

Court No. - 82

Case :- APPLICATION U/S 482 No. - 17330 of 2006

Applicant :- Ram Prakash Dwivedi And Others

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- Abhay Raj Yadav, Ramesh Kumar Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Ram Manohar Narayan Mishra, J.

1. By means of instant application has been filed under Section 482 Cr.P.C., the applicants are accused in Criminal Case arising out of charge sheet No.214 of 2006, under Sections 457, 380 IPC, have prayed for quashing the charge sheet along with summoning order dated 29.08.2006 passed by the learned Chief Judicial Magistrate, Chitrakoot after taking cognizance on the basis of charge sheet.

2. Heard Sri Ramesh Kumar Singh, learned counsel for the applicants and Sri Rajiv Dwivedi, learned counsel for the respondent No.2/informant as well as learned AGA for the State and perused the record.

3. According to the prosecution case, informant Dr. Ranveer Singh Chauhan is posted as Principal, Chitrakoot Inter College, Karvi and was residing at college campus. He was in possession of a scrap shop near traffic chauraha, which he obtained through a registered sale-deed and let it out on rent to Nafis Ali. In the night of 19.12.2005 at 10 P.M., the applicants entered in his shop and had stolen three coolers with exhaust which belongs to the informant and all the goods kept by tenant Nafis Ali by breaking open lock of the shop. Despite the fact that, a Civil Suit No.82 of 2005, Devraj and others Vs. Dr. Ranveer Singh Chauhan and another was pending between applicant No.3 Deo Raj Yadav and the informant, in which, a temporary injunction order was passed vide order dated 17.03.2005 to the effect that the parties shall maintain status quo over the property in dispute. The disputed shop was purchased by the informant. The first information report

was registered under Sections 457, 380 IPC, police station Kotwali Karvi, District Chitrakoot. The police investigated the case and submitted charge-sheet against the applicants. Learned Chief Judicial Magistrate took cognizance of the offence against the applicants on 29.11.2006 on the basis of charge-sheet.

4. Learned counsel for the applicants submits that the first information report has been registered after three months. The occurrence took place on 19.12.2005 and the FIR was lodged on 14.3.2006, a gap of almost three months between occurrence and lodging of the FIR and no explanation has been given in the FIR for this in-ordinate delay, which itself creates doubt of genuineness of the allegations made in the FIR. He also submits that the dispute between the parties with regard to the possession of the scrap shop, a civil suit is admittedly pending between the main accused Deoraj Yadav and the informant. The witnesses namely, Mahavir Yadav alias Kooti, Sri Badri Prasad Yadav and Sri Sukhram have not supported the FIR version in their statements u/s 161 Cr.P.C recorded by the Investigating Officer. They have denied the allegations that any goods of the informant was kept in disputed shop. The disputed land was purchased by the informant from Indrapal S/o Mahabir Yadav. No offence, under section 457 IPC is made out on the basis of statements of these witnesses. The proceedings of the present case is abuse of process of law. The dispute is of civil in nature and it can be duly resolved by the Civil Court as a civil suit is already pending between the parties.

5. Per contra, learned counsel for respondent No.2 submits that in the counter affidavit, respondent No.2 has admitted that he has no

real dispute from applicants No.1 and 2 and real dispute lies between the respondent No.2 and applicant No.3, Deoraj Yadav and informant had rightly lodged the FIR against the applicant Nos. 3 and 4. The name of applicant Nos. 1 and 2 got included in the F.I.R due to some misconception and respondent No.2 is not inclined to proceed against applicant Nos.1 and 2. However, respondent No.2 seeks to contest the case against applicant Nos. 3 and 4. Learned counsel for the respondent No.2 could not dispute the fact, that the matter in dispute between the parties is essentially of civil nature.

