as FIR No.641 dated 08.12.2019, if that is taken into consideration, it may not be construed, as to be a proceedings in parlance or similar to the present FIR, because the subject matter contained therein is entirely distinct, to that as it engaged consideration with regards to the act under Sections 420 and 120-B IPC and it's consequential effect with regards to the deed of conveyance. Apart from it is an admitted case of the applicant that the investigation in pursuance to the said FIR, which was registered by the present applicant on 08.12.2019, the investigation has completed and the charge sheet is about to be submitted for FIR No.641 of 2019.

9. On the other hand the C-482 application, has been opposed by the Government Advocate, that all these aspects pertaining to the inter-se play of proceedings, which is the subject matter of the civil suit in the FIR or initiated by the present applicant by way of an FIR No.641 dated 08.12.2019, the effect of the area of property, which has been conveyed from Khasra No.188, are all the issues which are to be appreciated, only after scrutinization of evidence by the learned trial court, that may not fall to be within the scope and ambit of C482 application, to be scrutinized by the High Court to arrive at a conclusion, as to whether at all an offence under Section 420 and 120-B IPC, is made out or not and particularly in the light of the charge sheet, which has been submitted in relation to the FIR No.58 of 2020, wherein it has been specifically observed, that so far as Khasra No.188 is concerned, it has a total area of property out of which only a part was conveyed was 1096 square meter and the present applicant had sold different segments of the property to the different persons, which requires an appreciation only by way of evidence.

10. In that eventuality, the cognizance taken by the court in trying the present applicant for the offence under Sections 420 and 120-B IPC, cannot be ventured into under Section 482 jurisdiction,

merely under the pretext that it is entailing consideration of a civil dispute for the reason being, that even civil disputes may also have an equivalent blend of criminal allegations, particularly when it relates to the set of allegations levelled in FIR No.58 of 2020, as it was registered against the present applicant.

11. It has been further argued by the Government Advocate that the present applicant has addressed the Court, about the inter-play of the two criminal proceedings and the pending civil suit in relation to the same set of property, but he has not addressed the Court on the propriety of the charge sheet and the summoning order, which is under challenge before this Court in the present 482 application and in that eventuality, he attempts to submit that when no argument has been extended in relation to the propriety of the charge sheet and the summoning order, the proceedings of Criminal Case No.1577 of 2022 State vs. Surjeet Singh pending before the court of Chief Judicial Magistrate cannot be said to be vitiated. This argument of applicant's counsel is not tenable in view of the reasons already given above.

12. For the reasons aforesaid, since the factum of possession in pursuance to the sale deed is a question would be assessed by evidence and upon the question of determination of evidence, it cannot be ventured into 482 application. The C-482 application is accordingly, dismissed.

(Sharad Kumar Sharma, J.) 20.09.2022 Arti