

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2113 OF 2017
[@ SPECIAL LEAVE PETITION (CRL.) NOS. 10733 OF 2015]

PRABHU DUTT TIWARI

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

J U D G M E N T

KURIAN, J.

1. Leave granted.
2. The appellant is aggrieved since an order summoning the respondents was quashed by the High Court as per the impugned order. The summoning order issued by the Additional Chief Judicial Magistrate, Court-19, Deoria reads as follows :-

"Complainant appeared along with the Counsel on being called. Arguments heard and record perused.

Complainant has stated that he is working in telecommunication department Varanasi and that they are three brothers and their father distributed the village land among them and all of them cultivate their land. The accused number-3 Pushpa Devi filed a case against accused number-5 Mahima, in collusion with the accused number 1, 2 and 4 and he was taken to their village Nautan Bihar by threatening him where he was tortured in many different ways and they got the registered deed for the land khasra

number 377 and 1191 forcibly. The mental condition of accused number-5 is not stable and he remains disturbed and taking advantage of the same and all the accused by colluding themselves, in order to cause damage to him and his brother Manoj got a false and fabricated registered deed made on 3.10.2012 by producing false papers. Police station was informed and since no action was taken by them, this case has been filed in this court.

In support of the statement, the testimony of the self and the two other witnesses has been recorded under section 202 Cr. P. C. and a photocopy of the application submitted to the Superintendent of Police has been produced as documentary evidence.

On perusal of the documents available on record a case appears to be prima facie made out against the accused Narendra Mishra, Awadhesh Mishra, Pushpa Devi Ashutosh Tiwari and Mahima Tiwari under sections 419, 420, 468, 471 and 120B IPC. The matter is fit for summoning the accused for trial.

ORDER

The accused Narendra Mishra, Awadhesh Mishra, Pushpa Devi, Ashutosh Tiwari and Mahima Tiwari are hereby summoned under sections 419, 420, 468, 471 and 120B IPC. The Complainant to comply within a week. List for attendance as above on 20.12.2012."

3. The respondents challenged the order, extracted above, in a criminal writ petition before the High Court. The consideration of the High Court reads as follows :-

"I have given my anxious judicial thoughts over the entire facts and circumstances of the case. Considering the fact that the bhumidhari right of Mahima Tiwari has never been challenged in the criminal complaint or in the evidence led in support of the allegations made therein and there is no allegation or evidence on record that the sale property was ancestral property or the complainant had any right by birth therein, Mahima Tiwari (accused no.5) was fully entitled to transfer his land in favour of Pushpa Devi and if he has executed the sale deed in question in her favour, neither he nor Pushpa Devi nor any other person can be held liable for criminal offence punishable under Sections 419, 420, 468, 471, 120-B of I.P.C. The court of learned Magistrate and learned revisional court are not supposed to shut their eyes to the transferable right of a Bhumidhar. They are not bound in all the circumstances to take it for granted that if the oral evidence under Sections 200 and 202 Cr.P.C. has been led in support of the allegations made in the criminal complaint, their hands are fettered upto

the extent that except issuing the process under Section 204 Cr.P.C. they would not pass any other order including the order of dismissal of the criminal complaint, if at all it appears to the Magistrate that accused have not committed any criminal offence. If there is any grievance to the complainant he is well within his right to agitate the matter before the civil court in a suit for cancellation of the sale deed. The criminal jurisdiction of the court cannot be invoked to settle the dispute purely of civil nature."

4. At the stage of summoning the accused on the basis of a private complaint, all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

5. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate

is only to see whether there is sufficient ground to proceed against the accused.

6. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early for the High Court to enter a finding otherwise. The impugned order is, hence, set aside. The appeal is allowed.

7. The party-respondents may appear before the trial court within a period of one month from today. On their appearance before the trial court, they shall be released on bail on furnishing sufficient surety/sureties to the satisfaction of the trial court. We make it clear that we have not expressed any opinion on the merits of the case and it is open to the parties to take all available steps at the appropriate stage.

.....J.
[KURIAN JOSEPH]

.....J.
[AMITAVA ROY]

New Delhi;
December 07, 2017.

ITEM NO.11

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10733/2015

(Arising out of impugned final judgment and order dated 12-12-2014 in CRLMW No. 5935/2014 passed by the High Court Of Judicature At Allahabad)

PRABHU DUTT TIWARI

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(FOR EXEMPTION FROM FILING O.T. ON IA 21786/2015)

Date : 07-12-2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Rajeev Kumar Bansal, AOR
Mr. M. P. Singh, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s) Mr. Anupam Mishra, AOR
Mr. V. J. Francis, Adv.
Mr. Harikumar V., Adv.
Ms. Pooja Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed reportable
Judgment.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed reportable Judgment is placed on the file)