

SUPREME COURT OF INDIA

Sau Saraswatibai

Vs.

Lalitabai

CrI.A.No.118-119 of 2019

((L.Nageswara Rao and M.R.Shah,JJ.,))

22.01.2019

JUDGMENT

M.R.Shah,J.,

SLP(CrI.)No.4152-4153 of 2014

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and orders dated 22.11.2013 and 29.11.2013 in Criminal Application No.1113/2012 with Criminal Application No.919/2013 passed by the High Court of Bombay, Bench at Aurangabad, by which in exercise of powers under Section 482 of the CrPC, the High Court has quashed the criminal proceedings including the Final Report arising out of Crime original complainant has preferred the present appeals.
3. That the appellant herein-original Complainant filed a Criminal Complaint against the private Respondents herein- the original accused before the learned Magistrate alleging, inter alia, that the complainant purchased a plot from Respondent No.1 by way of a registered sale deed in the year 2005. After sale of the plot, the original owner-accused No.1 fraudulently resold the plot in 2010 in favour of Accused No.2 by re-designating as "Plot No.24". It is required to be noted that the plot which was sold to the complainant was numbered as "Plot No.1" in "Survey No.121". It was alleged that the very plot which was sold to the complainant was sold by the owner by changing the Number and by re-designating the same as "Plot No.24". It was alleged that the second purchaser Respondent No.2-Accused No.2 was none other than the husband of the original Respondent No.1- Accused No.1. It was further alleged that Respondent No.2 thereon sold the very Plot/property in 2011, in favour of the Respondent No.3-Accused No.3. Therefore, it was alleged that the all accused persons and one another have committed offences under Sections 420, 464, 465, 467, 468, 471 read with Section 34 of IPC. That the learned Magistrate passed an order for investigation under Section 156(3) of the Cr.PC. That the police lodged an FIR for the aforesaid offences. That

the accused thereafter approached the High Court to quash the FIR by way of a Petition under Section 482 of Cr.PC.

3.1 It appears that, by the time, the matter was taken up for final hearing by the High Court, the Investigating Officer completed the investigation in the matter and having found the prima facie case against the accused, submitted the Final Report under Section 173 of the Cr.PC concluding that the accused had colluded and committed offences, as alleged, under Sections 420, 464, 465, 467, 468, 471 read with Section 34 of IPC. Despite the fact that, after conclusion of the investigation, a Final Report under Section 173 was submitted, by the impugned judgment and order dated 22.11.2013, the High Court in exercise of powers under Section 482 of the Cr.PC has quashed the criminal proceedings including the Final Report arising out of Crime No.85 of 2011 dated 02.12.2011. The High Court noted that the original Complainant also does not press the prosecution and considered the statement made by the learned counsel appearing on behalf of Original Accused that Plot No.1 of Original Complainant is distinct and has nothing to do with Plot No. 24. The High Court opined that there is no act of criminality to cheat the complainant-the purchaser of the property. It appears that immediately thereafter it was mentioned before the High Court by the complainant that he desires to withdraw the statement made by him, which was the basis for disposal of criminal application No.1113/2012. By order dated 29.11.2013 the High Court declined withdrawal of the statement.

3.2 Being aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in quashing and setting aside the criminal proceedings including the Final Report, the Original Complainant has preferred the present appeals.

4. Having heard the learned counsel appearing on behalf of the respective parties and considering the impugned judgment and order passed by the High Court by which the High Court has quashed and set aside the criminal proceedings and the Final Report, in exercise of powers under Section 482 of the Cr.PC, we are of the opinion that the impugned order quashing the proceedings cannot be sustained.

4.2 It is required to be noted that, as such, after the conclusion of investigation, the Investigating Officer submitted the Final Report under Section 173 of the Cr.PC, concluding that the accused have colluded and committed offences under Sections 420, 464, 465, 467, 468, 471 read with Section 34 of IPC. Once the Final Report was submitted under Section 173 of the Cr.PC, normally the accused, if aggrieved by the Final Report shall be relegated to approach the Magistrate for discharge. Even the High Court in the impugned order has also observed so. Despite the above, the High Court has without further discussing anything on merits of the Final Report has quashed the entire criminal proceedings, including the Final Report. On reading of the impugned order and judgment passed by the High Court, it appears that the High Court has not even observed anything on merits of the Final Report and solely relying upon the statement of the counsel for the Accused as recorded in paragraph 4, has believed the same and has quashed the criminal proceedings and the Final Report.

Therefore, on merits also, the impugned judgment and orders passed by the High Court deserve to be quashed and set aside. At this stage, it is required to be noted that there was no explanation as to why the original Land Owner-Accused No.1 sold one plot to her husband (A2) first and the same plot was sold to A3. That, in the facts and circumstances of the case, once the Investigating Officer submitted the Final Report on conclusion of the investigation, the High Court was not justified in interfering with the criminal proceedings in exercise of power under Section 482 of the Cr.PC and particularly when in the Final Report it was specifically concluded on the basis of the material on record that a prima facie case is made out for the offences alleged against the accused persons. Therefore, we are of the opinion that, in the facts and circumstances of the case, the High Court has clearly erred in exercise of powers under Section 482 of the Cr.PC and in quashing and setting aside the criminal proceedings including the Final Report.

4.3 In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court dated 22.11.2013 passed in Criminal Application No.1113/2012 is hereby quashed and set aside. Consequently, the prosecution against the Accused to proceed further in accordance with law, and on its own merits.

5. The appeals are allowed accordingly.