Udai Shankar Awasthi vs State Of U.P.& Anr on 9 January, 2013

Author: B.S. Chauhan

Bench: Jagdish Singh Khehar, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 61 of 2013

Udai Shankar Awasthi …Appellant

Versus

State of U.P. & Anr. …Respondents

WITH

CRIMINAL APPEAL NO. 62 of 2013

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Both these appeals have been preferred against the impugned judgment and order dated 13.3.2012, passed by the High Court of Judicature at Allahabad in Criminal Misc. Application No. 41827 of 2011, by which the High Court has rejected the petition filed under Section 482 of Code of Criminal Procedure,1973 (hereinafter referred to as the 'Cr.P.C.') for quashing the proceedings in Complaint Case No.628 of 2011 (Sudha Kant Pandey v. K.L. Singh & Anr.) under Sections 403 and 406 of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

2. Facts and circumstances giving rise to these appeals are:

A. M/s. Manish Engineering Enterprises of which respondent No.2, Sudha Kant Pandey, claims to be the proprietor, was given a work order by M/s. Indian Farmers Fertilizer Cooperative Ltd. (hereinafter referred to as "IFFCO"), Phulpur unit, on 1.2.1996 for the purpose of conducting repairs in their plant worth an estimated value of Rs.13,88,750/-. The said work order was subsequently cancelled by IFFCO on 7.2.1996.

B. Aggrieved, M/s. Manish Engineering Enterprises made a representation dated 21.3.2001, to IFFCO requesting it to make payments for the work allegedly done by it. As there was no response from the management of IFFCO, the said concern filed Writ Petition No. 19922 of 2001 before the High Court of Allahabad, seeking a direction by it to IFFCO for the payment of an amount of Rs.22,81,530.22 for alleged work done by it.

C. The High Court disposed of the said Writ Petition vide order dated 25.5.2001, directing IFFCO to dispose of the representation dated 21.3.2001, submitted by the said concern within a period of 6 weeks. In pursuance of the order of the High Court dated 25.5.2001, the said representation dated 21.3.2001, was considered by the Managing Director of IFFCO and was rejected by way of a speaking order dated 15.10.2001, and the same was communicated to the said concern vide letter dated 29.10.2001.

D. M/s. Manish Engineering Enterprises filed Writ Petition No. 7231 of 2002 before the High Court of Allahabad for the recovery of the said amount, which stood disposed of vide order dated 20.2.2002, with a direction to pursue the remedy available under the arbitration clause contained in the agreement executed in pursuance of the aforementioned work order.

E. M/s. Manish Engineering Enterprises filed Arbitration Application No. 24 of 2002 before the High Court of Allahabad under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act 1996') on 24.5.2002, praying for the appointment of an arbitrator, in view of the fact that the application made by the said concern for the purpose of appointing an arbitrator, had been rejected by IFFCO as being time barred. The High Court therefore, vide judgment and order dated 17.10.2003, appointed an arbitrator. However, the said arbitrator expressed his inability to work. Thus, vide order dated 13.2.2004, another arbitrator was appointed.

F. M/s. Manish Engineering Enterprises filed a Claim Petition on various counts, including one for an amount of Rs.9,27,182/- towards the alleged removal of items from their godown within the IFFCO premises.

The learned arbitrator so appointed, framed a large number of issues and rejected in particular, the claim of alleged removal of items from the godown of M/s. Manish

Enterprises, located within the IFFCO premises (being issue No.13), though he accepted some other claims vide award dated 11.3.2007.

IFFCO filed an application under Section 34 of the Act, 1996 for the purpose of setting aside the award dated 11.3.2007, before the District Court, Allahabad and the matter is sub-judice. G. Mr. Sabha Kant Pandey, the brother of respondent no.2/complainant, filed Complaint Case No. 4948 of 2009 against the officers of IFFCO on 23.11.2009 under Sections 323, 504, 506, 406 and 120-B IPC before the court of Special Chief Judicial Magistrate, Allahabad. Therein, some witnesses including the said complainant were examined.

H. Sabha Kant Pandey, the brother of respondent no.2 filed another Complaint Case No. 26528 of 2009, against the appellants and others under Sections 147, 148, 323, 504, 506, 201 and 379 IPC. In the said complainant, the brother of respondent no.2 was examined alongwith others as a witness.

I. Complaint case no. 4948 of 2009 was rejected by way of a speaking order passed by the Special Chief Judicial Magistrate, vide order dated 20.3.2010 under Section 203 Cr.P.C. J. Respondent no.2 filed Criminal Complaint No. 1090 of 2010 against the appellants and others on 2.4.2010, under Sections 323, 504, 506, 406 and 120-B IPC before the Special Chief Judicial Magistrate, Allahabad. After investigating the matter, the police submitted a report on 18.4.2010 stating that, allegations made in complaint case no. 1090 of 2010 were false.

