

Usha Chakraborty vs State Of West Bengal on 30 January, 2023

Author: C.T. Ravikumar

Bench: M.R. Shah, C.T. Ravikumar

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. _____ of 2022
Arising out of SLP (Crl.) 5866 of 2022

Usha Chakraborty & Anr.

...Appellants

Versus

State of West Bengal & Anr.

...Respondents

JUDGMENT

C.T. RAVIKUMAR, J.

Leave granted.

1. We have heard the learned counsel on both sides. This appeal by special leave is directed against the final judgment and order dated 17.05.2022 in C.R.R. No. 2615/2017 passed by the Calcutta High Court at Calcutta. The appellants herein approached the High Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking quashment of F.I.R. No. 189/2017 dated 11.04.2017, registered against them and two others, at Madhyamgram Police Station under Sections 323, 384, 406, 423, 467, 468, 420 and 120B of Indian Penal Code (I.P.C.) raising various grounds. The High Court declined to exercise the jurisdiction under Section 482 Cr.P.C. holding that perusal of the case diary as also the materials appearing therefrom prima facie made out a case for investigation. In that view of the matter, the interim order granting stay of all further proceedings pursuant to the registration of the stated F.I.R. was vacated and the stated petition was dismissed.

2. It is to be noted that the aforesaid crime was registered pursuant to the forwarding of an application filed by the respondent herein under Section 156(3) Cr.P.C. raising the allegation against the persons named therein including the appellants, by the learned Magistrate for investigation and thereupon, investigation was commenced. The appellants herein assailed the very order for forwarding of the application for investigation under Section 156(3) Cr.P.C., the consequential registration of the said F.I.R. and also the ongoing investigation pursuant thereto, raising various contentions that the application moved by the respondent herein before the learned Magistrate did not disclose commission of any cognizable offence, that the allegations in the complaint are actuated by mala fides, that the allegations would reveal that they pertain to pure civil dispute between the

parties and in fact the respondent did resort to civil remedies, that he failed in obtaining favourable order in interlocutory applications moved in a duly instituted suit and upon its frustration and as a tool for oppression and harassment he moved the application which culminated in the registration of the F.I.R. without disclosing the crucial aspects that in respect to the subject matter the suit instituted by him viz., Title Suit No. 363/2015 carrying the prayers for a declaration that he is the secretary of the schedule school and also for a permanent injunction restraining defendant Nos. 1 and 2 therein viz., the appellants herein, and their men, agents and associates from procuring and/or creating any document illegally and/or from obstructing him in representing as the Secretary of the Managing Committee, is pending before the First Court Civil Judge (Junior Division) at Barasat. It is also contended therein that the respondent herein had suppressed certain further aspects viz., that much before the filing of the application based on which the F.I.R. was registered he was removed from the post of Secretary and in fact, from the membership of the very Board of Trustees. Initially, he moved the office of Labour Commissioner raising grievances against such removal from the office of the secretary before instituting the stated suit. The impugned order would reveal that upon forming the opinion on perusal that they would prima facie make out a case for investigation, the High Court declined to exercise the jurisdiction under Section 482 Cr.P.C. It would also reveal that the crucial and relevant contentions raised by the appellants were not at all considered by the High Court. Hence, necessarily, the question to be decided is whether the High Court was justified in declining to invoke the power under Section 482 Cr.P.C. to quash the order dated 05.04.2017 for forwarding the application filed by the respondent herein carrying allegations qua the appellant for investigation under Section 156(3), Cr.P.C., the consequential registration of the F.I.R. and the investigation pursuant thereto qua the appellant, in the facts and circumstances of the case and in view of the settled position in the matter of exercise of inherent powers under Section 482, Cr.P.C.

