

Udai Shankar Awasthi Vs State of U.P. and Another

Court: Supreme Court of India

Date of Decision: Jan. 9, 2013

Acts Referred: Arbitration and Conciliation Act, 1996 " Section 11, 34
 Criminal Procedure Code, 1973 (CrPC) " Section 202, 203, 468, 469, 472
 Limitation Act, 1963 " Article 68, 69, 91, 22, 23
 Penal Code, 1860 (IPC) " S

Citation: (2013) 1 ACR 689 : (2013) 1 AD 537 : (2013) 3 BLJ 28 : (2013) 1 Crimes 231 : (2013) 1 JCC 711 : (2013) 1 JLJR 235 : (2013) 1 JT 539 : (2013) 1 MLJ(Cri) 462 : (2013) 1 NCC 549 : (2013) 1 PLJR 223 : (2013) 2 RCR(Criminal) 503 : (2013) 1 SCALE 212 : (2013) 2

Hon'ble Judges: J.S. Khehar, J; Balbir Singh Chauhan, J

Bench: Division Bench

Advocate: Mukul Rohatgi, Nagendra Rai, Abhay Kumar, Upendra Pratap Singh, Vineet Kr. Singh and Neetu Jain, for the Appellant; Gaurav Bhatia, AAG, Devvrat, Shalini Kumar, Anuvrat Sharma and Gautam Talukdar, for the Respondent

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.

Both these appeals have been preferred against the impugned judgment and order dated 13.3.2012, passed by the High

Court of Judicature at Allahabad in Criminal Misc. Application No. 41827 of 2011, by which the High Court has rejected the petition filed u/s 482

of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code of Criminal Procedure") for quashing the proceedings in Complaint

Case No. 628 of 2011 (Sudha Kant Pandey v. K.L. Singh and Anr.) under Sections 403 and 406 of Indian Penal Code, 1860 (hereinafter

referred to as the "Indian Penal Code").

2. Facts and circumstances giving rise to these appeals are:

A. M/s. Manish Engineering Enterprises of which Respondent No. 2, Sudha Kant Pandey, claims to be the proprietor, was given a work order by

M/s. Indian Farmers Fertilizer Cooperative Ltd. (hereinafter referred to as "IFFCO"), Phulpur unit, on 1.2.1996 for the purpose of conducting

repairs in their plant worth an estimated value of Rs. 13,88,750/-. The said work order was subsequently cancelled by IFFCO on 7.2.1996.

B. Aggrieved, M/s. Manish Engineering Enterprises made a representation dated 21.3.2001, to IFFCO requesting it to make payments for the

work allegedly done by it. As there was no response from the management of IFFCO, the said concern filed Writ Petition No. 19922 of 2001

before the High Court of Allahabad, seeking a direction by it to IFFCO for the payment of an amount of Rs. 22,81,530.22 for alleged work done

by it.

C. The High Court disposed of the said Writ Petition vide order dated 25.5.2001, directing IFFCO to dispose of the representation dated

21.3.2001, submitted by the said concern within a period of 6 weeks. In pursuance of the order of the High Court dated 25.5.2001, the said

representation dated 21.3.2001, was considered by the Managing Director of IFFCO and was rejected by way of a speaking order dated

15.10.2001, and the same was communicated to the said concern vide letter dated 29.10.2001.

D. M/s. Manish Engineering Enterprises filed Writ Petition No. 7231 of 2002 before the High Court of Allahabad for the recovery of the said

amount, which stood disposed of vide order dated 20.2.2002, with a direction to pursue the remedy available under the arbitration clause

contained in the agreement executed in pursuance of the aforementioned work order.

E. M/s. Manish Engineering Enterprises filed Arbitration Application No. 24 of 2002 before the High Court of Allahabad u/s 11 of the Arbitration

and Conciliation Act, 1996 (hereinafter referred to as "the Act 1996") on 24.5.2002, praying for the appointment of an arbitrator, in view of the

fact that the application made by the said concern for the purpose of appointing an arbitrator, had been rejected by IFFCO as being time barred.

