SUPREME COURT OF INDIA

Ravinder Singh

Vs.

Sukhbir Singh

Crl.A.No.67 of 2013

(Dr.B.S.Chauhan and V.Gopala Gowda JJ.)

11.01.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 14.12.2011, passed by the High Court of Delhi in Crl.M.C. No. 1262 of 2011, by way of which the High Court has dismissed the said application preferred by the appellant for quashing the criminal proceedings launched by respondent no. 1 under Section 3(1)(viii) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act 1989').

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant claims to be the owner of agricultural land measuring 1 bigha and 4 biswas, situated in the revenue estate of village Nangli Poona, Delhi. Respondent no.1 allegedly made an attempt to take forcible possession of the said land, and also filed FIR No. 254 of 2005 on 6.4.2005 under Sections 427, 447 and 506, read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). Though the appellant was arrested in pursuance of the said FIR, however, subsequently he was enlarged on bail.

B. Aggrieved, the appellant filed a complaint against respondent no.1, as well as against the police officials involved and in view thereof, FIR No.569 of 2005 under Sections 447, 323, 429 and 34 IPC was registered. The appellant engaged one Pradeep Rana, Advocate, respondent no.2 and filed Writ Petition (Crl.) No. 1667 of 2005, inter- alia, seeking a direction for quashing of FIR No. 254 of 2005. The

said writ petition was dismissed in limine vide order dated 29.9.2005. In the meantime, in the criminal proceedings launched by the appellant, a charge sheet was filed against respondent no.1 in December, 2005.

C. After investigating the allegations made in FIR No. 254 of 2005 against the appellant, the police submitted a final report dated 20.2.2006, under Sections 173 and 169 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'), in the court of the Metropolitan Magistrate, Delhi. Respondent no.1 approached the revenue authorities i.e. Tahsildar, Narela, seeking the inclusion of his name in the revenue record as a person in possession/occupation of the said land. However, his claim was rejected by the Tahsildar vide order dated 22.6.2006.

D. It is at this time, Writ Petition (Crl.) No. 2657 of 2006 was filed in the name of the appellant by Pradeep Rana, respondent no.2 as counsel on 18.11.2006, on the basis of the averments made in the first writ petition i.e. Writ Petition (Crl.) No. 1667 of 2005, and seeking the same relief sought therein. The said writ petition was dismissed in default vide order dated 17.8.2007. Meanwhile, respondent no.1 tried to get his name recorded in the revenue record as being in cultivatory possession, but the same was rejected again by the Tahsildar, Narela, vide order dated 13.8.2007.

E. Respondent no.1 filed another complaint under Section 107/150 Cr.P.C. on 18.9.2007, and filed a fresh FIR No.16 of 2007 on 21.9.2007 under Sections 379, 427 and 34 IPC, and subsequently added the provisions of Section 3(1)(v) of the Act 1989. Respondent no.1 also filed an appeal against the order of the Tahsildar, rejecting his application made for the purpose of recording his name in the revenue records.

F. Respondent no.1 also filed Contempt Case (Crl.) No.10 of 2007 before the High Court of Delhi against the appellant for filing two criminal writ petitions seeking the same relief, and for not disclosing the fact that he had filed the first writ petition, while filing the second writ petition, owing to which, the said writ petition stood dismissed in default vide order dated 17.8.2007.

G. On receiving notice from the High Court, the appellant filed a reply expressing his ignorance regarding the filing of the second criminal writ petition, and further stated that he was an illiterate person, owing to which, he had given all requisite papers to Pradeep Rana, Advocate, respondent no. 2, and that respondent no.2 might have filed the said petition, in collusion with respondent no.1. Notice was then issued to Pradeep Rana, respondent no.2 by the High Court, who appeared

and tendered an apology for filing the second petition, without disclosing such facts pertaining to the filing and dismissal of the first petition.

