

(2012) 01 AHC CK 0556

In the Allahabad High Court

Case No : Criminal Misc. Application No. 2103 of 2010

Ramesh Chandra Bhatia

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 200, 202, 245(2)
Evidence Act, 1872 — Section 41, 42, 43
Penal Code, 1860 (IPC) — Section 120B, 120B, 323, 406, 409

Citation : (2012) ACR 1483 : (2012) 2 ADJ 713

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—Applicant Ramesh Chandra Bhatia has approached this Court u/s 482 Cr. P.C., praying for quashing of the impugned order dated 6.11.2009, by which his prayer for discharge from offence u/s 420 IPC passed in Complaint Case No. 2872 of 03, Rajesh Bhatia v. Ramesh Chandra Bhatia and another, has been rejected by Vth Metropolitan Magistrate, Kanpur Nagar. Ancillary interim prayer is for stay of trial Court's proceedings till the final decision of this Application. Before delving upon applicants submissions and negation thereof by the rival sides, a brief narration of input facts indicate that Complaint Case No. 2872 of 2003, Rajesh Bhatia v. Ramesh Chandra Bhatia and another, was instituted by complainant respondent No. 2 in the Court of CMM, Kanpur Nagar on 5.7.2003 against accused applicant Ramesh Chandra Bhatia and one Rajesh Agrawal, Territory Manager, Bharat Petroleum Corporation, under Sections 406, 420, 409, 120B IPC, P.S. Nazirabad, district Kanpur Nagar, alleging therein that complaint's father Late Prakash Lal Bhatia was the joint owner of 1/5th share of plot No. 111A/10, Ashok Nagar, area 1803.14 square yards regarding which O.S. No. 1577 of 95, was pending before Civil Judge, Senior Division. Aforesaid Original suit was decreed on 3.11.1996, on the basis of a compromise between plaintiff and defendants, dated 5.2.1996. Complainant's father Late Prakash Lal

Bhatia was declared to be joint owner of said property along with Ram Swaroop Bhatia, Subhash Bhatia, Amar Nath Bhatia and Ramesh Chandra Bhatia and 1/5th share of it was bestowed on him. It seems that compromise decree was executed and it attained finality as none of the contesting sides in this application mentioned that it was challenged in any higher forum. It is alleged that subsequent to the said decree, applicant, by projecting himself as the sole owner of the entire property, inked a lease deed on 23.7.2002, for thirty years, in favour of Bharat Petroleum Corporation, at the lease rent of Rs. 21000/- per month, and on behalf of Corporation it was signed by co accused Rajesh Agrawal. This lease deed, was presented on 24.7.2002, which is the date of it's execution. Prior to it's execution said lease agreement was unbeknown to the complainant and when he gained it's knowledge, he brought the said fact in the knowledge of Bharat Petroleum Corporation but with no result. In spite all possible efforts neither one fifth share of the lease rent was given to the complainant nor any action was taken by the Corporation against the applicant and therefore complainant became convinced that in conspiracy with each other lease deed with feign contents was executed to deprive and cheat the complainant of his legal entitlement of lease rent and therefore, both the Corporation and the applicant had committed offence u/s 420 IPC. Through Sri Rajeev Sachdeva advocate, a registered notice was given by the complainant, respondent No. 2, to the applicant and other accused on 3.3.2003 which was followed by another notice dated 6.5.2003, through Sri Rakesh Srivastava, Advocate, demanding one fifth share of the lease rent and also demanding that shares of other shareholders of lease rent be also parted with but in spite of receiving both the notices, demand made there under went unheeded and no action was taken by the Corporation, and therefore, left with no option, respondent No. 2 lodged a complaint, Annexure 1, on 5.7.2003 against the two accused including the applicant before Additional Chief Metropolitan Magistrate.

2. Following procedure of complaint case, 1st ACMM Kanpur Nagar, recorded statement of the complainant u/s 200 Cr.P.C. vide Annexure 2 in which complainant reiterated his complain allegations and stated that his entitlement of lease amount was not given to him. Manmohan Bhatia was examined by the complainant as his witness u/s 202 Cr.P.C. Looking into the complaint allegations and statements of witnesses during inquiry, 1st ACMM, Kanpur Nagar summoned the applicant and Rajesh Agrawal only for the offence u/s 420 IPC and fixed 30.9.2003 for their appearance, vide order dated 20/21.8.2003.

