

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2069 OF 2012
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 7720 OF 2011)

PARAMJEET BATRA

... APPELLANT

Versus

STATE OF UTTARAKHAND & ORS.

... RESPONDENTS

O R D E R

Leave granted.

2. The appellant, respondents 3, 4 and one Rajpal are the accused in Criminal Case No. 723 of 2005 (charge-sheet No. 32/2005) pending on the file of the Judicial Magistrate, Khatima, District Udham Singh Nagar. Respondent 2 is the complainant. The appellant and respondents 3 and 4 filed a petition under Section 482 of the Code of Criminal Procedure (for short "the Code") in the High Court of Uttarakhand at Nainital for quashing of the above mentioned proceedings and for quashing of the order of cognizance dated 22/3/2005 passed thereon by the Judicial Magistrate, Khatima against the appellant and the other accused for the offences punishable under Sections 406, 420, 467, 468, 471, 447, 448 read with Section 34 of the Indian Penal Code (for short "the IPC"). By order dated 29/09/2011 Uttarakhand High Court dismissed the said petition. The said order is impugned in this appeal.

3. Respondent 2 filed a complaint against the appellant, respondents 3, 4 and five others at Police Station Kotwali Khatima, District Udham Singh Nagar on 4/1/2005. Respondent 2 inter alia alleged in the complaint that he had let out two shops situate in Khatima market to Rajpal Singh on fixed written conditions. After Rajpal Singh vacated the shops he wanted to run chicken corner in the said shops. He appointed the appellant as Manager and invested Rs.10,000/- for purchasing raw materials. Written agreement was prepared containing fixed terms and conditions. The business picked up and started fetching profit of Rs.1,000/- to Rs.1,500/- per day. According to respondent 2, the appellant conspired with others to grab the shop. He filed a civil suit claiming tenancy. He did not give accounts of the profit. The appellant and other accused prepared false documents and filed them in the court. According to respondent 2, they threatened him that if he does not take monthly rent of Rs.750/- he would be killed. He has been told that if he gives Rs.3 lakhs then they would vacate the shop. Respondent 2's further case in the complaint is that the accused have grabbed two years' income and materials worth Rs.50,000/-. They have also misappropriated an amount of Rs.10,000/- which was given to them in cash by him. According to respondent 2, accused have forcibly taken possession of the shop. After conclusion of investigation, charge-sheet was forwarded to the Judicial Magistrate, Khatima, who took cognizance against the appellant, respondents 3 and 4 and one Rajpal.

4. Learned counsel for the appellant submitted that the complaint discloses civil dispute. A civil suit has been filed by the appellant making similar grievance. It is pending. Since the Civil Court is seized of the dispute, the High Court should have quashed the complaint.

5. It is necessary to note here that office report dated 22/8/2012 indicates that the contesting respondent i.e. respondent 2 was directed to be served through Resident Commissioner vide Registrar's order dated 5/12/2011. He has accordingly been served. He has, however, neither cared to appear in-person nor has he engaged any counsel. We, therefore, proceed to deal with the submissions of counsel for the appellant.

6. Though the complaint attributes forgery and fabrication of documents to the appellant and other accused and states that the appellant has grabbed the profit of the running business and threatened respondent 2, it appears to us to be essentially a civil dispute. Basic grievance of respondent 2 is that the appellant has not given him accounts of the business. Respondent 2 has made a reference to the written agreement under which the appellant was appointed as Manager to manage his business. The appellant has annexed a copy of the agreement dated 1/1/2002 to the appeal. The agreement discloses that the appellant was to receive 25% of the net profit as salary. The agreement also notes that the appellant received Rs.10,000/- in cash for the purchase of raw materials. Admittedly, the appellant has filed Civil Suit No. 23/2002 against respondent 2 in the court of Civil Judge, (Jr. Div.), Khatima for permanent injunction claiming that he is a tenant of the shop in question. In that suit, he filed an application for temporary injunction. Copy of order dated 22/12/2004 passed on that application ordering status quo is also annexed to the appeal. The order indicates that the appellant and respondent 2 have filed documents in the said suit. While granting status quo order, the trial court has observed that the said documents will have to be proved by the appellant and respondent 2 and, hence, it is necessary to maintain status quo during pendency of the suit. In the complaint, it is the case of respondent 2 that this suit has been filed on the basis of fabricated documents. It is categorically stated on affidavit by the appellant that the said suit is still pending. If the said suit is still pending, then the grievance made by respondent 2 that the documents on which reliance is placed by the appellant are not genuine and are forged and fabricated, will be considered by the Civil Court. It is also significant to note that prior to the filing of this complaint, respondent 2 tried to lodge an FIR against the appellant by moving an application under Section 156(3) of the Code. But the said application was dismissed on 6/5/2004. We notice from the impugned order that a separate case under Section 406 of the IPC was filed by respondent 2 against the appellant in which the appellant was acquitted on 9/2/2009. It is further significant to note that statement was made on behalf of the appellant before the High Court that the appellant has vacated the shop in question and handed over possession to respondent 2. In the peculiar facts of the case, therefore, we are of the opinion that in the interest of justice, the pending criminal proceedings need to be quashed. We have taken serious note of the fact that respondent 2 did not appear before the High Court to refute the case of the appellant. He has also not chosen to appear before us though served. Probably because the possession of the shop is handed over to him, he is not interested in prosecuting the appellant and others.

7. While exercising its jurisdiction under Section 482 of the Code 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 otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of 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 criminal proceedings to prevent abuse of process of court.

8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.

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|Court Master

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(signed non-reportable order is placed on the file)