



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 22887 of 2021

Smt. Mithlesh And 5 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite

Party(s)

Counsel for Applicant(s) : Girish Kumar Yadav

Counsel for Opposite Party(s) : G.A., Jagannath Singh, Pawan Kumar Yadav, Rishi Yadav, Suresh Singh

Along with :

1. Application U/s 482 No. 18656 of 2022:

Indra Pal and 3 others

Versus

State of U.P. and another

2. Application U/s 482 No. 21869 of 2021:

Rajvati Devi and 4 others

Versus

State of U.P. and another

Court No. - 82

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. There are three applications under Section 482 Cr.P.C., which have been filed for quashing of entire proceeding of Criminal Complaint Case No. 586 of 2019 (Bishan Chandra Vs. Mithlesh and others), under Sections 420, 467, 468, 471 I.P.C., Police Station Divai, District Bulandshahar, pending in the court of learned Additional Chief Judicial Magistrate, Anoopshahar, District Bulandshahar, as well as for setting aside the order dated 20.03.2021, whereby applicants have been summoned in the aforesaid complaint case to face the trial.

2. The first application under Section 482 Cr.P.C. bearing No. 22887 of 2021 has been filed by the applicants-Smt. Mithlesh, Jay Prakash, Smt. Mamta Devi, Panna Lal, Sanjay Singh and Mohar Singh Yadav, whereas, the second application under Section 482 Cr.P.C. bearing No. 18656 of

2022 has been filed by the applicants-Indra Pal, Rajkumar, Mandevi and Rajwati. The last and third application under Section 482 Cr.P.C. bearing No. 21869 of 2021 has been filed by the applicants-Rajvati Devi, Rachana, Sarvesh Yadav, Kunwar Pal Singh and Neeraj Sharma.

3. Since all these applications arising out of same criminal complaint case filed by the same complainant, therefore, they are being heard and decided by a common order.

4. Heard learned counsel for the applicants, learned A.G.A. for the State as well as learned counsel for the opposite party No. 2.

5. The facts giving rise to the present applicant are that earlier the opposite party No. 2/ complainant filed a civil suit bearing No. 300 of 2012 before the court of Civil Judge (Junior Division), Anoopshahar, Bulandshahar against seventeen persons for permanent injunction showing himself to be the absolute owner of the disputed land. After exchange of pleadings by both the parties the concerned Civil Judge rejected the application of temporary injunction filed by the opposite party No. 2 vide order dated 22.07.2013. When the opposite party No. 2 failed to get any interim order in his favour in the aforesaid civil suit, then the opposite party No. 2 moved an application under Section 156(3) Cr.P.C. dated 09.3.2017 before the concerned Additional Chief Judicial Magistrate, who vide its order dated 31.03.2017 rejected the same while giving observation that the said application relates to some sale deed and it is a case of pure civil nature and no prima facie case is made out. Being dissatisfied with the order dated 31.03.2017 the opposite party No. 2 filed a Criminal Revision No. 275 of 2017 before the revisional court, which revision was allowed by the learned Additional Sessions Judge vide order dated 26.02.2019, while setting aside the order dated 31.03.2017 and remanded the matter before the court concerned for further hearing. Thereafter, the trial court after recording statements of complainant and witnesses under Sections 200 & 202 Cr.P.C. summoned the applicants vide impugned order dated 20.03.2021 to face the trial.

6. Learned counsel for the applicant further submits that for the sake of arguments, even if the whole prosecution case is taken to be true as has

been set up by the complainant, the present dispute is of a civil nature for which the complainant has the option to avail appropriate remedy at the appropriate forum, but instead of doing so he has chosen to initiate the present criminal proceeding only to harass the applicants. It has vehemently been argued that Hon'ble Apex Court in its several decisions has time and again deprecated the practice of giving criminal colour to a civil dispute and has quashed the proceedings on the said ground alone. Thus, the present proceeding initiated against the applicants is bad in the eyes of law and is liable to be quashed. In support of his above submission, learned counsel for the applicants has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Vijay Kumar Ghai and others Vs. State of West Bengal and others : (2022) 7 SCC 124**, paragraphs-10, 11, 34 & 42 of which are being reproduced herein as under:

10. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent No. 2 filed two complaints i.e., a complaint u/s 156(3) Cr.P.C before the Tis Hazari Court, New Delhi on 06.06.2012 and a complaint which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC before PS Bowbazar, Calcutta on 28.03.2013. ie., one in Delhi and one complaint in Kolkata. The Complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place occurrence in order to create a jurisdiction.