The High Court therefore, vide judgment and order dated 17.10.2003, appointed an arbitrator. However, the said arbitrator expressed his inability

to work. Thus, vide order dated 13.2.2004, another arbitrator was appointed.

F. M/s. Manish Engineering Enterprises filed a Claim Petition on various counts, including one for an amount of Rs. 9,27,182/- towards the alleged

removal of items from their godown within the IFFCO premises.

The learned arbitrator so appointed, framed a large number of issues and rejected in particular, the claim of alleged removal of items from the

godown of M/s. Manish Enterprises, located within the IFFCO premises (being issue No. 13), though he accepted some other claims vide award

dated 11.3.2007.

IFFCO filed an application u/s 34 of the Act, 1996 for the purpose of setting aside the award dated 11.3.2007, before the District Court,

Allahabad and the matter is sub-judice.

G. Mr. Sabha Kant Pandey, the brother of Respondent No. 2/complainant, filed Complaint Case No. 4948 of 2009 against the officers of IFFCO

on 23.11.2009 Under Sections 323, 504, 506, 406 and 120-B Indian Penal Code before the court of Special Chief Judicial Magistrate,

Allahabad. Therein, some witnesses including the said complainant were examined.

H. Sabha Kant Pandey, the brother of Respondent No. 2 filed another Complaint Case No. 26528 of 2009, against the Appellants and Ors.

Under Sections 147, 148, 323, 504, 506, 201 and 379 Indian Penal Code. In the said complainant, the brother of Respondent No. 2 was

examined alongwith others as a witness.

I. Complaint case No. 4948 of 2009 was rejected by way of a speaking order passed by the Special Chief Judicial Magistrate, vide order dated

20.3.2010 u/s 203 Code of Criminal Procedure.

J. Respondent No. 2 filed Criminal Complaint No. 1090 of 2010 against the Appellants and Ors. on 2.4.2010, Under Sections 323, 504, 506,

406 and 120-B Indian Penal Code before the Special Chief Judicial Magistrate, Allahabad. After investigating the matter, the police submitted a

report on 18.4.2010 stating that, allegations made in complaint case No. 1090 of 2010 were false.

K. The Additional Chief Judicial Magistrate, vide order dated 18.8.2011 dismissed complaint case No. 26528 of 2009 filed by the brother of

Respondent No. 2.

L. Respondent No. 2 filed another complaint case No. 628 of 2011 on 31.5.2011 Under Sections 403 and 406 Indian Penal Code, in which,

after taking cognizance, summons were issued to the present Appellants Under Sections 403 and 406 Indian Penal Code on 16.7.2011, and vide

order dated 22.9.2011, bailable warrants were issued against the Appellants by the Addl. CJM, Allahabad. Subsequently, vide order dated

21.11.2011, non-bailable warrants were also issued against one of the Appellants by the Addl. CJM, Allahabad.

In view of the fact that K.L. Singh, Appellant in the connected appeal, could not be served properly as the correct address was not given, on being

requested, the Addl. CJM withdrew the non-bailable warrants on 17.12.2011.

M. Aggrieved, the Appellants filed Criminal Misc. Application No. 41827 of 2011 u/s 482 Code of Criminal Procedure before the High Court for

quashing the said criminal proceedings, which has been dismissed vide impugned judgment and order.

Hence, these appeals.