H. The appellant filed a complaint before the Bar Council of Delhi against respondent no.2 for filing the second writ petition in collusion with respondent no.1 on 15.12.2008. The High Court accepted the version of events submitted by the appellant, and simultaneously, also the apology tendered by respondent no.2 and thereafter, it closed the said criminal proceedings at the instance of respondent no.1, vide order dated 16.2.2009.

I. After a period of six months thereof, respondent no.1 filed a criminal complaint under Section 3(1)(viii) of the Act 1989, for the filing of a false criminal writ petition by the appellant in the High Court of Delhi, and further and more particularly, the second writ petition, without disclosing the factum of filing and dismissal of the aforementioned first writ petition. The Metropolitan Magistrate rejected the said complaint vide order dated 13.8.2009 on the ground that the High Court had closed the contempt proceedings initiated against the appellant, as well as against respondent no.2, at the instance of respondent no.1.

J. Aggrieved, respondent no.1 filed Revision Petition No.23 of 2009 before the ASJ, Rohini Court, Delhi. As regards FIR No. 16 of 2007, the Special Judge (SC/ST) refused to proceed against the appellant and others, making serious comments regarding the conduct of respondent no.1, as well as that of the investigating officer. The revision petition filed by respondent no.1 against order dated 13.8.2009, was allowed by the revisional court vide order dated 25.10.2010, which was then challenged by the appellant, before the High Court by way of him filing a petition under Section 482 Cr.P.C. as Crl.M.C. No.1262 of 2011, which has been dismissed by impugned judgment and order dated 14.12.2011.

Hence, this appeal.

3. Shri Shekhar Naphade, learned senior counsel appearing on behalf of the appellant, has submitted that filing the instant complaint case amounts to abuse of process of the court. The criminal complaint is barred by the principle of issue estoppel, as the same issue has been fully adjudicated by the High Court in a criminal contempt case before it, and the High Court was fully satisfied that the fault lay in the actions of Pradeep Rana, respondent no.2, counsel for the appellant. The High Court even accepted the apology of the respondent no.2 thereafter, and closed the said criminal proceedings at the instance of respondent no.1. As the issue has already been adjudicated, and finally closed by the High Court, the

Magistrate court cannot sit in appeal against the said order passed by the High Court, closing the said case of criminal contempt, as the subject matter and allegations of the case before him, are verbatim and have already been adjudicated.

To invoke the provisions of the Act 1989, it is not enough that the complainant belongs to a Scheduled Caste or Scheduled Tribe, as it must further be established that the alleged offence was committed with the intention to cause harm to the person belonging to such category. Moreover, the term false, malicious and vexatious proceedings must be understood in a strictly legal sense and hence, intention (mens rea), to cause harm to a person belonging to such category must definitely be established. Where genuine civil matter is sub-judice, and parties are settling their disputes in revenue courts, such proceedings must not be entertained. The High Court therefore, committed an error in rejecting the application for quashing criminal proceedings.

4. Per contra, Shri Mukul Sharma, learned counsel appearing for respondent no.1, has defended the impugned judgment and order and submitted that the findings recorded in the case of criminal contempt cannot preclude respondent no.1 from initiating such criminal proceedings and that whether the same are false, malicious and vexatious, is yet to be established during trial. This is not the stage where any inference in this regard can be drawn. Furthermore, pendency of the issue regarding the ownership of the said land before the revenue court, is no bar so far as criminal proceedings are concerned. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions, and heard both, Shri Rakesh Khanna, learned ASG for the State of Delhi, and Shri Prasoon Kumar, Advocate, for respondent no.2, and have also perused the record.