11. A two-Judge bench of this Court in *Krishna Lal Chawla & Ors. Vs. State of U.P. & Anr. : (2021) 5 SCC 435* observed that multiple complaints by the same party against the same accused in respect of the same incident is impermissible. It held that Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each

case.

34. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. : (2000) 4 SCC 168*, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants.

42. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged *at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years)* with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.

7. Learned counsel for the applicants has further placed reliance upon one other judgment of Hon'ble Apex Court in the case of **R. Nagender Yadav Vs. State of Telangana and another : (2023) 2 SCC 195**, paragraph-17 of which is being reproduced herein as under:

17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.

8. Learned counsel for the applicants has also placed reliance upon a judgment of Calcutta High Court in the case of **Fitjee and others Vs. Sibadatta Mohanty and Another : 2022 SCC OnLine Cal 2162**, paragraphs-18 to 21 are being reproduced herein as under:

18. The Hon'ble Apex Court in the case of **Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another** reported in **(2000) 4 SCC 168** was pleased to observe in Paragraph 15.

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct

is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

19. Applying the dictum to the instant factual matrix, it appears that the ingredients of having and dishonest fraudulent intention under Section 420 is not made out in the case in hand.

20. In *Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 SCC 736 it was observed by the Apex Court in paragraph 13.

"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. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

"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."

21. The Apex Court on various instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety and as such, the impugned proceeding being CS/96841 of 2018 under Sections 420/34 of the Indian Penal Code pending before the learned Metropolitan Magistrate, 8th Court, Calcutta stands quashed.

9. Learned counsel for the applicants, while placing reliance upon the above judgments has lastly argued that in the light of above, the dispute is purely civil in nature regarding execution of sale deed, for which complainant has remedy file cancellation of those sale deeds, therefore, no offence under Sections 420, 467, 468, 471 I.P.C. is made out against the applicants and the present proceeding is not sustainable in the law and the same is liable to be quashed.

10. Learned A.G.A. for the State as well as learned counsel for the complainant submit that there appears no illegality in the impugned summoning order. The present dispute purely criminal nature as the applicants had cheated the opposite party No. 2. The court concerned has rightly summoned the applicants after considering the entire contents of complaint as well as after considering the statements recorded under Sections 200 & 202 Cr.P.C., therefore, all these three applications filed under Section 482 Cr.P.C. may be dismissed with costs.

11. After having heard the learned counsel for the parties and after having gone through the entire record including the above expositions of law of Hon'ble Apex Court, this Court is of the view that when the Apex Court on various instances has expressed its disapproval for imparting criminal colour to a civil dispute, such an exercise is nothing but an abuse of the process of law, therefore, there is no reason to continue with the present proceeding initiated against the applicants.

12. Thus, in view of above, it would be appropriate to quash the impugned proceedings initiated against the applicants.

13. Accordingly, all the above mentioned three applications filed under Section 482 Cr.P.C. are **allowed**. The entire proceedings of Criminal Complaint Case No. 586 of 2019 (Bishan Chandra Vs. Mithlesh and others), under Sections 420, 467, 468, 471 I.P.C., Police Station Divai, District Bulandshahar, pending in the court of learned Additional Chief Judicial Magistrate, Anoopshahar, District Bulandshahar, so far as it relates to the present applicants, are hereby **quashed**.

14. However, the opposite party No. 2 is at liberty to avail other remedy before appropriate forum. It is also open for the civil court to decide the civil suit pending between the parties on its own merits and on the basis of evidence that may be led by both the sides.

(Dr. Gautam Chowdhary,J.)

April 20, 2026

Mustaqeem.