3. Order of summoning was challenged by the applicant u/s 482 Cr.P.C., in Criminal Misc. Application No. 7987 of 2003, which was finally decided by this Court vide order dated 3.7.2009, where under this Court granted liberty to the applicant to move a discharge application raising all the grounds against continuance of trial against him and also granted interim relief to him by restraining trial Court from taking any coercive action against the applicant till it's disposal. Pursuant to the said order by this Court, applicant accused Rajesh Bhatia approached trial Magistrate by moving a discharge application, Annexure

5, u/s 245 (2) Cr.P.C. Vth ACMM Kanpur Nagar, vide impugned order dated 6.11.2009, rejected applicant's discharge application through impugned order and hence this 482 Cr.P.C. Application by the accused applicant challenging the said order.

4. In back ground of above narrated facts, I have heard Sri Amit Saxena, in support of this Application on behalf of the accused and Sri Manish Tandon, learned counsel for the complainant, respondent No. 2, and learned AGA for the State and perused entire material on record in the form of various affidavits and counter-affidavit.

5. Applicant's counsel assailing continuance of applicant's prosecution harangued that the same is mala fide, purposive and was launched with ulterior motives and hence deserves to be quashed. Only a civil dispute about entitlement of 1/5 share of lease rent is disclosed and during inquiry also only this grievance was stated by the complainant and his witness. Continuance of criminal trial, therefore, is vexatious and be nipped into it's bid argued learned counsel. It is next submitted that the sole apple of discord between accused and complainant is the alleged lease deed but till date no legal action to get it cancelled or annulled has been taken by the complainant and hence it is valid document, on the basis of which no offence is made out and hence entire prosecution of the applicant is without any basis. Submission was further buttressed by contending that till date, neither lease deed in question was challenged nor the same has been cancelled, and therefore, on the basis of such a document which has not been cancelled till date, no criminal prosecution can go on for committing an offence as, unless the deed is challenged, no offence can be said to have been committed by the applicant. On the said contentions it was prayed that the prosecution of the applicant be curbed and he be discharged.

6. Sri Manish Tandon, learned counsel for the complainant and learned AGA argued to the contrary.

I have considered rival submissions.

Perusal of the complaint, Annexure 1, and statements recorded during inquiry u/s 200 and 202 Cr.P.C., indicate that the pivotal of dispute between complainant and accused is the lease executed between accused regarding the property in which complainant has got 1/5th share. Most clamored grievance of the complainant is that he is not being offered part of lease rent money, which has fallen in his share that is 1/5th of it. It is recollected here that the lease was executed for Rs. 21000/- per month. Entire complaint read as a whole does not indicate that complainant had any grievance against execution of lease deed as such but his primary objection is that he is not being offered 1/5th of lease rent although he is entitled for it and the corporation Bharat Petroleum or the applicant is not paying him the same. During course of hearing, learned counsel for the complainant, has not been able to intimate the Court as to whether any suit for cancellation of the lease deed was filed by the complainant or not? Applicant's

counsel, however, brought to the notice of the Court that two suits were filed in between the parties being O.S. No. 123/04 Rajesh Bhatia v. Ramesh Chandra Bhatia and another, which is a suit for partition of all the property in dispute. Another suit in between the parties is O.S. No. 1354/02 Rajesh Bhatia v. Ramesh Chandra Bhatia and another, which is a declaratory suit wherein plaintiff is claiming half of share in the business of one M/S P.R. Motors. Since subject-matter of these suits are entirely different, therefore, they are not relevant and germane to decide the controversy in criminal trial. As mentioned above, the primarily dispute which is culled out from the complaint and statements of witnesses, is regarding share in the lease rent, which is primarily a civil dispute.

7. Powers u/s 482 Cr. P.C. has been preserved with the High Court to do ex debito to justice and to secure ends of justice. It is a wholesome power which is inherent in the High Court. The very plenitude of the power indicate it's exercise with utmost circumspection, care and caution, only in rarest of rare cases, where it's exercise is most desirable. Curtailing a prosecution at it's very inception should be done only when the high comes to a conclusion that continuance of it will result in miscarriage of justice as no offence is disclosed at all or the prosecution was launched because of vexatious and mala fide ulterior motives only to wreck vengeance. If there is no legal evidence for continuance of prosecution, even then, assent to the Court can be denied by scuttling a lame prosecution and nip it into it's bud. Aforesaid view is no longer remains res Integra and has been considered and decided by the Apex Court in innumerable decisions, some of which are referred to as exemplars here in below :

8. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, , It has been held by the Apex Court as under :

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroversial allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

9. Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is

unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued."

10. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, , it has been held by the apex Court as under :

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

11. In *Ch. Bhajan Lal v. State of Haryana*, AIR 1992 SC 607, Apex Court has sketched guidelines and had indicated the areas where power u/s 482 Cr. P.C. should be exercised. It has been held by the Apex Court in the aforesaid decision as under :

108. 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 F. I. R. 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 uncontroversial 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 u/s 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.

109. 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 caprices

12. In *Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others*, , Apex Court has been pleased to held as under :

19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the Court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.

20. In view of the above, the Judgment and order of the High Court dated 13.2.2009 is not sustainable in the eye of law and is liable to be set aside.

However, the facts and circumstances of the case do not warrant so. The agreement to sell in favour of the appellants' father is dated 22.10.1988 and sale-deed was to be executed and registered by 15.6.1989. The respondent Nos. 1 to 4 filed Civil suit No. 60/1989 in 1989. It is difficult to believe that the appellants' father was not aware of the pendency of that suit. No explanation has been furnished as to why after expiry of the date of execution of the sale-deed in favour of Kishan Singh, i.e. 15.6.1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6.2.1996 as Civil Suit No. 81/1996. Even if it is presumed that Kishan Singh was not aware of pendency of suit filed by the respondent Nos. 1 to 4, no explanation could be furnished that in case, the appellants' father filed another Suit No. 1075/1996 for setting aside the decree dated 8.5.1996 in Civil Suit No. 60/1989, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR has been filed only on 23.7.2002 i.e. after filing the RFA No. 2488/2002 before the High Court on 15.7.2002. Therefore, there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation whatsoever for the same.

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal.

22. 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 : Chandrapal Singh and Others Vs. Maharaj Singh and Another, ; State of Haryana and others Vs. Ch. Bhajan Lal and others, ; G. Sagar Suri and Another Vs. State of U.P. and Others, ; and Gorige Pentaiah Vs. State of A.P. and Others,).

23. The case before us relates to a question of the genuineness of the agreement

to sell dated 4.1.1988. The said Agreement was between Kishori Lal and respondents and according to the terms of the said Agreement, the sale-deed was to be executed by 10.6.1989. As the sale-deed was not executed within the said time, suit for specific performance was filed by the other party in 1989 which was decreed in 1996. So far as the present appellants are concerned, agreement to sell dated 22.10.1988 was executed in favour of their father and the sale-deed was to be executed by 15.6.1989. No action was taken till 1996 for non-execution of the sale-deed. The appellants' father approached the Court after 7 years by filing Suit No. 81/1996 for specific performance. However, by that time, the suit filed by the present respondents stood decreed. The appellants' father filed another Suit No. 1075/96 for setting aside the judgment and decree passed in favour of the respondents 1 to 4. The said suit was dismissed by the Additional District Judge (Senior Division), Khanna on 10.6.2002. Subsequently, the appellants preferred RFA No. 2488/02 on 15.7.2002 against the aforesaid order, and the said appeal is still pending before the Punjab and Haryana High Court.

24. It is to be noted that the appellants' father Kishan Singh lodged FIR No. 144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120B, IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No. 1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law.

25. In view of the above, and to do substantial justice, we are not inclined to interfere with the order passed by the High Court quashing the criminal proceedings against the respondents inspite of the fact that the impugned judgment dated 13.2.2009 passed in Criminal Misc. No. 4136 of 2003 is not sustainable in the eye of law.

Apex Court has held that if the dispute is civil in nature, criminal prosecution should not be permitted to go on as that will amount to harassment of accused and wastage of Court's time which are already overburdened. On the aforesaid principles, on the facts of the present case, since it is detected that dispute is civil in nature, allowing the prosecution of the applicant to go on for the charge u/s 420 IPC, which is not made out at all, will not serve the interest of justice.

13. In view of the above, this 482 application is allowed and prosecution of the applicant in Complaint Case No. 2872/03, Rajesh Bhatia v. Ramesh Chandra Bhatia and another, u/s 420 IPC, pending before Vth Metropolitan Magistrate,

Kanpur Nagar is hereby quashed. Both the parties are directed to file a copy of the judgment before the trial Magistrate for its intimation.