3. Shri Mukul Rohtagi and Shri Nagendra Rai, learned senior counsel appearing for the Appellants, have submitted that as the complaint cases

filed by the brother of the Respondent No. 2 in regard to the same subject matter were dismissed by the magistrate concerned, the question of

entertaining a fresh complaint could not arise. A fresh complaint cannot be entertained during the pendency of the complaint case filed by

Respondent No. 2, with respect to which, the police filed a final report, stating the same to be a false complaint. It was further submitted, that there

was suppression of material facts, as in Complaint Case No. 628 of 2011, dismissal of the earlier complaint was not disclosed. Furthermore, as

the matter is purely civil in nature, and in view of the fact that arbitration proceedings with respect to the very same subject matter are presently

sub-judice, and the claim of Respondent No. 2 on this count has already been rejected by the arbitrator, entertaining/continuing criminal

proceedings in the said matter is clearly an abuse of the process of the court. Moreover, the alleged claim is related to the period of 1996. A

complaint made after a lapse of 15 years is barred by the provisions of Section 468 Code of Criminal Procedure, and the High Court has erred in

holding the same to be a continuing offence. As, in pursuance of the High Court's order dated 25.5.2001, the representation of Respondent No. 2

dated 21.3.2001 was decided by the Managing Director, IFFCO vide order dated 15.10.2001, the limitation period began from the date of the

said order, or at the most from 29.10.2001, that is, the date on which, the order of rejection was communicated.

The initiation of criminal proceedings is nothing but an attempt by the frustrated litigant to give vent to his frustration, by invoking the jurisdiction of

the criminal court and thus, the proceedings are liable to be quashed.

4. Per contra, Shri Devrrat, learned Counsel appearing for Respondent No. 2, has submitted that the High Court has rightly held that the same was

in fact, a case of continuing offence. Therefore, the question of limitation does not arise. The law does not prohibit the initiation of criminal

proceedings where there has been breach of trust and further, in such a case, in spite of the fact that arbitration proceedings are pending, a criminal

complaint is maintainable, and the court concerned has rightly entertained the same. There is no prohibition in law as regards maintaining a second

application, even though the earlier application has been dismissed. Thus, the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties as well as by Shri Gaurav Bhatia and Shri Annurat, learned

Counsel appearing for the State of U.P. and perused the record.

In light of the facts of these cases, it is desirable to deal first, with the legal issues involved herein.

LIMITATION IN CRIMINAL CASES- Section 468 Code of Criminal Procedure:

6. Section 468 Code of Criminal Procedure places an embargo upon court from taking cognizance of an offence after the expiry of the limitation

period provided therein. Section 469 prescribes when the period of limitation begins. Section 473 enables the court to condone delay, provided

that the court is satisfied with the explanation furnished by the prosecution/complainant, and where, in the interests of justice, extension of the

period of limitation is called for. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a

crime never dies, as has been explained by way of the legal maxim, *nullum tempus aut locus occurrit regi* (lapse of time is no bar to the Crown for

the purpose of it initiating proceeding against offenders). A criminal offence is considered as a wrong against the State and also the society as a

whole, even though the same has been committed against an individual.

7. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision,

however, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in

light of the gravity of the charge in question. (Vide: 259974 296218 and 259124

8. The court, while condoning delay has to record the reasons for its satisfaction, and the same must be manifest in the order of the court itself. The

court is further required to state in its conclusion, while condoning such delay, that such condonation is required in the interest of justice. (Vide:

293714 and 267103

9. To sum up, the law of limitation prescribed under the Code of Criminal Procedure, must be observed, but in certain exceptional circumstances,

taking into consideration the gravity of the charge, the Court may condone delay, recording reasons for the same, in the event that it is found

necessary to condone such delay in the interest of justice.

CONTINUING OFFENCE:

10. Section 472 Code of Criminal Procedure provides that in case of a continuing offence, a fresh period of limitation begins to run at every

moment of the time period during which the offence continues. The expression, "continuing offence" has not been defined in the Code of Criminal

Procedure because it is one of those expressions which does not have a fixed connotation, and therefore, the formula of universal application

cannot be formulated in this respect.

11. In 276975, this Court dealt with the aforementioned issue, and observed that a continuing offence is an act which creates a continuing source

of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which

is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such character

that the injury caused by it itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore

depends, upon the effect of the injury.

