

**The High Court Of Madhya Pradesh
Bench Gwalior**

SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava

MCRC 16443 of 2019

Mamta Gupta vs. State of MP & Anr.

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Shri Gaurav Mishra, counsel for the petitioner.
Shri KS Tomar, counsel for the respondent No.1/State.
Shri Praveen Newaskar, counsel for the respondent No.2.
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Reserved on 13/01/2022
Whether approved for reporting/.....
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O R D E R
(Passed 24/01/2022)

Per Rajeev Kumar Shrivastava, J

By invoking the inherent power of this Court, the instant petition has been preferred by petitioner- Mamta Gupta u/S. 482 CrPC seeking relief for quashment of FIR vide Crime No.779/2018 registered at Police Station Kotwali, District Vidisha for offence under Section 447 IPC as well as charge sheet & other subsequent criminal proceedings pending before the Court of CJM, Vidisha (MP) in ST No.143 of 2019 (2) Facts giving rise to present petition in short are that on 18/11/2018, respondent No.2 complainant Hari Babu Agrawal filed a written complaint before the Superintendent of Police, Vidisha stating therein that he is the owner of survey no.4/2, area 0.062 hectare

situated at Sheopur Mujapta which comes within the Municipal limits and petitioner has encroached upon the said land by erecting a boundary wall. On that complaint, a preliminary enquiry was conducted and a report was called for from Tahsildar as well as from Nagar Palika Vidisha. As per the report, it was found that petitioner could not produce any documents to prove her possession over disputed land. Thereafter, an FIR was lodged against her vide Crime No.779/2018 for offence under Section 447 of IPC. Statements of parties were recorded and spot map was prepared. After analyzing the documents produced by parties and after completion of investigation, charge sheet was filed before the Court of CJM. The Magistrate vide impugned order framed charges against petitioner under Section 447 IPC. Being aggrieved, the present petition has been filed.

(3) Challenging order of framing charges, it is submitted by learned Counsel for the petitioner that earlier, a lease of aforesaid land was granted by the Government in the year 1961 in favour of petitioner's father and the same was remained in existence till 1995. The matter relating to continuation of aforesaid lease is also pending before the revenue authorities. The boundary wall erected over the land by the petitioner was prepared prior to dispute in question. At the time of erecting the boundary wall, the lease was in existence, therefore, no case is made out under Section 447 of IPC against petitioner. The

learned Magistrate has committed a material illegality in framing the charge against the petitioner as complaint filed by respondent No.2 did not disclose any offence. It is submitted that the revenue authority i.e. Collector in its order has already observed that Khasra/Survey No.4, total area 2.081 is in possession of Ajiz Fatima Bee and there is no possibility to issue any proceedings by accepting the same land as Nazul land. It is submitted by Shri Mishra, that the dispute is of a civil nature and civil suit is pending between the parties, therefore, the veracity as well as genuineness of "Patta/lease" can be considered in the civil proceedings and since there is no encroachment by petitioner, therefore, no offence is made out under Section 447 of IPC. As such, the civil dispute is tried to be converted into criminal dispute which can be said to be nothing, but an abuse of process of law. The present petition is maintainable in the light of judgment passed by Hon'ble Apex Court in the case of **Satish Mehra Vs. NCT of Delhi and Another**, reported in **AIR 2013 SC 506** wherein, the Supreme Court in paragraph 15 of the said judgment has observed as under:-

"15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest

of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused. "

