

(2022) 06 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 61027 Of 2021

Vijay Dandotiya And Others

APPELLANT

Vs

State Of MP And Others

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 34, 323, 376, 420, 452, 465, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2022) 06 MP CK 0036

Hon'ble Judges : Rajeev Kumar Shrivastava, J

Bench : Single Bench

Advocate : V.D. Sharma, Ravindra Singh, Siddharth Sharma

Final Decision : Dismissed

Judgement

Rajeev Kumar, J

1. Petitioners preferred present petition u/S 482 of CrPC challenging lodgment of FIR vide Crime No.1362 of 2021, dated 28-11-2021 registered at Police Station Kotwali, District Morena on the private complaint submitted by respondent no.2/ complainant before the Court of JMFC, Morena in connection with Criminal Case No.990 of 2021, whereby the learned JMFC in exercise of powers under Section 156(3) of CrPC vide order dated 09-11-2021 directed the police authorities for registering an FIR against petitioners for commission of offences punishable under Sections 420, 465, 467, 468, 471, 34 of IPC.

(2) In a nutshell, the facts giving rise to present petition are that nineteen years ago, the petitioners by means of playing fraud with the complainant, his brothers and sisters, have got the sale deed executed from the mother of complainant in favour of petitioner no.1 & 2 in respect of land, bearing survey no.1076 admeasuring 4 bigha situated in Village Hasai, Mavada, District Morena vide sale deed dated 11-07-2002 by showing the complainant along with his brothers and

sisters, as minor in place of major and at the time of execution of sale deed, petitioners no.3 and 4 were the witnesses. After 20 years of execution of sale deed, complainant came to know about the factum of fraud from the revenue authorities and thereafter, filed a private complaint before the Court of JMFC and the JMFC vide impugned order dated 09-11-2020 directed the police authorities for registering an FIR as well as to investigate into the matter in connection with offences as mentioned above. Hence, this petition.

(3) It is the say of the learned counsel for petitioners that the impugned FIR lodged by Police is purely civil in nature and after a long period of 20 years, the present FIR has been lodged with mala fide intention to harass the he petitioners in order to showing their greediness for escalating the price of disputed land. It is further contended that at the time of execution of sale deed by the mother of complainant on 11th July, 2002, the father of complainant was expired and the sale deed in question was signed by the mother of complainant and her children were minor and the sale deed was signed as witnesses by petitioners no.3 and 4. Thereafter, the petitioners no.1 and 2 sold the said land to one Rakesh Upadhyay and Deepak Upadhyay and by order of mutation dated 17-08-2021 passed by Tahsildar, the disputed land was mutated in their names vide order dated 17-08-2021. On 06-09-2021, the complainant along with his siblings filed a suit for cancellation of said sale deed executed in favour of the petitioners before the Civil Court, Morena and on 30-10-2021, the complainant also moved a private complaint before the Court JMFC with the allegation that at the time of execution of sale deed, the petitioners have shown the siblings of complainant as minor in place of major and signature of mother of complainant, namely, Smt. Vimla Devi is not found to be proved as per handwriting expert report.

Therefore, a private complaint was filed by respondent No.2-complainant before the Court of JMFC and the JMFC, vide impugned order dated 09-11-2021 directed the police authorities to register an FIR as well as to investigate into the matter for commission of offences against the petitioners as mentioned above. It is further contended by the counsel for the petitioners that the since the contents of FIR are civil in nature, therefore, the impugned order passed by JMFC in taking cognizance in the matter is bad in law. The controversial issue involved in the matter is of twenty-year old and the remedy is available to the complainant before the Civil Court for getting the elief in regard to cancellation of sale deed in question, otherwise, no case is made out against the petitioners for commission of alleged offences. Mere lodging of FIR is a clear abuse of process of law and since the petitioner no.4 is an old lady, aged around 74 years and her role is only to sign the sale deed in question as witness, therefore, no cognizable offence is made out against the petitioners. In support of contentions, the learned counsel for petitioners has relied upon the judgment dated 30th January, 2020 of Hon'ble Apex Court in the case of Ahmad Ali Quraishi & Others vs. The State of Uttar Pradesh and Another, passed in Criminal Appeal No.138 of 2020 (arising out of SLP (Crl) No. 3974 of 2018) and the judgments of Hon'ble Apex Court in the case of Paramjeet Batra vs. State of Uttarakhand and Others, 2013 Cr.L.R (SC) 67 and

Mahammed Ibrahim & Others vs. State of Bihar & Another, (2009) 3 SCC (Cr) 929. It is further contended that the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the the petitioners and with a view to spite due to private and personal grudge. Hence, it is prayed for setting aside the impugned order passed by JMFC as well as for quashment of impugned FIR.

(4) On the other hand, learned counsel for the State as well as complainant opposed the petition and it is contended that the the sale deed was executed by fraudulent manner by the petitioners and as per handwriting expert report, it was found that sale deed was not signed by mother of complainant at the time of execution of sale deed and even at that time, siblings of the complainant were minor. After coming to the knowledge of complainant, the impugned FIR has been lodged. Hence, it is contended that at this stage, the FIR cannot be quashed and the trial Court has to decide the trial as to whether the execution of sale deed by the petitioners in valid or proper or not; and, therefore, the learned JMFC has rightly taken cognizance against the petitioners. No interference is warranted. Hence, prayed for dismissal of this petition.

