

Reserved on 03.04.2025

Delivered on 18.04.2025

Neutral Citation No. - 2025:AHC:66031

Court No. - 74

Case :- APPLICATION U/S 482 No. - 26133 of 2024

Applicant :- Nitish Jaiswal And Another

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

Counsel for Applicant :- Suneel Kumar

Counsel for Opposite Party :- G.A.,Nitesh Patel,Udit Chandra

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Suneel Kumar, learned counsel for applicants, Sri Udit Chandra, learned counsel for opposite party no. 2 and learned AGA for the State.

Prayer

2. The instant application under Section 482 Cr.P.C. has been filed for quashing the entire proceeding of Case no. 149 of 2024 (State vs. Nitish Jaiswal & others) arising out of Case Crime no. 31 of 2024, under sections 353, 352, 447, 427 of IPC and under Section 2/3 of Prevention of Damage to Public Property Act, 1984, PS- Machchhali Sahar, District Jaunpur pending in the court of learned Civil Judge (S.D.), F.T.C., Jaunpur as well as cognizable order dated 22.05.2024 which has been taken by learned Civil Judge (S.D.), F.T.C, Jaunpur.

Submission on behalf of applicants

3. Learned counsel for applicants submitted that FIR has been lodged by opposite party no. 2 i.e. Sri Abhishek Kesarwani, Executive Engineer, 33/11, K.V. Electricity Sub-Division, Tehsil-Machchhali Sahar, District-Jaunpur against applicants and 25-30 other unknown persons as Case Crime no. 31 of 2024, under section 147, 353, 352, 447, 427 IPC and under Section 2/3 of Prevention of Damage to Public Property Act, 1984 at PS- Machchhali Sahar, District Jaunpur on 28.10.2024. During investigation, the Investigating Officer (I.O.) claims to have recorded statement of informant and other witnesses, who are not independent witnesses, in which they have reiterated the version of FIR in mechanically manner and I.O. without collecting cogent and substantive evidences finally came to conclusion and on the pressure and influence of

opposite party no. 2 submitted charge sheet against the applicants on 09.02.2024 and learned Magistrate has also in summary manner without giving any reasonable finding took cognizance on 22.05.2024 and summoned the applicants to face the trial.

4. The allegations narrated through FIR, is that on dated 28.01.2024 in morning at about 7:25 a.m. the applicants and 25-30 unknown persons entered in the Sub-Division and damaged the wall of north side forcibly and also damaged the old residential premises i.e. washroom and wall and also misbehaved with the employees.

5. It is next submitted that real fact of the case is that applicants are the recorded owner of plot no. 1247 areas 0.1380 hectare and applicants moved their case under Section 24 of U.P.Revenue Code Manual, 2006 before Sub Divisional Magistrate for demarcation of plot no. 1247 situated in village Kasba Ghisuwa Khas, Tehsil Machchhali Sahar, District Jaunpur in which the report was submitted by the Revenue Inspector dated 27.11.2000 wherein it has been found that Power Corporation encroached the huge area of applicants' plot no. 1247 and the Sub-Divisional Magistrate, Machhali Sahar, Jaunpur finally allowed the case of applicants under Section 24 of U.P.Revenue Code Manual, 2006 vide order dated 09.07.2021 and affirmed the report of Revenue Inspector dated 27.11.2020. In pursuance to order dated 09.07.2021, *Pathhar Gadhi* has been conducted and plot of applicants i.e. 1247 has been *Pathhar Naseeb* except the area encroached by the Power Corporation (opposite party no. 2). Applicants moved an application before the authority of Power Corporation as well as District Magistrate, Jaunpur for removal of illegal encroachment made by the Corporation over applicants' plot with the prayer seeking compensation in that regard.

6. The opposite party no. 2 without pre-permission of the higher authorities in malicious manner, made false story and lodged FIR against the applicants and other unknown persons by himself alleging demolition of wall with an intention to change the nature of dispute from civil nature to criminal nature and just to harass the applicants.

