

SAVITRI PANDEY AND ANOTHER

A

v.

STATE OF U.P. AND OTHERS

(Criminal Appeal No. 741 of 2015)

B

May 01, 2015.

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

*Constitution of India, 1950 – Art. 226 – Writ petition – Seeking quashing of FIR – Maintainability of – In the State of Uttar Pradesh – Held: In view of the fact that provision for anticipatory bail u/s 438 Cr.PC was deleted in the State of Uttar Pradesh, writ petition challenging FIR is maintainable.*

C

D

*FIR – Quashing of – FIR u/ss.420, 467, 468, 471, 120B, 504 and 506 IPC – Writ petition for quashing the FIR – Dismissed by High Court – On appeal, held: Facts of the present case indicate abuse of process of law on the part of the complainant – FIR liable to be quashed – Penal Code, 1860 – ss.420, 467, 468, 471, 120B, 504 and 506 – Administration of Criminal Justice.*

E

**Allowing the appeal, the Court**

F

**HELD: 1. In view of the position of law that provision for anticipatory bail u/s 438 Cr.PC has been deleted in the State of Uttar Pradesh, in the present case, it cannot be said that the writ petition challenging the First Information Report before the High Court was not maintainable. [para 10] [637-H] [638-A]**

G

*Ram Lal Yadav and others v. State of U.P. and others 1989 CriLJ 1013, Som Mittal v. Government of Karnataka*

H

A (2008) 3 SCC 753 – relied on.

2. Certain facts are glaring, indicating the abuse of process of law on the part of the complainant, viz. (a) In respect of registered sale deeds the complainant has woken up after a period of nineteen years to allege that the registered sale deeds are fraudulent, (b) In the counter affidavit filed on behalf of the complainant, it is nowhere stated that she ever filed suit for cancellation of the sale deeds alleging that the sale deeds were fraudulent till date, (c) Admittedly, parties are close relatives, had their joint property in the village, out of which properties have been sold through the disputed sale deeds, and (d) No specific role has been assigned to the present appellants as to their role for execution of the sale deeds in question. Therefore, the FIR is liable to be quashed. [para 11-12] [638-B-F, H] [639-A]

#### Case Law Reference

E	1989 CriLJ 1013	relied on	para 8
	(2008) 3 SCC 753	relied on	para 8

CRIMINALAPPELLATE JURISDICTION :CriminalAppeal No. 741 of 2015.

F

From the Judgment and Order dated 31.01.2014 of the High Court of Judicature at Allahabad in Criminal Misc. Writ Petition No. 2167 of 2014.

G Sanjay Singh, Rajeev Singh for the Appellants.

Gaurav Bhatia, AAG, Gaurav Srivastava, Abhishek Chaudhary, Chandra Bhushan Prasad, Kripa Suankar Prasad, Sukanta Kumar Biswal, Ravi Prakash Mehrotra for the Respondents.

H

The Judgment of the Court was delivered by

A

**PRAFULLA C. PANT, J. 1.** Leave granted.

2. This appeal is directed against order dated 31.1.2014, passed by the High Court of Judicature at Allahabad in Criminal Misc. Writ Petition No. 2167 of 2014 whereby said Court has dismissed the writ petition challenging the First Information Report, registered as Crime No. 16 of 2014, relating to offences punishable under Sections 420, 467, 468, 471, 120B, 504, and 506 of Indian Penal Code (IPC) at Police Station Milak, District Rampur.

B

C

3. We have heard learned counsel for the parties and perused the papers on record.

4. Brief facts of the case are that respondent No. 4 Damitri Pandey, lodged First Information Report on 8.1.2014 at Police Station Milak, Rampur, in respect of above offences against as many as fifteen accused stating that in respect of land owned by her, which was part of Khasra No. 148 in Village Asdullapur, three sale deeds (at different dates) were fraudulently got executed in favour of different persons in the year 1994. The present appellants have been named as accused Nos. 14 and 15 in the First Information Report, but no specific role has been assigned to them. It is admitted to the parties that complainant (respondent No. 4) is real sister-in-law of appellant No. 1, and appellant No. 2 (Raju Pandey) is son of appellant No. 1. It is also admitted that the land in question was joint family property of the appellants, respondent No. 4 and other members of the family.

D

E

F

G

5. In paragraph 6 of the counter affidavit filed on behalf of respondent No. 4, (complainant) it is stated that though no specific role of the present appellants has been disclosed in First Information Report, but it is clearly mentioned that since

H

A they have played important role, as such, they had colluded in the fraud in execution of the sale deeds in dispute.

