

[AFR]

Court No. - 11

Case :- APPLICATION U/S 482 No. - 9084 of 2023

Applicant :- Alok Mitra Jaiswal And Others

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

Counsel for Applicant :- Shiv Prakash Dwivedi

Counsel for Opposite Party :- G.A.,Ajai Kumar,Vivek Kumar Rai

[AND]

Case :- APPLICATION U/S 482 No. - 10202 of 2023

Applicant :- Achchhe Lal Jaiswal

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

Counsel for Applicant :- Ashok Kumar Bajpai,Abhishek Kumar,Belal Ahmad,Kadambani Lal,Surendra Prasad Gupta

Counsel for Opposite Party :- G.A.,Vivek Kumar Rai

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Jyotindra Mishra, learned Senior Advocate assisted by Sri Shiv Prakash Dwivedi, learned counsel for the petitioners in Crl. Misc. Case No. 9084 of 2023 (u/s 482 Cr.P.C.), Sri Rao Narendra Singh and Sri Aniruddh Kumar Singh, learned AGA for the State as well as Sri Vivek Kumar Rai, learned counsel for private opposite party no. 2.

2. Heard Sri Ashok Kumar Bajpai, learned counsel for the petitioner in Crl. Misc. Case No. 10202 of 2023 (u/s 482 Cr.P.C.), Sri Rao Narendra Singh and Sri Aniruddh Kumar Singh, learned AGA for the State as well as Sri Vivek Kumar Rai, learned counsel for private opposite party no. 2.

3. Notably, both the aforesaid cases arise out of the same criminal proceedings, therefore, with the consent of the parties, both the petitions are decided together.

4. In the case of Alok Mitra Jaiswal and others, [Crl. Misc. Case No. 9084 of 2023 (u/s 482 Cr.P.C.)]. though learned AGA has filed counter affidavit but he is not pressing the same making request that the present matter may be decided on the basis of material available on record and also on the basis of arguments so advanced by learned counsel for the parties.

5. Since learned AGA has not pressed his counter affidavit, therefore, the opportunity to file rejoinder affidavit to learned counsel for the petitioners is not given.

6. By means of aforesaid petition bearing Crl. Misc. Case No. 9084 of 2023 (u/s 482 Cr.P.C.), the petitioners have prayed the following relief:

"Wherefore, it is most humble prayed that this Hon'ble Court may kindly be pleased to quash the impugned cognizance order dated 11.08.2023 as well as Chargesheet No. 01/dated-09.08.2023 in case crime No. 0298/2023, Under Section-120-B, 420, 465, 466, 467, 468, 471 I.P.C., Criminal Case No. 7812/2023, bearing name State V/S Alok Mitra & Others, Police Station- Kotwali Nagar, Distt-Sultanpur which is passed by Chief Judicial Magistrate, Court No. 16, District-Sultanpur in the interest of justice.

It is further prayed that the further proceeding in pursuance to the impugned Cognizance order dated 11.08.2023 as well as Charge sheet No. 01/dated-09.08.2023 in case crime no. 0298/2023, Under Section- 120-B, 420, 465, 466, 467, 468, 471 I.P.C. Criminal Case No. 7812/2023, bearing name State V/S Alok Mitra & Others, Police Station-Kotwali Nagar, District Sultanpur which is passed by Chief Judicial Magistrate, Court No. 16, District-Sultanpur be stayed during the pendency of petition before this Hon'ble Court."

7. By means of aforesaid petition bearing Crl. Misc. Case No.10202 of 2023 (u/s 482 Cr.P.C.), the petitioner has prayed the following relief:

"to quash the entire criminal proceedings including charge sheet of criminal case no. 7812 of 2023 relating to case crime no. 298 of 2023, under Section 120-B, 420, 465, 466, 467, 468 & 471 IPC of Police Station Kotwali Nagar, District Sultanpur, pending in the court of learned C.J.M., Sultanpur, in the interest of justice.

It is further most respectfully prayed that this Hon'ble court may graciously be pleased to stay the further proceedings of criminal case no. 7812 of 2023 relating to case crime no. 0298 of 2023, under section 120-B, 420, 465, 466, 467, 468 & 471 IPC, of Police Station Kotwali Nagar, District-Sultanpur, pending in the court of learned C.J.M. Sultanpur, pending in the court of C.J.M. Sultanpur, till the final disposal of this petition, in the interest of justice."

8. In the case of Alok Mitra Jaiswal and Others, this Court has passed the order dated 19.09.2023 which reads as under:

"Sri Vivek Kumar Rai and Sri Ajai Kumar, advocates, have put in appearance by way of filing vakalatnama on behalf of opposite party no. 2 and the same is taken on record.