7. When the representation of the applicants moved before the authority concerned for making compensation about the encroached land has been decided by the authority concerned, the applicants filed Writ C no. 13002 of 2024 (Pradeep Kumar vs. State of U.P. & 4 others) before this Court and co-ordinate Bench of this Court called a report from the District Magistrate concerned vide order dated 23.04.2024, ultimately vide order dated 05.07.2024, the writ petition has been disposed of with direction to

District Magistrate, Jaunpur to consider and decide the representation of applicants dated 29.01.2024 within six weeks. The District Magistrate, Jaunpur has not decided the representation of applicants in pursuance to order dated 05.07.2024 passed by this Court and aggrieved with the same, applicants filed a Civil Misc. Contempt Application no. 7332 of 2024 (Pradeep Kumar vs. Sri Dinesh Chandra, District Magistrate, Jaunpur) wherein this Court issued notice to opposite party fixing date on 16.12.2025 with direction that on such date, the opposite party shall either file compliance affidavit indicating full compliance of order passed by writ court or shall be personally present in the court. In pursuance of the order passed by this Court in Contempt Application, the District Magistrate, Jaunpur illegally and mala fide decided the representation of applicants vide order dated 13.12.2024 and filed compliance affidavit before this Court and the contempt application is still pending before this Court. In pursuance of order of this Court in contempt application dated 26.11.2024, the District Magistrate, Jaunpur directed to file a civil suit, pursuant to which opposite party no. 2 filed civil suit before learned civil court for injunction by making applicants defendants/respondents about the plot nos. 1295, 1296 which has not been related to the applicants and the restoration application has also been filed by the opposite party no. 2 against order dated 09.07.2021 passed by Sub-Divisional Magistrate. The Power Corporation also filed declaratory suit under Section 144 of U.P.Revenue Code Manual, 2006 before Sub-Divisional Magistrate, Machchhali Sahar for declaring the title of Power Corporation on the basis of adverse possession/non-standing possession. All the exercises have been conducted by the authorities concerned after order passed by this Court in contempt case and on that very basis the District Magistrate, Jaunpur illegally dismissed the representation of applicants.

8. In paragraph no. 9 of counter affidavit filed by opposite party no. 2, he admitted that between the parties, civil proceedings with respect to property in dispute is pending before learned civil court.

9. In various judgments of Hon'ble Apex Court as well as this Court, it is stated that where the civil dispute is pending, criminal proceeding shall not lie. In the present case civil dispute is pending between the parties. In the present case, the allegations narrated are that the applicants damaged wall of Power Corporation which is false. Applicants never entered in the premise of opposite party no. 2 so the provisions of Prevention of Damage to Public Property Act, 1984 is not applicable and the opposite party no. 2 has not taken permission of higher authorities for lodging FIR, in

pursuance to Act of 1984, so without permission, present FIR is nothing but abuse of process of law.

10. It is submitted that this Court has inherent powers in order to prevent abuse of process of any Court. Recently in the judgment passed by Hon'ble Apex Court in case of ***Anand Kumar Mohatta and anr. vs. State (Govt. of NCT of Delhi) Department of Home and Anr. in Criminal Appeal no. 1395 of 2018 decided on 15.11.2018***, quoting the case of ***State of Haryana and ors. vs. Bhajan Lal and others (1992) Supp. (1) SCC 335***, the Hon'ble Apex Court set out the categories of cases in which the inherent power under Section 482 of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows:-

"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 channelized 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."

11. Lastly, it is submitted that going by above analogy, the case of applicant falls under the category (1), (5) and (7) set out in case of ***Bhajanlal (supra)*** thus the summoning order as well as entire proceeding going on in its furtherance are not tenable in the eye of law and if the same are permitted to continue before learned trial court then same would amount to gross abuse of process of law.

Submission on behalf of opposite party no. 2.

