

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1284 OF 2009
(Arising out of SLP (Crl) No.6598 of 2008)

Ramesh Dutt & Ors.

... Appellants

Versus

State of Punjab & Ors.

... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.
2. The appellant herein is aggrieved by and dissatisfied with a judgment and order dated 27.05.2008 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in Criminal Miscellaneous No.12308 of 2001 whereby and whereunder an application filed by them purported to be under Section 482 of the Code of Criminal Procedure for quashing a First Information Report lodged at the direction of Respondent

No.4 by the respondent No.2 on 23.3.2001 for the alleged commission of offences punishable under Sections 420/465/467/468/471 and 120B of the Indian Penal Code has been dismissed.

3. The basic fact of the matter is not in dispute. The appellants are members of the Managing Committee of Shastri Memorial School, Shivaji Nagar, Ludhiana. The said society is registered under the Societies Registration Act in the year 1982.

4. Allegedly, the land in question was said to have been transferred to one Kahla Singh by the Tehsildar in the year 1977-78. He filed a suit being Civil suit No.309 against his daughter-in-law wherein a decree acknowledging a transfer in favour of the latter was passed. The appellants are said to have made a representation before the concerned authority in relation to the functioning of the school after passing of the aforementioned decree came to their knowledge. It is stated that a report dated 14.1.1983 was submitted by the then Tehsildar (Sales), Ludhiana showing the school to be an existing one whereafter the name of the appellants had been recorded in the record of rights.

They filed a suit in the year 1990 praying for a decree for possession. By reason of a judgment dated 15.3.1990, the said suit was decreed. In the

said suit, State of Punjab, Collector Ludhiana as well as the said Kahla Singh were arrayed as defendants.

5. An order of mutation was thereafter passed in their favour which, however, is said to have been cancelled. Indisputably, a proposal was moved for lodging of a First Information Report.

6. Appellants sold a part of the land to M/s Everest Girls School. Allegedly sale proceeds therefrom had been spent on construction of sixteen rooms in the existing school. The vendees of the said premises, i.e., the M/s. Everest School were threatened with dispossession by the supporters of respondent Nos.3 and 5. A newspaper report to that effect also appeared in 'Punjab Kesri'. They filed a civil suit in the court of Civil Judge, Ludhiana wherein an order of status-quo was passed in the following terms :

“In the meantime defendants are restrained from interfering in possession of the plaintiffs in property comprised in Khasra No.12/9 khata No.23/1571 as per Jamabandi for the years 1992-93, situated at Village Saidan, Shivaji Nagar, Ludhiana and further restraining the defendants from interfering in the construction being raised by the plaintiffs except in due course of Law till 21.12.1999.”

7. It appears that in a meeting held on 24.6.1999, the third respondent raised a question with regard to the purported illegal transfer by the

appellants before the District Grievance Committee. However, it was stated that he had obtained the legal opinion that no offence is made out. The resolution adopted in the said meeting dated 24.6.1999 reads as under:

“Item No.15 Sh. Sat Pal Gausain, M.L.A. submitted an application from the residents of Shivaji Nagar, Ludhiana regarding property No.918/4 which is alleged to be under unauthorized possession of some persons. S.S.P. informed that about a year prior to it Managing Committee of Shastri Memorial Model School sold the land for a sum of Rs.9.85 lacs to Everest School. The allegation in the application is that a property has two different members. As per the record, land purchased by the Managing Committee Shastri Memorial Model School, bears No.3849. After the investigation legal opinion has opined that no offence is made out. This matter is between the members of the Managing Committee of the school and there is no action required on the part of the police.

The matter may be re-investigated after summoning both the parties and complete report be submitted in the case made.”

8. The appellants also filed an application before the respondent No.4 on 18.9.2000 stating their bona fide in the matter besides pointing out the interest of the students of the school. The Municipal Corporation, Ludhiana issued notice to the school assessing the house tax. House Tax is being paid by the appellants.

9. In the suit filed by the Everest School, applications were filed by the supporters of respondent Nos.3 and 5 for their impleadment which were dismissed.

However, in a meeting dated 11.9.2000, again a resolution was moved wherein a decision was taken to lodge a First Information Report against the appellants in the following terms :

“The Commissioner Municipal Corporation, Ludhiana informed on the application submitted by Sat Pal Gausain MLA on behalf of certain residents of Shastri Nagar, Ludhiana regarding illegal possession of some persons on property No.918/4 that the land being ownership of Rehabilitation Department no amount on the construction can be spent.

The President ordered that accused who exchanged the area, an FIR be registered against them and necessary correspondence be made between Commissioner, Municipal Corporation Ludhiana and the item was deleted from the agenda.”

10. Pursuant to the said resolution, a First Information Report was lodged, relevant portions whereof reads as under :

“From the above, it is clear that the civil court has ordered for the possession by holding that applicant committee is registered which is running School; their possession will not be taken. Meaning thereby that order of the Court was regarding possession. Whereas the revenue officials vide mutation No.38144 has changed the

