

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 5948 of 2024

Petitioner :- Sone Lal And 5 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Bhawesh Pratap Singh

Counsel for Respondent :- G.A.

Hon'ble Arvind Singh Sangwan,J.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard learned counsel for the petitioners, learned counsel for respondent no. 4 and learned A.G.A. for the State.

2. Learned counsel for the petitioners submits that the revenue authorities has entered mutation in the name of petitioner No. 1- Sone Lal and his brother late Khageshwar as one of the successor being adopted sons of deceased Gokul. He further submits that this order was passed on 25.08.1991.

3. Learned counsel for the petitioners submits that the petitioner no. 1 is in possession of the respective share. It is stated that now in the year 2023, the informant Devi Gulam son of Gokul has filed an application before the Tehsildar Kanpur, Janpad- Kanpur, challenging the aforesaid order dated 25.08.1991 on the ground that Sone Lal is not son of Gokul and therefore, his name has been wrongly mutated. Counsel for the petitioner submits that the application was dismissed by the concerned Tehsildar on 14.07.2023 by passing a detailed order that the mutation was sanctioned in accordance with law. He further submits that Sone Lal was in fact, adopted by Gokul and after his death the informant has become dishonest and has initiated the litigation. It is submitted that against this order of the Tehsildar, an appeal is filed by the informant before the S.D.M., which is pending. He also submits that an F.I.R. has been registered on 20.3.2024 being F.I.R. No. 0097 under Sections 420, 467, 468 and 471 I.P.C. on the direction issued by the competent court, in exercise of power under Section 156(3) Cr.P.C. Learned counsel submits that in para 4 of the F.I.R., it is specifically stated that the informant is fighting for his right in accordance with law and therefore, it is admitted that he is contesting his case before the revenue courts and without appreciating this aspect, the Magistrate has issued direction to register the F.I.R. though on the face of it no offence is made out. It is also submitted that apart from petitioner no. 1- Sone Lal, who is the only beneficiary, petitioner nos. 3 to 6, who are sons of petitioners are neither beneficiary nor they are party to the civil dispute and similar is petitioner no. 2. It is submitted that F.I.R. is registered after a delay of 22 years without any explanation.

4. The counsel for the informant has however, submitted that the informant is contesting the adoption of petitioner no. 1 made by his father Gokul and therefore, he has filed the petition before the revenue court for setting aside the aforesaid transfer as well as the F.I.R. has been registered under Section 156 (3) Cr.P.C. as per the direction of the Ilaka Magistrate.

5. After hearing the counsel for the parties and going through the record, we find that on the face of it, even the contents of the application given to the Magistrate, were not looked into by the concerned Magistrate to form an opinion whether any cognizable offence is made out or not. In the F.I.R., it is stated that the accused persons are trying to take forcible possession but informant with the help of the police is not allowing them to succeed.

6. Be whatsoever, the remedy for the informant is to file a suit for permanent injunction, if there is any threat to his possession and not to register the F.I.R. as the ingredients of Sections 420, 467, 468 and 471 on the face of it are not made out till a finding is recorded by the competent court of law adverse to the interest of petitioners.

7. This Court is flooded with number of such petitions challenging first information reports where primarily there is a civil dispute and first information reports are registered either under Sections 406, 420 I.P.C. or 467, 471 I.P.C.

8. Reliance is placed upon the judgment of Supreme Court in in Criminal Appeal No. 1224 of 2022 (Special Leave Petition (Crl.) No. 10730 of 2018) **Wyeth Limited & Others Vs. State of Bihar & Another**. Similar view taken by the Supreme Court in Criminal Appeal No. of 2022 (Arising out of SLP (Crl.) No. 5866 of 2022), **Usha Chakraborty & Anr. Vs. State of West Bengal & Anr.**, wherein it has been observed that criminal proceedings are liable to be quashed, if there is an attempt to give a colour of criminal offence to a civil dispute.

9. In **Lalita Kumari Vs. State of U.P., 2014 (1) SCC (Crl) 524**, Supreme Court has issued guidelines regarding registration of F.I.R. in cognizable offences. The concluding part reads as under:-

"Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry".

10. It has been held by the Supreme Court in number of cases that where the first information report discloses that it is nothing but more than a commercial relationship, no offence is made out.

11. In paragraph 44 the Hon'ble Supreme Court in **Mitesh Kumar Vs. State of Karnataka and Others (2022) 14 SCC 572** has held as under:

"44. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety".