12. It is submitted by learned counsel for opposite party no. 2 that the FIR which has been registered is under Section 2/3 of Prevention of Damage to Public Property Act, 1984 (henceforth referred as PDPP Act) which clearly defines the public property under definition 2(b) as a property, which is movable or immovable owned or possess or control by any Central Government or State Government or local authority or any corporation established by or under a Central Provincial or State act or any company as defined under Section 617 of Companies Act or any Institution, concern or undertaking notified by the Central Government in Official Gazette. In the present case, the allegations are that demolition of the wall done by the applicants, over the property which is in possession with the DISCOM. Therefore, the provisions of PDPP Act are attracted as property is a public property and the DISCOM is a company under Section 617 of the Companies Act as the State Government holds 51% of the paid up share capital and is also controlled by the State Government. It is an undisputed fact that the DISCOM is in possession and has control over the property for more than 50 years and is still in possession. Therefore, the damage has been done to the public property and thus the Act is applicable.

13. The only strength on which the applicant is alleged to claim possession/ ownership over the land is an order passed under Section 24 of Land Revenue Code. Needless to mention here that both the orders

passed under Section 24 of the Land and Revenue Code are *ex parte* and already a recall application has been filed in the relevant court.

14. The best right/title of the ownership of the land is through sale deed followed by possession over the land. A sale was executed by the father of the applicant no. 2 way back in 18.02.1969 and since then the DISCOM is over the possession of the land. Therefore, the applicants have no right over the land and the order of Section 24 of Land Revenue Code will be a nullity. It is immaterial that even though the DISCOM was having ownership of the land through sale dated 18.02.1969, and their name has not been mutated in the revenue record, no right will be created in favour of the applicants mainly because of the entries in the revenue record (khatauni) as they are only for fiscal purpose and no ownership is conferred on the basis of entries. This has been held by the recent judgment of the Supreme Court in the case of ***Jitendra Singh vs. State of Madhya Pradesh reported in 2021 SCC Online SC 802.***

15. Even otherwise, assuming without admitting that the aforesaid sale deed was not presented before the authorities while they were following the procedure under Section 24 of the Land and Revenue Code, then also the applicants cannot forcefully enter the premises without following due process of law. This has been held by the Supreme Court in the case of ***Ram Gowda vs. M.Varadappa Naidu reported in 2004 (1) SCC 76*** where it has been held by the Hon'ble Supreme Court that even in cases of trespasser, the same can only be removed through procedure of law. In case he has an actual possession over a sufficiently long period which can happen only through civil courts. Therefore, the action of the applicant of entering into the property of the DISCOM is trying to take physical possession by breaking the public property, which is in the wash room and boundary wall will definitely constitute an offence under Section 2/3 of Prevention to Damage to Public Property Act, 1984.

16. The DISCOM has also filed certain civil proceedings like declaratory suit under Section 144 of Land Revenue Code as well as permanent injunction suit before Civil Court, Jaunpur over the aforesaid property, however that will not bar the continuation of the present criminal proceedings as both the proceedings are separate in nature.

17. The other offences as mentioned in the FIR under sections 427, 447, 352, 353 and 147 are clearly made out from perusal of FIR as well as the charge sheet and therefore, the Court should not look into the evidences or documents annexed in the application as the same has to be tested during trial.

18. The principles for judicial interference under Section 482 by the Court has been laid down in one of the landmark judgement of ***State of Haryana vs. Bhajan Lal reported in 1992 Supplementary (1) SCC 335*** where the Hon'ble Supreme Court has laid down certain principles under which the Court can interfere in exercise of inherent powers given under Section 482 of Cr.P.C., however, the aforesaid findings recorded by the judgment in ***Bhajan Lal (supra)*** has been read down by the Hon'ble Supreme Court in subsequent judgment by laying more emphasis on para 103 of ***Bhajan Lal (supra)*** and the Hon'ble Supreme Court in case of ***Google India Private Limited vs. M/s Visakha Industries reported in AIR 2020 SC 350*** has emphasized on the word rarest of rare cases as mentioned in para 103 of the ***Bhajan Lal (supra)***. This note of caution as mentioned in para 103 of ***Bhajan Lal(supra)*** have been heavily relied in the recent judgements of the Hon'ble Supreme Court where the court has specifically stated that power of quashing a criminal proceeding should be exercised very prudently and the court should not embarked itself into the enquiry as to the relatability and genuineness on the allegations made in the FIR or the complaint.

