

Before Vinod S. Bhardwaj, J.

RAM BHUL — *Petitioner*

versus

STATE OF HARYANA AND ANOTHER — *Respondents*

CRM-M No.34678 of 2019

June 01, 2022

Code Of Criminal Procedure, 1973—S.482— Indian Penal Code, 1860 — Ss.420, 465, 468, 471, 120-B, 323, 452, 427 — Quashing of FIRs — Allegations— Tenant forcefully entered premises after beating guard and breaking Iron Gate, demolished boundary wall and cut 25-30 trees. During investigation noticed that Petitioner/Tenant changed page 1 of lease deed and forged signatures of landlord/complainant. Argument of Petitioner—registered document i.e. lease deed to be given preference as regards legitimacy – disregarded. Defense version – cannot be examined under Section 482 CrPC – such exercise would amount to pre-empting investigation and pre-judging case. Correctness of either version to be determined by the investigating agency, not High Court. Court not to examine probative value of documents and record finding discarding one version in preference to other – more so when investigation is pending. Petitions dismissed.

Held, that for the purpose of invoking jurisdiction under Section 482 Cr.P.C., it must be shown to the Court that the allegations, even if accepted in its entirety, do not make out a criminal case. Where the petitioner urges a Court to weigh the probative value of the allegations leveled in the version as defence, the same would be an exercise in ascertaining the dispute in question of fact. The High Court, while exercising its jurisdiction under Section 482 Cr.P.C., would not ordinarily enter into the said arena and to take upon itself the burden of ascertaining the correctness of respective versions and to pre judge the investigation on the basis of the probabilities propounded by the respective parties. Such an exercise is neither warranted nor desirable under Section 482 Cr.P.C. The correctness of either of the versions is yet to be determined by the Investigating Agency. The objections of the petitioner to the pace of investigation, or to the deficiencies in the investigation or against the direction of the investigation is not sufficient for a Court to quash the FIR and all other proceedings arising therefrom during the process of investigation itself. Such undue haste in

culling the criminal proceedings have a greater potential of doing much harm and tend to allure the Court into opining on a case pre-maturely when the investigation has not yet been concluded. It is not for the High Court to ascertain as to what evidence may be collected or ought to be collected by the Investigating Agency during the course of its investigation. Whether an offence is made out or not and whether the power under Section 482 Cr.P.C. in a case of such a nature has to be exercised can only be seen after the investigation is complete and the entire evidence/material sought to be relied upon by the prosecution to prove its case is collected and filed as a part of a report under Section 173 Cr.P.C.

(Para 23)

Puneet Bali, Senior Advocate with Sachin Jain, Advocate and Jashandeep K. Mann, Advocate, *for the petitioner.*

Anmol Malik, DAG, Haryana.

Harkesh Manuja, Advocate for respondent No.2.

VINOD S. BHARDWAJ. J.

(1) This common order shall dispose of the above said two miscellaneous petitions that have been filed by the petitioner Ram Bhul Singh. CRM-M-34678-2019 seeks quashing of FIR No. 331 dated 19.08.2019 (Annexue P-10) registered under Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Rai, District Sonapat and all other subsequent proceedings arising there from.

(2) The CRM-M-25541 of 2020 on the other hand seeks quashing of FIR No. 227 dated 07.06.2019 registered under Sections 323, 452 and 427 of the Indian Penal Code at Police Station Rai, District Sonapat and all consequential proceedings arising therefrom.

FACTS OF THE CASE

(3) Since the CRM-M-25541 of 2020 relates to the FIR that was registered prior the point of time i.e. 07.06.2019, hence, the facts of the said case are being summarized in brief as under:-

“The above said FIR was registered on the complaint of Varun Goyal S/o Pardeep Goyal (Complainant-respondent in CRM- M-34678-2019) wherein it was alleged that he possesses 05 acres of land on the main road at Rai out of which 20,000 square feet of land and ground floor has been

rented. The original lease agreement dated 31.01.2019 was registered at Rai and that Guards had been hired for safety of land. However, on 06.06.2019, the guard namely Sonu informed that the owner of Golden Hut Restaurant (namely Ram Bhul the petitioner herein) had forcibly entered the land and uprooted the trees by JCB which is outside the boundary of rented premises. It is alleged that on reaching the spot it was noticed that the trees and plants that were around 25 years old had been cut without permission and even the Guard had been given beating resulting in registration of the FIR.