6. So far as Contempt Case (Crl.) No.10 of 1007 is concerned, it is evident that the appellant, after becoming aware of the fact that a second writ petition was filed in his name, filed a complaint before the Bar Council of Delhi, through its Secretary against respondent no.2 on 29.12.2007 (Annx. P/11), wherein it was stated that the said second writ petition No. 1667 of 2005 was filed without his instructions, using papers signed by him in good faith, in the office of respondent no.2, at his instance. Upon considering the reply of the appellant, the High Court issued notice to Pradeep Rana, Advocate, respondent no.2 in Contempt Case (Crl.) No. 10 of 2007, and thereafter, respondent no.2 filed his reply, wherein he submitted that even though the second writ petition was filed on the instructions of the appellant, however, he inadvertently, failed to mention the fact that he had filed the earlier

writ petition and that the same had been dismissed, for which he tendered absolute and unconditional apology.

7. The High Court, vide judgment and order dated 16.2.2009 disposed of the said contempt proceedings. The order reads as under: "Learned counsel for Ravinder Singh admits that Crl. Writ Petition No. 1667/2005 and Crl. Writ Petition No.2657/2006 were filed under his signatures but states that he being not well-versed in English would sign the petition and supporting affidavits in Hindi and that he was being guided by his counsel with respect to the contents of the petition.

Mr. Pradeep Rana, learned counsel for Mr. Ravinder Singh express his regrets and tenders an unqualified apology for filing two identical petitions one after the other and not disclosing in the second petition that the first petition was filed and was dismissed.

Keeping in view the young age of Mr. Pradeep Rana, learned counsel for the petitioner states that in view of the fact that Mr. Ravinder Singh has admitted that both petitions were filed under his signatures and given an explanation as to what had happened, the petitioner does not want to pursue the remedy against the counsel, the instant petition may be disposed of as not pressed.

We dispose of the petition as not pressed."

(Emphasis added)

8. The aforesaid order hence, makes it crystal clear that the High Court was satisfied that the appellant had been guided by his counsel and that he himself was not well-versed with the English language and had also filed his supporting affidavit in Hindi and further that it had accepted the unqualified apology tendered by Pradeep Rana, respondent no.2, and that considering the fact that the advocate was of a young age, even though both petitions had been filed under the signature of the appellant, it had decided to drop the said proceedings, as respondent no.1 did not wish to pursue his remedy any further. Hence, the petition was disposed of, as the same was not pressed.

9. In Masumsha Hasanasha Musalman v. State of Maharashtra, AIR 2000 SC 1876, this Court has dealt with the application of the provisions of the Act 1989, and held that merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be the sole ground for prosecution, for the reason that the offence mentioned under the said Act 1989 should be committed

against him on the basis of the fact that such a person belongs to a Scheduled Caste or Scheduled Tribe. In the absence of such ingredient, no offence under Section 3 (2)(v) of the Act is made out.

10. Section 3(1)(viii) of the Act 1989 reads as under: "Punishment for offences of atrocities:(1) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe,-

(i) xx xx xx

viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

ix) xx xx xx

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

11. The dictionary meaning of word `false' means that, which is in essence, incorrect, or purposefully untrue, deceitful etc. Thus, the word 'false', is used to cover only unlawful falsehood. It means something that is dishonestly, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word 'false' is used to characterise a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive. The word false may also be used in a wide or narrower sense. When used in its wider sense, it means something that is untrue whether or not stated intentionally or knowingly, but when used in its narrower sense, it may cover only such falsehoods, which are intentional. The question whether in a particular enactment, the word false is used in a restricted sense or a wider sense, depends upon the context in which it is used.

12. In Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics, (2010) 9 SCC 630, this Court, after relying upon certain legal dictionaries, explained that the word false describes an untruth, coupled with wrong intention or an intention to deceive. The Court further held that in case of criminal prosecution, where consequences are serious, findings of fact must be recorded with respect to mens rea in case a falsehood as a condition precedent for imposing any punishment.