K. The Additional Chief Judicial Magistrate, vide order dated 18.8.2011 dismissed complaint case no. 26528 of 2009 filed by the brother of respondent no.2.

L. Respondent no.2 filed another complaint case no. 628 of 2011 on 31.5.2011 under Sections 403 and 406 IPC, in which, after taking cognizance, summons were issued to the present appellants under Sections 403 and 406 IPC on 16.7.2011, and vide order dated 22.9.2011, bailable warrants were issued against the appellants by the Addl. CJM, Allahabad. Subsequently, vide order dated 21.11.2011, non-bailable warrants were also issued against one of the appellants by the Addl.

CJM, Allahabad.

In view of the fact that K.L. Singh, appellant in the connected appeal, could not be served properly as the correct address was not given, on being requested, the Addl. CJM withdrew the non-bailable warrants on 17.12.2011.

M. Aggrieved, the appellants filed Criminal Misc. Application No. 41827 of 2011 under Section 482 Cr.P.C. before the High Court for quashing the said criminal proceedings, which has been dismissed vide impugned judgment and order.

Hence, these appeals.

3. Shri Mukul Rohtagi and Shri Nagendra Rai, learned senior counsel appearing for the appellants, have submitted that as the complaint cases filed by the brother of the respondent no.2 in regard to the same subject matter were dismissed by the magistrate concerned, the question of entertaining a fresh complaint could not arise. A fresh complaint cannot be entertained during the pendency of the complaint case filed by respondent No. 2, with respect to which, the police filed a final report, stating the same to be a false complaint. It was further submitted, that there was suppression of material facts, as in Complaint Case No. 628 of 2011, dismissal of the earlier complaint was not disclosed. Furthermore, as the matter is purely civil in nature, and in view of the fact that arbitration proceedings with respect to the very same subject matter are presently sub-judice, and the claim of respondent no.2 on this count has already been rejected by the arbitrator, entertaining/continuing criminal proceedings in the said matter is clearly an abuse of the process of the court. Moreover, the alleged claim is related to the period of 1996. A complaint made after a lapse of 15 years is barred by the provisions of Section 468 Cr.P.C., and the High Court has erred in holding the same to be a continuing offence. As, in pursuance of the High Court's order dated 25.5.2001, the representation of respondent no.2 dated 21.3.2001 was decided by the Managing Director, IFFCO vide order dated 15.10.2001, the limitation period began from the date of the said order, or at the most from 29.10.2001, that is, the date on which, the order of rejection was communicated.

The initiation of criminal proceedings is nothing but an attempt by the frustrated litigant to give vent to his frustration, by invoking the jurisdiction of the criminal court and thus, the proceedings are liable to be quashed.

4. Per contra, Shri Devrrat, learned counsel appearing for respondent no.2, has submitted that the High Court has rightly held that the same was in fact, a case of continuing offence. Therefore, the question of limitation does not arise. The law does not prohibit the initiation of criminal proceedings where there has been breach of trust and further, in such a case, in spite of the fact that arbitration proceedings are pending, a criminal complaint is maintainable, and the court concerned has rightly entertained the same. There is no prohibition in law as regards maintaining a second application, even though the earlier application has been dismissed. Thus, the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties as well as by Shri Gaurav Bhatia and Shri Annurat, learned counsel appearing for the State of U.P. and perused the record.

In light of the facts of these cases, it is desirable to deal first, with the legal issues involved herein.

LIMITATION IN CRIMINAL CASES- Section 468 Cr.P.C.:

6. Section 468 Cr.P.C. places an embargo upon court from taking cognizance of an offence after the expiry of the limitation period provided therein. Section 469 prescribes when the period of limitation begins. Section 473 enables the court to condone delay, provided that the court is satisfied

with the explanation furnished by the prosecution/complainant, and where, in the interests of justice, extension of the period of limitation is called for. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies, as has been explained by way of the legal maxim, nullum tempus aut locus occurrit regi (lapse of time is no bar to the Crown for the purpose of it initiating proceeding against offenders). A criminal offence is considered as a wrong against the State and also the society as a whole, even though the same has been committed against an individual.

7. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision, however, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in light of the gravity of the charge in question. (Vide: Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368; and Noida Entrepreneurs Association v. Noida & Ors., AIR 2011 SC 2112).

