

Ramesh Chandra Gupta vs State Of U.P. on 28 November, 2022

Author: Ajay Rastogi

Bench: C.T. Ravikumar, Ajay Rastogi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2022
(Arising out of SLP(Crl.) No(s).39 of 2022)

RAMESH CHANDRA GUPTA

...APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). OF 2022
(Arising out of SLP(Crl.) No(s).4813 of 2022)

CRIMINAL APPEAL NO(S). OF 2022
(Arising out of SLP(Crl.) No(s).7052 of 2022)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The instant appeals have been filed against the judgment dated 3rd February, 2021 passed by the High Court of Judicature at Allahabad dismissing the criminal miscellaneous application filed at the instance of the present appellants.

3. The dispute relates to House No.189, Mohalla Madia, Kanpur Road, Jhansi, which as per the complainant, was purchased in the name of Shravan Kumar Gupta, who was minor at that time, by means of a registered sale deed dated 4th May, 1977 and through the ostensible owner, the de-facto complainant purchased the property by registered sale deed dated 22nd December, 2018, but prior thereto, a family settlement took place in the family comprising of Ram Kumari, widow of Raja Ram

Gupta and her four sons, namely, Ramesh Chandra Gupta, Ashok Kumar, Shravan Kumar and Vinod Kumar and a Memorandum of Understanding(MOU) was executed between the parties on 19th August, 2006 and in terms of the aforesaid MOU, the house came in the share of Vinod Kumar Gupta and while the Original Suit No.91 of 2015 filed at the instance of Vinod Kumar Gupta was pending adjudication, the ostensible owner Shravan Kumar Gupta executed a registered sale deed dated 22nd December, 2018 in favour of the de-facto complainant and according to the informant/second respondent, who is the vendee of the afore- mentioned registered sale deed, possession by title in favour of Shravan Kumar Gupta over the house in dispute came to be transferred in his favour and possession of the same was also handed over to him(de-facto complainant).

4. The de-facto complainant/second respondent, Atul Shukla, had a grievance that he was dispossessed from the subject property in question in reference to which a complaint dated 29th January, 2019 was made under Section 156(3) CrPC with the concerned Magistrate. As a consequence of the aforesaid, an FIR dated 2nd April, 2019 came to be registered as Case Crime No.183 of 2019 under Sections 420, 467, 468, 471, 504, 506, 447, 386 IPC, P.S. Navabad, District Jhansi. In the aforesaid FIR, four persons were specifically named, viz. Vinod Kumar Gupta, Ashish Gupta, Ramesh Chandra Gupta and Rinky Sarna.

5. The complaint on which FIR was registered is reproduced hereunder:

“The Police Inspector, Navabad Jhansi Subject:

Regarding put up a lock of the house of the applicant and after grabbing the same demanding of Rs. 20 Lakhs and regarding recovery of the possession and lodge an FIR. Sir, the applicant Atul Kumar S/o Sh. Ram Swaroop Shukla R/o House No. 110, Kailash Residency Nvabada Jhansi UP India has sold the said a house situated at Mohlla Madia, Kachari Choraha, Navabad Jhansi, from Shrawan Kumar Gupta S/o Raja Ram Gupta and the applicant was in possession of the same and this house was purchased by Shrawan Kumar Gupta S/o Raja Ram Gupta vide a registered sale deed on 04.05.1977 from Mantra Devi and the house tax of the same is being deposited continuously by Shrawan Kumar in the Municipality. The real brother of Shrawan Kumar namely Vinod Kumar S/o Raja ram Gupta R/o House No.168 Mohlla Madia, Kachari Choraha, Navabad Jhansi and his house is touched with my house. In the night my house was locked from the inside by a channel gate and grabbed my property by Vinod Kumar. When on 15.02.2019 at 2 pm I entered in the house then in the house Vinod Kumar, his nephew Ashish Kumar S/o Ashok Kumar and Ramesh Chandra Gupta S/o Raja Ram were sitting in the house and I was thrown by them by pushing and used the filthy language and stated that if you come inside the home we will kill you. He said that I have to take Rs.20 Lakhs from you and since then Vinod Kumar has prepared the forge documents of the said house and has been let out by Vinod to Rinki Sarna alias Sardar Ravinder Singh who is well known Gunda of when I started to go from there when Rinki Sarna alias Sardar Ravinder Singh R/o House No.420, 97114 Civil Line behind Talkies, Navabad Jhansi UP started saying that this