3. There can be no doubt with respect to the position that jurisdiction under Section 482 Cr.P.C. is to be exercised with care and caution and sparingly. To wit, exercise of the said power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of process of law. Before referring to the relevant authorities on the scope of exercise of power under Section 482, it is only apposite to refer to application filed by the respondent herein before the Learned Additional Chief Judicial Magistrate at Barasat, which was numbered as C. Case No. 538/2017, against Shri Shankar Biswas, Shri Debashis Roy and the appellants herein seeking for a direction to conduct investigation under Section 156(3), Cr.P.C. The appellants herein were arrayed as accused Nos. 3 and 4 therein. In view of the nature of the contentions and recriminations raised by the appellants and the respondents in this appeal, it is only appropriate to extract the translated copy of the said application filed by the respondent herein as under :-

“Translated Copy C/2687/17 Sd/- Jayanta Banerjee Filed by:

Sd/- Illegible District – North 24 – Parganas In the Court of Ld. Additional Chief Judicial Magistrate at Barasat.

Shri Jayanta Banerjee son of Shri Nripendra Kumar Banerjee, resident Of No. 93, Basunagar, P.O. and P.S. Madhyamgram, Dist. North 24-Parganas, Kolkata – 700129

...Complainant / Applicant

- Versus -

- 1) Shri Shankar Biswas Son of Late Birendra Nathy Biswas,
- 2) Shri Debashish Roy son of Late Kshiti Ranjan Roy,
- 3) Shrimati Usha Chakraborty, wife of Late Makhanlal Chakraborty
- 4) Shrimati Ashoka Chakraborty daughter Of Late Makhanlal Chakraborty All residents of P3 62, Basunagar, P.O. and P.S. Madhyamgram, District North 24 – Parganas, Kolkata 700 129 ...Accused persons.

Received on 11.04.17 at 16:35 hrs. And started M/Gram. P.S. case No. 189/17 dated 11.4.17 U/s 323/384/406/423/467/468/420/120B I.P.C. Sd/- Illegible 11.4.17 Sd/- Jayanta Banerjee And Reference – Madhyamgram P.S. G.D.E. No., 1459/17 dated 22.3.2017 and application Submitted on 27.3.2017 to Superintendent of Police North 24 – parganas Application under the aforesaid Section And Sections 323/384/406/423/467/468/420/120B IPC And Section 156(3) of Cr.P.C.

The applicant submitted that –

- 1) The Applicant is a highly educated Indian Citizen and live in the aforesaid address permanently.
- 2) The Applicant is one of the Trustee of Basunagar of Bagla Sundari Memorial Trust at Basunagar Madhyamgram address of which is as 271, Basunagar, Madhyamgram Kolkata 700

129. Under the said Trust there is a High School under the name of Road Bank Educare. The applicant is the Secretary of the said school and is connected with the Managing Committee for along time and has been doing various type of social service activity.

Sd/- Jayanta Banerjee

2) The Accused persons are in different post of the Managing Committee of the said School. Accused No. 3 is the Chair Person of the said Trust and Accused No. 4 is the Head Mistress of the said School. However, unfortunately the Accused persons are extremely ferocious and cunning type of person. The Accused persons keeping complainant in the dark and without giving any information by strengthening the said Trust Deed illegally got the same registered on 12.07.2016 and removed the complainant illegally from this post from the said Trust. (The Xerox of two copies of the said Trust Deed are enclosed herewith). The complainant having made process of the said incident, the said person abused the complainant and assaulted him and Accused No. 1 and 2 said that if the complainant went to take previous steps then he would be kill.

3) The accused persons joke the complainant out of the said School by force illegally and withheld all necessary papers and documents of the complainant. The said accused persons have kept the L.I.C. Policy of the complainant (hearing No. 425670161) Bank Pass Book namely (Axis Bank Madhyamgram Branch A/C No. 547010100053181, Oriental Bank of Commerce, Madhyamgram Branch A/c. No. 07512010017260, Union Bank Madhyam Gram Branch A/C/ No. 5470002010009486 and A/C No. 570002010001131, put them under their custody.

