35

* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (CRL.) NO.1230 OF 2003 &**
CRIMINAL M.A. NOS.1005 OF 2003, 16250 OF 2012

Decided on : 27th February, 2013

P.L. ADLAKHA & ORS. ..... Petitioners
Through: Mr. S.N. Tripathi, Advocate.

Versus

STATE & ANR. ..... Respondents
Through: Mr. Saleem Ahmed, ASC with Ms. Charu Dalal, Advocate.
IO SI Yogesh Tanwar, PS Amar Colony.

WITH

CRIMINAL M.C. NO.1333 OF 2007 &
CRIMINAL M.A. NOS.4646 OF 2007, 14411 OF 2012

P.D. ADLAKHA & ORS. ..... Petitioners
Through: Mr. G.P.Thareja, Advocate

Versus

STATE & ANR. ..... Respondents
Through: Mr. Saleem Ahmed, ASC with Ms. Charu Dalal, Advocate.
IO SI Yogesh Tanwar, PS Amar Colony.
Mr. S.N. Tripathi, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are two connected cross petitions. Criminal Writ Petition No.1230/2003 titled P.L. Adlakha & Ors. Vs. State & Anr. has been filed

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36

by the petitioners under Article 226 of the Constitution of India read with section 482 Cr.P.C. for quashing of FIR No.877/2002, under Sections 341/427/451/506 IPC, registered at Police Station Lajpat Nagar. Criminal Miscellaneous Cas. No.1333/2007 titled P.D. Adlakha (brother of P.L. Adlakha) & Ors. vs. State & Anr. has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. for quashing of the Criminal Complaint No.541/2003 and the impugned order dated 13.12.2006 passed in the said complaint by virtue of which the direction under Section 156 (3) Cr.P.C. has been given to the police to register an FIR against the respondent No.2, P.D. Adlakha and others, for offences under Sections 451/506(1)/34 IPC for which they have been summoned to face trial. The trial of both these cases has been stayed by this court while entertaining these two petitions.

2. So far as the Criminal Writ Petition is concerned, P.L. Adlakha, petitioner No.1, has stated that he is an old man of 73 years and has been residing with his family members at E-214, East of Kailash, New Delhi-110065 in the capacity of an absolute owner of the said property. The petitioner No.2 happens to be his wife, petitioner No.3 is the son, petitioner No.4 is the daughter-in-law and petitioner Nos.5 and 6 are the

sons-in-law of the petitioner No.1. It has been stated in the petition that his brother P.D. Adlakha (respondent No.2), the complainant in the FIR, was residing in the front portion of the ground floor of the said property and was claiming himself to be the owner of the front portion. There was a dispute regarding the ownership of the aforesaid property between the brothers because of which the petitioner No.1, that is, P.L. Adlakha had filed a civil suit for mandatory injunction against P.D. Adlakha which was pending. The said suit was filed for restraining P.D. Adlakha from taking forcible possession of the suit property from the petitioner No.1, P.L. Adlakha. It is alleged in the petition that after filing of the suit, the behaviour of P.D. Adlakha, who happens to be the complainant in the FIR, and his family members qua the petitioner No.1, P.L. Adlakha changed. On 10.6.2002, when the petitioner No.1, P.L. Adlakha, and his wife and maid servant allegedly were the only persons available at home, at about 1:45 p.m., the complainant P.D. Adlakha along with his associates tried to raise construction by installing an aluminium *chajja* in the central compound so that he could use the central portion exclusively for himself. It is alleged that the petitioner No.1, P.L. Adlakha raised an objection with regard to this unauthorized and illegal activity of the

respondent No.2/complainant and told the labourers that the property belongs to him and consequently P.D. Adlakha could not create and install any *chajja*. This resulted in some altercation between the two brothers and it is alleged by the petitioner No.1 that the respondent No.2 and his associates started manhandling, abusing and threatening both the petitioner No.1 and his wife and it was with great deal of effort that they got themselves freed and made a telephone call to the Police Control Room whereupon a PCR van arrived at the house after 15 minutes or so and the complaint was registered. The petitioner No.1 also made a written complaint against the respondent No.2 and other guilty persons to the police. It is alleged that no effective steps were taken by the police but only a *kalandra* under Section 107/150 Cr.P.C. was prepared against both the parties and they were sent to Special Executive Magistrate, Patiala House Courts so that there is no breach of peace. It is alleged that on 8.8.2003, abruptly the petitioners were surprised when they received a notice from the police station and learnt about the registration of an FIR on the basis of a complaint purported to have been made by his brother P.D. Adlakha. It is alleged by him that P.D. Adlakha is a lawyer and has misused his professional contacts so as to get an FIR registered against

them. The petitioner has denied that any offence has been committed by him. It is the case of the petitioners that the allegations made in the FIR are so absurd as nobody would believe that the petitioner No.1, who was 73 years of age at the time of incident, would commit the alleged offence. It is alleged that the FIR has been got falsely registered only to fix him and his family members for the resistance which they had shown for raising illegal construction.