house has been let out to me because I have to recover Rs.20 Lakh from you and if you will not give they will kill you and I will give the same to Vinod and if you fail to give they will kill you and he said you may file the case before the Court because the administration cannot be able to give this property. I have come to know that a case was filed by Vinod Kumar before Civil Judge, CD bearing No.OMS/91/2015 regarding the partition of the shop and house of his brother Shwrawan Kumar and during the pendency of the case, Vinod Kumar sold his shops vide a sale deed to some other person and against the shops which are required to be given to Shrawan Kumar, Shrawan Kumar sold his property to me vide a registered sale deed.

Hence the case itself become nullified because both the parties have sold their own properties. The court has not passed any order. The aforesaid case was not for possession and the same was for transfer. My house has been locked forcibly by Vinod and forge documents have been prepared by Vinod and the same has been let out to Rinki Sarna alias Sardar Ravinder Singh to extort the money. In this regard, it is requested that an FIR may be lodged and direction may be given to open the lock of my house and return back the possession of my house. All the witness will appear at the time of investigation. Dated 02.4.19, Sd/ Atul Kumar S/o Sh Ram Swaroop Shukla R/o House No.110, Kailash Residency Nvabada Jhansi Mob. No.829921694.

I, Cont. Surender Kumar certify that the report has been typed word to word.

Sd/-“

6. We have heard learned counsel for the parties and with their assistance perused the material on record.

7. Learned counsel for the appellants submits that the present is a case where the High Court ought to have exercised its jurisdiction for quashing the entire criminal proceedings. The criminal proceedings against the present appellants were nothing but to put pressure on the appellants and to harass them.

8. Learned counsel further submits that from the very perusal of the complaint on which the FIR came to be registered, there is no commission of offence at all made out against the present appellants for the simple reason that Shravan Kumar Gupta had executed a registered sale deed dated 22nd December, 2018 in favour of the de- facto complainant and it was pleaded by him that the very subject property of which sale deed was executed in favour of the de-facto complainant by Shravan Kumar Gupta is in possession of Vinod Kumar Gupta who is claiming to be the owner of the property on the strength of MOU entered into between the family on 19th August, 2006 and the present appellants are neither parties to the agreement, nor were they witness and/or facilitators in execution of the sale deed dated 22nd December, 2018 nor in possession of the subject property and none of the three appellants are directly and indirectly connected in reference to the transaction where Shravan Kumar Gupta executed a sale deed in favour of the de-facto complainant by registered sale deed dated 22nd December, 2018 and even in the civil suit which has been filed by the de-facto complainant(Original Suit no.21 of 2019), the present appellants were not the

defendants/parties to the proceedings, although he later withdrew the suit on 22nd November, 2019.

9. The other suit which had been earlier filed by Vinod Kumar Gupta being Original Suit No.91 of 2015 for partition, the de-facto complainant has impleaded himself as a party defendant. The only allegation which the de-facto complainant has made so far as the present appellants are concerned that after he came into possession over the subject property in question pursuant to the registered sale deed executed in his favour dated 22nd December, 2018, the present appellants have dispossessed the complainant and used filthy language against him. The two appellants, i.e. Ramesh Chandra Gupta and Ashish Gupta are the members of the family of late Raja Ram Gupta including Vinod Kumar Gupta who is one of the co- accused and is facing trial and who, according to the complainant, have forcibly taken possession of the subject property in question from the de-facto complainant.

10. So far as Rinky Sarna is concerned, the only allegation against him is that Vinod Kumar Gupta has forged the documents of the subject property and the same has been let out to Rinky Sarna. There is no allegation against either of the appellants regarding their active/passive participation in the transaction/commission of crime in reference to which sale deed was executed on 22nd December, 2018.