(4) In so far as the allegation in CRM-M-34678 of 2019 is concerned, it is alleged therein that the complainant Pardeep Goyal is a Secretary of Ganga Devi Educational and Welfare Society which owns land measuring 05 acres and that the complainant had built a Dhabha on some portion of the same and had given the land measuring 17500 square feet on the ground floor to the petitioner on lease for 11 years vide lease No. 6241 dated 28.01.2019 on the condition that the petitioner-accused had to deposit Rupees thirty lakhs as security and Rupees six lakhs towards monthly rent to be increased by 5 per cent every year. The lease in question was to commence on 01.06.2019. It is alleged that as per lease deed, the petitioner-accused did not have any right to the basement and terrace of the building but he could raise temporary construction. It is also alleged that in the month of March, 2019 the petitioner-accused requested the respondent-complainant about modification in the conditions enumerated in the lease deed to the effect that the respondent No.2-complainant cannot cancel the lease deed before the expiry of 11 years to which the complainant agreed and a supplementary lease deed vide lease deed No. 7172 dated 14.03.2019 was executed. As per the said addendum, it was settled that if the petitioner-accused continued to pay the rent regularly, he shall not be evicted from the said premises for the period of 11 years and that he may choose to vacate the premises after that. It is alleged that on the night of 06.06.2019 at around 12 A.M., the petitioner forcefully entered the premises after beating the Guard and breaking of the Iron Gate of the Farm, demolished the boundary wall and cut 25-30 trees of the Farm whereupon son of the complainant rushed to the spot and informed the police. A complainant was given in writing and the Police officials assured to take action thereupon. It is alleged that Police officials connived with the petitioner and set them free whereupon the petitioner again reached at the Farm. FIR No. 227 dated 07.06.2019 was registered under Sections 323, 427, 452 of the IPC at Police

Station Rai, District Sonipat against the petitioner. It is alleged that during investigation, the petitioner presented deed No.7172 dated 14.03.2019 and it was noticed that 01 page of the lease deed had been exchanged after forging signatures of the complainant and it was got recorded therein that deed No. 6142 dated 28.01.2019 stands cancelled and it was written in the conditions that the tenure of the lease has been increased from 11 years to 22 years and that construction cost of Rupees five crores was to be raised by the respondent- No.2 complainant and that the monthly rent was reduced from Rs.6,00,000/- to Rs.3,00,000/- with an increase of 10% after every 03 years. Further, the advance cheques of 05 years which were to be given under the earlier agreement were substituted by cheques to be paid on monthly basis. The basement, terrace and remaining land was also included in the leased out area and it was recorded that the petitioner-accused was allowed to raise temporary & permanent construction on the land. It was thus alleged that the petitioner-accused connived to forge the documents to illegally and forcibly take possession of 05 acres of land belonging to the complainant.

(5) That for the facility of reference, the arguments advanced by the counsel for the parties are referred to from CRM-M-34678 of 2019 since the case FIR was registered later in point of time and has specific reference to the earlier case registered at the instance of son of the complainant- respondent No.2 as well.