19. The word rarest of rare cases confines the scope of Section 482 and also emphasizes the fact that the powers so given under Section 482 should be used sparingly and with circumspection as mentioned in judgment of ***Jeffrey J. Diermeier vs. State of West Bengal reported in 2010 (6) SCC 243***. Therefore, the power under Section 482 cannot be exercised to record any finding with respect to factual disputes as said by Hon'ble Supreme Court in ***Lakshman vs. State of Karnataka reported in 2019 (9) SCC 677*** or to appreciate evidence for coming to the conclusion that whether the materials produced as sufficient or not for convicting the accused and therefore, the court cannot embark upon itself as an enquiry court either appreciating the evidence or evaluating the statements made by the witnesses as mentioned in the ***Rajiv Kourav vs. Bhaisahab, AIR 2020 SC 909*** or merits of defence case or submissions as the aforesaid function is that of trial judge as laid down by this Court in ***Wasiullah vs. State of U.P., 2021 (1) ALJ 42***. This fact is further reiterated in the recent judgment of Hon'ble High Court in the case of ***Radheshyam vs. State of U.P. reported in 2020 (5) ALJ 51*** where it has been held that such types of applications which involve disputed questions of facts should be entertained by the Court.

20. In view thereof, it is lastly submitted that present proceedings are patently illegal and requires no interference by this Court and the same may be dismissed with cost.

Submission on behalf of State

21. Learned AGA vehemently opposed the prayer sought through the instant application and submitted that applicant no. 2 has filed a contempt petition before this Court bearing no. 7332 of 2024 wherein the District Magistrate, Jaunpur had filed affidavit of compliance which shows that an order dated 13.12.2024 was passed and the disputed land was demarcated. Copy of order dated 13.12.2024 along with demarcation report, site plan/field book and spot memo dated 10.05.2024 are collectively filed and marked as Annexure no. CA 3 to the compliance affidavit filed on behalf of State. Copy of Khatauni has also been annexed as Annexure no. CA4 to the said affidavit. Lastly, it is submitted that the proceedings initiated against the applicants are in accordance with law and requires no interference by this Court.

Observation and Conclusion

22. After having rival submissions extended by learned counsel for the parties, the instant application has been pressed for seeking prayer made therein mainly on the grounds that the applicants are recorded owner of plot no. 1247 area measuring about 0.1380 hectare and as per the demarcation proceeding finalized up to the stage of fixture of permanent marks over the property demarcated under Section 24 of U.P.Revenue Code, 2006 in presence of responsible authorities of opposite party no. 3, Department of Electricity, but they refused to put their signatures over the final demarcated documents and as such there is hardly any case of trespass.

23. It is also submitted by learned counsel for the applicants that opposite party no. 2 was not having any authority to lodge FIR at the behest of opposite party no. 3, moreover the applicants have been dragged into unwarranted criminal litigation just because they preferred Writ C no. 13002 of 2024 wherein, report from the District Magistrate, Jaunpur has been called for vide order dated 23.04.2024 and thereafter the contempt proceedings has been initiated in pursuance to Civil Misc. Contempt Application no. 7332 of 2024 and ultimately the same was decided with direction to District Magistrate, Jaunpur for filing civil suit pursuant to which opposite party no. 2 filed civil suit before learned civil court for seeking injunction in respect of plot nos. 1295 and 1296 but the applicants are not related in any manner to those plots. It has been apprised by learned counsel for the applicant that in spite of preferring a restoration application against order dated 09.07.2021 passed by Sub Divisional

Magistrate but till today the same is still pending to be adjudicated since there is hardly any merit and at that stage also opposite party no. 3 failed to establish regarding its title being the owner over the plot no. 1247 situated at village Kasba Ghisuwa Khas, Machchhali Sahar, District Jaunpur.

24. It is further informed by learned counsel for the applicant that opposite party no. 3 also preferred declaratory suit under Section 144 of U.P.Revenue Code, 2006 before Sub Divisional Magistrate, Machchhali Sahar for declaring the title of Power Corporation on the basis of adverse possession and all the exercise has been initiated at the behest of opposite party no. 3 only after passing orders by co-ordinate Bench of this Court in contempt proceeding and the lodging of FIR is one of the make up proceeding initiated at the behest of opposite party no. 3 and all the sections in which applicants have been implicated are cognizable/non-cognizable and having punishment of two years and less than two years.

