

Court No. - 87

Case :- APPLICATION U/S 482 No. - 35214 of 2018

Applicant :- Atul Kumar Keshri

Opposite Party :- State Of U.P. And 3 Ors

Counsel for Applicant :- Swapnil Rastogi, Nikhil Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari, J.

1. Two counter affidavits duly served upon applicant, filed today by learned A.G.A. is taken on record.
2. Heard Sri Nikhil Mishra, learned counsel for applicant and learned A.G.A. for State.
3. Present 482 application has been filed seeking quashing of charge sheet dated 23.05.2018 as well as entire proceeding of Criminal Case No. 161 of 2018, arising out of Case Crime No. 152 of 2018 (State vs. Santosh Tiwari), under sections 147, 504, 447 IPC and Section 3(1) of SC/ST (Prevention of Atrocities) Act, P.S.-Rohaniya, District-Varanasi.
4. This Court vide order dated 05.10.2018 has issued notice to opposite party No. 2. As per office report dated 09.09.2020, notice has been served upon opposite party No. 2 personally, but no one has put in appearance on his behalf.
5. As pleadings are exchanged, therefore, with the consent of parties, Court is proceeded to decide the case on merits.
6. Learned counsel for the applicant submits that the applicant is the owner of Survey Plot No. 352-Ka, whereas the opposite party no.2 is the owner of Survey Plot No. 353-Kha. Both plots are contiguous plots and there is boundary dispute between the parties. For protecting possession over Survey Plot No. 353-Ka, the sister of the applicant, namely, Smt. Meenkashi Kesari filed Original Suit No. 383 of 2017 (Smt. Meenakshi Kesari vs. State of U.P. & Others) in which the complainant-opposite party no.2 is the defendant no.4. The Civil Court upon consideration of the material brought on record granted temporary injunction in favour of the plaintiff i.e. Smt. Meenakshi Kesari, the sister of the applicant on 4th April, 2017. This order of the

temporary injunction dated 4th April, 2017 was violated by the opposite party no.2 on 12th April, 2017. Consequently, a first information report dated 13th April, 2017 was lodged by the brother of the applicant, which was registered as Case Crime No. 393 of 2017 under Sections 427 and 506 I.P.C., Police Station Rohaniya, District Varanasi. Upon completion of the statutory investigation of the aforesaid case crime number, the Police has submitted a charge-sheet dated 21st April, 2017. Upon the same, cognizance has been taken and consequently the opposite party no.2 has been summoned. Similarly, the plaintiff of Original Suit No. 383 of 2017 i.e the sister of the applicant, Meenakashi Kesari filed an application under Order XXXIX Rule 2 (A) of the Code of Civil Procedure for violation of the order of temporary injunction dated 4th April, 2017 on 12th April, 2017 by the opposite party no.2. The said proceedings are also pending before the Civil Court. During the pendency of the civil proceedings as noted herein-above, the opposite party no.2 lodged a first information report dated 23rd March, 2018 against the applicant. It is next submitted that as per settled provisions of law, in civil dispute, criminal proceeding may not be initiated.

7. In support of his contention, he has placed reliance upon the judgment of this Court as well as Apex Court in the matter of ***Indian Oil Corporation vs. NEPC India Ltd. reported in (2006) 6 SCC 736., Usha Chakraborty vs. State of West Bengal reported in 2023 SCC Online SC 90, Ramawatar vs. State of M.P., reported in (2022) 13 SCC 635 and B. Venkateswaran and ors. Vs. P. Bakthavatchalam reported in AIR 2023 SC 262.***

8. Learned A.G.A. could not dispute the facts so argued by learned counsel for applicant.

9. I have considered rival submissions advanced by counsel for parties and perused the records as well as judgments cited above.

10. From the perusal of records, it is apparently clear that there is civil dispute pending between the parties.

11. Now coming to judgments relied upon by learned counsel applicant. This matter was very well considered and settled by this Court as well as Apex Court in the matter of ***Indian Oil Corporation (Supra), Usha Chakraborty(Supra), Ramawatar (Supra) and B. Venkateswaran (Supra).***

12. I have perused the judgment of Apex Court in the case of ***Indian Oil Corporation (Supra)*** and relevant paragraph of the said judgment is quoted hereinbelow:-

"13. 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 through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of U.P [2000 (2) SCC 636], this Court observed :

"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 law. 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."