6. In the counter affidavit filed on behalf of respondent Nos. 1 to 3 by Dr. Tejveer Singh, Circle Officer, Milak, District Rampur,  
B it is stated at the end of paragraph 2(vii) as under: -

“it is further pertinent to mention here that as on date neither the petitioners nor respondent No. 4 are participating / supporting in the investigation.”

C 7. It is argued before us on behalf of the appellants that the impugned First Information Report is nothing but abuse of process of law, and it is simple property dispute between family members. It is further contended that the High Court has erred  
D in law in not granting relief to the appellants. On the other hand, learned counsel for the complainant (respondent No. 4) contended that it is a matter of investigation as to whether impersonation was done, if so, who impersonated in getting executed the sale deeds in question, in respect of land of the  
E complainant.

8. It is further pointed out on behalf of learned counsel for the State (respondent No. 1) that in a Seven-Judge Bench decision of Allahabad High Court in *Ram Lal Yadav and others v. State of U.P. and others*<sup>1</sup>, since it has been held  
F that the High Court cannot interfere with the investigation by police, in its powers under Section 482 Cr.P.C., as such, for the relief of quashing of First Information Report writ petitions are entertained in said High Court.

G 9. In *Som Mittal v. Government of Karnataka*<sup>2</sup>, following observations have been made by this Court regarding the difficulties faced by the accused due to deletion of provision

---

1989 CriLJ 1013

H (2008) 3 SCC 753

under Section 438 Cr.P.C.: -

A

**“38.** In this connection, I would also like to refer to the situation prevailing in the State of Uttar Pradesh where due to deletion of the provision for anticipatory bail under Section 438 Cr.P.C by Section 9 of U.P. Act 16 of 1976, huge difficulties have been created both for the public as well as for the Allahabad High Court.

B

**39.** It may be noted that in U.P. such provision for anticipatory bail has been deleted while it continues to exist in all other States in India, even in terrorist affected States. The result is that thousands of petitions under Section 482 are filed every year in the Allahabad High Court praying for stay of arrest or for quashing the FIR, because in the absence of the provision of anticipatory bail many persons who are innocent cannot get anticipatory bail even though the FIR filed against them may be frivolous and/or false. Even if such persons get regular bail under Section 439, before that they will have to go to jail, and thus their reputation in society may be irreparably tarnished.

C

D

E

xxx

xxx

xxx

**45.** Because of absence of the provision for anticipatory bail in U.P. thousands of writ petitions and Section 482 Cr.P.C applications are being filed in the Allahabad High Court praying for stay of the petitioner's arrest and/or quashing the FIR. This is unnecessarily increasing the workload of the High Court and adding to the arrears, apart from the hardship to the public, and overcrowding in jails.”

F

G

10. In view of the above position of law in the State of Uttar Pradesh, in the present case, it cannot be said that the

H

A writ petition challenging the First Information Report before the High Court was not maintainable.

11. Now, we have to examine as to whether in the present case the High Court has erred in law or not in declining to quash the First Information Report. In this connection, some facts are glaring, indicating the abuse of process of law on the part of the complainant, which are as under: -

(a) In respect of registered sale deeds executed in the year 1994, the complainant has woken up in the year 2014, i.e., after a period of nineteen years to allege that the registered sale deeds are fraudulent.

(b) In the counter affidavit filed on behalf of the respondent No. 4, it is nowhere stated that he ever filed suit for cancellation of the sale deeds before any civil court alleging that the sale deeds were fraudulent till date.

(c) Admittedly, parties are close relatives, had their joint property in the village, out of which properties have been sold through the disputed sale deeds.

(d) No specific role has been assigned to the present appellants Savitri Pandey and Raju Pandey as to in what manner they have played their role for execution of the sale deeds in question.

12. In view of the above facts read together, we have no difficulty in arriving at a conclusion that in the present case the First Information Report in question is nothing but abuse of process of law on the part of the complainant, and the First Information Report is liable to be quashed. As such, we hold that the High Court has erred in law in not allowing the writ petition in the above facts and circumstances of the case.

13. Accordingly, the appeal is allowed. The First

SAVITRI PANDEY v. STATE OF U.P.  
[PRAFULLA C. PANT, J.]

639

Information Report, lodged against the present appellants, A  
stands quashed.

Kalpana K. Tripathy

Appeal allowed.

B