ownership of the above property in favour of Shastri Memorial Middle School Committee registered which has been ordered as disputed by the District Collector, Ludhiana vide his order dated 15.9.1999 and in compliance with that order, the revenue officer has cancelled the mutation. It is worth mentioning here that Managing Committee of the above school by selling the property got the mutation changed and same has been cancelled after the sanction of the mutation No.38144. This land was sold to Pankaj Sharma S/o Rajinder Kumar of Everest Educational Society and its President was Rajinder Kumar Sharma and the land after sale was mutated vide mutation No.40762 (0-2-00-300 Sq. Yds), 40763 (0-1-17-275 Sq.yds) 40064 (0-2-13 400 Sq.yds) because of cancellation of mutation No.38144 their sanity has also come in. Now, ownership of this land vests in the Central Govt. Your attention is invited to letter No.906/IPC dated 11.5.2000 and the report that now the Central Govt. has been shown as owner of this land. Sh. Jaspal Singh, the then Halqa Patwari and Circle revenue officer Jagdeep Singh are guilty as in order to usurp the Govt. land, with dishonest intention in order to give undue benefit to the members of the Managing Committee of the School, have sanctioned mutation against orders of the Court. Similarly, these members of the Managing Committee of the School who in connivance with the revenue officers, have got the land transferred in favour of the School and have further sold it to Sh. Pankaj Sharma of Everest Educational Society have cheated the Govt. when they were not lawful owners of the land. In view of decision of the Grievance Committee in its meeting dated 11.9.2000 all the above said accused are liable for cheating including the members of the above Society and along with predecessor. A case under above said sections be registered and legal action be taken. In this connection opinion of the District

Attorney, Ludhiana has been obtained and he has opined that case under Sections 420/465/467/468/471 read with Section 120-B IPC can be registered. You are hereby informed that keeping in view order of District Grievance Committee meeting held on 11.9.2000, necessary case be registered against above said accused persons and this office may be informed about the action taken therein.”

11. The appellants filed an application under Section 482 of the Code of Criminal Procedure praying for quashing of the said First Information Report which by reason of the impugned order has been dismissed.

12. Mr. D.K. Bhatti, learned counsel appearing on behalf of the appellant, would contend:

- (i) The High Court committed a serious error in so far as it failed to take into consideration that the admitted events would clearly and unequivocally show that the First Information Report lodged by the respondents was an act of mala fide on their part and based on political consideration.
- (ii) Appellants having obtained a decree in their favour, a criminal proceeding would not be maintainable.
- (iii) The contents of the first information report, even if given face value and taken to be correct in their entirety, do not disclose an offence

cognizable far less under Sections 420/465/467/468/471 read with Section 120B of the Indian Penal Code..

13. Mr. Anil Grover, learned counsel appearing on behalf of the respondent, on the other hand, urged:

- (i) The appellants having obtained a decree for permanent injunction although they have no title in or over the property in question, could not have transferred a portion thereof to M/s. Everest School.
- (ii) In view of an attempt on the part of the appellants to get their names mutated in the Revenue Records with the connivance of the Revenue Authorities, the High Court must be held to be correct in declining to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure.
- (iii) In view of the decisions of this Court laying down the law that the first information report can be quashed only on limited grounds as for example in State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp. 1 SCC 335], it is not a fit case where this Court should exercise its jurisdiction under Article 136 of the Constitution of India.

14. Indisputably, the appellants, as members of the society, have been running a school on the plot in question. They have obtained a decree in

their favour. The decree had not only been passed against the State but also against the Collector and Shri Kahla Singh who had claimed his right, title and interest in or over the said property.

Before us, the respondents have filed a counter affidavit wherein it has, inter alia, been stated that the title in respect of the lands in question are with the Central Government.

The fact that respondents herein, acting in their official capacity, are bound by the said decree is not in dispute.

15. Title in or over an immoveable property has many facets. Possession is one of them. Unless there exists a statutory interdict, a person in possession may transfer his right, title and interest in favour of a third party. [See Vinash Kumar Chauhan v. Vijay Krishna Mishra [(2009) 2 SCC 532]

16. Mr. Grover, learned counsel appearing on behalf of the respondent, may not be correct in contending that only because the order of mutation made in favour of the appellants had been cancelled, the same ipso facto would lead to the conclusion that they have no title over the property. It is now a well settled principle of law that entry in a Revenue Record of rights merely is an evidence of possession. [See Faqrudin (Dead) through LRs. v. Tajuddin (Dead) through LRs. [(2008) 8 SCC 12].

17. Such an entry does not create title; absence thereof does not extinguish the same. Furthermore, it is one thing to say that the appellants had committed acts of criminal misconduct while trying to obtain orders of mutation but it is another thing to say that only because they filed such an application, the same by itself would tantamount to commission of a criminal offence. In the facts and circumstances of this case, in our opinion, only because appellants are said to have transferred a portion of the property without having complete ownership over them by itself do not satisfy the ingredients of Sections 467, 468 and 469. This aspect of the matter is covered by a recent decision of this Court in Devendra & Ors. v. State of U.P. & Anr. [2007 (9) SCC 613].

18. We, however, make it clear that we do not intend to lay down a law that the judgment of the Civil Court would be binding on a criminal court in view of several decisions of this Court.

In Seth Ramdayal Jat v. Laxmi Prasad [2009 (5) SCALE 527], this Court, while referring to a large number of decisions, held as under:

“18. It is now almost well-settled that, save and except for Section 43 of the Indian Evidence Act which refers to Sections 40, 41, and 42 thereof, a judgment of a criminal court shall not be admissible in a civil court.”

The provisions of Section 41 to 44 of the Indian Evidence Act do not suggest that the decision of the Civil Court would be binding on the Criminal Courts. Section 44 of the Indian Evidence Act, reads as under :

“44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.—

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.”

The institution of a criminal case must be held to be an act of mala fide on the part of the respondents in the aforementioned backdrop of events which stand admitted. This case, therefore, satisfies some of the parameters laid down in several sub-paras of paragraph 105 of Bhajan Lal (supra) which read as under:

“105. 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 extra-ordinary 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.

xxx xxx xxx

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.

xxx xxx xxx

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.

xxx xxx xxx

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.”

19. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed. This Order,

however, may not be construed to be a judgment in respect of the right, title and interest over the property in question.

.....J.
[S.B. Sinha]

.....J.
[Deepak Verma]

New Delhi;
July 21, 2009