12. In paragraph 36 the Hon'ble Supreme Court in **Gulam Mustafa Vs. State of Karnataka and Another (2023) SCC Online SC 603** has held as under:

"36. What is evincible from the extant case-law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and / or money are given the colour of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the Court. In the present case, there is a huge, and quite frankly, unexplained delay of over 60 years in initiating dispute with regard to the ownership of the land in question, and the criminal case

has been lodged only after failure to obtain relief in the civil suites, coupled with denial of relief in the interim therein to the respondent no. 2/ her family members. It is evident that resort was now being had to criminal proceedings which, in the considered opinion of this Court, is with ulterior motives, for oblique reasons and is a clear case of vengeance".

13. In paragraph 20 the Hon'ble Supreme Court in **Sachin Garg Vs. State of U.P. and Another** (2024) SCC Online SC 82 has held as under:

"20. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court".

14. In **Ramdev Food Products Private Limited v. State of Gujarat 2015 Cri. L.R. (SC) 425** in which while relying upon the earlier judgment of the Court, it is observed as under:

"It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning Section 156 and ending with report or chargesheet under Section 173. On the other hand, Section 202 applies at post cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed."

15. ***In the light of aforesaid recent judgments of Supreme Court, this Court deem it appropriate to issue direction to the Director General of Police, U.P. to the following effect:-***

(i) Where an F.I.R. is sought to be registered under Sections 406, 408, 420 / 467, 471 I.P.C. etc., wherein, on the face of it, it appears that there is a commercial dispute or a civil dispute or a dispute arising out of different types of agreements or partnership deeds, etc. before registration of the F.I.R., an opinion will be taken in all such cases from the concerned District Government Counsel / Deputy District Government Counsel in their respective Districts and only after obtaining a report, the F.I.R. will be registered. Such opinion will be reproduced in concluding part of F.I.R.

(ii) The D.G.P., U.P. will issue necessary instructions to all the S.S.P. in the State of Uttar Pradesh who will further instruct all Station House Officers of their respective police stations to ensure that prior to registration of the F.I.R. where a civil / commercial dispute is apparent, the opinion of the District / Deputy Government Counsel should be taken at the pre-cognizance stage.

(iii) Director Prosecution U.P. will also insure necessary directions to all Government counsels concerned.

(iv) It is made clear that in all cases where first information reports, which are to be registered after 01.05.2024, if no such legal opinion is taken by the concerned police official before registration of the F.I.R., as per (i) and (ii) above they may be liable to contempt proceedings.

(v) This direction will not apply where F.I.R's. are registered on direction of competent Court under Section 156(3) Cr.P.C. as these directions relates to pre-cognizance stage.

16. This court is also experiencing that the trial courts while exercising power under Section 156 (3) Cr.P.C. are virtually acting as post office by just forwarding the complaint to concerned police officer with direction to register the F.I.R.s. This is not the mandate of Lalita Kumari's case as per paragraph 120.1.

17. Therefore, directions are also issued to all the magistrates in State of U.P. who are exercising power under Section 156 (3) Cr.P.C. to pass an order directing registration of F.I.R./s only after a satisfactory note "**after careful perusal of contents of entire complaint and as per affidavit of informant/ complainant no prior civil dispute is pending inter se parties before any court of law, therefore, the Court is convinced that commission of cognizable offence is made out.**"

17a. If the affidavit is silent, the court must insist on complainant to fill specific affidavit whether any civil litigation is pending or not and if pending, the stage of case and if any interim stay order is passed or not. The affidavit will also give explanation of inordinate delay, if any.

18. Issue notice to respondent no. 4, returnable at an early date.

19. List again on 09.05.2024 as fresh part heard case.

20. In the meantime, no coercive action shall be taken against the petitioner.

21. Counter affidavit, if any, be filed by the next date of listing.

22. Meanwhile, the Director Judicial Training and Research Institute, Lucknow is directed to sensitise all the Magistrates in State of U.P. about the correct procedure to be followed, to avoid unnecessary registration of F.I.R.s by not forwarding the complaints in routine to concerned police station. The Director Judicial Training and Research Institute, Lucknow will take services of two resource persons (Retired Judges of this Court) for this purpose and will hold online/ offline seminars. A sum of Rs. 50,000/- each will be payable to the resource person by the High Court.

23. The Registrar General of this Court is also directed to ensure compliance of this order forthwith by all concerned.

24. The affidavit of Director General of Police, U.P. and Director Prosecution, Department of U.P. be filed mentioning the action taken in compliance of this order before the next date of hearing.

Order Date :- 18.4.2024

Nitika Sri.