In the said case, the court dealt with a case of a wrongful act of forcible ouster, and held that the resulting injury caused, was complete at the date

of the ouster itself, and therefore there was no scope for the application of Section 23 of the Limitation Act in relation to the said case.

12. In 293447 this Court dealt with the issue and held as under:

According to the Blacks' Law Dictionary, Fifth Edition, "Continuing" means "enduring; not terminated by a single act or fact; subsisting for a

definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is

committed over a span of time." As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement

of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the

indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought,

purpose or action which may be deemed a single impulse." So also a "Continuous Crime" means "one consisting of a continuous series of acts,

which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of

limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or

act.

13. While deciding the case in Gokak Patel Volkart Ltd. (Supra), this Court placed reliance upon its earlier judgment in 258782 wherein the court

while dealing with the case of continuance of an offence has held as under:

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of

those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which

continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and

recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an

offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it

continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence

which takes place when an act or omission is committed once and for all.

(See also: 267446 and 294063

14. In 295451 this Court held as under:

It cannot legitimately be contended that the word "continuously" has one definite meaning only to convey uninterruptedness in time sequence or

essence and on the other hand the very word would also mean "recurring at repeated intervals so as to be of repeated occurrence". That apart,

used as an adjective it draws colour from the context too.

15. In 301298 this Court observed as under:

A suit for damages, in our opinion, stands on a different footing vis-à-vis a continuous wrong in respect of enjoyment of one's right in a

property. When a right of way is claimed whether public or private over a certain land over which the tort-feasor has no right of possession, the

breaches would be continuing one. It is, however, indisputable that unless the wrong is a continuing one, period of limitation does not stop running.

Once the period begins to run, it does not stop except where the provisions of Section 22 of the Limitation Act would apply.

The Court further held:

Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft,

or dishonest misappropriation or conversion; knowledge as regards possession of the property shall be the starting point of limitation in terms of

Article 68. For any other specific movable property, the time from which the period begins to run would be when the property is wrongfully taken,

in terms of Article 69. Article 91 provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or

wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully

taken or injured or when the detainer's possession becomes unlawful.

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the

offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all

i.e. when the same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself

continue.

SECOND COMPLAINT ON SAME FACTS-MAINTAINABILITY:

17. While considering the issue at hand in 299843 this Court, after considering its earlier judgments in 277517 296336 298628 ; Poonam Chand

Jain and Anr. v. Fazru AIR 2005 SC 38 held:

It is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has

been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete

facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could

have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on

full consideration of the case of the complainant on merit.

18. The present appeals require to be decided on the basis of the settled legal propositions referred to hereinabove.

Complaint Case No. 4948 of 2009 was filed by Sabha Kant Pandey, brother of Respondent No. 2, wherein, he claimed to be a partner in the

firm M/s. Manish Engineering Enterprises, against one of the Appellants and other officers of IFFCO, under Sections 323, 504, 506, 406 and

120B Indian Penal Code at Police Station Phulpur, District Allahabad, alleging that the said Firm had been given a separate godown/office within

the IFFCO compound, wherein their articles worth Rs. 30-40 lacs, as well as their documents were kept. The complainant was not permitted to

remove them and additionally, even the payment for the work done by the firm was not made, on certain technical grounds. The officers of

IFFCO, including Mr. U.S. Awasthi - the Appellant, misbehaved with the complainant and kept the said articles worth Rs. 30-40 lacs, as also the

important documents, in addition to the entry gate pass required to enter the plant by the complainant and his brother Sudhakant (Respondent No.

2 herein), therefore making it impossible for them to access their godown.

19. The complaint was dealt with appropriately by the competent court, wherein the present complainant was also examined as a prosecution

witness. The Court took note of the fact of pendency of the Arbitration Proceedings with respect to the payment of dues, and came to the

conclusion that the complaint had been filed to put pressure on IFFCO to obtain payments. The said complaint was dismissed on merits.