ARGUMENT BY THE PETITIONER

(6) Learned counsel appearing on behalf of the petitioner has argued that the petitioner is running business under the name and style of Golden Hut Resorts at Village Aswarpur, 39, Mile Stone, G.T. Road, Tehsil Rai, District Sonapat as its proprietor. It is alleged that the property in question was owned by Smt. Ganga Devi Educational and Cultural Society and a lease deed No. 6241 dated 30.01.2019 was duly executed before the Joint Sub Registrar, Tehsil Rai. The aforesaid lease deed was amended vide registered lease deed No. 7172 dated 14.03.2019 for a period of 22 years for opening of Restaurant/Dhabha under the name and style of Golden Hut Resorts. A reference was made to the registered sale deed (Annexure P-1) and to the conditions made there under and it was pointed out that the petitioner was allowed to use the main gates/entrance as ingress and egress initially for a period of 11 years. Attention was also drawn to the supplementary lease deed registered on 14.03.2019 and contended that each page of said registered supplementary lease agreement is duly signed by both the

parties and is also attested by the Joint Sub Registrar. Even the photograph of the complainant on the date of registration of the supplementary agreement was also taken. It is submitted that the complainant has on the other hand appended the supplementary agreement Annexure R-2/5 dated 14.03.2019, of which the second page (forming the basis of registration of the FIR), is not signed by the Joint Registrar, Rai at Sonapat. He thus argued that the respondent No.2-complainant has himself prepared this bogus document that was neither presented before the Joint Sub Registrar nor registered or signed/stamped by the Joint Sub Registrar. The complainant has gotten the FIR registered against the petitioner on the basis of this forged document. He argues that no primacy can be given to any such document that is unregistered and that except registration of the FIR in the year 2019, there is nothing on record or with the Investigating Agency to even remotely suggest that the lease deed with the petitioner is at any variance than the lease deed registered and available in the office of Joint Sub Registrar, Tehsil Rai, District Sonapat. He has also argued that there is no material to infer at this juncture that the document in favour of the petitioner is a forged and fabricated document considering that the said document is duly reflected in the record of Sub Registrar and all pages thereof bear the stamp of Joint Sub Registrar. Per contra, the document relied upon by the respondent No.2-complainant is not authenticated by the Joint Sub Registrar. An unregistered document cannot be given any precedents or preference over a document which is duly registered in the office of Joint Sub Registrar. It is alleged that the complainant is abusing his proximity with the Police to the prejudice of the petitioner and to seek redetermination of the terms and conditions of the lease by taking recourse to such illegal means.

(7) He has further submitted that after execution of the lease agreement and the supplementary lease agreement, the petitioner started the work of setting up of Restaurant/Dhabha and made an investment of Rs.6 crores towards renovation and completed the said work in the month of May, 2019. However, the complainant started interfering in the possession of the petitioner in a illegal manner to extort more money from the petitioner who had already made heavy investment. Resultantly, the petitioner had to file a civil suit titled as “Ram Bhul versus Ganga Devi Educational and Cultural Society and others” for permanent and mandatory injunction. A copy of the said suit dated 06.06.2019 is attached as Annexure P-3. The details of the original lease deed as also the supplementary lease deed were duly

mentioned in the said civil suit. Vide order dated 11.07.2019, the Civil Judge (Junior Division) Sonapat directed the parties to maintain status quo as regards the possession of the suit property and that the said order maintaining status quo is still continuing. That the respondent No.2 Ganga Devi Educational and Cultural Society through Pardeep Goyal also instituted a Civil Suit (Annexure P-6) for declaration with consequential relief of permanent and mandatory injunction under Section 34, 37 and 39 of the Specific Relief Act, 1963 to challenge the lease deed wherein it was acknowledged by the respondent No.2-complainant in para No. 9 of the plaint in the Civil Suit that a supplementary rent agreement was executed between the parties on 18.03.2019. The allegations leveled in the FIR in question were also incorporated in the said Civil Suit instituted on 18.06.2019 and in Paragraph No.14 thereof and a declaration was sought that the lease deed No. 6241 dated 30.01.2019 and the supplementary rent deed No. 7172 dated 14.03.2019 (wrongly mentioned as 18.03.2019) are null and void and not binding on the respondent-plaintiff No.2 on account of violation of the terms of the lease by the petitioner and a further injunction was sought against the petitioner from taking possession of the suit property other than the leased out area.