Sd/- Jayanta Banerjee Although the applicant made repeated request for returning the said document, they did not pay any heed to the same. The Accused persons have withheld the personal Tata Sumo Car of the complainant bearing No. WB 26-C1- 666 forcibly.

4) The said accused person has usurped misappropriated the amount of Provident Fund payable to the complainant and the document relating to the same when the complainant make enquiry from EPS Office Titagarh with the Provident Fund A/C. No. 100697965118 the office authority inform that there is discrepancy in the amount deposited by the complainant. The accused person have forged all the document relating to ESI of the complaint namely E.A.I.C. (code No. 40000384070001303) and usurp the money. Now the complainant has come to know that the accused persons have duplicated the document relating to School and Trust for using the same forever intentionally and have practice forgery. The applicant think that the accused persons has dis-conspiracy in the same.

4) The accused No. 1 is a extremely ferocious person and is under the protection of particular Political party and is an anti-social alimments. He wants to harass heckle the complainant at any cause. Although the complainant has informed everything again and again to Madhyamgram Police Station. The Police Station authority has not taken any strep till date.

6) The applicant prayed to your Honour's Court by conducting investigation of the said incident they be properly punished.

Hence, the Applicant prays to this Court that – by awarding punishment to the accused U/S. 323/384/406/423/467/468/420/120B I.P.C. against the accused persons and by sending this application to C.I.D. North 24-Parganas (Barasat K.B. Basu Road, Kolkata 700 124) U/S. 156(3) of Cr.P.C. and the said by fitting as an F.I.R. Investigation of the said incident be done and the accused persons are properly punished. End – Dated 5.4.2017 Sd/- Jayanta Banerjee Affidavit I Shri Jayanta Banerjee, aged 48 years son of Shri Nreipendra Kumar Banerjee, resident of No. 90 Basunagar, P.O. and P.S. Madhaymgram, District North 24-Parganas, Kolkata – 700 129, Nationality India, faith Hindu, declare to the effect that:

1) I am the applicant in this Application.

2) I have not placed this incident before any Court heretofore.

3) When I inform about the said incident to Madhyamgram Police Station they advised me to take resort to Court.

The aforesaid facts are true to my knowledge. I sign this Application after getting it written and read over and writing and going through the same finding it to be written as per my instruction.

Sd/- Jayanta Banerjee Signature of the Applicant.

Signature of the Identifier Sd/- Illegible Advocate.

(Endorsement) Sd/- Illegible Certified to be the English translation of an Application with Affidavit in Bengali.

Sd/-

19/05/22 R. Islam Rtd. Senior Interpreting Officer O.S. High Court, Calcutta.

TRUE COPY” (Emphasis added)

4. Before advertng to the rival contentions with reference to application under Section 156(3), Cr.P.C. within the parameters, we think it only appropriate to refer to the following decisions of this Court in respect to the scope of exercise of power under Section 482, Cr.P.C .

5.1 In *Paramjeet Batra v. State of Uttarakhand & Ors.*¹, this Court held:-

“12. While exercising its jurisdiction under Section 482 of the Code of 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 1 (2013) 11 SCC 673 otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the 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 the criminal proceedings to prevent abuse of process of the court.” 5.2 In *Vesa Holdings Private Limited and Anr. v.*

*State of Kerala and Ors.*², it was held that: -

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the 2 (2015) 8 SCC 293 present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not

disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.” 5.3 In *Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors.*³, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

3 (2021) 5 SCC 524 5.4 In the decision in *State of Haryana v. Bhajan Lal*⁴, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: -

(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 4 AIR 1992 SC 604 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.