11. The pith and substance of the complaint of the de-facto complainant/second respondent is that the subject property was sold by the ostensible owner, Shravan Kumar Gupta, in reference to which registered sale deed was executed in his favour on 22nd December, 2018, but he was later dispossessed from the subject property.

12. Subsequent to the aforesaid FIR, the investigating officer conducted investigation and later submitted a charge-sheet dated 24th June, 2019, whereby named accused i.e. the appellants herein have been charge-sheeted under Sections 420, 467, 468, 471, 504, 506, 448, 387 IPC. Upon submission of the above charge-sheet, the learned CJM, Jhansi, by an order dated 13th August, 2019 took cognizance and summoned the present accused appellants.

13. Being aggrieved by the aforesaid, the appellants who were charge-sheeted, approached the High Court by filing a Miscellaneous Application under Section 482 CrPC. That came to be dismissed by the High Court under the judgment impugned dated 3rd February, 2021 which is the subject matter of challenge in appeals before us.

14. The High Court under the impugned judgment has even failed to examine as to what was the complaint and how the present appellants are, in any manner, concerned with the so-called alleged commission of crime, but after recording superficial observations regarding the scope of interference under Section 482 CrPC dismissed the petition under the order impugned.

15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another¹ decided on 31st March, 2017. It may be useful to refer to paras 22, 23

and 41 of the above judgment where the following was stated:

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 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 the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘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 realisation of the object and purpose of the provision which seeks to save the inherent powers of (2017) 13 SCC 369 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.’

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* 1992 Supp (1) SCC 335.

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 fides 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 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides 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 1992 Supp (1) SCC 335 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.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana and Others v. Bhajan Lal and Others² as under :

“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 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 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 1992 Supp. (1) 335 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/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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*³.

18. The present case is fully covered by categories (1) and (3), as enumerated in *State of Haryana and Others v. Bhajan Lal and Others* (supra). A bare perusal of the complaint on the basis of which FIR came to be registered at the instance of the de-facto complainant/second respondent does not disclose any act of the 2021 SCC OnLine SC 315 present appellants or their participation in the commission of crime. They are neither concerned with the registered sale deed dated 4th May, 1977 nor the later sale deed executed in favour of the de-facto complainant by Shravan Kumar Gupta dated 22nd December, 2018, nor in possession of the subject property nor are parties to the civil proceedings and it is not the case of the complainant that either the appellants have played any active/passive role either in scribing the document or are facilitators or witness to the document in reference to which the complaint has been made for cheating and committing forgery or have played any role in delivery of possession of the subject property in question.

19. What it appears is that the de-facto complainant has implicated the present appellants being members of the family to put pressure for obtaining possession of the subject property and to settle the civil dispute which is pending between Vinod Kumar Gupta, Shravan Kumar Gupta and the de-facto complainant in Original Suit No.91 of 2015.

20. We are of the view that in the present facts and circumstances, the High Court ought to have exercised its power under Section 482 CrPC for quashing of the criminal complaint and proceedings in consequence thereof qua the present appellants.

21. Before parting with the order, we further like to observe that the observations which has been made are restricted to the three appellants, namely, Ramesh Chandra Gupta, Ashish Gupta and Rinky Sarna before this Court and the learned trial Judge may not be influenced by the observations made above and may proceed with the Criminal Case No.2200 of 2019 qua the other accused persons independently on its own merits in accordance with law.

22. Needless to say that the Court which is seized of the Original Suit No.91 of 2015 may decide the same independently on its own merits in accordance with law.

23. In the result, the appeals are allowed. The judgment impugned of the High Court dated 3rd February, 2021 is set aside and FIR numbered as Criminal Case No.2200 of 2019 registered at PS Navabad, District Jhansi and all the consequential proceedings qua the present appellants stand quashed.

24. Pending application(s), if any, shall stand disposed of.

.....J. (AJAY RASTOGI)J. (C.T. RAVIKUMAR) NEW DELHI;

NOVEMBER 28, 2022