

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1424 of 2024

Applicant :- Ajay Kumar Baghel

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home Civil
Sectr. Lko. And Another

Counsel for Applicant :- Sant Vijay Singh, Ratnesh Kumar Rawat

Counsel for Opposite Party :- G.A., Saurabh Mishra

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Ratnesh Kumar Rawat Advocate, the learned counsel for the applicant, Sri Anant Pratap Singh, the learned AGA for the State, Sri Saurabh Mishra, the learned counsel for the opposite party no. 2 and perused the record.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of Charge Sheet No. 1 of 2022 dated 30.09.2022 for offences under Sections 420, 467, 468, 471, 406 & 506 I.P.C. submitted in furtherance of F.I.R. No. 440 of 2022, Police Station Sushant Golf City, Lucknow, summoning order dated 02.12.2022 as well as the entire criminal proceedings of Criminal Case No. 117643 of 2022, State v. Ajay Baghel, pending before the Judicial Magistrate-III, Lucknow.
3. The opposite party no. 2 has filed a counter affidavit which is taken on record.
4. The learned AGA states that the dispute is between the opposite party no. 2 and the applicant, which is private in nature and as the opposite party no. 2 has filed a counter affidavit, the State does not propose to file a separate counter affidavit. With the consent of all the learned counsel appearing for the respective parties, the Court proceeds to decide the application finally.

5. The opposite party no. 2 lodged FIR No. 440 of 2022 on 07.09.2022 alleging that the complainant is the proprietor of a firm 'M/s Utkarsh Vipul Transport Company' and is engaged in the business of supply of road and building material through his firm. In April, 2018, the complainant came into contact with the applicant, who projected himself to be the owner of a flat situated in Media Enclave, Sushant Golf City, Police Station Sushant Golf City, Lucknow and told its price to be Rs. 60,00,000/-. The complainant transferred Rs. 93,000/- to the firm of the applicant through IMPS on 28.06.2018. Till May, 2019, the complainant had transferred Rs. 17,00,000/- to the bank account of the applicant. The complainant claims to have paid a further amount of Rs. 12,00,000/- in cash after borrowing the same from some friends. When the complainant demanded documents of the flat on numerous times, the applicant provided a title deed of the flat, which turned out to be fake and the complainant came to know that he had been cheated.
6. The F.I.R. further states that when the complainant again demanded refund of his money, the applicant went to his house, gave him an account payee cheque for Rs. 11,71,373/- and he destroyed the fake title deed which was lying on a table in the complainant's house. The cheque presented by the complainant was returned by the bank unpaid on 10.07.2022. When the complainant informed this fact to the applicant through his two mobile numbers and demanded his money, the applicant declined to pay money to him and threatened to kill him. The FIR further alleges that the applicant is a habitual offender and a gangster, against whom more than one and a half dozen cases are registered in various police stations.
7. After investigation, a charge sheet was submitted on 30.09.2022 alleging commission of offences under Sections 420, 467, 468, 471, 406 & 506 IPC and the trial court took cognizance of the offences on 02.12.2022 and summoned the applicant to face the trial.
8. It has been stated in the application that there were business relations between the applicant and the complainant and the monetary

transactions between the parties were made in relation to their business dealings. No agreement for sale of any flat has been executed by the applicant in favour of the complainant and no money was paid by the complainant to the applicant for purchasing any immovable property.

9. The complainant has stated in the counter affidavit that the applicant is a hardened criminal and has a long criminal history, including a case under the U. P. Gangster and Anti Social Activities (Prevention) Act, 1986. He has obtained bail in the present concealing his criminal history. It has also been stated that the defence set up by the applicant in his application under Section 482 Cr.P.C. cannot be taken into consideration by this Court at this stage.
10. In the case of **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court considered the law laid down in various precedents regarding scope of interference under Section 482 Cr.P.C. and summarized the law in the following words:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or 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 a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

(Emphasis supplied)

11. Immediately after mentioning the aforesaid categories, the Hon'ble Supreme Court has cautioned that the power has to be exercised in rarest of rare cases by adding that:-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

12. The expression “rarest of rare cases” used by the Hon'ble Supreme Court in **Bhajan Lal** (Supra) has been explained in **Som Mittal (2) v. State of Karnataka**, (2008) 3 SCC 574 in the following words:—

*“9. When the words “rarest of rare cases” are used after the words “sparingly and with circumspection” while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words “sparingly and with circumspection”. **They mean that the power***

under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression “rarest of rare cases” is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection.”

