

(2024) 04 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 13185 Of 2024

Girish Mehta

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437(3), 482
Indian Penal Code, 1860 — Section 380, 454

Citation : (2024) 04 MP CK 0033

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : V.K. Jain, Vaibhav Jain, Harshlata Snoi, Rishti Agrawal, Brijesh Garg

Final Decision : Dismissed

Judgement

Subodh Abhyankar, J

Heard finally.

1] At the outset, learned counsel for the State has submitted that the case diary is not available, however, Shri V.K. Jain, learned senior counsel assisted by Shri Vaibhvh Jain, learned counsel for the petitioner has vehemently opposed the prayer and it is submitted that it is a case for quashing the FIR, and he would be able to demonstrate from the FIR itself that it is liable to be quashed. Thus, the matter is heard finally at the insistence of the learned senior counsel.

2] This petition has been filed by the petitioner under Section 482 of Cr.P.C. for quashing the FIR dated 23/01/2021 lodged at Crime No.55/2021 under Section 380 and 454 of Indian Penal Code, 1860 on the ground that it has been lodged falsely at the instance of respondent No.2, the ex-tenant of the petitioner.

3] In brief, the facts of the case are that the aforesaid FIR was lodged against the petitioner by respondent No.2 Jethmal Lunkaran Soni on 23/01/2021, at 20:47 hours, in respect of an incident of theft which took place between

21/10/2020 to 25/10/20. Thus, the FIR admittedly has been lodged after around 3 months by the complainant Jethmal Lunkaran Soni by filing a written complaint alleging that his landlord Girish Mehta has taken illegal possession of the shop which is situated at House No.109-A, Station Road, Ratlam after breaking the lock despite the Court order. In this FIR, the complainant has also stated that in respect of the aforesaid shop, the other landlord Harshad Mehta and others have also filed a case against him for eviction, in which, the Court has already granted an injunction order directing the parties to maintain status quo, and despite the aforesaid order, in the absence of the complainant, the petitioner Girish Mehta around 3-4 days ago has taken possession of the shop and has also removed certain articles.

4] After the aforesaid FIR was filed, the petitioner applied for anticipatory bail before this Court by filing M.Cr.C. No.9525/2021, which was opposed not only by the complainant Jethmal Soni but also by the son and wife of the deceased brother of the petitioner Utpal S/o Kishore Mehta and Smt. Bharti W/o Kishore Mehta. The aforesaid application for anticipatory bail was allowed by this Court vide its detailed order dated 09/03/2021, and also imposing a cost of Rs.50,000/- on the objectors Utpal and Smt. Bharti Mehta. The aforesaid order dated 09/03/2021 was challenged by the objectors Utpal and Smt. Bharti Mehta before the Supreme Court in Special Leave to Appeal (Crl.) No.4590/2021, and the Supreme Court, vide its order dated 04/10/2021 has although affirmed the order of bail of this Court, although the cost imposed was waived.

5] Shri V.K. Jain, learned senior counsel appearing for the petitioner has vehemently argued before this Court that the petitioner has been falsely implicated in the case and in support of his submissions, he has relied upon as many as 12 documents filed along with this petition itself, whereas the objectors Utpal and Smt. Bharti Mehta who are the son and wife of the petitioner's brother Late Kishore Mehta, have also filed their objections in writing through a power of attorney holder as both of whom are the residents of San Jose, California (USA), and the reply to the aforesaid objection has also been filed by the petitioner on 03/03/2021, as also the additional reply on 07/04/2021, along with a copy of the order passed by this Court in bail application M.Cr.C. No.9525/2021 dated 09/03/2021, and thereafter yet another detailed objection was again filed by Utpal and Smt. Bharti Mehta on 10/06/2021, through their advocate Rishi Agrawal, again filing certain documents, a copy of the order passed by the Supreme Court in Special Leave to Appeal (Crl.) No.4590/2021 arising out of the bail application M.Cr.C. No.9525/2021 has also been filed, and thereafter the respondent No.2 complainant who is the tenant in the petitioner's house has also filed his objection running into 16 pages, with additional documents, thereafter by way of list of documents, on 06/03/2021, certain other documents have also been filed by the petitioner from A/13 to A/17 running into more than 50 pages including various judgements, order sheets, various applications and written statement etc. pending in the civil Court between the parties. And as if all these documents were not enough, on 26/11/2021, again an application was filed by

the petitioner for bringing the additional documents on record and thus, Annexure A/18 and A/19 have also been filed on record. All these documents have been filed regarding the disputes, pending and disposed of, between the parties in respect of their property disputes.

