

(2010) 08 DEL CK 0309

Delhi High Court

Case No: Criminal Miscellaneous Case No. 1053 of 2007

M.M. Rai Khanna and
Another

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 156(3), 173(2), 250
- Penal Code, 1860 (IPC) - Section 34, 415, 420, 467, 468

Hon'ble Judges: Sanjiv Khanna, J

Bench: Single Bench

Advocate: K.K. Sud, Aman Vachher, Ashutosh Dubey, L.K. Sharma and V.K. Gupta, for the Appellant; Arvind Kumar Gupta, APP and Suman Kumar, SI, P.S. Kotla Mubarakpur for State and Suman Kapoor and Rajesh Kumar, for the Respondent

Judgement

Sanjiv Khanna, J.

In the present petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code, for short), the petitioners - Mr. M.M. Rai Khanna and Ms. S.L. Khanna have made the following prayers:

(a) Quash the FIR No. 24/2007 dated 16.1.2007 u/s 420, 468, 471, 467, 34/IPC registered at Police Station Kotla Mubarakpur against the petitioners;

(b) Pass such other order/orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

2. The aforesaid FIR was registered pursuant to the direction of the Magistrate dated 16th January, 2007 u/s 156(3) of the Code on a complaint was made by the respondent No. 2 herein Mr. Durgesh Lal Sachdeva.

3. Brief facts alleged in the complaint are that leasehold rights in the property bearing No. B-6/104, Safdarjung Enclave, New Delhi were allotted/granted to one

Mr. G.S. Brar by the DDA on 31st March, 1976. Mr. G.S. Brar executed documents like agreement to sell etc. and transferred the said leasehold rights to the petitioner No. 2, Ms. S.L. Khanna. He also executed a power of attorney in favour of the petitioner No. 1, Mr. M.M. Rai Khanna. Vacant possession of the plot was handed over to them. Original documents, including the lease deed dated 31st March, 1976 was also handed over to them. It is alleged that the petitioners had agreed to sell the property to the respondent No. 2 in September, 1983 and had handed over original documents to him except the original lease deed dated 31st March, 1976 on the pretext that the same was misplaced. With regard to this alleged agreement, there are disputes between the petitioners and the respondent No. 2. It is alleged in the complaint that on 28th November, 1984 the petitioner No. 1 mortgaged the property with the State Bank of Patiala, Daryaganj. The original lease deed was deposited with the State Bank of Patiala, Daryaganj. The said bank filed a civil suit against the petitioners, M/s Asiatic Overseas Private Limited and Mr. G.S. Brar. This civil suit was decreed in favour of the said bank on 28th September, 2001 and a final decree was passed on 24th May, 2002. During the pendency of the civil suit, the petitioner No. 2 applied to DDA for issue of a fresh/duplicate conveyance deed. It was stated that the original lease deed dated 31st March, 1976 has been lost/misplaced, concealing that this deed had been deposited with the State Bank of Patiala and mortgage had been created. The DDA on the representation of the petitioner No. 2 issued and executed a sale deed in favour of the petitioner No. 2 on 26th June, 1996. In August, 2003, the petitioner No. 2 obtained loan from Standard Chartered Bank by mortgaging the property on the basis of the sale/conveyance deed dated 26th June, 1996 executed by the DDA. On the said date, the property was already the subject matter of the final mortgage decree passed in favour of the State Bank of Patiala. Respondent No. 2 claims that the State Bank of Patiala has subrogated the decree in his favour vide letter dated 7th June, 2004 and he has stepped up into the shoes of the State Bank of Patiala. He claims that vide order dated 2nd August, 2006, he has been substituted for the said bank in the execution proceedings.

4. The matter was heard at considerable length on 26th April, 2010. The said order records as under:

Mr. K.K. Sud, Sr. Advocate states in his own words (i) "that the prosecution in this case is based upon a bundle of facts which have been concealed from the court, which go to the root of the maintainability of the complaint. In the garb of letter of subrogation from the decree holder the respondent, who has been in litigation with the petitioner pertaining to the same property and having failed at every stage is indulging in tactics and as such the complaint does not make out an offence, much less the complaint is inspired malafidely and only discloses civil dispute between the parties". (ii) "A person getting a letter of subrogation of a money decree does not become entitled to a property, which is a subject matter of equitable mortgage. He has a right to recovery of the money decree, after auction sale has been confirmed.

He does not become the owner of the property and cannot make an allegation of loss within the meaning of Section 415, IPC and the complaint by such a person is not maintainable."

To my mind, only three contentions have been raised.

(i) Locus standi of the respondent-complainant to file the complaint.

(ii) Whether the complaint has been filed malafidely and by concealment of facts by the respondent-complainant and whether this affects the validity of the complaint.

(iii) Whether the complaint discloses commission of a criminal offence which justifies registration of an FIR.

The petitioner will file written submissions in about three pages along with relied upon judgments. In the written submissions, the petitioner is at liberty to raise additional submissions, if any. As requested, the petitioner is granted three weeks' time to file written submissions. Response thereto will be filed within three weeks thereafter.

Re-list on 18th August, 2010.