20. Complaint Case No. 26528 of 2009 was then filed by Sabhakant Pandey, brother of Respondent No. 2, against one of the Appellants and

also other officers of IFFCO Under Sections 147, 148, 323, 504, 506, 201 and 379 Indian Penal Code in Police Station Phulpur, Allahabad,

making similar allegations, and giving full particulars of the outstanding dues. That complaint was heard and disposed of by the competent court,

taking note of the fact that there had been a cross-complaint by the officers of IFFCO, wherein allegations were made to the effect that on

19.12.2008, Arbitration Proceedings in Case No. 1 of 2007 took place at the residence of the Arbitrator, a retired Judge of the Allahabad High

Court, wherein Sabha Kant Pandey and Sudha Kant Pandey misbehaved with the Arbitrator, and he was hence forced to adjourn the hearing of

the case. Subsequently, they stood in front of his house and shouted slogans, abusing the officers of IFFCO and even tried to beat them up. The

court dismissed the said complaint after recording the following findings:

In the opinion of the court, the complaint filed by Sabhakant Pandey is imaginary, a bald story with an intention to put illegal pressure and by

suppressing material facts in the complaint.

21. Complaint Case No. 1090 of 2010 was filed by the present complainant, Respondent No. 2 against the Appellant Udai Shankar Awasthi and

other officers of IFFCO Under Sections 323, 504, 506, 406 and 120B Indian Penal Code, making similar allegations as were mentioned in the

first complaint, to the effect that articles worth Rs. 15-20 lacs in each godown were lying in the premises of IFFCO, and that the complainant was

not permitted to remove the same. In the said case, after investigation, the police filed the final report stating that all the allegations made in the

complaint were false. The concluding part of the report reads as under:

For last 6 months no body has turned up to get his statement recorded in spite of notice. The application had been filed on false facts and

complaint was bogus, forceless and baseless and was liable to be dismissed.

22. So far as the present complaint is concerned, the same has been filed Under Sections 415, 406 and 403 Indian Penal Code, wherein the

allegation that their Bill had been cleared on 10.7.1996, but the requisite payment, to the tune of Rs. 22,81,530/- was not made to the

complainant. Their claim for payment was wrongly rejected. Certain articles and documents belonging to the complainant were lying within the

premises of IFFCO and the same were not returned to the complainant despite requests for the same. In this case, after taking cognizance,

summons were issued on 16.7.2011, Under Sections 403 and 406 Indian Penal Code, though the case u/s 415 Indian Penal Code stood rejected.

23. It is evident that in the said complaint, no reference was made by the complainant as regards the Arbitration Proceedings. There was also no

disclosure of facts to show that earlier complaints in respect of the same subject matter, had been dismissed on merits by the same court.

24. A copy of the Award made by the Arbitrator was placed on record, wherein issue No. 13 which dealt with the present controversy, i.e. some

material and documents were placed in the premises of IFFCO and the return of the same was refused. The claim as regards the same, has been

rejected. There has been no mention of such claim and its rejection by the said concern, in either of the writ petitions filed before the High Court

earlier or even for that matter, in the application filed by the said concern before IFFCO, for the purpose of making appointment of an arbitrator,

or in the application filed u/s 11 of the Act, 1996 before the High Court.

25. In the counter affidavit filed by Respondent No. 2, it has been submitted that the contract was terminated by IFFCO fraudulently, to usurp the

entire amount towards the work done by it and that IFFCO took illegal possession of all the goods and articles belonging to the firm lying within its

premises, and as the amount had not been paid, the officers were guilty of criminal breach of trust and were therefore, liable to be punished.

However, the fact that earlier complaints had been filed by the brother of Respondent No. 2 Sabha Kant Pandey has been admitted. It has further

been admitted that Arbitration Proceedings are still pending, but it has also simultaneously been urged that criminal prosecution has nothing to do

with the Arbitral award.

26. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Code of Criminal Procedure, though the

Appellants were outside his territorial jurisdiction. The provisions of Section 202 Code of Criminal Procedure were amended vide Amendment

Act 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the

Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and

making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other

person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing

summons in such cases.. (See also: 271288 and 298697

27. Section 403 Indian Penal Code provides for a maximum punishment of 2 years, or fine or both; and Section 406 Indian Penal Code provides

for a maximum punishment of 3 years, or fine or both. The limitation period within which cognizance must be taken, as per the provisions of

Section 468 of Code of Criminal Procedure is three years. In the case of an instantaneous offence, as per the provisions of Section 469 of the

Code of Criminal Procedure, the period of limitation commences on the date of offence. In the instant case, admittedly, the claim of the said firm

was rejected by way of a speaking order dated 15.10.2001, in pursuance of the order of the High Court dated 25.5.2001, and the said order was

communicated vide letter dated 29.10.2001. Respondent No. 2 correctly understood the nature of the offence and, therefore, subsequently

approached the High Court for the purpose of seeking recovery of outstanding dues, wherein the High Court directed him to pursue the remedy

available under the arbitration agreement between the parties. In such a fact situation, it is beyond our imagination as to how the offence involved

herein can possibly be termed as a continuing offence. In fact, the damage caused by virtue of non-payment of their dues, if any, is legally

sustainable, may continue, but the offence is most certainly not a continuing offence, as the same has not recurred subsequent to order dated

15.10.2001, even though the effect caused by it may be continuous in nature.

In 291296 this Court held that in a case of cruelty, the starting point of limitation would be the last act of cruelty. (See also: 286459

28. Approaching the court at a belated stage for a rightful cause, or even for the violation of the fundamental rights, has always been considered as

a good ground for its rejection at the threshold. The ground taken by the learned Counsel for Respondent No. 2 that the cause of action arose on

20.10.2009 and 5.11.2009, as the Appellants refused to return money and other materials, articles and record, does not have substance worth

consideration. In case a representation is made by the person aggrieved and the same is rejected by the competent statutory authority, and such an

order is communicated to the person aggrieved, making repeated representations will not enable the party to explain the delay.

29. In 270170 , in spite of the fact that the Government rejected a representation and communicated such rejection to the applicant therein, his

subsequent representations were entertained by the Government. A Constitution Bench of this Court held as under:

He says that the representations were being received by the government all the time. But there is a limit to the time which can be considered

reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar

lines would not enable the Petitioners to explain the delay.

(Emphasis added)

30. In 269724 270997 and 270129 a similar view has been reiterated.

31. The view taken by this Court in Rabindra Math Bose (Supra) has been approved and followed in 287087 260196 and 260446

32. In 294120 , this Court while dealing with a case of inordinate delay in launching a criminal prosecution, has held as under:

In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an

explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had

given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who

failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive

of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply

invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and

persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to

enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the

facts and circumstances of the case. (Vide: 272084 ; 258809 282821 and 260348

33. The instant appeals are squarely covered by the observations made in Kishan Singh (Supra) and thus, the proceedings must be labeled as

nothing more than an abuse of the process of the court, particularly in view of the fact that, with respect to enact the same subject matter, various

complaint cases had already been filed by Respondent No. 2 and his brother, which were all dismissed on merits, after the examination of

witnesses. In such a fact-situation, Complaint Case No. 628 of 2011, filed on 31.5.2001 was not maintainable. Thus, the Magistrate concerned

committed a grave error by entertaining the said case, and wrongly took cognizance and issued summons to the Appellants.

34. In view of above, the appeals are allowed. The impugned judgment dated 13.3.2012 is set aside and the proceedings in Complaint Case No.

628 of 2011 pending before the Additional C.J.M., Allahabad, are hereby quashed.