25. So far as implication of the applicants in pursuance to Section 352 IPC is concerned, it is crystal clearly mentioned in the application of the same section, if the provocation is given by anything done in lawful exercise of the right of private defence whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact. Facts related to the instant matter is crystal clear that the opposite party no. 3 were not having any legal rights available over the plot in dispute which has been submitted to be encroached or trespassed by the applicants.

26. In respect of Section 353 IPC, there is hardly any criminal force used by applicants to deter public servant from discharge of his duty, since the informant being a Junior Engineer was not available at the time of incident. As per the narration of the FIR itself, rather he has been informed by some another person and then FIR has been preferred and the matter has been registered at Case Crime no. 31 of 2024.

27. So far as regarding Section 427 of IPC is concerned there is hardly any case made out for mischief causing damage to amount of Rs.50/- or upward since on the date of the incident, name of the applicants were recorded in the revenue record against the plot in dispute and there is hardly any case for disturbing the power station and its machinery/equipments installed therein.

28. Insofar as Section 447 IPC is concerned, punishment for criminal trespass is dependent in pursuance to State amendment as notified vide Trespass Act, no. 31 of 1961, Section 2 w.e.f. 13.11.1961 through which it is crystal clear that whosoever enters into or upon property in possession

of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence or having entered into or upon such property, whether before or after the coming into force of the criminal law (U.P.Amendment) Act, 1961 with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit criminal trespass and as such it is apparent from the records that charge sheet has been submitted in pursuance to Section 447 of IPC without serving any notice as mentioned in Section 441 of IPC.

29. Attraction of Section 2/3 of Prevention of Damage to Public Property Act in which the applicants were also implicated through charge sheet preferred against them is also not maintainable since so far as the public property is concerned the matter may be instituted in shape of preferring FIR only at the behest of coming into the knowledge of competent revenue authority either from any private person or by a proper proposal initiated by Land Management Committee of the concerned village and the same has to be supported with a ground report submitted by concerned Lekhpal and after perusal of the same, the revenue authority in shape of Tehsildar/Sub-Divisional Officer of concerned Tehsil may direct any revenue authority to lode the FIR against the person who encroached over public property such as land pertains to Gaon Sabha/other respective department which are covered under Article 12 of the Constitution of India, in the instant matter no such proceeding has ever been adopted and without having any title over the property in dispute opposite party no. 2 preferred a FIR, whereupon at the stage of preferring charge sheet Section 2/3 of Prevention of Damage to Public Property Act has been mentioned as directed against the applicants.

30. Although opposite party no. 2 is well covered under Article 13 of the Constitution of India but at the same time in absence of any specific title available in shape of either plot in question pertains to Gaon Sabha or against the name of Electricity Department, there is hardly any attraction of Section 2/3 of Prevention of Damage to Public Property Act against the applicants.

31. It is admitted case of opposite party no. 3 that till today declaratory suit under Section 144 of U.P.Revenue Code, 2006 is still pending to be

adjudicated finally by competent revenue authority and there is no interim order available in favour of the opposite party no. 3 and as such by mere filing declaratory suit does not create any right in favour of the opposite party no. 3 for initiating any criminal proceeding in presence of civil proceedings pending in shape of declaratory suit under Section 144 of U.P.Revenue Code, 2006.

32. In view of aforementioned facts and circumstances, and in the light of the observations as made above, there is hardly any case made out against the applicant for dragging them into unwarranted criminal litigation instituted at the behest of opposite party no. 3 and as such entire proceeding arising out of Case Crime no. 0031 of 2024 in pursuance to sections 353, 352, 447 and 427 of IPC along with Section 2/3 of Prevention of Damage to Public Property Act, pending before learned court of Civil Judge, Senior Division/FTC, Jaunpur in shape of Case no. 149 of 2024 are hereby quashed and set aside.

33. The instant application stands **allowed** accordingly.

Order Date :- 18.4.2025

Shaswat

(Saurabh Srivastava,J.)