

Court No. - 84

Case :- APPLICATION U/S 482 No. - 23342 of 2011

Applicant :- Smt. Madhu Gupta And Others

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

Counsel for Applicant :- A.K. Upadhyaya, Anil Kumar

Mishra, Arun Kumar Tripathi, Mohammad Mustafa, Vijay Prakash
Chaturvedi, Vinay Kumar Singh Chandel

Counsel for Opposite Party :- Govt. Advocate, Rajesh Kumar
Chitragupt, Sanjai Kumar Pandey

Hon'ble Rajendra Kumar-IV, J.

1. Heard learned counsel for parties and perused the materials available on record.

2. This application under Section 482 Cr.P.C. has been filed by Smt. Madhu Gupta, Mahesh Chandra Gupta, Dwarika Prasad Jaiswal, Sanjai Singh and Rajneesh with the prayer to quash the charge sheet dated 05.04.2010 and entire criminal proceedings in Criminal Case No. 3609 of 2010, under Section 419, 420, 467, 468 and 471 IPC, Police Station Siddharth Nagar, District Siddharth Nagar with the following prayers :-

“to quash the further proceeding of criminal case no. 3609 of 2010 under section- 419, 420, 467, 468, 471 IPC, Police Station and District Siddharth Nagar pending before Chief Judicial Magistrate, Siddharth Nagar and or may pass such other and further order as this Hon’ble court may deem fit proper under the facts and circumstances of the case, otherwise the applicants shall suffer irreparable loss and injury.”

3. Brief facts of the case giving rise to the present application, are as under :-

i. Informant moved an application, under Section 156(3) Cr.P.C. against the applicants herein, alleging them Informant’s father Satya Narayan executed a will-deed in favour of Dwarika, Ayodhya sons of Balram, Ashish and Alok sons of Kanhiya Lal on 11.07.1996 in respect of his

movable and immovable property. After the Will was made, they stopped serving and caring of Satya Narain, father of Informant, on which Informant and his wife in view of his father's illness etc., started treating his father with care and medicine, due to which, his father Satya Narain cancelled the first Will executed in favour of Dwarika and others and executed the second Will in favour of his three sons on 25.07.1997. It is further alleged in application that Dwarika Prasad filed an application 156(3) Cr.P.C. before CJM concerned, which came to be dismissed. There against, criminal revision was also filed by him before Sessions Judge, which was also dismissed on 1.12.2005. Saying his failure Dwarika made a sale deed dated 19.5.2009 of Plot No.399 (c) in favour of Madhu Gupta on the basis of Will, to which he had no right. When Informant came to know this fact, he went Police Station to lodge the FIR but no action was taken in the matter.

ii. Upon the application 156(3) Cr.P.C. made by the Informant, an FIR was directed to be lodged, whereupon FIR in Case Crime No. 285 of 2010 was registered in Police Station concerned. Investigating Officer undertook investigation, collected the evidence and filed charge-sheet in the matter, which is under challenge in the present application.

4. Learned counsel for the applicants submits that property was recorded in the name of Satya Narain, who had three sons namely Balram, Kanhaiya and Sriram. Satya Narain, during his life time, had executed a registered will-deed in favour of Ayodhya, Dwarika, Ashish and Alok. As per allegations, Satya Narain himself, during his life time, got cancelled earlier will-deed.

5. Learned counsel next contended that after the death of Satya

Narain, name of Dwarika Prasad and others, in whose favour Will was executed, was mutated by revenue authorities, even after the submission of objection of Informant. Thus, name of Dwarika Prasad and others got mutated in the revenue record and they have been recorded tenure holder of the property. Learned counsel further submits that applicant No.1 had purchased the land / plot No. 399 (c) after giving full consideration through registered sale deed and she is a bona fide purchaser. She got her house constructed over the land and she is living peacefully in that house. Matter is of civil nature, cancellation of will-deed is not pending in any court but Informant tried to settle his dispute of civil nature by roping the applicants in criminal case. Prosecution of applicants in criminal case is abuse of process of court, which should not be permitted to continue. Learned counsel further submits that it appears that Dwarika Prasad had moved an application under Section 156(3) Cr.P.C. against the Informant, prior to this application, thus, Informant in retaliation thereto filed present application against the applicants. Learned counsel for applicants referred the some judgments in favour of his contentions.

6. Learned AGA opposed the submissions made by learned counsel for the applicants but conceded the factual submissions made and admitted that it is a case of civil dispute. He could not show the manner in which offence is committed by accused-applicants except saying that applicants are named in the FIR and FIR was registered on the application of 156(3) Cr.P.C. and Investigating Officer submitted charge sheet in the matter. Learned AGA further submits that constitution of any offence may be debated at the time framing charge.