(Emphasis supplied)

13. When we examine the facts of the case in light of the law laid down by the Hon’ble Supreme Court in the aforesaid cases, what appears is that the FIR alleges that the applicant is the proprietor of a firm, which had business relations with the firm of the applicant, although the name of the applicant’s firm has not been disclosed in the FIR. The complainant claims to have entered into an agreement to purchase a flat of the applicant situated in Media Enclave, Sushant Golf City but neither the flat number nor any other particulars have been disclosed in the FIR so as to ascertain the identity of the Flat that was agreed to be sold to the complainant. In response to a query put by the Court, the learned counsel for the applicant admitted that no registered agreement had been executed between the parties for purchasing the flat and the reason for non execution of the agreement, as per the learned counsel for the applicant, was that since title had not been transferred, therefore, registered agreement was not executed.
14. The complainant claims that he had paid Rs. 93,000/- through IMPS by transferring the amount to the applicant’s firm on 28.06.2018 and till May, 2019, he had transferred Rs. 17,00,000/- to the bank account of the applicant. A further sum of Rs. 12,00,000/- is said to have been paid in cash after borrowing the same from some friends. The FIR does not disclose the date of making cash payment of such a huge amount or the names of the complainant’s friends who had lent him the money.
15. The complainant has alleged in the F.I.R. that the applicant had provided a title deed of the flat, which turned out to be fake and when the complainant had gone to the applicant’s house to refund Rs.

11,71,373/- through a cheque, the applicant had destroyed the title deed that was given by him to the complainant. Therefore, as per the claim of the complainant himself, he does not have the alleged fake copy of the title deed that had been provided by the applicant.

16. On the aforesaid factual allegations, the complainant alleges that the applicant has committed offences of criminal breach of trust and cheating and dishonestly inducing delivery of property, forgery of valuable security for delivery of property for the purpose of cheating and using as genuine a forged document. It would be appropriate to have a look at the definitions of the offences, which are being reproduced below: -

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

* * *

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations...

* * *

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

* * *

463. Forgery.—*Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

* * *

467. Forgery of valuable security, will, etc.—*Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 2[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

* * *

468. Forgery for purpose of cheating.—*Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

* * *

471. Using as genuine a forged document or electronic record.—*Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”*

17. Criminal breach of trust defined by Section 405 IPC entails misappropriation or conversion of another's property for one's own use, with a dishonest intention. Cheating defined under Section 415 IPC also involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property. Both the sections clearly lay down “dishonest intention”, as a precondition for even prima facie establishing the commission of the said offences. In order to assess the allegations leveled by the complainant, the question whether applicant’s actions were committed in furtherance of a dishonest intention is to be seen.

18. Except for the bald allegation leveled by the complainant, there is absolutely no material to establish that the applicant had entered into any agreement with the complainant to sell his immovable property. Even as per the complainant, the property was worth Rs.60,00,000/- and he has paid merely Rs.17,00,000/- through banking channel and Rs.12,00,000/- are claimed to have been paid after borrowing the same from undisclosed sources and except for the bald allegation, there is absolutely no material to establish this payment. Even as per the complainant himself, he has not paid or even tendered to the applicant the balance amount of Rs.31,00,000/- towards sale consideration for the immovable property and there would be no occasion for execution of any sale deed prior to payment of the total sale consideration and the refusal to execute the sale deed would not establish any 'dishonest intention' of the applicant. Therefore, the offences under Sections 406 and 420 I.P.C. are not made out from the complainant's allegations.
19. Regarding the alleged act of showing a false title deed, there is no allegation that the applicant had himself made the false title deed. In **Sheila Sebastian v. R. Jawaharaj**, (2018) 7 SCC 581, the Hon'ble Supreme Court explained the requirement of the offence of 'forgery' in the following words: -
- “25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.”*
20. The offence of forgery is made out only against the person who has made the fake document and there is no allegation that the applicant had made the forged copy of any sale deed. Therefore, the offences under Section 467 and 468 are not made out from the complainant's allegations.

21. The complainant himself states that the applicant had shown the fake title deed after he had already made the entire payment of Rs.29,00,000/- and the applicant did not induce the complainant to make any payment after showing the alleged fake deed. The alleged fake deed is said to have been destroyed also before the applicant could have used it as genuine to cheat the complainant. Therefore, the offence under Section 471 is also not made out from the complainant's allegations.
22. The complaint states that the applicant had given a cheque for Rs. 11,71,373/- towards return of the amount of Rs. 29,00,000/-. Although this Court is not required to return a finding of fact while deciding an application under Section 482 Cr.P.C., the magic odd figure of Rs. 11,71,373/- apparently does not bear any co-relation with the sum of Rs.29,00,000/- that is alleged to have been paid by the complainant towards purchase of the flat and prima facie this odd figure supports the contention of the applicant that it was a payment towards a business transaction between the parties.
23. The complainant claims that the cheque was dishonored by the bank and in such a situation, the complainant had the remedy of filing a complaint under Section 138 of the Negotiable Instruments Act, 1881, which he chose not to avail. Therefore, the present case also falls in category (6) mentioned in para 102 of **Bhajan Lal** (Supra), i.e. where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
24. The complainant has not stated that he has filed any complaint under Section 138 of the Negotiable Instruments Act, 1881 and it appears that he has lodged the F.I.R. after being aggrieved by the dishonor of the cheque by the Bank. In this regard, it would be relevant to have a look at Section 142 (1) of the Negotiable Instruments Act, 1881 which provides that: -

“142. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

—

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.”

