

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 237 OF 2020
(Arising out of S.L.P.(Crl.)No.4592 of 2017)

PREM CHAND SINGHAPPELLANT(s)

Versus

THE STATE OF UTTAR PRADESH
AND ANOTHERRESPONDENT(s)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The appellant has challenged the order dated 18.12.2015 rejecting his application for discharge and the affirmation of the same on 31.05.2016 in Criminal Revision No. 70 of 2016 by the 4th Additional Sessions Judge, Gonda (U.P.).

3. The respondent no.2 is stated to have given a general power of attorney to the appellant on 02.05.1985 and on the basis of which the appellant sold certain lands belonging to the respondent. The respondent lodged FIR No. 160 of 1989 on 14.09.1989 that he had never executed any general power of attorney in favour of the appellant and that the appellant has forged general power of attorney to sell his lands illegally. The appellant was acquitted in the trial as the charge could not be established. Though no records are available, the acquittal is not disputed by counsel for respondent. The respondent then filed Civil Suit No. 353 of 2007 to cancel the general power of attorney. On 09.10.2008, the respondent filed an application under Section 156(3) Cr.P.C. before the court which was forwarded to the police leading to registration of FIR No. 114 of 2008 on 09.10.2008 alleging that the appellant had forged general power of attorney and on the basis of the same had sold certain lands of the respondent.

That earlier also the appellant had sold lands of the respondent in like manner.

4. The appellant filed an application for discharge referring to his acquittal dated 07.08.1998 under Section 419 or 420 Cr.P.C. pleading that he could not be tried for the same offence twice and that the FIR was based on concealment of facts with regard to the earlier acquittal. The Judicial Magistrate Class II Gonda rejected the discharge application simplicitor on the ground that the order of acquittal dated 07.08.1998 had not been brought on record. Revision against the same was dismissed holding that the grounds urged on behalf of the appellant can more appropriately be urged at the time of framing of the charges.

5. Mr. Pradeep Kant, learned senior counsel appearing for the appellant, submitted that the order of acquittal dated 07.08.1998 and the subsequent institution of Civil Suit No.353 of 2007 for the cancellation of the general power of attorney executed by the respondent is not in dispute. The

subsequent FIR on 09.10.2008 itself refers to the general power of attorney which was the subject matter of FIR No. 160 of 1989 but conceals the order of acquittal of the appellant. It is submitted that in the facts of the case, the institution of the FIR on 09.10.2008 long years after execution of general power of attorney dated 02.05.1985 is, therefore, a complete abuse of the process of law and the proceedings are fit to be quashed. Referring to Section 300 Cr.P.C. it is submitted that the appellant could not have been tried for the same offence twice at the behest of the respondent who is the complainant himself in both the FIRs.

6. Mr. Amit Yadav, learned Counsel for the respondent-complainant, submits that the High Court has declined interference since the ingredients of the two FIRs were different. While the FIR No. 160 of 1989 was under Section 419 or 420 IPC the second FIR was under Sections 467, 468 and 471 also. Furthermore, the second FIR contains allegations that the appellant put up an imposter in place of

the respondent before the registration authorities and collusively executed sale deed in respect of his lands along with Sushil Kumar Singh and Arvind in pursuance of a general power of attorney which respondent had never executed. The discharge application was, therefore, rightly rejected and interference declined in revision.

7. We have heard learned counsel for the parties.

8. The FIR No. 160 of 1989 alleges that the respondent on account of his job invariably stayed outside. The appellant had created a forged general power of attorney from the respondent in his name with regard to his lands bearing Gata no. 77/0.87 decimal and sold it on the basis of the forged general power of attorney which the respondent became aware of on 25.07.1989. The respondent denied having ever executed any general power of attorney in favour of the appellant. The respondent does not dispute that the appellant was acquitted of the charge by judgment dated 07.08.1998.

The fact that the judgement may not have been made available is therefore inconsequential.

9. The institution of Civil Suit No. 353 of 2007 by the respondent for cancellation of the general power of attorney, after the acquittal of the appellant, is nothing but an acknowledgment of the genuineness of the general power of attorney executed by the respondents which he now wished to revoke.

10. The respondent then filed an application under Section 156(3) Cr.P.C. which was forwarded by the Magistrate to the police leading to registration of FIR dated 09.10.2008. The allegations are similar that the appellant put up an imposter in place of the respondent and along with one Sushil Kumar Singh and Arvind on the basis of a general power of attorney, which the respondent had never executed, sold his lands. The FIR itself recites that earlier also the appellant had sold the lands of the respondent on the basis of same general power of

attorney, but conceals the order of acquittal dated 07.08.1998, and also the institution of Civil Suit No. 353 of 2007 for annulment of the same.

11. It is, therefore, apparent that the subject matter of both the FIRs is the same general power of attorney dated 02.05.1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.

12. Section 300 of the Cr.P.C. provides as follows:

“300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from

the one made against him might have been made under sub-Section (1) of Section 221, or for which he might have been convicted under sub-Section (2) thereof."

13. In view of the conclusion that the substratum of the two FIRs are the same and that the appellant has already stood acquitted on 07.08.1998 of the charge with regard to forging any general power of attorney of the respondent, we are of the considered opinion that the subsequent prosecution of the appellant in FIR No. 114 of 2008 dated 09.10.2008 is completely unsustainable. In the result, the FIR dated 09.10.2008, the orders dated 18.12.2015, 31.05.2016 and the impugned order dated 01.03.2017 are set aside. The appeal is allowed.

.....J.
(Navin Sinha)

.....J.
(Krishna Murari)

New Delhi,
February 07, 2020