(5) Heard learned counsel for the parties and before advertting to the merits of matter, it is necessary to look into scope and ambit of inherent jurisdiction of the High Court while exercising power under Section 482 of CrPC.

(6) The Hon'ble Apex Court in the case of Ahmad Ali Quraishi (supra) has held as under:-

"10. Before we enter into facts of the present case and submissions made by learned counsel for the parties, it is necessary to look into scope and ambit of Inherent Jurisdiction which is exercised by the High Court under Section 482 Cr.P.C. This Court had occasion to consider the scope and jurisdiction of Section 482 Cr.P.C. This Court in State of Haryana and others versus Bhajan Lal and others, 1992 suppl. (1) SCC 335, had elaborately considered the scope and ambit of Section 482 Cr.P.C./ Article 226 of the Constitution in the context of quashing the criminal proceedings. In paragraph 102, this Court enumerated seven categories of cases where power can be exercised under Article 226/ Section 482 Cr.P.C. by the High Court for quashing the criminal Proceedings. Paragraph 102 is as follows:

"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 under Section 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 channelized an 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 under Section 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 under Section 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/o where there is 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 malafide 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.”

(7) The Hon'ble Apex Court in the matter of Vineet Kumar & Others Vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369, had considered the jurisdiction of High Court under Section 482 Cr.P.C. In the above case also, the Additional Civil Judicial Magistrate had summoned the accused for offence under Sections 452, 376, and 323 IPC and the Criminal Revision against the said order was dismissed by the District Judge.

(8) The Hon'ble Apex Court, time and again, has examined the scope as well as the purview of jurisdiction of High Court under Section 482 Cr.P.C. and has laid down several principles which govern exercise of jurisdiction of the High Court under Section 482 Cr.P.C.

(9) A three-Judge Bench of Hon'ble Apex Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699, has held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of Court or that the ends of justice require that the proceeding ought to be quashed. In para 7, the Hon'ble Apex Court has held as under:-

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

(10) Similarly, a three-Judge Bench of Hon'ble Apex Court in the matter of State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, had the occasion to consider ambit as well as scope of Section 482 Cr.P.C. By analyzing the scope of Section 482 Cr.P.C. the Hon'ble Apex Court has laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It was further held that High Court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. The following law has been laid down in para 6 by the Hon'ble Apex Court as under:-

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is

disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto." Further, in para 8 following law has been laid down by the Hon'ble Supreme Court as under:-

"8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*."

(11) Further, the Hon'ble Supreme Court in the matter of *Sunder Babu v. State of T.N.*, (2009) 14 SCC 244, has given similar finding in regard to abuse of process of law and allegations by referring to judgment of *Bhajan Lal* and held that petition under Section 482 deserves to be allowed and the proceedings deserve to be quashed. After considering earlier several judgments of *Bhajan Lal* (supra) and *Vineet Kumar* (supra), the Hon'ble Apex Court has laid down as under:-

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal*. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal*, which is to the following effect:

(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." Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal

proceedings."

(12) The Hon'ble Apex Court in the case of Paramjeet Batra (supra) has held as under:-

"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of Court."

(13) The Hon'ble Apex Court further in the case of Mohammed Ibrahim (supra) has held as under:-

' 8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind."

(14) Heard the learned counsel for the parties at length and perused the documents available on record.

(15) In the light of above-said judgments of the Hon'ble Apex Court as well as in the light of allegations made in the complaint/FIR, it appears that no ingredients of alleged offence is made out against the petitioners. If the contents made in the complaint/FIR are assumed to be true in its true perspective, then it appears that the same do not make out any offence against petitioners. From the the sequence of the events as mentioned above, although it is clear that petitioners by means of playing fraud with complainant, his brothers and sisters, have got the sale deed in question executed from the mother of complainant in favour of petitioner no.1 & 2 in respect of land in dispute by showing the complainant along with his brothers and sisters, as minor in place of major and at the time of execution of sale deed, petitioners no.3 and 4 were the witnesses but after a long lapse of 20 years of execution of sale deed, complainant filed a private complaint before the Court of JMFC and JMFC vide impugned order dated

09-11-2020 directed police authorities for registering an FIR as well as to investigate into the matter but it is evident that the criminal proceedings have been initiated by the complainant with an ulterior motive due to some reason best known to him and it appears that complainant has maliciously instituted criminal proceedings with ulterior motive permitting such criminal proceeding to go on, is nothing, but is a clear abuse of process of law.

(16) As a result, the petition filed by the petitioners deserves to be and is hereby allowed. The lodgment of FIR vide Crime No.1362 of 2021, dated 28-11-2021 registered at Police Station Kotwali, District Morena on a private complaint submitted by respondent no.2 before Court of JMFC, Morena in connection with Criminal Case No.990 of 2021 vide order dated 09-11-2021 directing the police authorities for registering an FIR against the petitioners for commission of offences punishable under Sections 420, 465, 467, 468, 471, 34 of IPC is hereby quashed and set aside. It is made clear that this order will, however, have no effect on the civil suit, if any, filed by any of parties between Civil Court and the Civil Court is under an obligation to decide the civil suit in accordance with law, being not influenced by the order of this Court passed today.

Let a copy of this order be sent to the concerning Police Station as well as the Court concerned for information.