13. In the event that the appellant preferred an application for the purpose of quashing the FIR lodged by respondent no.1, and was unsuccessful therein, the

same does not mean that the appellant had filed a false case against respondent No. 1. There is a difference between the terms `not proved' and `false'. Merely because a party is unable to prove a fact, the same cannot be categorized as false in each and every case. (Vide: A. Abdul Rashid Khan (dead) Ors. v. P.A.K.A. Shahul Hamid Ors., (2000) 10 SCC 636).

14. Legitimate indignation does not fall within the ambit of a malicious act. In almost all legal inquiries, intention as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with an intentional act without just cause or excuse. (Vide: Ors., AIR 2001 SC 24).

15. In West Bengal State Electricity Board v. Dilip Kumar Ray, AIR 2007 SC 976, this Court dealt with the term "malicious prosecution" by referring to various dictionaries etc. as:

'Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognised mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result.

'MALICE' consists in a conscious violation of the law to the prejudice of another and certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime.

Malicious prosecution means - a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:—Malice is not merely the doing of a wrongful act intentionally but it must be established that the defendant was actuated by malus animus, that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

16. Mala fides, where it is alleged, depends upon its own facts and circumstances, in fact has to be proved. It is a deliberate act in disregard of the rights of others. It is a wrongful act done intentionally without just cause or excuse. (See: Ors., AIR

2001 SC 343; State of A.P. Ors. v. Goverdhanlal Pitti, AIR 2003 SC 1941; Prabodh Sagar v. Punjab SEB Ors., AIR 2000 SC 1684; and Ors., AIR 2003 SC 4536).

17. The word vexatious means ‘harassment by the process of law', 'lacking justification' or with 'intention to harass'. It signifies an action not having sufficient grounds, and which therefore, only seeks to annoy the adversary.

The hallmark of a vexatious proceeding is that it has no basis in law (or at least no discernible basis); and that whatever the intention of the proceeding may be, its only effect is to subject the other party to inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court. Such proceedings are different from those that involve ordinary and proper use of the process of the court.

18. The principle of issue-estoppel is also known as ‘cause of action estoppel’ and the same is different from the principle of double jeopardy or; autre fois acquit, as embodied in Section 403 Cr.P.C. This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or res judicata against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might be permitted by Section 403(2) Cr.P.C. Thus, the rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. If with respect to an offence, arising out of a transaction, a trial has taken place and the accused has been acquitted, another trial with respect to the offence alleged to arise out of the transaction, which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial, is prohibited by the rule of issue estoppel. In order to invoke the rule of issue estoppel, not only the parties in the two trials should be the same but also, the fact in issue, proved or not, as present in the earlier trial, must be identical to what is sought to be re-agitated in the subsequent trial. If the cause of action was determined to exist, i.e., judgment was given on it, the same is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam. (See: Manipur Administration, Manipur v. Thokchom, Bira Singh, AIR 1965 SC 87; Piara Singh v. State of Punjab, AIR 1969 SC 961; State of Andhra Pradesh v. Kokkiligada

Meeraiah Anr., AIR 1970 SC 771; Masud Khan v. State of U.P., AIR 1974 SC 28; Ravinder Singh v. State of Haryana, AIR 1975 SC 856; Ors., AIR 1986 SC 111; Anr., AIR 2005 SC 626; and Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors., AIR 2005 SC 2392).

19. While considering the issue at hand in Shiv Shankar Singh v. State of Bihar Anr., (2012) 1 SCC 130, this Court, after considering its earlier judgments in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876; Jatinder Singh Ors. v. Ranjit Kaur AIR 2001 SC 784; Anr., AIR 2003 SC 702; Poonam Chand Jain Anr. v. Fazru AIR 2005 SC 38 held:

"It is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

20. In Chandrapal Singh Ors. v. Maharaj Singh Anr., AIR 1982 SC 1238, this court has held that it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by enabling them to invoke the jurisdiction of criminal courts in a cheap manner. In such a fact-situation, the court must not hesitate to quash criminal proceedings.