Office is directed to print the name of Sri Vivek Kumar Rai and Sri Ajai Kumar as counsels for opposite party no. 2, on the next date of listing.

Learned counsel for opposite party no. 2 submits that he will file counter affidavit within a period of two weeks.

A week time thereafter, shall be available to counsel for the applicants to file rejoinder affidavit, if any.

List/put up this matter in the week commencing 30.10.2023."

9. In the case of Achchhe Lal Jaiswal, this Court has passed the orders dated 19.12.2023, 08.01.2024 and 10.01.2024 which respectively read as under:

"1. Counter affidavits filed by learned A.G.A. for the State and learned counsel for the private respondent are taken on record.

2. Heard Mr. S.P. Gupta, learned counsel for the applicant, learned counsel for the private respondent and learned A.G.A. for the State.

3. Learned A.G.A. informs that the present petition/application is filed by Achchhe Lal Jaiswal s/o late Ram Adhar Jaiswal r/o B-8-9, Sector- 1, Devendra Nagar, City Center Mall, District- Rapur, Chhattisgarh and in support the present petition/application, the affidavit is filed by Varun Jaiswal s/o Alok Mitra Jaiswal, Aadhar Card No. 263220760644, r/o Village, Alahdadpur, Lohramau By-pass Road, N.H. 56, Police Station-Kotwali Dehat, Sultanpur which is not maintainable as in the criminal cases, it is obligatory on the part of applicant that affidavit should be filed by him.

4. Mr. S.P. Gupta, who appears on behalf of applicant, informs that Mr. Ashok Kumar Bajpai, learned counsel for the applicant is arguing counsel in the present case. He requests that due to illness of Mr Ashok Kumar Bajpai, the matter may be listed on some other date.

5. Accordingly, the above request/prayer is allowed.

6. List this case on 08.01.2024 within top ten cases.

7. On the next date, deponent shall appear in person before this Court.

8. On the next date, learned counsel for the applicant will explain this fact that why the affidavit of applicant is not filed. In case, the counsel for the applicant fails to assist the court then the interim order shall be vacated automatically.

9. In the meantime, learned counsel for the applicant may file rejoinder affidavit.

10. Interim order, granted earlier vide order dated 18.10.2023, shall continue till the next date of listing."

"1. Heard Sri Ashok Kumar Bajpai, learned counsel for the petitioner, Sri Rao Narendra Singh and Sri Anirudh Kumar Singh, learned AGA for the State and Sri Vivek Kumar Rai, learned counsel for the opposite party no. 2.

2. In terms of the order of the Court the deponent is present before the Court.

3. On the request of learned counsel for the parties, list / put up on 10.1.2024 within top ten cases.

4. Interim order to continue till the next date of listing.

5. The deponent shall again appear in person in terms of the order of the Court."

"Heard Ms. Kadambani Lal, Advocate holding brief of Sri Ashok Kumar Bajpai, learned counsel for the petitioner, Mr. Rao Narendra Singh and Mr. Anirudh Kumar, learned AGA for the State and Sri Vivek Kumar Rai, learned counsel for opposite party no.2.

In terms of the order dated 08.01.2024 the deponent namely Varun Jaiswal son of Alok Mitra Jaiswal is present in person.

Ms Kadambani Lal has filed supplementary affidavit on behalf of the petitioner, the same is taken on record. The petitioner is a deponent in the aforesaid supplementary affidavit and has stated the reason, in paragraph 3, as to why he could not file the affidavit at the time of filing this petition.

Ms Kadambani Lal has stated that her senior Sri Ashok Kumar Bajpai is ill today, therefore he could not come to the Court. She has requested for short adjournment of the present case on the ground of illness of her senior. However, learned AGA for the State as well as learned counsel for the private party have raised strong objections on the aforesaid request by submitting that after the interim order having been granted in favour of the petitioner, the case is being adjourned on the request of learned counsel for the petitioner for one reason or another. They have drawn the attention of this Court towards the order dated 19.12.2023, on that date the case was adjourned on the illness of Sri Ashok Kumar Bajpai.

Vakalatnama reveals that alongwith Sri Ashok Kumar Bajpai, the vakalatnama has also been signed by Sri Abhishek Kumar, Sri Belal Ahmad, Ms. Kadambani Lal and Surendra Prasad Gupta.

Considering the request of Ms. Kadambani Lal the case is adjourned for today.