5. Written submissions have been filed by the petitioners.

6. Regarding the locus standi of the respondent No. 2-complainant, it may be stated here that the FIR has been registered pursuant to direction issued by the Metropolitan Magistrate in his order dated 16th January, 2007. Respondent No. 2 claims right on the basis of the letter of subrogation and the order passed by the Additional District Judge substituting him as a decree holder in the place of the State Bank of Patiala. Prima facie, therefore, it appears that the respondent No. 2 does have some right or interest in the property. Even otherwise the police is entitled to investigate when it is alleged that a cognizable offence has been committed and facts showing commission of a cognizable offence are brought to their notice.

7. Regarding the second and the third contention, the petitioners have made several allegations in the petition and have made further allegations and stated new facts in the written submissions. These factual statements and allegation cannot be a ground to quash an FIR, if the FIR ex facie and on the face of it discloses commission of a cognizable offence. These are aspects which the police have to take into account and examine during investigating of an FIR. An FIR is registered to investigate a cognizable offence, which it is alleged has been committed. Police investigates to find out true and correct facts. In case allegations are false and wrong, a closure report is filed. If allegations are found to be true and correct and an offence has been committed, a charge sheet is filed. Registration of an FIR is the starting point for conducting investigation and not an end point. Courts are normally reluctant to interfere with the investigation, which is the function and duty of the police. Interference is rarely made when allegations in the FIR do not show

commission of a cognizable offence or the proceedings per se have been initiated malafidely and with ulterior motives. This legal question was examined in depth wayback in 1992 in the [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), and the following parameters were prescribed:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 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 report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. 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 FIR 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.

8. The said parameters have been followed till today.

9. In [Indian Oil Corporation Vs. NEPC India Ltd. and Others](#), this aspect was again considered and it was observed as under:

12. The principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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.* 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 u/s 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.

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power u/s 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

10. I have already reproduced in nutshell the main allegations made in the FIR. The allegations, if correct, it cannot be said do not disclose commission of a cognizable offence which at least requires investigation. I refrain from expressing any opinion or making observations on merits of the allegation as this will cause prejudice to the parties. It may be noted here that the police after investigation has already filed a

charge sheet before the court. Thus, the investigation has concluded and the police has come to the conclusion that a charge sheet should be filed and closure report has not been filed. Recently, in the case of Satyendra Kumar Jain and Anr. v. State and Anr. CrI.M.C. No. 5553-54/2006 decided on 1st July, 2010, it was observed as under:

17. The respondents also submit that once a charge sheet has been filed, the FIR cannot be quashed. A charge sheet is the culmination of the investigation by the police and is accompanied by necessary documents, statements of witnesses etc. Thus a petition praying for simplicitor quashing of FIR becomes infructuous on filing of the charge sheet. The only resort with the accused in such a situation is either to challenge the charge sheet as not making out any offence or argue before the trial Court at the stage of framing of charge.

11. Similarly, in State of Punjab v. Dharam Vir Singh Jethi 1994 SCC (CrI.) 500 it was held:

2. Heard learned Counsel for the State as well as the contesting respondent. We are afraid that the High Court was not right in quashing the First Information Report on the plea that the said respondent had no role to play and was never the custodian of the paddy in question. In fact it was averred in the counter-affidavit filed in the High Court that the said respondent had acted in collusion with Kashmira Singh resulting in the latter misappropriating the paddy in question. At the relevant point of time the respondent concerned, it is alleged, was in overall charge of the Government Seed Farm, Trehan. This allegation forms the basis of the involvement of the respondent concerned. The High Court was, therefore, wrong in saying that the respondent concerned had no role to play. A specific role is assigned to him, it may be proved or may fail. In any case, pursuant to the First Information Report the investigation was undertaken and a charge-sheet or a police report u/s 173(2) of the Code of Criminal Procedure was filed in the court. If the investigation papers annexed to the charge-sheet do not disclose the commission of any crime by the respondent concerned, it would be open to the court to refuse to frame a charge, but quashing of the First Information Report was not permissible.

(emphasis supplied)

12. I have referred to some of the factual aspects in the earlier portion of this order as the charge sheet has been filed during the pendency of the present writ petition. I have examined whether it is a fit case for interference in view of the parameters laid down by the Supreme Court in Bhajan Lal (supra) and other cases. The answer in view of the allegations is in negative.

13. It may be, however, noted that the petitioners have stated that they have settled and paid the dues to the Standard Chartered Bank. They have made some other allegations against the respondent No. 2. These are aspects, which the learned trial court will have to consider. It will be open to the petitioners to raise all contentions

and issues raised in the present petition before the learned trial court at an appropriate stage and in accordance with law. It will be open to the petitioners to file documents before the learned trial court and ask for admission/denial of documents in accordance with Section 294 of the Code.

14. The petitioners by an interim order have been granted bail/interim protection. The said order granting bail/interim protection will continue for a period of one month from today to enable the petitioners to approach the learned trial court for grant of regular bail.

15. The petition is disposed of.

16. It is clarified that the observations made above are for the purpose of disposal of the present petition and will not be construed as expression of opinion on merits binding on the trial court.