(4) On the other hand, learned counsel for the State as well as complainant opposed the petition and prayed for its dismissal. It is submitted that possession of the petitioner over the disputed land is unauthorized and illegal. The land in question is in possession of respondent No.2 Haribabu Agrawal, who had purchased the same by a registered sale deed and the grounds raised by petitioner in the petition are baseless as she has to prove genuineness and veracity of "Patta/lease" granted in her favour before Civil Court. It is also submitted that after receiving report from Tahsildar as well as from Nagal Palika Parishad and after collecting credible and material

evidence against petitioner, the police has submitted a charge-sheet and learned Magistrate after applying its mind judiciously has taken cognizance against petitioner. It is further submitted that the petitioner has committed a criminal trespass by entering into the possession of complainant, therefore, he is liable to be convicted under Section 447 of IPC. Therefore, learned Magistrate has applied its mind judiciously while framing the charge against petitioner. To buttress his contention, Shri Newaskar, relied upon the judgment of **Kaptan Singh vs. State of Uttar Pradesh & Others**, reported in **AIR 2021 SC 3931** in which the Hon'ble Apex Court has observed as under:-

"10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta –Accused No.2 and Munni Devi under which according to Accused no.2 - Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25

lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarized affidavit dated 27.10.2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarized affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs.25 lakhs as mentioned in the joint notarized affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs.2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

12. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the Investigating Officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

(5) Heard learned counsel for the parties and perused documents available on record.

(6) Before entering into the merits of case, this Court thinks it apposite to consider first scope of interference in exercise of power u/S. 482 of CrPC while quashing FIR/charge sheet/criminal proceedings.

(7) The Hon'ble Apex Court in the matter of **S.Khushboo vs.**

Kanniammal reported in (2010) 5 SCC 600 has observed as under:-

"18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in

the statutory provisions themselves. It was further observed that superior courts “*may examine the questions of fact*” when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In *Shakson Belthissor v. State of Kerala* this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

“25..... One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.”

(Emphasis supplied)

(8) The Hon'ble Apex Court in the case of **Amit Kapoor v. Ramesh**

Chander reported in (2012) 9 SCC 460 has observed as under:-

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or

not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist. [Ref. *State of W.B. v. Swapan Kumar Guha Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*; *Janata Dal v. H.S. Chowdhary*; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*; *G. Sagar Suri v. State of U.P.*; *Ajay Mitra v. State of M.P.*; *Pepsi Foods Ltd. v. Special Judicial Magistrate, State of U.P. v. O.P. Sharma*; *Ganesh Narayan Hegde v. S. Bangarappa*; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*; *Shakson Belthissor v. State of Kerala*; *V.V.S. Rama Sharma v. State of U.P.*; *Chundurur Siva Ram Krishna v. Peddi Ravindra Babu*; *Sheonandan Paswan v. State of Bihar*; *State of Bihar v. P.P. Sharma*; *Lalmuni Devi v. State of Bihar*; *M. Krishnan v. Vijay Singh*; *Savita v. State of Rajasthan* and *S.M. Datta v. State of Gujarat.*]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the

Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(9) So far as contention raised by the counsel for the petitioner that criminal proceedings are nothing but an attempt to convert the civil proceedings into criminal proceedings is concerned, it is well-established principle of law that a civil proceeding as also a criminal proceeding may go on simultaneously and no statute puts an embargo in relation thereto. A decision in a criminal case is not binding on the civil court. If primacy is given to a criminal proceeding, indisputably, civil suit must be determined on its own keeping in view the evidence which has been produced on record before it and not in terms of the evidence brought in the criminal proceeding. Pendency of civil suit has no relevancy in the criminal proceedings, therefore, both civil proceedings and criminal proceedings can proceed simultaneously. Criminal complaint cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If ingredients of offence alleged against the petitioner- accused *prima facie* make out in complaint/FIR, then the criminal proceeding shall not be interdicted. Allegation against petitioner is of encroachment upon the Government land, therefore, the alleged offence has been registered.

Accordingly, this Court is of the considered opinion that no case is made out warranting quashment of charges framed against petitioner.

Before parting with this order, this Court would like to mention that observation in this order has been made in the light of limited scope of interference at this stage. The Magistrate concerned is directed not to get prejudiced by any observations made by this Court and it is expected that the trial Court should decide the trial strictly in accordance with the evidence come on record as well as law.

Petition *sans* merit is **dismissed** accordingly.

(Rajeev Kumar Shrivastava)
Judge