List this case on 17.01.2024 alongwith application under Section 482 bearing No.9084 of 2023, in the additional cause list as first case. This case shall be taken up immediately after fresh cases. Learned counsel for the parties may make mention of this case for taking out of turn. It is made clear that this case shall not be adjourned on the next date and if Sri Ashok Kumar Bajpai does not recover by the next date, any other counsel may address the Court.

Interim order to continue till the next date of listing."

10. In the petition of Achchhe Lal Jaiswal (supra), it has been indicated in Para 9 that the co-accused Alok Mitra Jaiswal and Smt. Pramila Jaiswal have filed a Regular Suit in the nature of permanent injunction bearing Regular Suit No. 421 of 2016 against the petitioner and opposite party no. 2 and others alongwith injunction application, in which learned Civil Judge (Senior Division), Court no. 15, Sultanpur has granted

injunction vide order dated 15.02.2023 (Annexure No. 3). However, in the petition of Achchhe Lal Jaiswal, the deponent is one Varun Jaiswal S/o Alok Mitra Jaiswal.

11. The learned counsel for the petitioners in both the petitions have stated that their Regular Suit is pending consideration before the Civil Court and the issue in question is civil in nature, therefore, till disposal of the aforesaid Civil Suit, the impugned criminal proceedings may be quashed and set aside. In support of his argument, Sri Jyotindra Mishra, learned Senior Advocate has drawn attention of this Court towards the judgement of Apex Court rendered in the case of **Mohammed Ibrahim and Others Vs. State of Bihar and Another** reported in **[(2009) 3 SCC (Cri) 929]**, wherein the Apex Court has observed that criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil dispute, therefore, the present petition may be allowed.

12. Learned counsel for opposite parties have raised strong objection against the aforesaid affidavit by saying that when Achchhe Lal Jaiswal, the petitioner has not authorized Sri Varun Jaiswal to file the petition before this Court how can Varun Jaiswal who is son of rival party, namely, Alok Mitra Jaiswal may swear the affidavit on behalf of Achchhe Lal Jaiswal. Though, Achchhe Lal Jaiswal has filed an affidavit clarifying the position that when the petition was to be filed before this Court on 06.10.2023, he was running ill, therefore on his instructions, Varun Jaiswal has sworn the affidavit on his behalf. However, learned counsel for the opposite parties have stated that the direction may be issued to verify the signatures of Achchhe Lal made on Vakalatnama and also the signatures made on subsequent affidavit, inasmuch as both the signatures are apparently different and as per their information, Achchhe Lal Jaiswal is a patient of Alzheimer so he could have not authorized Varun Jaiswal to swear the affidavit on his behalf.

13. Since I am disposing of this petition at the admission stage, therefore, I am not going into those contentions of the opposite parties. Learned counsel for the opposite parties have stated that Alok Mitra Jaiswal and his wife has filed a Regular Suit against Achchhe Lal Jaiswal, on the basis of one unregistered Will-deed which has been prepared on the plain papers. The aforesaid Will-deed is a forged and fictitious document, inasmuch as after lodging the FIR to the effect that appropriate investigation has been conducted by the Investigating Officer and on the basis of material and on the basis of evidence collected during the investigation, the chargesheet has been filed against the petitioners in both the petitions.

14. Learned counsel for the opposite parties have also stated that at the time of filing the Regular Suit in the year, 2016, the copy of the Will-deed has not been filed before the court concerned but obtained the order of status-quo, however the photostat copy of such Will-deed has been filed before the court concerned on 15.02.2023 as 12-ga 1/1, as has been shown in second paragraph of the internal page 7 of the interim order dated 15.02.2023 passed by Civil Judge (Senior Division), court no. 15, Sultanpur. Learned counsel for the opposite parties has also stated that the Division Bench of this Court in Crl. Misc. Writ Petition No. 3559 of 2023 (Alok Mitra @ Alok Jaiswal and 3 others Vs. State of U.P. and 3 others) has granted interim protection to the petitioners to the effect that till filing of the chargesheet, the petitioners shall not be arrested. The aforesaid writ petition was dismissed on 18.08.2023 for want of prosecution. Thereafter, the petitioners filed C.M. Application No. 2 of 2023 seeking recall of the order dated 18.08.2023 and restoration of the writ petition in its original number. The aforesaid application was taken up on 13.09.2023 and this Court recalled its order dated 18.08.2023 and restored the writ petition to its original number, issuing notice to private opposite party and extended the interim order till the next date of listing.

