

Court No. - 91

Case :- APPLICATION U/S 482 No. - 9715 of 2022

Applicant :- Bhonu Patel

Opposite Party :- State Of U.P And 11 Others

Counsel for Applicant :- Arvind Kumar Kushwaha,Pooja

Counsel for Opposite Party :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

Heard earned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

This application U/s 482 Cr.P.C. has been filed to quash the order dated 2.2.2022 passed by Chief Judicial Magistrate, Varanasi in Case No. 1982 of 2021 (Bhonu Patel Vs. Ramnagina Yadav and others). By the impugned order the learned Magistrate has treated the application U/s 156(3) Cr.P.C. moved by the applicant as a complaint case.

The averments made in the application are that the plot no. 125, 175, 176, 179, 180, 183, 257 total area 1.94 acre situated in village Shahpur, Pargana Katehar, Tehsil & District Varanasi are the ancestral property of the applicant and his uncle Shyamlal son of late Sitaram. Both applicant and his uncle were cultivating on the aforesaid land for about 35 years. After the death of his uncle applicant was continuously cultivating the aforesaid plots up till now. After the death of Sitaram name of the both daughters namely Smt. Sajni and Smt. Mankeshri were mutated on the aforesaid land without any order of the competent authority with the collusion of the Lekhpal concern and name of late Shyamlal was not mutated in respect of the aforesaid land. When this fact came into the knowledge of Shyamlal, uncle of the applicant then he filed a suit under section 229-B U.P.Z.A. & L.R. Act in the year 1987 before the concerned Sub Divisional Officer but the same was dismissed against which the appeal was filed before the Commissioner, Varanasi Division, Varanasi the same was also dismissed then against the same second appeal was filed before the Board of Revenue which is still pending and interim stay order has been granted. During the continuance of the stay order granted in the aforesaid second appeal Smt. Sajni and Smt. Mankeshri executed a registered sale deed in the year 1993 in favour of Ramlal, Shyamlal, Rajendra, Mahendra all sons of Khaderan Shahu, resident of Panihari. Uncle of the applicant namely late Shyamlal executed a registered will deed on 3.4.1998 in favour of the applicant in respect of the aforesaid land. During the

pendency of the aforesaid case O.P. No. 7 got a registered sale deed dated 25.5.2012 executed by Ramlal, Shyamlal, Rajendra, Mahendra all sons of Khaderan Shahu in favour of his wife Smt. Ranjita Yadav O.P. No.8 and his mother late Kalawati Devi and O.P. No. 9 got the sale deed executed in the name of his wife Suman Singh O.P. No. 10 in respect of the aforesaid plots in collusion with O.P. Nos. 11 and 12 and their names had also been mutated in the aforesaid plots. Thereafter by order dated 30.7.2015 passed by additional Sub divisional Officer Sadar, Varanasi name of the wife of O.P. No. 7 Smt. Ranita Yadav and his mother namely Kalawati Devi and O.P. No. 8 and wife of O.P. No. 9 Smt. Suman Singh and O.P. No. 10 were deleted from the revenue record in respect of the aforesaid plots. O.P. No. 7 namely Guru Prasad Yadav filed a Revision No. 2097 of 2015 (Smt. Kalawati Devi and others Vs. Shyam Lal and others) against the order dated 30.7.2015 in the Hon'ble Board of Revenue U.P. at Lucknow, which is still pending. The uncle of the applicant namely Shyamlal died on 23.12.2016. The O.P. No. 2 namely Ramnagina Yadav is retired police officer. Despite knowing the fact that the name of Smt. Ranjita Yadav O.P. No. 8 and his mother-in-law namely Kalawati Devi have been deleted from the revenue record in respect of the aforesaid land and case is pending in Board of Revenue, O.P. No. 2 to 10 got a registered sale deed executed on 28.10.2015 in the name of Smt. Asrafi Devi wife of O.P. No. 2 with intention to cause unlawful loss to the applicant. On the basis of the aforesaid registered sale deed dated 28.10.2015 O.P. No. 2 to 6 filed a mutation proceedings in the competent court but the same was rejected on 19.5.2016 ex-parte against which a restoration application was filed but the same was also dismissed on 5.3.2020. The aforesaid order has already been recorded in the Khatauni of the aforesaid plots. O.P. Nos. 2 to 11 by playing fraud got the registered sale deed dated 28.10.2015 the same is clear from the aforesaid facts. On 23.7.2021 at about 4:00 p.m. O.P. No. 2 taking the advantage of his being related to the police department, in collusion with some peoples of P.S. Chaubepur came along with O.P. Nos. 3 to 12 and 10-15 unknown persons at plot nos. 179, 180, 183, 257 with intention to take possession of the land and to cultivate the same and on making of the objection by the applicant O.P. Nos. 2 to 12 and 10-15 unknown persons started abusing the applicant by using filthy words and also started beating him then on hearing the alarm of the applicant, his son and other people came on the spot and save the applicant and thereafter opposite parties run away from there saying the applicant not to come near the land otherwise they will kill him and buried him in the land in dispute and his dead body could not be traced.