8. The court, while condoning delay has to record the reasons for its satisfaction, and the same must be manifest in the order of the court itself. The court is further required to state in its conclusion, while condoning such delay, that such condonation is required in the interest of justice. (Vide: State of Maharashtra v. Sharad Chandra Vinayak Dongre & Ors., AIR 1995 SC 231; and State of H.P. v. Tara Dutt & Anr., AIR 2000 SC 297).

9. To sum up, the law of limitation prescribed under the Cr.P.C., must be observed, but in certain exceptional circumstances, taking into consideration the gravity of the charge, the Court may condone delay, recording reasons for the same, in the event that it is found necessary to condone such delay in the interest of justice.

CONTINUING OFFENCE:

10. Section 472 Cr.P.C. provides that in case of a continuing offence, a fresh period of limitation begins to run at every moment of the time period during which the offence continues. The expression, 'continuing offence' has not been defined in the Cr.P.C. because it is one of those expressions which does not have a fixed connotation, and therefore, the formula of universal application cannot be formulated in this respect.

11. In Balakrishna Savalram Pujari Waghmare & Ors. v. Shree Dnyaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798, this Court dealt with the aforementioned issue, and observed that a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such character that the injury caused by it itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore depends, upon the effect of the injury.

In the said case, the court dealt with a case of a wrongful act of forcible ouster, and held that the resulting injury caused, was complete at the date of the ouster itself, and therefore there was no scope for the application of Section 23 of the Limitation Act in relation to the said case.

12. In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath & Ors., (1991) 2 SCC 141, this Court dealt with the issue and held as under:

> "According to the Blacks' Law Dictionary, Fifth Edition, 'Continuing' means 'enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.' Continuing offence means 'type of crime which is committed over a span of time.' As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. 'A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse.' So also a 'Continuous Crime' means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act."

13. While deciding the case in Gokak Patel Volkart Ltd. (Supra), this Court placed reliance upon its earlier judgment in State of Bihar v. Deokaran Nenshi & Anr., AIR 1973 SC 908, wherein the court while dealing with the case of continuance of an offence has held as under:

> "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all." (See also: Bhagirath Kanoria & Ors. v. State of M.P., AIR 1984 SC 1688; and Amrit Lal Chum v. Devoprasad Dutta Roy, AIR 1988 SC 733).

14. In M/s. Raymond Limited & Anr., Etc. Etc. v. Madhya Pradesh Electricity Board & Ors., Etc. Etc., AIR 2001 SC 238, this Court held as under:

> "It cannot legitimately be contended that the word "continuously" has one definite meaning only to convey uninterrupted ness in time sequence or essence and on the other hand the very word would also mean 'recurring at repeated intervals so as to be of repeated occurrence'. That apart, used as an adjective it draws colour from the context too."

15. In Sankar Dastidar v. Smt. Banjula Dastidar & Anr., AIR 2007 SC 514, this Court observed as under:

> "A suit for damages, in our opinion, stands on a different footing vis--vis a continuous wrong in respect of enjoyment of one's right in a property. When a right of way is claimed whether public or private over a certain land over which the tort-teaser has no right of possession, the breaches would be continuing one. It is, however, indisputable that unless the wrong is a continuing one, period of limitation does not stop running. Once the period begins to run, it does not stop except where the provisions of Section 22 of the Limitation Act would apply." The Court further held:
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> "Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion; knowledge as regards possession of the party shall be the starting point of limitation in terms of Article 68. For any other specific movable property, the time from which the period begins to run would be when the property is wrongfully taken, in terms of Article 69. Article 91 provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful."

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue. SECOND COMPLAINT ON SAME FACTS-MAINTAINABILITY:

17. While considering the issue at hand in Shiv Shankar Singh v. State of Bihar & Anr., (2012) 1 SCC 130, this Court, after considering its earlier judgments in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876; Jatinder Singh & Ors. v. Ranjit Kaur AIR 2001 SC 784; Mahesh Chand v. B. Janardhan Reddy & Anr., AIR 2003 SC 702; Poonam Chand Jain & Anr. v. Fazru AIR 2005 SC 38 held:

> "It is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on

> the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

18. The present appeals require to be decided on the basis of the settled legal propositions referred to hereinabove.

Complaint Case No.4948 of 2009 was filed by Sabha Kant Pandey, brother of respondent no.2, wherein, he claimed to be a partner in the firm M/s Manish Engineering Enterprises, against one of the appellants and other officers of IFFCO, under Sections 323, 504, 506, 406 and 120B IPC at Police Statition Phulpur, District Allahabad, alleging that the said Firm had been given a separate godown/office within the IFFCO compound, wherein their articles worth Rs.30-40 lacs, as well as their documents were kept. The complainant was not permitted to remove them and additionally, even the payment for the work done by the firm was not made, on certain technical grounds. The officers of IFFCO, including Mr. U.S. Awasthi - the appellant, misbehaved with the complainant and kept the said articles worth Rs.30- 40 lacs, as also the important documents, in addition to the entry gate pass required to enter the plant by the complainant and his brother Sudhakant (respondent no.2 herein), therefore making it impossible for them to access their godown.

