

Smt Shanti Devi And Another vs State Of U.P. And Another on 31 January, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14160

Court No. - 73

Case :- APPLICATION U/S 482 No. - 27763 of 2024

Applicant :- Smt Shanti Devi And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Digvijay Tiwari

Counsel for Opposite Party :- Bhrigu Jee Singh,G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicants, learned counsel for the opposite party no.2, learned A.G.A. for the State and perused the material brought on record.

2. This application under Section - 482 Cr.P.C. has been preferred for quashing of the entire proceedings, including summoning order dated 01.04.2024, of Complaint Case No. 869 of 2023 (Rajendra Prasad Vs. Shanti Devi and Others), under Sections - 419, 420 I.P.C., Police Station - Rasra, District - Ballia, pending in the Court of Additional Civil Judge (J.D.)/Judicial Magistrate, Rasra, Ballia

3. It is submitted by learned counsel for the applicant that no prima facie case is made out against applicants. The opposite party no.2 has lodged impugned complaint making false and baseless allegations. It was stated that regarding disputed property, two declaratory suits are pending before the court of Sub-Divisional Magistrate and in those cases it is yet to be decided that who is owner of the disputed property. It is further submitted that in the complaint, the opposite party no.2 has alleged that applicants have got executed sale deed by way of impersonation showing the same to be executed by Achchey Lal but in his statement under Section - 200 Cr.P.C., the complainant has stated that the said sale deed was got executed by some another person in place of complainant as vendor and there are material contradictions in the version of complainant. Learned counsel has referred case of Delhi Race Club Vs. State of Uttar Pradesh 2024 0 Supreme (SC) 689 and submitted that no case is made out against applicants and dispute between the parties is civil in nature and thus, impugned proceedings are liable to be quashed. Learned counsel has also placed reliance upon Paramjeet Batra Vs. State of Uttarakhand 2013 1 CCR (SC) 148, Dr. Sonia Verma Vs. State of Haryana 2024 0 Supreme (SC) 252 and R. Nagendra Yadav Vs. The State of Telangana and Anr. 2022 0 Supreme(SC) 1250.

4. Learned counsel for the opposite party no.2 has opposed the application and submitted that the owner of the property was Achchey Lal, who has died on 06.10.2006. After that in the year 2008 a permission was sought from District Magistrate by way of cheating and forgery on behalf of Achchey Lal and after obtaining said permission, sale deed was executed in favour of applicants by impersonating some one as Achchey Lal, whereas he has already died in the year 2006. It was submitted that the allegations of cheating and forgery are involved and that issue can never be decided in declaratory suits, which are pending before the court of Sub-Divisional Magistrate.

5. I have considered the rival submissions and perused the record.

6. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases.

7. In case of Delhi Race Club (supra), the Hon'ble Apex Court has held as under :-

"29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability

would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

8. In case of Paramjeet Batra (supra), the Hon'ble Apex Court has held as under :-

"6. Though the complaint attributes forgery and fabrication of documents to the appellant and other accused and states that the appellant has grabbed the profit of the running business and threatened respondent 2, it appears to us to be essentially a civil dispute. Basic grievance of respondent 2 is that the appellant has not given him accounts of the business. Respondent 2 has made a reference to the written agreement under which the appellant was appointed as Manager to manage his business. The appellant has annexed a copy of the agreement dated 1/1/2002 to the appeal. The agreement discloses that the appellant was to receive 25% of the net profit as salary. The agreement also notes that the appellant received Rs.10,000/- in cash for the purchase of raw materials. Admittedly, the appellant has filed Civil Suit No. 23/2002 against respondent 2 in the court of Civil Judge, (Jr. Div.), Khatima for permanent injunction claiming that he is a tenant of the shop in question. In that suit, he filed an application for temporary injunction. Copy of order dated 22/12/2004 passed on that application ordering status quo is also annexed to the appeal. The order indicates that the appellant and respondent 2 have filed documents in the said suit. While granting status quo order, the trial court has observed that the said documents will have to be proved by the appellant and respondent 2 and, hence,

