

Court No. - 55

Case :- APPLICATION U/S 482 No. - 20503 of 2009

Applicant :- Mumtaz Hasan & Others

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Akhtar Ali, Dharmendra Singhal, Raghuraj Kishore

Counsel for Opposite Party :- Govt. Advocate, Anand Prakash Srivastava, Arvind Kumar-Iii, Avinash Pandey, M P Yadav

Hon'ble Shashi Kant, J.

1. Supplementary Counter Affidavit filed by learned counsel for the O.P. No.2 is taken on record.
2. Heard Mr. Raghuraj Kishore, learned counsel for the applicants, Mr. Avinash Pandey, learned counsel for the O.P. No.2, learned A.G.A. for the State of U.P. and perused the record.
3. This application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings as well as charge-sheet dated 12.06.2009 in Case No.6207 of 2009 - (State Vs. Mumtaz Hasan & others), arising out of Case Crime No. 104 of 2005 under Sections 420, 467, 468, 471, 120-B I.P.C., P.S. Sadar Bazar, District Saharanpur and the impugned summoning order dated 24.07.2009 passed by C.J.M., Saharanpur in the aforesaid case.
4. Learned counsel for the applicants submits that:
 - 4.1 Applicant Nos. 1 to 4 are the owner of the land in dispute. Opposite party no.2/ complainant has filed a Civil Suit No. 123 of 1978 against the applicants for specific performance which was decreed, against thereof the applicants have filed First Appeal No. 480 of 1980 which was allowed by this Court vide judgement dated 09.09.1997 in favour of the applicants.
 - 4.2 The O.P. No. 2 approached the Honble Supreme Court against the judgment and decree of the Appellate Court. On its turn, Honble Supreme Court has remanded the matter vide order dated 16.01.2002 to this Honble Court for fresh decision and in these circumstances, first appeal filed by the applicants is still pending before this Court, after decision of Honble Supreme Court.

4.3 Meanwhile the O.P. No.2 has maliciously filed a wrong Criminal Case No. 408 of 2003 under Section 148, 420, 467, 468, 471 and 120 B I.P.C. before the Chief Judicial Magistrate, Saharanpur with the allegations that the mother of the applicant Nos. 1 to 4 have executed a sale deed 27.3.2003 in favour of other applicants and the applicants are liable to be punished (Annexure 1).

4.4 Proceedings of above Criminal Case has been stayed vide order of this Court dated 28.01.2004 (Annexure 2) passed in CrI. Misc. 482 Cr.P.C. Application No. 607 of 2004 and this stay order is still in operation.

4.5 Subsequent to that the opposite party no.2 has moved an application on the same facts to the S.S.P. and an F.I.R. under Section 420, 467, 468, 471, 120 B, 323, 504, 506, 307 I.P.C. has been lodged on 24.03.2005 (Annexure 3) in which after investigation final report (Annexure 4) has been filed.

4.6 Against the aforesaid final report the O.P. No.2 filed protest petition and after re-investigation, again final report (Annexure 5) was filed in this matter. Above final report was rejected by the S.S.P., Saharanpur and learned Magistrate has again passed the order dated 16.06.2008 for the re-investigation of the matter.

4.7 Against the above orders, applicants again approached to this Court by means of a Criminal Misc. Application No. 25604 of 2008 - Mumtaj Hasan and others verses State of U.P and others in which arrest of the applicants have been stayed vide order dated 23.09.2008 (Annexure 6).

4.8 Without taking any evidence and relying on the same facts and circumstances upon which the final report was submitted, Investigating Officer has wrongly submitted the impugned charge-sheet under Section 418, 420, 467, 468, 471, 120-B I.P.C. dated 12.06.2009 (Annexure 7) and on which summoning order (Annexure 8) has been passed by the C.J.M., Saharanpur.

4.9 Learned counsel for the applicants also urged that this is a matter of pure civil nature and admittedly first appeal is pending before this Court regarding disputed property and respective vendies are parties in that and decision of that appeal will be binding also, on them.

5. Learned A.G.A. and learned counsel for the O.P. No.2 vehemently opposed the prayer for quashing of the charge-sheet and entire

proceedings of the aforesaid case but conceded that first appeal filed by predecessor of the applicants is pending before this Court and vendies of the disputed property by means of separate sale deeds (Annexure 2 of the Supplementary Counter Affidavit) are parties in the aforesaid appeal.

6. Considered the rival submissions advanced by learned counsel for the parties and perused the record.

7. For the discussion made above, I am of the considered view that matter is purely of civil nature and has been wrongly given colour of criminal offence which is bad in law. The application deserves to be allowed.

8. The application is accordingly **allowed**.

9. The impugned charge-sheet (Annexure No.7) as well as proceedings of Case No.6207 of 2009 - (State Vs. Mumtaz Hasan & others), arising out of Case Crime No. 104 of 2005 under Sections 420, 467, 468, 471, 120-B I.P.C., P.S. Sadar Bazar, District Saharanpur are hereby quashed.

10. It is clarified that quashing of this proceeding will not affect other rights of O.P. No.2 in respect to the disputed property.

Order Date :- 25.8.2017

A. Mandhani