6] CCTV footages have also been filed by the petitioner to which Shri Shri Brijesh Garg, learned counsel for the respondent no.2 tenant has objected to, and it is submitted that the petitioner has deliberately not filed the footages of the date and time at which the theft took place.

7] Needless to say, parties have argued the matter at length running into more than an hour.

8] It is also found that even in the objections made by respondent No.2 in the police station opposing the bail application of the applicant, it was stated that the petitioner has taken possession of his shop illegally and has also informed that in his shop, two sign boards and certain broken articles were kept. Parties have also admitted that both the complainants Utpal and Smt. Bharti Mehta are resident of USA, whereas the petitioner himself is also a resident of USA, and is a Green Card Holder.

9] Shri V.K.Jain, learned sr. counsel for the petitioner has also drawn the attention of this court to an intimation made by the petitioner to the concerned police station stating that he has obtained the possession of the shop on 11/10/2020 Jethmal Soni, the tenant, to demonstrate the bona fide of his client, the petitioner herein. Although, this document has been disputed and opposed by the respondents and it is submitted that if at all the petitioner had taken possession of the shop from the respondent no.2, he could have obtained the same receipt from the respondent no.2.

10] After hearing the elaborate arguments of the counsel for the parties, this Court is of the considered opinion that the counsel have contested this matter as if in a writ petition, and surprisingly even the objectors did not object to the various documents filed by the petitioner in this petition for quashing the FIR and even they have filed various documents in support of their contentions that the FIR cannot be quashed, raising various disputed questions of facts, and this Court is unable to come to a conclusion only on the basis of the FIR that it is liable to be quashed on bare reading of the same.

11] It is also found that Shri Brijesh Garg, learned counsel appearing for respondent No.2/the tenant/complainant Jethmal Soni was also the counsel for not only the petitioner, but also of the other objectors Utpal and Smt. Bharti Mehta in the eviction suit against respondent No.2. Thus, it makes it more than clear to this Court that respondent No.2 is a sponsored objector on behalf of other objectors Utpal and Smt. Bharti Mehta.

12] In such facts and circumstances of the case, this Court is not inclined to entertain this petition as all the disputed questions, regarding the status of the

petitioner in his house, the validity of the decree passed against respondent No.2, the effect of the subsequent eviction suit against respondent No.2 by legal heirs of the deceased brother of the petitioner cannot be gone into by this Court in a case for quashing the FIR under Section 482 of Cr.P.C. Thus, the petition is hereby dismissed with liberty to all the parties concerned, to raise all the grounds available under law before the trial court.

13] Having arrived at the aforesaid conclusion, this Court is also constrained to observe that the petitioner and the objectors, Utpal and Smt. Bharti Mehta are well endowed, and are fighting tooth and nails over their ancestral property, whereas their counsel are treating the courts as their playground. Although, the petitioner was entitled to file the petition for quashing the FIR, however, from the scores of documents which have been relied upon by the petitioner, which do not form the part of the charge-sheet, and the leisurely manner in which the entire matter has been argued by the counsel for the parties, this Court is of the considered opinion that the counsel also owe a duty to the court to argue responsibly and not for the gallery.

14] In such circumstances, for the reasons assigned as aforesaid, this Court is inclined to dismiss this petition with a heavy exemplary cost of Rs.1,50,000/-, not only on the objectors Utpal Mehta and Smt. Bharti Mehta, but also on the respondent No.2/complainant Jethmal Lunkar Soni, as also the petitioner Girish Mehta. As such, this case has the unique distinction of imposition of costs on all the parties involved.

15] Accordingly, the petitioner (Girish Mehta), respondent No.2 (Jethmal Lunkar Soni) and the objectors (Utpal and Smt. Bharti Mehta, as one party) shall pay a cost of Rs.50,000/- each (in all Rs. 1,50,000/-), which shall be deposited by them in the account of "President and Secretary H.C. Employees Union" (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of 15 days time (two weeks) from the date of receipt of certified copy of this order, and the acknowledgement of the same shall be filed before the Registry of this Court.

16] With the aforesaid directions, misc. criminal petition is dismissed.