7. It has been mainly stated in the counter affidavit that Tehsildar illegally decided the mutation in favour of applicant No.3 and other paras of counter affidavit are general in nature denying

the contentions of the applicants' affidavit. In paragraph 5 of the counter affidavit, it has been stated that father of Informant Satya Narain executed another Will deed on 25.2.1997 by canceling the earlier will dated 11.07.1996 and all movable and immovable property distributed in his all three sons including the Opposite Party No.2.

8. It is also mentioned in the counter affidavit that unregistered Will deed in favour of Opposite Party No.2 has also been challenged by applicant No.3-Dwarika Prasad but the application filed by Dwarika Prasad under Section 156(3) Cr.P.C. before CJM, Siddharth Nagar has also been dismissed, not finding any offence. Copy of CJM's order dated 12.05.2005 is annexed as Annexure No.2 to the counter affidavit.

9. It is admitted fact by the parties that at the time of alleged sale deed, property was recorded in the name of Dwarika Prasad, applicant Madhu Gupta purchased the plot in question from its recorded owner through registered sale deed after paying a due consideration and from the date of sale deed, she is in possession. Execution of sale deed is neither in question nor disputed. It is also admitted fact that applicant No.2 is the husband of applicant no.1 and applicant nos. 4 and 5 are the marginal witnesses of alleged sale deed. Will deed in favour of Dwarika Prasad was not challenged nor it was cancelled. It is settled law that Will is always subject to proof. If it is not proved, it becomes of no importance.

10. In the instant case, the first information report has been registered under Sections 419, 420, 467, 468 and 471 IPC. The allegations leveled in the first information report are of (1) cheating and (2) forgery. I shall deal with the Section 420 IPC. Cheating is defined in Section 415 IPC and is punishable under Section 420 IPC. Section 415 is set out below:

“415. Cheating. Whoever, by deceiving any person,

fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

Section 415 IPC thus requires

- 1. deception of any person.*
- 2. (a) fraudulently or dishonestly inducing that person-*
 - (i) to deliver any property to any person; or*
 - (ii) to consent that any person shall retain any property; or*
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.*

On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

11. I shall now deal with the ingredients of Section 467 IPC.

Section 467 IPC reads as under:

“467. Forgery of valuable security, will etc. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable

security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or 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. The following ingredients are essential for commission of the offence under section 467 IPC:

- 1. the document in question so forged;*
- 2. the accused who forged it.*
- 3. the document is one of the kinds enumerated in the aforementioned section.*

The basic ingredients of offence under Section 467 are altogether missing even in the allegations of the FIR against the appellants. Therefore, by no stretch of the imagination, the appellants can be legally prosecuted for an offence under Section 467 IPC.

Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Section 420 and 467 IPC is not made out against the applicants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

12. The Supreme Court, in **Inder Mohan Goswami v. State of Uttaranchal**, (2007)12 SCC 1, observed as under :

“The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction.

The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of courts powers under Section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of courts powers under Section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.”

13. The Supreme Court, in **Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chadrojirao Angre and Others**, (1988) 1 SCC 692, observed as under :-

“The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

14. The three judge Bench of the Apex Court in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866** after discussing the power of this Court under Section 561A old code (pari materia with Section 482 Cr.P.C.) observed in paragraph no.6 as:-

"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code.

The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A

third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and' contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. XXXXXXXX" (Emphasis supplied)

15. Again Supreme Court discussed the power of this Court under Section 482 Cr.P.C. very elaborately in the case of **State of Haryana and others Vs. Bhajan Lal and others 1992 Supp (1) SCC 335** and in paragraph 102 enumerated 7 categories of the cases where power under Section 482 Cr.P.C. can be exercised by this Court which is quoted below:-

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

16. Recently the three Judge Bench of the Apex Court in the case of **M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra** and others reported in **AIR 2021 Supreme Court 1918** again discussed the scope of Section 482 Cr.P.C. and Article 226 of Constitution of India in detailed manner and summarised in paragraph-23 as under:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied." (Emphasis supplied)

17. Therefore, Section 482 Cr.P.C. deals with the inherent power of this Court to prevent the abuse of process of any Court or to secure the ends of justice.

18. The three judges Bench of the Apex Court in the case of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another (2017) 9 SCC 641** held that Section 482 Cr.P.C. is prefaced with an overriding provision and

this Court being a superior Court has the inherent power to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice.

19. Recently, the Apex Court in the case of **Kapil Agarwal and 8 others Vs. Sanjay Sharma and others (2021) 5 SCC 524** observed in respect of power of this court under Section 482 Cr.P.C. as:-

"As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed."

20. The Supreme Court, in **Mohd. Ibrahim v. State of Bihar (2009) 8 SCC 751**, observed as under:

"19. 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).

20. 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. On the other hand, the purchaser is made a co-accused.

21. 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. Nor did the complainant allege that the first appellant pretended to

be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Section 417, 418, 419 or 420 of the Code.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract.

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows :

"24. Dishonestly'- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".

