

Abdul Gaffar & Another ... vs State Of Uttarakhand And Others on 15 December, 2022

Author: Sanjaya Kumar Mishra

Bench: Sanjaya Kumar Mishra

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IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (Criminal) No. 2338 of 2022

Abdul Gaffar & Another

.....Petitioners

-Versus-

State of Uttarakhand and Others

.....Respondents

Present: Mr. Aditya Singh, learned counsel for the petitioners.

Mr. J. S. Virk, learned Deputy Advocate General for the State of Uttarakhand.

Date of Hearing and Order: 15.12.2022

Sri Sanjaya Kumar Mishra, J.

Upon hearing the learned counsel for the parties, the Court has passed the following order:-

1. By filing this writ petition, the petitioners have prayed for the following reliefs:-

- i. A writ, order or direction in the nature of Certiorari quashing the impugned First Information Report dated 18.11.2022 registered as F.I.R. No. 0444 of 2022 under Section 420 of I.P.C. registered at Police Station Vikasnagar, District - Dehradun. ii. A writ, order or direction in the nature of Mandamus commanding the respondent no. 2 not to arrest and not to harass the petitioner in connection with F.I.R. No. 0444 of 2022 under Section 420 I.P.C. registered at Police Station Vikasnagar, District - Dehradun. iii. Any other suitable writ, order or which, this Hon'ble Court may deem fit and proper.

iv. Award the cost of the petition to the petitioner.

2. It is borne out from the records as well as the contents of the F.I.R. that the petitioners were enjoined by a Civil Court from interfering in the peaceful possession of the land in question. It was an ex-parte order, however, the application filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 was dismissed and an appeal was preferred, but the same was also dismissed. Thereafter, the petitioners filed a civil proceeding under Section 229 of the U.P. Z.A. and L.R. Act, 1950, to declare that he is the owner of the property. It is admitted at this stage by the learned counsel for the petitioners that the land does not stand recorded in the name of the petitioners but it is recorded in the name of the respondent no. 3 - complainant. During pendency of the application before the Revenue Authorities under Section 229 of the U.P. Z.A. and L.R. Act, the petitioners allegedly sold the land to some third persons. Now the petitioners claim that they were supposed to execute the 'Power of Attorney' but a fraud has been committed upon them and a sale deed has been executed by them without passing of any consideration. Thereafter, they filed a Civil Suit before the Civil Court without making the complainant as a party and prayed for cancellation of the sale deed. A month thereafter, the F.I.R. has been filed. Since the petitioners have sold a piece of land to some third party, which is admittedly, not standing in their name in the Revenue records, we are of the opinion that an offence under Section 420 of I.P.C. is clearly made out.

3. In that view of the matter, this Court finds no merit in the writ petition even for issuance of notice, hence the writ petition is dismissed in limine being devoid of merits.

(Sanjaya Kumar Mishra, J.) 15.12.2022 (Grant urgent certified copy of this order, as per Rules) A/-