15. Learned counsel for the opposite parties have further stated that after getting the interim order recalled and writ petition restored on 13.09.2023, the petitioners filed the petition under Section 482 Cr.P.C. bearing no. 9084 of 2023 before this Court challenging the chargesheet wherein the counter affidavit and rejoinder affidavit have been called for. Learned counsel for the opposite parties have further submitted that in the aforesaid criminal case, the chargesheet was filed on 09.08.2023, learned trial court took cognizance and issued summons on 11.08.2023. The aforesaid chargesheet and summoning order dated 11.08.2023 have been challenged by the petitioner in the aforesaid petition no. 9048 of 2023, therefore, it is clear that the petitioners were aware that the chargesheet has already been filed and cognizance has already been taken on 11.08.2023, therefore, the writ petition bearing Crl. Misc. Writ Petition No. 3559 of 2023 has already lost its efficacy but the petitioners got the aforesaid writ petition restored and got the interim order extended. They have further submitted that when the petition under Section 482 Cr.P.C. was filed wherein the order dated 19.09.2023 was passed, the writ petition before the Division Bench was already pending wherein there was stay order in favour of the petitioner. Learned counsel for the opposite parties have stated with vehemence that the aforesaid fact has not been disclosed in the present petition filed by Alok Mitra Jaiswal and others.

16. On being confronted, the learned counsel for the petitioners in Re; Alok Mitra Jaiswal (supra) as to why the aforesaid relevant material fact has not been disclosed before the Court, learned counsel for the petitioner has casually stated that due to inadvertence and bonafide mistake, he could not disclose this fact before this Court.

17. Having heard, learned counsel for the parties and having perused the material available on record and having regard the judgment in Re: **Mohammed Ibrahim** (supra), so cited by Sri Jyotindra Mishra, learned Senior Advocate, I am of the considered opinion that if the civil disputes in certain cases have contained ingredients of criminal offences, such dispute have to be entertained notwithstanding, they are also a civil dispute. Para 8 of the judgment of **Mohammed Ibrahim (supra)** is reproduced herein-below:

"This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPCIndia Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind."

18. Hon'ble Apex Court in the judgment rendered in **Pratibha v. Rameshwari Devi, (2007) 12 SCC 369**, has held that:

"it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts."

19. Since in the petition of Alok Mitra Jaiswal (supra), the fact has not been disclosed that earlier the aforesaid petitioners have filed a writ petition before this Court and have been granted interim protection and that the aforesaid writ petition was dismissed for want of prosecution, the petitioners got the order dated 18.08.2023 recalled and the writ petition was restored to its original number and got the interim order extended, whereas by that time the chargesheet had been filed, cognizance had been taken and summons had been issued. Not only the above, challenging the aforesaid chargesheet, cognizance order and summoning order, the petitioners filed another petition i.e. instant petition before this Court without disclosing the fact that their one writ petition before the Division Bench is pending and

interim order has been extended. Even in Para 1 of the petition, they have stated that they have not filed any petition before this Court either at Allahabad or Lucknow and they further declared that this is the first petition on behalf of the petitioners against the cause of action.

20. The aforesaid conduct of the petitioners is a deliberate and intentional concealment of facts. In **K.D Sharma Vs. Steel Authority of India Limited and others, (2008) 12 SCC 481**, Supreme Court held that no litigant can play "hide and seek" with the courts or adopt "pick and choose". To hold a writ of the court one should come with candid facts and clean breast. Suppression or concealment of material facts is forbidden to a litigant or even as a technique of advocacy.

21. The Apex Court in **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114** came down heavily on unscrupulous litigants by holding that it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

22. In **K. Jayaram and others Vs. Bangalore Development Authority and others, (2022) 12 SCC 816**, Hon'ble Supreme Court held as under:

"It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."

23. In view of the aforesaid facts and circumstances of the case, I do not find any infirmity or illegality in the impugned chargesheet, cognizance order and summoning order, therefore, I hereby dismiss both the aforesaid petitions.

24. Needless to say that if the petitioners of both the petitions appear/surrender before the learned court below and file their bail application, the same may be disposed of with expedition without giving any unnecessary adjournment to the prosecution. Further, I find it appropriate to observe here that since Sri Achchhelal Jaiswal (supra) is said to have suffering from various ailments and he is an old aged person, so his bail application may be considered and disposed of by learned court below with expedition in the light of the provisions of Section 437 Cr.P.C.

25. It is also needless to say that if the petitioners of both the petitions file their discharge application, taking all pleas and grounds available to them, the said application shall be decided strictly in accordance with law by affording opportunity of hearing to the parties concerned and that order must be speaking and reasoned order so that it could be understood that the learned trial court has applied its judicious mind.

26. Both the petition under Sections 482 Cr.P.C. are hereby **dismissed**.

27. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 17.1.2024

kkv/