3. So far as P.D. Adlakha is concerned, his version regarding the FIR is that he got the FIR registered against the petitioner, P.L. Adlakha in respect of the same incident for offences under Sections 341/427/451/506/34 IPC. P.D. Adlakha had made a complaint on 5.8.2002 to the local police wherein he stated that he is residing along with his family in the front portion of the said property, i.e., at E-214, East of Kailash, New Delhi. It is stated by him that the construction was raised in the year 1978 and even before raising the construction; he was in possession of the said plot as a joint owner. It is stated by him that P.L. Adlakha is his brother, who is occupying the rear portion. P.D. Adlakha alleged that he is being harassed and threatened of dire

consequences by P.L. Adlakha that he would forcibly and illegally dispossess him from the front portion and take the entire property. It was also alleged by him that with this intention P.L. Adlakha and his family members had started blocking the common passage by keeping furniture, chairs and tables, etc., thereby obstructing free ingress and egress to his portion of the property. Thus, P.L. Adlakha is alleged to have committed an offence of wrongful restraint in pursuance to a criminal conspiracy on their part. It is alleged by him that on 3.8.2002, he and his family members including the driver were confronted by P.L. Adlakha in an uncivilized manner, who not only assaulted him but threatened to kill him, therefore, an offence under Section 506/120-B IPC is made out against him. On the basis of these facts, he wanted an FIR to be registered which was done by the local police.

4. So far as P.D. Adlakha is concerned, he has also been summoned on the basis of a private complaint filed by his brother P.L. Adlakha for offences of wrongful restraint, threat and criminal intimidation. This summoning order has been passed by the learned Magistrate on 13.12.2006 after P.L. Adlakha had filed a criminal complaint against P.D.

Adlakha under Sections 341/452/499/500/506/34 IPC. In this complaint, the sum and substance of the case setup by P.L. Adlakha was that he was living along with his family in the rear portion of the property while as his brother P.D. Adlaka is living in the front portion. On the date of incident, that is, on 10.6.2002, there was some incident which had occasioned on account of illegal aluminium *chajja* being constructed by P.D. Adlaka which resulted in altercation, charges and counter charges where it is alleged by P.L. Adlakha that P.D. Adlakha threatened him with the words like "*goli maar dunga ab mana karke dekh*". The complainant P.L. Adlakha had examined himself as a witness and proved certain documents, namely, the complaints purported to have been made to the DCP which failed to bring any desired result. He had also examined PW-2, Yashoda, his maid servant. She also supported the case of the complainant/petitioner No.1 in criminal writ petition. On the basis of these facts, P.D. Adlakha and his family members were summoned under Section 451/506(1)/34 IPC. As has been stated hereinabove, the proceedings of both the cases before the trial court are stayed.

5. The cases have been pending in this court for a considerable period of time and despite efforts to bring about an amicable settlement to the dispute between the parties, which essentially is emanating from civil dispute regarding ownership or the division of the property where both the parties are living in two different portions, it could not be resolved because of the adamant attitude of the parties leaving thereby no other option to the court but to decide the main matter on merits. It may also be pertinent here to mention that so far as P.L. Adlakha is concerned, he was 73 years of age at the time of filing the petition. We are ten years down the line and by this time, he is 83 years of age. So far as P.D. Adlakha is concerned, by profession, he is an advocate practicing in this court and must also be in late 80's.

6. I have heard the learned counsel for the parties. So far as criminal writ petition is concerned in which there is a prayer for quashing of the FIR No.877/2002, the main ground on the basis of which FIR has been sought to be quashed is that the dispute between the petitioner, P.L. Adlakha and the complainant P.D. Adlakha, who happens to be his younger brother, is essentially a civil dispute which is sought to be given

a criminal colour only with a view to score a point on the petitioner No.1 so as to force him to settle the matter. So far as the incident is concerned, there is no denial of the fact that the parties had an altercation and perhaps heated altercation on 10.6.2002 with regard to alleged installation of a *chajja* in a common portion falling in between the two portions of the parties. But each one of them is giving their own version. Both these versions have been given above. Moreover, both the parties have tried to use their influence over the other. So far as P.D. Adlakha is concerned, he being an advocate, has tried to enrope the entire family of P.L. Adlakha by making the sons-in-law of the petitioner No.1 P.L. Adlakha also as party while as they have nothing to do with the dispute between the two brothers and are not admittedly living in the said property.