(8) That vide order dated 20.06.2019 (Annexure P-7) it was noticed by the Additional Civil Judge (Senior Division), Sonapat that the registered document (lease deed) is in favour of the defendant (petitioner herein) and that since the said document is under challenge on the ground of forgery, the petitioner was restrained from taking possession of suit property other than as mentioned in the original lease deed dated 30.01.2019 and was restrained from raising any construction for the suit property.

(9) Learned counsel has further alleged that respondent No.2 there after connived with the Municipal Authorities to get the property in question sealed. In the said process, various notices were received by Respondent No.2 without any intimation to the petitioner alleging violation of the sanctioned building plans. The petitioner was thus compelled to approach the High Court by filing CWP No.18339 of 2019 titled as "Golden Hut Resort versus State of Haryana" wherein the Municipal Corporation was restrained from taking any action against the petitioner for removal of construction vide order dated 09.07.2019. He thus contends that multiple attempts with malicious intent and mischievous content have been made by respondent-complainant to pressurize the petitioner and to put the petitioner in economic duress to

make him agree to the terms at variance than the terms agreed as per the supplementary lease deed.

(10) It has also been vehemently argued that two civil suits amongst the parties are already pending including the issue of fraud/forgery raised by the respondent-complainant in his suit for seeking declaration and that initiation of the criminal proceedings, after a delay, is an abuse of process of law. He has further argued that the offences in question are not made out in the instant petition inasmuch as even if the best case of the petitioner is accepted, its only a dispute pertaining to the rate of rent amongst the parties and the mode and manner of payment of the rent. It is not in dispute that the premises in question were leased out to the petitioner and that the petitioner had every right to make an ingress and egress to the property in question. It is thus submitted that once the petitioner has a right to enter the premises under a registered document, the offence of trespass into the property could not have been made out. It is further submitted that as per the allegation forming basis of the FIR No. 227 dated 06.07.2019, the petitioner is alleged to have entered on the land. While making a reference to the provision of Section 452 IPC, it is submitted that the land was not falling within the definition of 'building' and as such offence under Section 452 is not made out. He has further drawn attention to Section 442 IPC which defines house trespass. It is submitted that total land cannot be categorized as 'building' 'tent' or 'Vessel' being used for dwelling and in the absence of the same falling within the definition of house trespass, offence under Section 452 IPC is not attracted. The petitioner being lessee could not be stopped from entering into the property in question. He further submits that there is no evidence of any nature whatsoever that would show that any trees or plants had ever been standing on the land. Besides, there is also no evidence to suggest that any person had sustained any injury in any alleged incident. There is no medical record to substantiate the same and the FIR in question was registered only to harass and pressure the petitioner to vacate the land knowing fully well that the petitioner having invested more than Rupees 6 crores for setting up of the Restaurant would have no option but to submit to the illegal demands of the respondent.

(11) Learned counsel has further argued that even in the proceedings initiated under the Rent Act, the provisional rent in terms of Section 13 (2) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 is the provisional rent of the property which has

been assessed at Rs.3,00,000/- per month by the Appellant Authority, Sonapat vide judgment dated 01.04.2021 and the registered supplementary lease deed has thus been acknowledged as a valid and enforceable document in the said proceedings as well. He thus concluded that civil dispute has wrongly been given a flavor of criminal proceeding to abuse the process of law.

ARGUMENT BY RESPONDENT

(12) The petition in question is opposed by the official respondents who alleged that the matter in question is under investigation and that a thorough, fair and impartial investigation is being conducted by the Investigating Agency. Reference is made to the following extract of the reply filed by the respondent-parties: -