19. The complaint was dealt with appropriately by the competent court, wherein the present complainant was also examined as a prosecution witness. The Court took note of the fact of pendency of the Arbitration Proceedings with respect to the payment of dues, and came to the conclusion that the complaint had been filed to put pressure on IFFCO to obtain payments. The said complaint was dismissed on merits.

20. Complaint Case No.26528 of 2009 was then filed by Sabhakant Pandey, brother of respondent no.2, against one of the appellants and also other officers of IFFCO under Sections 147, 148, 323, 504, 506, 201 and 379 IPC in Police Statition Phulpur, Allahabad, making similar allegations, and giving full particulars of the outstanding dues. That complaint was heard and disposed of by the competent court, taking note of the fact that there had been a cross-complaint by the officers of IFFCO, wherein allegations were made to the effect that on 19.12.2008, Arbitration Proceedings in Case No.1 of 2007 took place at the residence of the Arbitrator, a retired Judge of the Allahabad High Court, wherein Sabha Kant Pandey and Sudha Kant Pandey misbehaved with the Arbitrator, and he was hence forced to adjourn the hearing of the case. Subsequently, they stood in front of his house and shouted slogans, abusing the officers of IFFCO and even tried to beat them up. The court dismissed the said complaint after recording the following findings:

> "In the opinion of the court, the complaint filed by Sabhakant Pandey is imaginary, a bald story with an intention to put illegal pressure and by suppressing material facts in the complaint."

21. Complaint Case No.1090 of 2010 was filed by the present complainant, respondent no.2 against the appellant Udai Shankar Awasthi and other officers of IFFCO under Sections 323, 504, 506, 406 and 120B IPC, making similar allegations as were mentioned in the first complaint, to the effect that articles worth Rs.15-20 lacs in each godown were lying in the premises of IFFCO, and that the complainant was not permitted to remove the same. In the said case, after investigation, the police filed the final report stating that all the allegations made in the complaint were false. The concluding part of the report reads as under:

"For last 6 months no body has turned up to get his statement recorded in spite of notice. The application had been filed on false facts and complaint was bogus, forceless and baseless and was liable to be dismissed."

22. So far as the present complaint is concerned, the same has been filed under Sections 415, 406 and 403 IPC, wherein the allegation that their Bill had been cleared on 10.7.1996, but the requisite payment, to the tune of Rs.22,81,530/- was not made to the complainant. Their claim for payment was wrongly rejected. Certain articles and documents belonging to the complainant were lying within the premises of IFFCO and the same were not returned to the complainant despite requests for the same. In this case, after taking cognizance, summons were issued on 16.7.2011, under Sections 403 and 406 IPC, though the case under Section 415 IPC stood rejected.

23. It is evident that in the said complaint, no reference was made by the complainant as regards the Arbitration Proceedings. There was also no disclosure of facts to show that earlier complaints in respect of the same subject matter, had been dismissed on merits by the same court.

24. A copy of the Award made by the Arbitrator was placed on record, wherein issue no.13 which dealt with the present controversy, i.e. some material and documents were placed in the premises of IFFCO and the return of the same was refused. The claim as regards the same, has been rejected. There has been no mention of such claim and its rejection by the said concern, in either of the writ petitions filed before the High Court earlier or even for that matter, in the application filed by the said concern before IFFCO, for the purpose of making appointment of an arbitrator, or in the application filed under Section 11 of the Act, 1996 before the High Court.

25. In the counter affidavit filed by respondent no.2, it has been submitted that the contract was terminated by IFFCO fraudulently, to usurp the entire amount towards the work done by it and that IFFCO took illegal possession of all the goods and articles belonging to the firm lying within its premises, and as the amount had not been paid, the officers were guilty of criminal breach of trust and were therefore, liable to be punished. However, the fact that earlier complaints had been filed by the brother of respondent no.2 Sabha Kant Pandey has been admitted. It has further been admitted that Arbitration Proceedings are still pending, but it has also

simultaneously been urged that criminal prosecution has nothing to do with the Arbitral award.

26. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended vide Amendment Act 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.. (See also: Shivjee Singh v. Nagendra Tiwary & Ors., AIR 2010 SC 2261; and National Bank of Oman v. Barakara Abdul Aziz & Anr., JT 2012 (12) SC 432).

27. Section 403 IPC provides for a maximum punishment of 2 years, or fine or both; and Section 406 IPC provides for a maximum punishment of 3 years, or fine or both. The limitation period within which cognizance must be taken, as per the provisions of Section 468 of Cr.P.C. is three years. In the case of an instantaneous offence, as per the provisions of Section 469 of the Cr.P.C., the period of limitation commences on the date of offence. In the instant case, admittedly, the claim of the said firm was rejected by way of a speaking order dated 15.10.2001, in pursuance of the order of the High Court dated 25.5.2001, and the said order was communicated vide letter dated 29.10.2001. Respondent No. 2 correctly understood the nature of the offence and, therefore, subsequently approached the High Court for the purpose of seeking recovery of outstanding dues, wherein the High Court directed him to pursue the remedy available under the arbitration agreement between the parties. In such a fact situation, it is beyond our imagination as to how the offence involved herein can possibly be termed as a continuing offence. In fact, the damage caused by virtue of non-payment of their dues, if any, is legally sustainable, may continue, but the offence is most certainly not a continuing offence, as the same has not recurred subsequent to order dated 15.10.2001, even though the effect caused by it may be continuous in nature.

In Arun Vyas & Ors. v. Anita Vyas, AIR 1999 SC 2071, this Court held that in a case of cruelty, the starting point of limitation would be the last act of cruelty. (See also: Ramesh & Ors. v. State of Tamil Nadu, AIR 2005 SC 1989).

28. Approaching the court at a belated stage for a rightful cause, or even for the violation of the fundamental rights, has always been considered as a good ground for its rejection at the threshold. The ground taken by the learned counsel for respondent No. 2 that the cause of action arose on 20.10.2009 and 5.11.2009, as the appellants refused to return money and other materials, articles and record, does not have substance worth consideration. In case a representation is made by the

person aggrieved and the same is rejected by the competent statutory authority, and such an order is communicated to the person aggrieved, making repeated representations will not enable the party to explain the delay.

29. In Rabindra Nath Bose & Ors. v. Union of India & Ors., AIR 1970 SC 470, in spite of the fact that the Government rejected a representation and communicated such rejection to the applicant therein, his subsequent representations were entertained by the Government. A Constitution Bench of this Court held as under:

> "He says that the representations were being received by the government all the time. But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay." (Emphasis added)

30. In State of Orissa v. Sri Pyarimohan Samantaray & Ors., AIR 1976 SC 2617; State of Orissa etc. v. Shri Arun Kumar Patnaik & Anr. etc., etc., AIR 1976 SC 1639; and Swatantar Singh v. State of Haryana & Ors., AIR 1997 SC 2105, a similar view has been reiterated.

31. The view taken by this Court in Rabindra Math Bose (Supra) has been approved and followed in Sri Krishna Coconut Co. etc. v. East Godavari Coconut and Tobacco Market Committee, AIR 1967 SC 973, Karnataka Power Corporation Ltd. & Anr. v. K. Thangappan & Anr., AIR 2006 SC 1581; and Eastern Coalfields Ltd. v. Dugal Kumar, AIR 2008 SC 3000.

32. In Kishan Singh (dead) thr. Lrs. v. Gurpal Singh & Ors. AIR 2010 SC 3624, this court while dealing with a case of inordinate delay in launching a criminal prosecution, has held as under:

> "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 & Ors. v. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. v. State of U.P.& Ors., AIR 2000 SC 754; and Gorige

Pentaiah v. State of A.P. & Ors., (2008) 12 SCC 531)."

33. The instant appeals are squarely covered by the observations made in Kishan Singh (Supra) and thus, the proceedings must be labeled as nothing more than an abuse of the process of the court, particularly in view of the fact that, with respect to enact the same subject matter, various complaint cases had already been filed by respondent No.2 and his brother, which were all dismissed on merits, after the examination of witnesses. In such a fact-situation, Complaint Case No. 628 of 2011, filed on 31.5.2001 was not maintainable. Thus, the Magistrate concerned committed a grave error by entertaining the said case, and wrongly took cognizance and issued summons to the appellants.

34. In view of above, the appeals are allowed. The impugned judgment dated 13.3.2012 is set aside and the proceedings in Complaint Case No. 628 of 2011 pending before the Additional C.J.M., Allahabad, are hereby quashed.

.....J. (Dr. B.S. CHAUHAN) .....J. (JAGDISH SINGH KHEHAR) New Delhi, January 9, 2013