7. Similarly, so far as P.L. Adlakha is concerned, he too has gone to the extent of filing a private complaint against not only P.D. Adlakha but his son also and accused him of committing various offences of wrongful restraint, criminal intimidation, defamation, etc. He has also not shown magnanimity of treating his younger brother in the manner in which he is deserved to be. The complaint, in respect of which P.D. Adlakha has

been summoned, is also a ploy to counter the registration of an FIR by the respondent No.2 (P.D. Adlakha).

8. It is settled by the Supreme Court in not only one but tens of cases that there is a growing tendency on the part of the parties in the recent years to convert the civil dispute into a criminal dispute only with a view to score a march over the other. In this case, one has tried to do exactly the same thing over the other. If one goes through the complaint, it is very much possible that there was a heated exchange of arguments between the two old men and their families as one of the parties, P.D. Adlakha, wanted to erect some aluminium *chajja* in the courtyard, which may not have been to the liking of P.L. Adlakha. So far as P.D. Adlakha is concerned, his case was that P.L. Adlakha and his family members were stopping his free ingress and egress to his portion of the property in the front. I fail to see as to how the access to the front portion could be stopped by the person who is living at the back because the front portion of the house would have an entry from the front and even if there is a second entry to the side portion also, P.L. Adlakha could hardly create hurdle in the free movement of the other side as it happened to be a

common passage or a common courtyard. It seems that P.D. Adlakha wanted to convert the said portion of the property to his exclusive use, which might have been resisted.

9. The dispute between the parties is essentially a civil dispute. A suit for mandatory injunction is stated to have already been filed by P.L. Adlakha against P.D. Adlakha which was pending before the civil court at Tis Hazari, when the altercation is alleged to have taken place. The parties ought to have permitted the civil court to decide finally the dispute with regard to the title or the possession of the property rather than taking the law into their own hands. While as in the instant case, each of the party has tried to pin down the other side by either getting an FIR registered or by getting the other side summoned for various offences by invoking jurisdiction of the trial court under Section 200 Cr.P.C. But in essence, the purpose of both these criminal proceedings would be to pin down the other side so as to score a point. This, in my view, is not permissible as the Apex Court in number of judgments has held that a civil dispute between the two parties cannot be permitted to be converted into a criminal dispute.

46

10. In *M/s Indian Oil Corporation vs. NEPC India Ltd. & Ors.;* AIR 2006 SC 2780, the Apex Court observed as under :-

> *"10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which, do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of UP:* 2000 Cri LJ 824 *, this Court observed:*
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> > *It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in taw. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.*
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> *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a*

prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant."

11. There is another ground of triviality involved in the matter on the basis of which not only the FIR but even the complaint and the summoning order deserves to be quashed. In this regard, reliance can be placed on a full Bench judgment of this court titled *Neelam Mahajan Singh vs. Commissioner of Police & Ors;* 53 (1994) DLT 389. Section 95 of the IPC also talks about the defense of triviality. The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this Section. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, but being so trivial, these acts ought not to be treated as crimes. The purpose of triviality as a ground for quashing is that these matters are so trivial that a person of ordinary sense and temper would not complain about the same. In the instant case also what has been seen is that on 10.6.2002,

the respondent No.2, namely, the complainant P.D. Adlakha wanted to put an aluminium sheet in the courtyard so as to ensure that it is used exclusively by him. Obviously, when this was resisted, most of the family members must have been away at that time as has been alleged by the parties though there is an averment that the extended family of both the parties was present. The factors which show that this altercation was heated and did not result in any serious injury to any of the party are borne out from the record that there were only superficial injuries when the parties were examined by the private doctors. Therefore, the episode of 10.6.2002 should not have been made a basis so as to make it as a launching pad for either criminal investigation under Section 173 Cr.P.C. or for a complaint by either of the parties. I feel that continuance of both these proceedings between the parties is essentially a gross abuse of the processes of law as the parties are trying to convert the civil dispute, essentially between them with regard to ownership and possession of the property, into a criminal case. This cannot be permitted to be done.

12. For the reasons mentioned above, I quash not only the FIR No.877/2002 but also the Criminal Complaint No.541/2003 and order

dated 13.12.2006 by virtue of which P.D. Adlakha and others have been summoned to face trial for offence under Section 451/506 (1)/34 IPC. I hope and trust that both the brothers, who are fairly very old, would permit the civil court to decide on the question of injunction. Accordingly, both the petitions are allowed.

V.K. SHALI, J.

FEBRUARY 27th, 2013
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