5.5 In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*⁵, a three Judge Bench of this Court laid down the following principles of law:-

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad (supra)*, the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

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ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

6. We will now, carefully scan the application filed by the respondent herein which was forwarded for investigation under Section 156 (3), Cr.P.C to consider whether the appellant is justified in taking up the contention that the allegations raised thereunder did not contain the ingredients to constitute the alleged offences or whether the respondent had made out a prima facie case for investigation. In that regard it is worthwhile to take note of the fact that the respondent herein has alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. We will refer to the ingredient to constitute such offences to consider the said question. 6.1 The basic requirements/ingredients to bring home the accusations under the alleged offences are hereunder:-

Offence punishable under Section 323, IPC.

(i) causation of hurt by another person; (ii) that he caused such hurt voluntarily; (iii) that such a case is not covered under Section 334, IPC.

Offence of extortion punishable under Section 384, IPC.

(i) intentionally putting a person in fear of injury to himself or another; (ii) dishonestly inducing a person so put in fear to deliver to any person any property, or valuable security.

Offence of criminal breach of trust punishable under Section 406, IPC.

(i) Entrustment of the property or any dominion over property with accusation; (ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust or willfully causing sufferance to any other person so to do. Offence punishable under Section 423, IPC.

The essential ingredients to constitute an offence under Section 423, IPC is that the sale deed or deed subjecting an immovable property to a charge was contained a false statement relating to the consideration or relating to the persons or whose use or benefit, it was intended to operate. Thus, it is evident that Section 423, IPC deals with twin specific frauds in the matter of execution of deeds or instruments of transfer or charge, idest, (i) false recital as to consideration or false recital as to the name of beneficiary.

Offence punishable under Section 467, IPC. Virtually, the offence under Section 467 is an aggravated form of the offence under Section 466, IPC. The essential ingredients to constitute the offence punishable under this Section are (i) commission of forgery; (ii) that such commission of forgery must be in relation to a document purporting to be (a) a valuable property; or (b) a will; or (c) an authority to adopt a son; or (d) which purports to give authority to any person to make or transfer any valuable security; or (e) the receive the principle, interest or dividends thereon; or (f) to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or (g) an acquittance or receipt for the delivery of any movable property or valuable security. Offence punishable under Section 468, IPC.

(i) Commission of forgery, (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating. Offence punishable under Section 420, IPC. To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person

(i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120B, IPC, to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.

7. Now, the question is whether the allegations in the aforesaid application are sufficient to constitute the alleged offences.

8. We have already extracted the said application filed by the respondent against the appellants in its entirety. At the outset, it is to be noted that in the affidavit accompanying the application, the

respondent has stated thus:- “I have not placed this incident before any Court heretofore”. In the application, obviously, it is stated that he is one of the trustees of Bagla Sundari Memorial Trust at Basunagar Madhyagram and under the said trust there is a high school by name of Rose Bank Educare and he is the Secretary of the said school. The recital in paragraph 2 of the application filed by the respondent would reveal his case that the accused persons kept him in dark and without giving any information by strengthening the said trust deed illegally got the same registered on 12.07.2016 and removed him from the said post. It is in this context that the aforesaid statement in the aforesaid affidavit assumes relevance. It is the case of the appellants that in regard to his removal from the post of Secretary of the school, the respondent had instituted title suit No.363 of 2015, praying therein for a declaration that he is the Secretary of the school and the said suit is still pending. Despite the institution of the said suit and its pendency before the First Court of Civil Judge, Junior Division, Barasat the respondent made such a statement in the affidavit. That apart, what is stated in the application is that he is the Secretary of the school, run by the trust.

9. The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter-affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship. Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the civil suit to cover up the civil nature of the dispute.

10. By non-disclosure the respondent has, in troth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent’s allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury,

dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B, IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjit Batra (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

11. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.

12. In the result, the registration of FIR No.189 of 2017 dated 11.04.2017 at Madhyagram Police Station against the appellants herein and all further proceeding based on the same qua the appellants are quashed and set aside.

13. The appeal is allowed as above.

....., J.

(Ajay Rastogi), J.

(C.T. Ravikumar) New Delhi;

January 30, 2023.