“XX XX XX XX XX XX

Varun Goyal, the son of complainant of present case. During the investigation of said case, petitioner produced the deed no. 7172 dated 14.03.2019, a perusal of which shows that petitioner in connivance with Ram Kuwar replaced one leaf of said lease by affixing his (complainant) fake signatures. In the said forged lease deed, the previous deed no. 6241 dated 28.01.2019 is shown to have been cancelled and it has been got mentioned in the terms that the lease period has been enhanced from 11 years to 22 years and the amount of Rs.5.00 crores for raising construction was to be spent by complainant and the rate of rent has been reduced to Rs.3.00 lacs from Rs.6.00 lacs per month and it has also been added that the interest shall be increased at the rate of 10% after every three years and the 60 cheques paid by petitioner towards the rent shall be returned and the rent shall be paid to the tune of Rs.3:00 lacs per month and the basement, roof and remaining land of the complainant was also incorporated in the lease deed and the terms regarding all types of construction over the remaining land was also incorporated. The complainant further stated that the above said forged document has been prepared only to grab his property and to infringe his valuable rights and on the basis of above said forged document, accused tried to encroach upon his property, which was never the subject matter of the lease deed. The complainant also stated that the accused along with associates have also threatened to kill him. He also stated that the cheque pertaining to the rent given by

petitioner has also been dishonored. With these allegations, the complainant sought for legal action against the miscreants. On the basis of above said complaint instant FIR was lodged and investigation was taken up.

a. That during course of investigation, on 19.09.2019 complainant was joined in the investigation and his statement was recorded. He produced copy of supplementary lease deed no. 7172 dated 18.03.2019 and stated that the terms of the lease have been changed by affixing his forged signatures on page no.2 of deed no. 7172 dated 18.03.2019. The complainant denied his signatures on the second page of said deed. He also offered to get his signatures examined through some expert. On 19.09.2019 itself, an application was moved in the Court of learned Area Magistrate, Sonipat for obtaining specimen signatures of complainant and thereafter, his specimen signatures were obtained in the Court premises on 19.09.2019. During investigation, complainant produced copy of supplementary lease deed dated 18.03.2019 and claimed that the second page of the said deed does not bear his signatures and same have been forged. Thereafter, the original supplementary deed dated 18.03.2019 was obtained from the office of Tehsildar, Rai, Sonipat. During investigation, bank account opening form of account no. 115810028653 of complainant with Dena Bank, Delhi was obtained for the purpose of matching of his specimen signatures. Thereafter, the bank opening form of above said bank account, original deed dated 18.03.2019 obtained from Tehsildar, Rai and the specimen signatures of the complainant obtained in the court have already been sent to FSL, Madhuban for matching on 04.12.2019, whose report has already been received, the copy of which is annexed herewith as **Annexure R1**. A thorough, fair and impartial investigation is being conducted by the Investigating Agency and truth will be brought on surface by conducting a meticulous investigation.

b. That instant case is still under investigation and mere registration of FIR is not encyclopedia of the case and it is for the Investigating Agency to investigate matter and thereafter, submit the final investigation report in the Court.

There are specific and direct allegations against the petitioner and investigation of the case is still going on and the contentions raised by petitioner and purely subject to conclusion of investigation and petitioner is not entitled to frustrate the investigation being conducted by investigating agency.”

(13) Learned counsel has also referred to the report of the FSL which reads as under:-

“The aforesaid divergence are fundamental in nature and are beyond the range of natural variations and intended disguise and when considered collectively they lead to the opinion that the person who wrote red enclosed standard signatures stamped and marked A1 to A7, R1 to R4, S1 to S15 did not write the red enclosed questioned signature similarly stamped and marked Q1.”

(14) It has been contended that the matter in question is still pending under investigation and that disputed questions of fact are involved. It is yet to be determined as to whether any forgery by the change of leaf of the lease deed in question has been done or not. Reference was also made to an affidavit filed by Jatinder Singh, HPS, District Head Quarter, Sonapat dated 18.06.2020 pointing out that the investigation is still pending and that as the disputed questions of fact raised by the petitioner are yet to be determined. The petitioner is wanting to frustrate the investigation by invoking the extra ordinary jurisdiction of the High Court.