25. Therefore, the filing of an FIR alleging that the cheque given by the applicant was returned by the Bank unpaid, which amounts to commission of offences of criminal breach of trust and cheating, is barred by the provisions contained in Section 142 of the Negotiable Instruments Act. This also brings the present case within category (6) of Para 102 of **Bhajan Lal** (Supra), i.e. where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act to the institution and continuance of the proceedings.
26. So far as the allegation of commission of the offence of criminal intimidation punishable under Section 506 IPC is concerned, the said offence is defined in Section 503 IPC as follows: -

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.”

27. Although the complainant has alleged threatening by the applicant through mobile phone, there is no allegation that the threat was extended with intent to cause alarm to the complainant, or to cause him to do or omit to do any act as the means of avoiding the execution

of such threats. Therefore, in absence of the allegation of such an ‘intent’, the offence of criminal intimidation is also not made out.

28. Therefore, none of the offences alleged are not made out from the allegations leveled by the complainant and the material relied upon by him and the present case falls within category (3) mentioned in para 102 of **Bhajan Lal** (Supra).
29. The complainant has rightly contended that this Court cannot consider the applicant’s defence at this stage and this Court has not considered any plea raised by the applicant in his defence. Even as per the complainant’s case, the complainant had entered into an agreement to purchase a flat worth Rs. 60,00,000/- and had paid a sum of Rs.17,00,000/- through banking channel and Rs.12,00,000/- in cash without any documentation. No written agreement was executed in this regard, what to say about the agreement being registered. In absence of a registered agreement, no suit based on that agreement would lie in any Court and it would be difficult for the complainant to succeed even on the test of a preponderance of probabilities in his favour. Yet, the complainant has chosen to initiate criminal proceedings, which require a much high level of burden of proof beyond reasonable doubt.
30. The complainant has claimed that had he demanded refund of money from the applicant and applicant had given a cheque of Rs. 11,71,373/- , which was dishonored, but the complainant did not initiate any proceeding under Section 138 of the Negotiable Instruments Act. Admittedly, the complainant has not initiated any civil suit for recovery of the amount of money from the applicant. Had the complainant initiated some civil proceedings for enforcement of his rights of specific performance of the alleged contract of sale of immovable property or for recovery of money paid under the alleged agreement, it could be accepted that the complaint had initiated criminal proceedings for merely punishment of the applicant. As the complainant has initiated criminal proceedings only, it appears that the criminal proceedings have been initiated with an oblique motive to

coerce the applicant to pay money to the complainant. Thus a matter, which is essentially of a civil nature, has been given a cloak of criminal offence as a short cut of other remedies, which require payment of Court fee and where the proof of the right will be subject to inadmissibility of an unregistered agreement regarding purchase of immovable property worthy Rs.60,00,000/-.

31. In **G. Sagar Suri v. State of U.P.**, (2000) 2 SCC 636, the Hon'ble Supreme Court held that: -

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a 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 the 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.”

32. As far back as in the year 2006, the Hon'ble Supreme Court had observed in **Indian Oil Corpn. v. NEPC India Ltd.**, (2006) 6 SCC 736, that: -

“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 breakdown 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....

* * *

14. 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 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant....”

33. However, instead of being checked and restrained, the tendency of entangling opponents in criminal cases to indirectly pressurize them to enter into a settlement for redressal of the grievances of infringement of civil rights, is ever growing. A very large share of the judicial time of the Courts is consumed in dealing with matters which essentially arise out of civil disputes and for which no civil proceedings for recovery of money, specific performance of contract cancellation of agreement etc., are initiated, which require payment of court fee.
34. This tendency of misusing the criminal proceedings for claiming enforcement of civil rights by indirect methods and evading payment of stamp duty, registration fee and court fee cannot be appreciated by the Courts and it should not be encouraged. It is nothing but cheating committed against the public at large by depriving the public exchequer of the money that would be payable as registration fee, stamp duty and court fee, which would have benefited the public at large.
35. So far as the applicant's criminal history and his having concealed his criminal history while obtaining bail from this Court, the same are not relevant for adjudication of this application, as the conduct of the applicant would not justify the complainant's conduct of initiating criminal proceedings with an oblique motive of taking advantage in a civil dispute even when the alleged offences are not made out even as per the allegations leveled and material relied upon by the complainant.
36. From the aforesaid facts, it appears that the complaint has instituted the criminal proceeding maliciously with an ulterior motive for

wreaking vengeance on the applicant, with a view to spite him due to the complainant's personal grudge. In such circumstances, the continuance of criminal proceedings is a gross abuse of the process of criminal law and the same are liable to be quashed.

37. Accordingly, the application is ***allowed***. The Charge Sheet No. 1 of 2022 dated 30.09.2022 for offences under Sections 420, 467, 468, 471, 406 & 506 I.P.C. submitted in furtherance of F.I.R. No. 440 of 2022, Police Station Sushant Golf City, Lucknow, the summoning order dated 02.12.2022 as well as the entire criminal proceedings of Criminal Case No. 117643 of 2022, State v. Ajay Baghel, pending before the Judicial Magistrate-III, Lucknow, are hereby quashed.

(Subhash Vidyarthi J)

Order Date :- 22.02.2024

Pradeep/-