it is necessary to maintain status quo during pendency of the suit. In the complaint, it is the case of respondent 2 that this suit has been filed on the basis of fabricated documents. It is categorically stated on affidavit by the appellant that the said suit is still pending. If the said suit is still pending, then the grievance made by respondent 2 that the documents on which reliance is placed by the appellant are not genuine and are forged and fabricated, will be considered by the Civil Court. It is also significant to note that prior to the filing of this complaint, respondent 2 tried to lodge an FIR against the appellant by moving an application under Section 156(3) of the Code. But the said application was dismissed on 6/5/2004. We notice from the impugned order that a separate case under Section 406 of the IPC was filed by respondent 2 against the appellant in which the appellant was acquitted on 9/2/2009. It is further significant to note that statement was made on behalf of the appellant before the High Court that the appellant has vacated the shop in question and handed over possession to respondent 2. In the peculiar facts of the case, therefore, we are of the opinion that in the interest of justice, the pending criminal proceedings need to be quashed. We have taken serious note of the fact that respondent 2 did not appear before the High Court to refute the case of the appellant. He has also not chosen to appear before us though served. Probably because the possession of the shop is handed over to him, he is not interested in prosecuting the appellant and others.

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."

9. In case of R. Nagendra Yadav (supra), the Hon'ble Apex Court has held as under :-

"17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the

criminal proceeding to prevent abuse of process of court."

10. Keeping in view in aforesaid legal positions, in the instant matter, it may be seen that the opposite party no.2 has alleged in the impugned complaint that disputed land was of his grand father Banwari Singh, which was inherited by the father and uncle of complainant. After death of father and uncle of complainant, the said land was in possession of family of complainant but in connivance with Revenue officials, the said land was got recorded in name of one Sahdeo. After death of said Sahdeo, Revenue officials have recorded name of Achchey Lal, Jay Prakash, Narsingh and Smt. Rajni Devi but they have never been in possession of the disputed property. When complainant came to know about those entries in Revenue record, he has filed a case under Section ? 229-B Zamindari Abolition Act. It was further alleged that said Achchey Lal had died on 06.10.2006 and after his death an application was made to the District Magistrate for permission of sale of said land on behalf of Achchey Lal and after obtaining permission by way of cheating and forgery, said land was transferred in favour of applicants by impersonating some other person in place of said Achchey Lal. Thus, there are allegations that the sale deed in favour of applicants was executed on the basis of permission, which was obtained on behalf of dead person, by way of cheating and forgery and similarly the sale deed in favour of applicants was executed by impersonating a person in place of said Achchey Lal. In view of these specific facts and circumstances, it cannot be said that dispute between the parties is civil in nature. Here, it may be mentioned that the said suits have been filed before the Revenue authorities for declaration and there is nothing to show that any case was pending before the Civil court. The issue of cheating and forgery cannot be decided in proceedings under Section ? 229 B Zamindari Abolition Act by Revenue courts. In case of Paramjeet Batra (supra) the dispute was related to accounts of business and in view of those attending facts, the Hon'ble Apex Court held that dispute was civil in nature. Similarly the issue involved in case of Delhi Race Club (supra) was also on different footing. The aforesaid case laws referred by learned counsel for the applicant do not provide any help to the applicants. In view of material on record, it can not be said that no prima facie case is made out. As observed earlier the issue of forgery and cheating is involved and that matter can not be decided by the Revenue Court in case filed for declaration. The submissions raised by learned counsel for applicants call for determination on questions of fact, which may adequately be discerned/adjudicated only by the trial court. Even the submissions made on point of law can also be more appropriately gone into by the trial court. In view of material on record, no case for quashing of proceedings is made out. Hence, the present application under Section 482 Cr.P.C. is liable to be dismissed.

11. The application u/s 482 Cr.P.C. is hereby dismissed.

Order Date :- 31.1.2025 S Rawat