21. There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding, particularly, when the same is that of a co-ordinate bench, or of a larger bench. It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned". The case must be considered, taking note of the ratio decidendi of the same i.e., the general reasons, or the general grounds upon which, the decision of the court is based, or on the test or abstract, of the specific peculiarities of the particular case, which finally gives rise to the decision. (Vide: Smt. Somavanti Ors. v. The State of Punjab Ors., AIR 1963 SC 151; Ballabhdas Mathuradas Lakhani Ors. v. Municipal Committee, Malkapur, AIR 1970 SC

1002; Ors., AIR 1980 SC 1762; and Director of Settlements, A.P. Ors. v. M.R. Apparao Anr., AIR 2002 SC 1598).

22. In The Direct Recruit Class-II Engineering Officers' Association Ors. v. State of Maharashtra Ors., AIR 1990 SC 1607, a Constitution Bench of this Court has taken a similar view, observing that the binding nature of a judgment of a court of competent jurisdiction, is in essence a part of the rule of law on the basis of which, administration of justice depends. Emphasis on this point by the Constitution is well founded, and a judgment given by a competent court on merits must bind all parties involved until the same is set aside in appeal, and an attempted change in the form of the petition or in its grounds, cannot be allowed to defeat the plea. (See also: Daryao Ors. v. State of U.P. Ors., AIR 1961 SC 1457; and Forward Construction Co. Ors. v. Prabhat Mandal (Regd.), Andheri Ors. AIR 1986 SC 391).

23. The instant case is required to be decided taking into consideration the aforesaid settled legal propositions. The complaint in dispute filed by the respondent no.1 is based on the ground that there has been a false declaration by the appellant while filing the second writ petition as he suppressed the truth that earlier for the same relief a writ petition had been filed and it was done so to gain a legal advantage and therefore, it was a false, vexatious and malicious one attracting the provisions of Section 3(1)(viii) of the Act 1989. The High Court while dealing with the contempt case did not record such a finding. The first writ petition was dismissed in limine while the second was dismissed in default. The issue of filing a false affidavit has been dealt with by the High Court in contempt case which the respondent no.1 did not press further.

24. The facts on record make it evident that the land on which both parties claim title/interest had initially been allotted to one Anant Ram, a member of the Schedule Caste community, under the 20 Point Programme of the Government of India (Poverty Elevation Programme) and he sold it to one Ram Lal Aggarwal in the year 1989, who further transferred it to his son Anil Kumar Aggarwal in the year 1990. Anil Kumar Aggarwal sold the same to appellant Ravinder Singh in the year 2005. Respondent No. 1, who at the relevant time was holding a very high position in the Central Government, claimed that initial transfer by Anant Ram, the original allottee, in favour of Ram Lal Aggarwal was illegal and he could not transfer the land allotted to him by the Government under Poverty Elevation Programme and further that as the said land had been encroached upon by his father, he had a right to get his name entered in the revenue record. Thus, it is clear that the respondent no. 1, became the law unto himself and assumed the

jurisdiction to decide the legal dispute himself to which he himself had been a party being the son of a rank trespasser. Transfer by the original allottee at initial stage, even if illegal, would not confer any right in favour of the respondent no.1. Thus, he adopted intimidatory tactics by resorting to revenue as well as criminal proceedings against the appellant without realising that even if the initial transfer by the original allottee Anant Ram was illegal, the land may revert back to the Government, and not to him merely because his father had encroached upon the same.

25. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of respondent no.1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint.

In view of the above, the judgment of the High Court impugned herein dated 14.12.2011 as well as of the Revisional Court is set aside. Order of the Metropolitan Magistrate dated 13.8.2009 is restored. The complaint filed by respondent no.1 under the provisions of Section 3(1)(viii) of the Act 1989 is hereby quashed. The appeal is thus allowed.

Before parting with the case, it may be necessary to observe that any of the observations made herein shall not affect by any means either of the parties in any civil/revenue case pending before an appropriate authority/court.