6. From perusal of this FIR version and pleadings of parties in Civil Suit No.82 of 2005 (Devraj and four others Vs. Dr. Ranveer Singh Chamar and another) it appears that the land in dispute where disputed shop situates initially belonged to Smt. Chunki whose grand sons Om Prakash and Indrapal inherited the property from her. Indrapal is issueless. Devraj, Amar Kumar, Rajendra and Yogendra are sons of Om Prakash and after death of Om Prakash sons of Om Prakash and his brother Indrapal became co-sharers; certain sale deeds were executed in the life of Om Prakash by his brothers. According to Indrapal he constructed a shop, well and a chabutara which situates in disputed side came to his share in private partition between the brothers and Nafis son of Razi operates the shop as tenant. The well has got extinct during passage of time and only its marks are found on the spot. In revenue records name of Plaintiffs Devraj and other, and respondent No.2, Indrapal continues as co-sharers/co-bhumidhars. Defendant Indrapal sold a portion of land to the informant which exists in revenue record as bhumidhari, but on the spot its bhumidhari character is no more in existence. The sale deed was executed in favour of the informant on 21.02.2005.

The present accused persons Devraj and others have assailed said sale deed in Civil Suit No.82 of 2005. From perusal of record it appears that the real dispute between the informant and accused is with regard to title and possession of disputed land and shop which has been given cloak of criminal proceedings by the informant by lodging the FIR under Sections 457 and 380 IPC. No FIR has been lodged at the instance of the shopkeeper Nafis who is admitted to be tenant by the informant as well as Indrapal his vendor, whereas Nafis is said to be in possession of the shop as a tenant where accused persons are said to have committed lurking house trespass and theft in the night on 19.12.2005. The informant has already exonerated accused Nos. 1 and 2 by entering into a compromise with them which is on record, where all the accused persons are assigned similar role in the said offence. On a meticulous examination of the facts of the case in the light of ingredients of offence under Sections 457 and 380 IPC it is difficult to comprehend that a case under Sections 457 and 380 IPC is made out in the case. In fact, the dispute pertains between the parties is essentially of civil nature and in continuation of criminal prosecution against the applicants will amount to abuse of process of law.

7. Hon'ble Supreme Court in a recent judgment **A.M. Mohan Vs. The State represented by SHO and another reported in 2024 SCC Online SC 339 (three Judge Bench)** considered the scope of Section 482 Cr.P.C. while deciding the appeal challenging the order passed by learned Single Judge of the High Court of Madras on an application under Section 482 Cr.P.C. the Hon'ble Court observed as under:-

.....9. The law with regard to exercise of jurisdiction under Section 482 of Cr.P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of **Indian Oil Corporation v. NEPC India 10 Limited and Others** after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

- (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is

whether the allegations in the complaint disclose a criminal offence or not.

8. Hon'ble Apex Court further observed that there is nothing in the words of section 482 Cr.P.C. which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [**G. Sagar Suri v. State of U.P.**, (2000) 2 SCC 636].

9. Hon'ble Supreme Court in a recent judgment **Naresh Kumar and another Vs. The State of Karnataka and another** reported in 2024 SCC Online SC 268 arising out of SLP (Crl.) No.1570 of 2021 observed as under:-

*.....6. In the case of **Paramjeet Batra v. State of Uttarakhand** (2013) 11 SCC 673, Hon'ble Supreme Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:*

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are

present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

(emphasis supplied)

Relying upon the decision in Paramjeet Batra (supra), Apex Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.”

10. In the result placing reliance on above stated dictum of Hon’ble Supreme Court on the facts of the present case, it may be added that on peculiar facts of the case where there is civil dispute between the parties with regard to shop in question prior to lodging of FIR, no FIR has been lodged at the instance of the person who is admittedly a tenant of the shop as per version of the informant in the present FIR and also in the version of his vendor in his written statement in Civil Suit; it is difficult to comprehend that in fact, an offence under Section 457 and 380 IPC has been committed by the accused persons/ applicants.

11. Consequently I am inclined to allow the application under Section 482 Cr.P.C. The Chargesheet No.214 of 2006 dated 10.08.2006 under Section 457 and 380 IPC filed pursuant to investigation in FIR in Crime No.64 of 2006 under Sections 457, 380 IPC, P.S. Karvi Kotwali, District Chitrakoot and summoning order dated 29.08.2006 passed by learned CJM concerned in Criminal Case No.1726/IX/2006 are hereby quashed.

12. The application under Section 482 Cr.P.C. is **allowed**, accordingly.

Order Date :- 22.8.2024

SFH/Ashish