
Satpal & Another Vs State Of M.P. & Another

Miscellaneous criminal case no. 23209 of 2017

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: June 19, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 482#Indian Penal Code, 1860 " Section 161, 165, 380, 454#Prevention of Corruption Act, 1988 " Section 5(2)

Hon'ble Judges: S.A. DHARMADHIKARI, J

Bench: Single Bench

Advocate: Uma Kushwah, A.K. Nirankari

Final Decision: Dismissed

Judgement

Heard finally with the consent of both the parties.

1. This application has been filed under Section 482 of the Cr.P.C for quashing the FIR in Crime No. 108/2017 registered at Police Station Dabra

Dehat District Dabra for the offence punishable under Sections 454 and 380 of IPC as well as all other consequential proceedings.

2. The facts necessary for disposal of this application in short are that an FIR was lodged by respondent No.2 to the effect that on 29/03/2017, he left

his village Litapura alongwith his wife for medical treatment of his wife for Jalandhar in Punjab. He authorized Rinku Pathak of village Litapura to

look after his house and also handed over the keys to him. On 30/03/2017, the complainant received a call from Rinku Pathak on his mobile whereby

Rinku Pathak informed him that when he was away from the house, the present petitioners Satpal and Dineshwar broke open the lock and took away

the suitcase and locked the house and thereafter both of them went to Jalandhar. After receiving information, complainant came back to Litapura on

30/04/2017. Rinku Pathak informed him that his brother Satpal had locked the house. The lock was opened in front of village people. On inspection, he

found that suitcase alongwith gold ornaments, passbooks, cheque books, papers relating to army pension and land records are missing. The incident

was seen by his neighbors Rinku Pathak and Ramesh Pathak.

3. Learned counsel for the petitioners contended that petitioner No.1 and complainant are brothers. There is a dispute with regard to land between

both of them for which complainant filed a civil suit before the Civil Judge, Class- I Dabra for declaration which is pending. The place from which the

theft took place is also part of the suit whereas house is in ownership of petitioner No.1. The civil suit has been registered as Civil Suit No. 918/2016.

The present complaint has been lodged with the intention to create pressure for compromise. Counsel for the petitioner further contended that incident

took place on 30/03/2017 at 8.00 am whereas information with regard to incident was given on 08/05/2017. According to the FIR, when complainant

came back from Jalandhar on 30/03/2017, he inquired into the incident from Rinku Pathak thereafter FIR has been lodged with considerable delay

which goes to show that a false FIR has been lodged against the petitioners. All these grounds, petitioners seeks quashment of FIR.

4. Per contra, counsel for the respondent-State has submitted that proceedings is at initial stage and even if the dispute primarily is of civil nature,

criminal proceedings can not be quashed. Accordingly, it is submitted that police has rightly registered the FIR. It is further submitted that matter is still

under investigation, therefore, FIR can not be quashed.

5. The counsel for the petitioners in order buttress his contention that the case is predominantly of civil in nature and therefore, criminal proceedings

should not be allowed to continue, relied upon the judgments of the Supreme Court in the case of U.Dhar and another Vs. State of Jharkhand and

others (AIR 2003 SC 974), M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and others (AIR 2006 SC 2780), Inder Mohan Goswami Vs. State

of Uttaranchal and others (AIR 2008 SC 251), Dalip Kaur and others Vs. Jagnar Singh and another (AIR 2009 SC 3191), Chandran Ratnaswami Vs.

K.C. Palaniswami (AIR 2013 SC 1952), All Carbo Movers India (P) Ltd. Vs. Dhanesh Badarmal Jain ((2007) 14 SCC 776), Sharon Michael Vs.

State of Tamilnadu ((2009) 3 SCC 375), Rajib Ranjan and others Vs. R. Vijay Kumar ((2015) 1 SCC 513), submitted that the tendency of converting

the civil cases into criminal cases should be discouraged and therefore, considering the fact that the present case is merely a case of breach of

contract, the criminal proceedings are liable to be quashed.

6. The Supreme Court in the case of Mahesh Chaudhary vs. State of Rajasthan & Anr. reported in (2009) 4 SCC 439 has held as under:-

14. 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 appreciation of evidence. The Court shall moreover consider the materials on record as a whole. In *Kamaladevi Agarwal vs. State of*

W.B. (2002) 1 SCC 555, this Court opined: (SCC pp. 559 -60, para 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 their 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.

15. The Apex Court in *B. Suresh Yadav vs. Sharifa Bee*(2007) 13 SCC 107 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 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.

16. Recently in *R. Kalyani vs. Janak C. Mehta*(2008) 14 SCALE 85, this Court laid down the law in the following terms: (SCC p.523, paras 15-16) ""15.

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.

7. In *State of Haryana vs. Bhajan Lal*1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against

the respondent Bhajan Lal for the offences under Section 161&165of IPC andSection 5(2)of the Prevention of Corruption Act was proper and legal.

Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from

reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised 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. However, this Court in *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* 1995 (6) SCC 194, held that

at the stage of quashing an FIR or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or

genuineness of the allegations made therein.

8. Keeping the aforesaid legal position with regard to the scope and powers of this Court under Section 482of Cr.P.C., this Court is of the view that

the FIR prima facie discloses the commission of cognizable offence and the allegations as made in the FIR do not suggest that they are predominantly

of civil in nature and, therefore, as the ingredients of criminal law are also there in the FIR and the allegations, therefore, this Court is of the view that

it is not a fit case to quash the FIR. Accordingly, this petition fails and is hereby dismissed.