(15) Counsel appearing on behalf of the respondent No.2 has also placed reliance on the averments incorporated by the official respondent in their response and had reiterated the allegations leveled in the FIR. He has vehemently argued that the petitioner is making a reference to the disputed questions of fact which cannot be inquired into during the proceedings under Section 482 of the Code of Criminal Procedure, 1973 and that the factual aspect is yet to be determined. He further submits that the matter is still under investigation and that civil and criminal proceedings can always be instituted together. The criminality of the acts done by the petitioner is different and distinct and that the petitions cannot be permitted to take advantage of the institution of the civil proceedings by the respondent to protect his rights. He further submits that in the suit for declaration, the Civil Court has not recognized the second/supplementary rent deed and has only extended the protection up to the undisputed first lease agreement

dated 28.01.2019. He has thus argued that the Civil Court has not accepted the supplementary rent deed. He also argued that the terms and conditions of the supplementary rent deed are at complete variance and have unilaterally altered the terms and conditions in a manner that no person in the same mindset would agree to incorporate anything of the nature stated in agreement in writing in any agreement. He has highlighted the circumstances outlined hereinafter below as sufficient suspicious circumstances to disbelieve the supplementary rent deed :-

- (i) The supplementary rent deed gives a recital as per which the complainant admits that he committed a fraud upon the petitioner while executing the first agreement. It is argued that no sane person would admit or acknowledge any fraud while getting a document registered.
- (ii) That the rent in question has been reduced by half on a pretext that the area in question has been reduced whereas in the same supplementary rent deed it is stated that the area has in fact increased.
- (iii) It is thus argued that the reasoning given in the supplementary deed for reduction of the rent is a factually incorrect assertion. Besides, no sane person would reduce the rent by half while increasing the area given on lease
- (iv) That the annual increase at the rate of 5 % is also given up to make an increase by 10 % every 03 years.
- (v) That there is no reason why any sane person would refund all the advance rent cheques given for a period of 05 years and to instead agree for an advance cheque to be sent on monthly basis.
- (vi) The respondent has been further burdened with a liability of Rs.5 crores to be invested. There was no reason why the respondent would agree to fasten any additional liability while decreasing rent by half.
- (vii) That the terms and conditions of the supplementary rent agreement are unilaterally in favour of the petitioner and to the prejudice of the complainant without any justifying reason and the reasoning mentioned in the agreement does not find any support from the ground realities.

ANAYLYSIS

(16) I have heard learned counsel for the parties and have gone through the petitions, the appended documents as well as the documents relied upon by the respective parties.

(17) The primary issue that has been raised by learned counsel appearing on behalf of the petitioner is to the effect that the dispute in question is primarily civil in nature and that the registration of criminal case is an abuse of process of law. Reliance was placed on the suit filed by the petitioner qua injunction and a declaratory suit filed by the respondent- complainant as also to the eviction proceedings initiated by the respondent- complainant. Invariably, in the case relating to cheating and fraud, there is generally some element of civil nature. It is well settled by the Hon'ble Supreme Court in the matter of *M. Krishnan versus Vijay Singh and another*¹ that civil and criminal proceedings can be proceeded simultaneously. Both cases are to be decided by adopting separate yardsticks. It was observed that where the factual foundation for the offence has been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one of the ingredients have been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The relevant extract of the said judgment is reproduced as under:-

“4. Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single Judge of the High Court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings.

5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the

¹ 2001 (4) R.C.R. CrI 405

aforsaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe :

"In my view, unless and until the civil court decides the question whether the document are genuine or forged no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

6. Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties."

(18) Further, in the matter of *Kamladevi Agarwal versus State of West Bengal*², the Hon'ble Supreme Court recorded as under:

9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in *State of Haryana v. Bhajan Lal* , 1992 Suppl. (1) SCC 335, *Rajesh Bajaj V. State*

² 2001 (4) RCR CrI 522

NCT of Delhi, 1992 (2) RCR (Criminal) 160 (SC): 1999 (3) SCC 259 this Court in **Trisuns Chemical Industry v. Rajesh Agarwal & Ors. [1999 (8) SCC 687 : 1999 (4) RCR (Criminal) 223 (SC) held:**

"Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent, powers of the High Court should be limited to very extreme exceptions (vide **State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335 and Rajesh Bajaj v. State NCT of Delhi, 1999 (3) SCC 259.**"

In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating were committed in the course of commercial and also money transaction."