28. To 'defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (sec.206, 421, 424)

(ii) Fraudulent claim to property to prevent seizure (sec. 207).

(iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin

(sec.239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253)

(vi) Fraudulent acts relating to stamps (sec. 255-261)

(vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)

(viii) Cheating (sec. 415 to 420)

(ix) Fraudulent prevention of debt being available to creditors (sec. 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).

(xi) Forgery making or executing a false document (sec. 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)

(xiii) Fraudulently going through marriage ceremony (sec.496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 Penal Code

29. The allegations of the complaint do not also make out the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace.

The allegation in the complainant is that when he enquired with accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Section 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing

hurt under Section 323 of IPC.”

21. Applying the law laid down by the Apex Court referred to herein-above, now I will proceed to discuss the fact of the present case.

22. The impugned complaint / FIR was filed by opposite party no.2 against the applicants with the allegation that on the basis of forged Will of his father, applicant no.3 got mutated his name while, later on, his father executed unregistered Will in his favour. Admittedly Will in favour of Dwarika was registered one and on the basis of registered Will after hearing both the parties, the mutation court passed the order in favour of applicant No.3 and except the bald allegation, there is no evidence on record on the basis of which, it can be said that the alleged registered Will was forged one.

23. The Apex Court in case of **R.P. Kapur (supra)** observed that if there is no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to charge, then proceedings of such cases can be quashed while exercising the power under Section 482 Cr.P.C.

24. In the present case except bald allegation there is no legal evidence on record which can show that either applicants prepared the forged Will or they executed the forged Will, rather there is order of mutation dated 16.12.2008, which shows that after hearing both the parties, on the basis of registered Will, the name of applicant-Dwarika was mutated and opposite party no.2 did not even challenge the order of mutation, therefore, in view of the law laid down in **R.P. Kapur (supra)**, the instant application succeeds.

25. Further, opposite party no.2 did not even challenge the alleged registered Will dated 11.07.1996 in any competent civil court and directly filed impugned FIR. As per FIR/ complaint itself the present dispute is of civil nature, therefore, question arises, whether in such cases, which are purely civil in nature, criminal

proceedings should be permitted to continue.

26. The Apex Court in the case of **G. Sagar Suri and another Vs. State of U.P. and others (2000) 2 SCC 636** observed in paragraph no. 8 as:-

"Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, Jurisdiction- under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

27. The Supreme Court in the case of **Indian Oil Corporation Vs. NEPC India Limited and others (2006) 6 SCC 736** observed as:-

"13. xxxxx There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged"

28. The three judge Bench of the Apex Court in the case of **M. Subramaniam and another Vs. S. Janki and another (2020) 16 SCC 728** cautioned that a civil dispute should not be given the colour of criminal offence.

29. If I apply the above principles on the facts of the case at hand then I find that opposite party no.2 has given the colour of criminal offence to a purely civil dispute. As per facts, on the basis of Will, the mutation proceeding was ended in favour of the applicant-Dwarika Prasad and there is no evidence that the registered Will was forged one, therefore, only competent civil court having jurisdiction over the matter could decide the issue

whether the Will in dispute was forged one or not but opposite party no.2 did not choose to file any suit for cancellation of Will, therefore, it appears that Informant wanted to settle his dispute through criminal proceedings as criminal proceedings can be very easily initiated and can harass the applicants too. Therefore, from this point of view too, the present application filed on behalf of the applicants can succeed.

30. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser and his marginal witnesses.

31. The FIR does not disclose any offence so far as the applicants are concerned. There is no whisper of how and in what manner, these applicants are involved in any criminal offence. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice.

32. In view of the facts and circumstances of the present case, rival submissions made, admitted fact that originally property was recorded in the name of Satya Narain, registered Will deed was in favour of Dwarika Prasad and Others, mutation order in favour of Dwarika Prasad, their being a long litigation between the Informant and Dwarika Prasad, mutation made by Tehsildar in favour of the applicant No.3 after ignoring the objection made by Informant and dispute mainly being of civil nature, their being a registered sale-deed in favour of applicant-Madhu Gupta executed by applicant No.3 Dwarika Prasad recorded tenure holder of the property, I am of the considered opinion that allowing the prosecution to continue against the applicants is abuse of process of law and it should be quashed.

33. In view of above, application, under Section 482 Cr.P.C.

succeeds and is, accordingly, allowed. Charge-sheet dated 05.04.2010 and entire criminal proceedings in Criminal Case No. 3609 of 2010, under Sections 419, 420, 467, 468 and 471 IPC, arising out of Case Crime No. 285 of 2010, Police Station Siddharth Nagar, District Siddharth Nagar, are hereby quashed.

34. The petition stands disposed of accordingly.

35. Certify the judgment to trial court concerned through District Judge for compliance forthwith.

Order Date:-09.09.2022

Akram