Learned counsel for the applicant contended that there are clear allegations in the application from which a cognizable offence is made out. Some of the accused are known but some of the accused are unknown. Without investigation their identity can not come into picture. Hence, in the circumstances the investigation is necessary. The learned Magistrate has failed to consider it and has passed the order for treating the application as a complaint case instead of registration of FIR and investigation. In the circumstances of the case the learned Magistrate was bound to order for registration of the case and investigation. Learned counsel further contended that learned Magistrate has relied upon the case law of **Sukhwasi Vs. State of U.P. (2007) 59 SCC page 739** but ignored the ruling cited on behalf of applicant which are as follows:

1. *Lalita Kumari Vs. Govt. of U.P. and others AIR 2014 SC 187*
2. *Anmol Singh Vs. State of U.P. and others 2021 0 Supreme(All) 10 2021 1 ADJ 400*
3. *Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat AIR 2015 Supreme Court 1742*

Learned counsel further contended that the aforesaid rulings also support the applicant's case. The impugned order is arbitrary and illegal.

Learned A.G.A. contended that there is no illegality in the impugned order. It is also contended that the impugned order is revisable, hence, application U/s 482 Cr.P.C. is not maintainable. There is no averment in the application U/s 482 Cr.P.C. that the impugned order is abuse of process of court. In absence of such specific averment the application U/s 482 Cr.P.C. can not be entertained.

It is settled principle of law that on an application U/s 156(3) Cr.P.C. the learned Magistrate has following three options:

1. He may outrightly reject the application if he comes to the conclusion that no cognizable offence is made out.
2. If he comes to the conclusion that cognizable offence is made out and investigation is also required, he may pass the order for registration of the FIR and investigation in the matter.
3. If he comes to the conclusion that although a prima facie cognizable offence is made out but in the circumstances of the case no investigation is required, he may treat it as complaint case.

It is not mandatory for a Magistrate to order for registration of FIR and investigation in on each and every application moved under section 156(3) Cr.P.C. which discloses a cognizable offence. It is the discretion of the Magistrate which is to be exercised judicially and not arbitrarily.

The allegations made in the application U/s 156(3) Cr.P.C. clearly indicates that there is property dispute between the parties and parties are litigating the same before the competent courts and one of the party has executed sale deed. Subsequent sale deed have also been executed by the purchasers. Considering all the facts and circumstances of the case the order to treat the application U/s 156(3) Cr.P.C. as a complaint seems to be just and reasonable. Learned Magistrate has also given reasons and cited the case law in support of his finding. So it can not be said that impugned order is arbitrary or unjust.

The ruling cited by the learned counsel for the applicant are not applicable in the present case. The case of Lalita Kumari (supra) is on different point. It relates to the interpretation of Section 154, Section 41(1)(a), Section 41(1)(g) of Cr.P.C.

The facts of the case of Anmol Singh Vs. State of U.P. are different. That case was related to an offence of molestation and sexual assault. Considering the gravity and severity of the offence and the requirement of the evidence for the purpose of launching successful prosecution this court interfered in the matter and set-aside the order of treating the application as a complaint and directed the learned Magistrate to pass a fresh order.

In Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat (supra) cited by the learned counsel for the applicant the Hon'ble Supreme Court has held that the "direction under section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine 'existence of sufficient ground to proceed'. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."

Even after registration of the application as a complaint case the Magistrate has ample power during inquiry under section 202 Cr.P.C. to direct the investigation to be made by a police officer or by such other person as he thinks fit.

Section 202(1) Cr.P.C. provides as follows:

"Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

- (a) where it appears to be Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
- (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200."

So even if the application is registered as complaint case even then under process of inquiry Magistrate has ample power to direct for investigation to be made by police officer or by such officer as he thinks fit. So at the stage of inquiry under section 202 Cr.P.C. Magistrate may opt for that.

Considering the entire facts and circumstances and the legal proposition there appears to be no necessity for interference. The impugned order passed by the learned Magistrate is sound and reasoned one and does not suffer from any illegality.

The application U/s 482 Cr.P.C. is devoid of merit and is hereby dismissed.

Order Date :- 7.5.2022
Masarrat