10. In **Medchl Chemical & Pharma (P) Ltd. v. Biological E. Ltd. & Ors., 2000 (2) SCC 269: 2000 (2) RCR (Criminal) 122 (SC)** this Court again reiterated the position and held:

"Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge- sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under

the law..

Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has to authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear *ex facie* on the complaint. The observations in *Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 lend support to the above statement of law:

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused:

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) ere the discretion exercised by the Magistrate in issuing process in capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defect, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

11. In *Lalmuni Devi (Smt.) v. State of Bihar & Ors.*, 2000 (1) RCR (Criminal) 228 (SC):2001 (2) SCC 71 this Court held:

"There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed.

However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

12. Again in Vijay Singh *M. Krishnan v. Vijay Singh & Anr.* (Criminal Appeal No. 1028 of 2001 decided on 11.10.2001 : 2001 (4) RCR (Criminal) 405 (SC) this court held that while exercising powers under Section 482 of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature. In a case where the accused alleged that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the civil court, the court observed:

"Accepting such a general proposition would be against the provision of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the document and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice

and law by filing suits with respect to the documents intended to be use against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

(19) Further, the Hon'ble Supreme Court reiterated the said proceedings in the judgment of *Mahesh Chaudhary versus State of Rajasthan and Another*³ is reproduced as under:

"14. It is also well settled that save and except very exceptional circumstances, the court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or Complaint Petition fulfill the ingredients of the offences alleged against the accused.

15. Indisputably, the question as to whether the complainant was entitled to a higher amount of commission in terms of the agreement dated 21.2.1973 is essentially a civil dispute. The complainant in terms of the said agreement was not only entitled to inspect the documents maintained by the accused but also to get the same audited. It is, therefore, difficult to hold as has rightly been opined by the Investigating Officer that a case for imposing a criminal liability on the accused on that score has been made out. While saying so, we are not unmindful of the limitations of the court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The court at that stage would not embark upon

³ 2009 (3) RCR (Cr) 717

appreciation of evidence. The Court shall moreover consider the materials on record as a whole.

*In Kamaladevi Agarwal versus State of W.B. & ors*⁴, this Court opined :

"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.

*This Court in B.Suresh Yadav versus Sharifa Bee & anr*⁵ opined as under:

"13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before us that the appellant herein got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30.9.2005 and the purported demolition took place on

⁴ 2001 (4) RCR(CrI) 522 : [(2002) 1 SCC 555]

⁵ 2007 (4) RCR(CrI) 870 : 2007 (6) RAJ 46: [(2007) 13 SCC 107]

29.9.2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so."

Recently in *R. Kalyani versus Janak C. Mehta & ors*⁶, this Court laid down the law in the following terms:

"9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

⁶ (2008 (14) SCALE85)

(20) A perusal of the aforesaid judgments clearly shows that law is well settled that merely because a dispute has civil over-tones as well, it would not be sufficient to invoke the power under Section 482 of the Code of Criminal Procedure, 1973.

(21) That it is not a subject matter of dispute that the investigation in the matter has not been concluded and is still pending. While the allegation of the –complainant-respondent No.2 is to the effect that the petitioner has connived with the officials of the office of the Sub Registrar and has changed the second page of the supplementary agreement and has also forged the signatures of the complainant-respondent No.2, the emphasis of the petitioner is to the effect that a registered document has to be given preference as regards its legitimacy and hence, the allegations of the respondent-complainant ought to be disregarded.