13. I have also perused the judgment of Apex Court in the case of ***Usha Chakarborty (Supra)*** and relevant paragraph of the said judgment is quoted hereinbelow:-

15. The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter-affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship. Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the civil suit to cover up the civil nature of the dispute.

16. By non-disclosure the respondent has, in truth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the

respondent's allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B, IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in *Paramjit Batra (supra)*, the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

17. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings

against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.

14. Similar matter was also come up before the Apex Court in the matter of **Ramawatar (Supra)**. Relevant Paragraph of the said judgment is quoted hereinbelow:-

“17. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a ‘special statute’ would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr.P.C.

15. This issue was again come before the Apex Court in the matter of **B. Venkateshwaran (Supra)** wherein Apex Court has also taken the same view. Relevant paragraph of the said judgments are quoted hereinbelow:-

“We have heard Shri Nagamuthu, learned senior counsel for the appellants – original accused and the respondent appearing in person. We have also gone through the complaint and considered the allegations in the complaint made against the accused. Having considered the allegations in the complaint and the material on record, it appears that initiation of the criminal proceedings by the respondent against the appellants – original accused for the offence under the provisions of the Scheduled Castes and the [Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#) is nothing but an abuse of process of law and the court and also provision of the Scheduled Castes and the [Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#). It appears that a private dispute was going on between the parties with respect to the illegal construction. As per the allegations in the complaint, the original complainant had purchased the vacant land and constructed the building. It is alleged that adjacent to his house and on the common pathway, the accused have unlawfully encroached upon the pathway and started constructing the temple and thereby have put up illegal construction on his water pipeline, sewage pipeline and EB Cable. In the entire complaint, there are no allegations that the complainant is obstructed and / or interfered with enjoyment of his right on his property deliberately and willfully knowing that complainant belongs to SC/ST. From the material on record, it appears that a civil dispute is converted into criminal dispute and that too for the offence under the provisions of the Scheduled Castes and the [Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#). Prior to filing of the complaint, it appears that the temple was already in existence since many years. The complainant, who resides adjacent to the temple, filed WP No. 1272 of 2007 before the Madras High Court. Pursuant to the order passed by the High Court, the Commissioner of Corporation, Chennai conducted the inspection and found that there was absolutely no encroachment by the temple. It appears that thereafter the complainant filed another Writ Petition No. 30326 of 2013 before the Madras High Court. The High Court directed the official

respondent to proceed with the inquiry against both the parties. At this stage, it is required to be noted that it was the case on behalf of the original accused that in fact complainant had violated all building norms and had constructed a building in blatant violation of the set-back rules and had also put-up unauthorized construction on the ground floor and first floor. That thereafter, the Temple filed writ petition being No.3322 of 2017 before the High Court. The Division Bench of the High Court vide order dated 10.2.2017 stayed the proceedings against temple. It appears that thereafter the complainant filed a private complaint for the aforesaid offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. From the aforesaid, it seems that the private civil dispute between the parties is converted into criminal proceedings. Initiation of the criminal proceedings for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, therefore, is nothing but an abuse of process of law and Court. From the material on record, we are satisfied that no case for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, even prima facie. None of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/ or satisfied. Therefore, we are of the firm opinion and view that in the facts and circumstances of the case, the High Court ought to have quashed the criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure. The impugned judgment and order passed by the High Court, therefore, is unsustainable and the same deserves to be quashed and set aside and the criminal proceedings initiated against the appellants deserves to be quashed and set aside.”

16. In light of aforesaid judgements, law is very much clear that in the matter of civil dispute, criminal proceedings cannot be initiated. In the present case, facts are undisputed that a civil dispute is pending between the parties, therefore, under such circumstances, aforesaid criminal proceeding is bad and is hereby set aside.

17. Accordingly, instant 482 application is **allowed**.

18. No order as to costs.

Order Date :- 31.10.2023

Sartaj