(22) The said argument necessarily calls upon the Court to disregard the allegations in the complaint in its entirety and to accept the defence. The question as to probative value of the defence version or the allegations leveled by the complainant cannot be examined by the Court in exercise of its power under Section 482 Cr.P.C. Such an exercise, if undertaken, would amount to pre-empting an investigation and pre-judging a case. Out of the two versions, which of the two, is a more probable version is a matter of scrutiny of evidence and cannot be looked into by the High Court under Section 482 Cr. P.C. The admissibility of a document in evidence on account of it being registered would not *ipso facto* be sufficient to discard the allegations of the respondent-complainant altogether. The probabilities relied upon by the petitioner are at best a probable defence, however, the same cannot be accepted as a gospel truth to disregard the allegations of the complainant even at the stage where the matter is still under investigation.

(23) For the purpose of invoking jurisdiction under Section 482 Cr.P.C., it must be shown to the Court that the allegations, even if accepted in its entirety, do not make out a criminal case. Where the petitioner urges a Court to weigh the probative value of the allegations leveled in the version as defence, the same would be an exercise in ascertaining the dispute in question of fact. The High Court, while exercising its jurisdiction under Section 482 Cr.P.C., would not ordinarily enter into the said arena and to take upon itself the burden of ascertaining the correctness of respective versions and to pre judge the investigation on the basis of the probabilities propounded by the

respective parties. Such an exercise is neither warranted nor desirable under Section 482 Cr.P.C. The correctness of either of the versions is yet to be determined by the Investigating Agency. The objections of the petitioner to the pace of investigation, or to the deficiencies in the investigation or against the direction of the investigation is not sufficient for a Court to quash the FIR and all other proceedings arising therefrom during the process of investigation itself. Such undue haste in culling the criminal proceedings have a greater potential of doing much harm and tend to allure the Court into opining on a case pre-maturely when the investigation has not yet been concluded. It is not for the High Court to ascertain as to what evidence may be collected or ought to be collected by the Investigating Agency during the course of its investigation. Whether an offence is made out or not and whether the power under Section 482 Cr.P.C. in a case of such a nature has to be exercised can only be seen after the investigation is complete and the entire evidence/material sought to be relied upon by the prosecution to prove its case is collected and filed as a part of a report under Section 173 Cr.P.C.

(24) The Hon'ble Supreme Court had laid down following principles/guidelines in the case tilted as *State of Haryana versus Bhajan Lal and others*⁷ for exercising the powers under Section 482 Cr.P.C. to quash a FIR and the criminal proceedings arising therefrom. The said guidelines are as extracted as under:

107. 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

⁷ AIR 1992 SC 604

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 F.I.R. 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 F.I.R. 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 F.I.R. 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.

108. 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 F.I.R. 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.

(25) A perusal of the aforesaid principles/guidelines would establish that the Hon'ble Supreme Court impresses upon the High Courts to exercise such a power only upon being satisfied that the FIR so registered or the criminal proceedings so initiated fall under either of the said categories. From a perusal of the allegations leveled in the FIR and upon consideration of the response filed by the Investigating Agency, it cannot be said that the petitioner has been able to bring his case squarely under any one of the said categories laid down by the Hon'ble Supreme Court. A mere allegation that the initiation of the criminal proceedings is perpetuated by an intense desire to pressurize the petitioner would not be fully established. Such a plea of motive has to be accepted with circumspection and greater caution as the same is a double edged sword.

(26) Whether the initiation of the criminal proceedings is perpetuated by greed or by malice either by the complainant or by the accused, cannot be conclusively determined on the strength of the documents sought to be proposed in defence and when such document is itself in dispute. The Court is not required to examine the probative value of the respective documents and to record a finding discarding one version in preference to the other. Such an exercise should not be ordinarily undertaken by the High Court under Section 482 Cr.P.C. more so when the allegations are still under investigation and have not yet been conclusively determined.

(27) In so far as the obligation of clandestine cutting of trees is concerned, the submission of the petitioner that there is no proof of standing trees on land in dispute is again a disputed question of fact. One version cannot be accepted at the outset over & above the version of the prosecution especially when the investigation in the case has yet not concluded.

In view of the above the instant petitions are dismissed at this stage.