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Supreme Court of India

Mahmood Ali vs State Of U.P. on 8 August, 2023

Author: B.R. Gavai

Bench: B.R. Gavai

2023 INSC 684

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2341 OF 2023
(Arising out of S.L.P. (Criminal) No. 12459 of 2022)

MAHMOOD ALI & ORS.

...APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J. :

1. Leave granted.
2. This appeal is at the instance of the original accused persons of the First Information Report (FIR) No. 127 of 2022 registered with the Mirzapur Police Station, District Saharanpur, State of U.P. dated 04.06.2022 for the offences punishable under Sections 420, 467, 468, 471, 342, 386, 504 and 506 resp of the Indian Penal Code (IPC) and is directed against the order passed by the High Court of Judicature at Allahabad dated 08.07.2022 in the Criminal Miscellaneous Writ Petition No. 7335 of 2022 by which the High Court rejected the 15:45:17 IST Reason:

↑Writ Petition and thereby declined to quash the said FIR for the offences enumerated above.

3. The FIR in question reads as thus:-

“Sir, it is submitted that the applicant has worked for may years in the offices of different government approved mining lease holders in Saharanpur district. Mining industry is the

main source of employment in the Behat area of Saharanpur district. The educated youth of the area earn their livelihood by working in the offices of some crushers and mining lease holders established in the area due to unemployment. In this way, thousands of people earn their livelihood by working in mining offices and stone crushers at the local level. Taking advantage of the unemployment and helplessness of the applicant, Mohammad Wajid s/o Iqbal obtained his signature on some papers on 1.8.2008 and after that he kept on making the applicant sign other papers and blank cheques. The applicant kept signing those papers so as to save his job and out of fear, because he refused to sign, he would have been threatened with removal from the job and harassed by implicating him in some false case.

Mohammad Iqbal used to threaten the applicant repeatedly that if he would not listen to him, he would send him to jail and would also get his family finished. Due to this fear, the applicant remained silent for so many years and continued to lead the life of slavery. Thereafter the applicant came in contact with those who are sharing the evil deeds of Mohammad Iqbal with the Hon'ble Supreme Court and Central agencies. I was fraudulently appointed as a Director in the company by Mohammad Iqbal and Mohammad Wajid s/o Iqbal. When I came to know about the fake appointment, I resigned from that company on 22 March 2017. I was appointed as a Director by fraudulently obtaining my signature on papers without my consent, whereas I was not even aware at that time as to what is a Director or a company and why my signature is being obtained? I left the job in 2017 as I was not even paid salary for 2 ~~↑~~ years after 2015. I along with those who were exposing their misdeeds have brought many of their misdeeds to the notice of central agencies. The above persons are so clever fraudsters that they have filed a bogus Writ Criminal (Miscellaneous) Petition No.2342 of 2019 in the Hon'ble High Court Allahabad in the name of the applicant. When I came to know about this, I appeared before the Hon'ble Judge in the Hon'ble High Court, Allahabad made him aware of the truth that at present I do not work with the aforesaid persons and in the past also I have worked in his mining lease office only and never did a job in their University. A copy of the order of the Hon'ble Court is enclosed. It has also come to my notice that the misdeeds of Mohammad Iqbal are being investigated by the Special Investigation Team (SIT). I want to cooperate in the investigation going on against them so that the misdeeds of the above persons can be exposed. I have seen the terrible forms of the above persons for many years and have suffered their wrath. I was forced to work in their office by being held as a hostage and being threatened to be killed by Mohammad Iqbal alias Bala s/o Abdul Waheed and his sons by showing fear of life. These persons did not even pay the salary to me for 2 years. When I asked for my salary, Mohammad Iqbal alias Bala and his sons and brother put a pistol (Tamancha) on my temporal region and said that we are spending a lot of money in the pairvi of case in the court. If you ask for money, we will kill you. Thus, they withheld my salary for 2 years. Even on festivals like Holi and Diwali, they did not permit me to leave, while these are the main festivals of the mine. I don't know how many lives have been destroyed by Mohammad Iqbal alias Bala and his sons and brother and how many families have been ruined. Mohammad Iqbal alias Bala and his family members create panic among the people and threaten to send them to jail by implicating in a false/fake cases. Because of Mohammad Iqbal alias Bala and his family, I had to face many false cases and I was so tensed that I had a heart attack and since then I am alive by taking medicines regularly. I do not want that the life of any other family or person to be destroyed because of such ~~↑~~ mafias. It has also come to my notice that there are many illegal properties in the name of the company in which I was fraudulently shown as a director. I do not have any relation or concern with any of his company/property, nor is any of his property registered in my name. Therefore, I request to cooperate with me in the investigation so that innumerable misdeeds of Mohammad Iqbal alias Bala s/o Abdul Waheed and his sons Abdul Wajid, Javed, Alishan, Afzal and his brother Mehmood can be exposed and they can be punished. Such people are a threat to the society. ...”

4. Thus, a plain reading of the aforesaid FIR reveals that the original first informant namely Ravinder Kumar (the respondent No. 3 herein) claims to be an illiterate person and was in the employment of the accused persons from 01.08.2008. It is alleged that taking advantage of the helplessness of the first informant, the appellant No. 2 herein, Abdul Wajid obtained his signature on some papers on 01.08.2008 and later, the appellant No. 2 kept on compelling the first informant to sign other papers and bank cheques without the consent of the first informant and without bringing anything to the notice of the first informant in regard to the cheques, blank papers, etc. It is also alleged that the first informant was fraudulently appointed as a Director of a Company by the appellant 3 Mohd. Iqbal and the appellant No. 2 Abdul Wajid. Upon coming to know about the said fake appointment, the first informant resigned from the Company on 22.03.2017. It is further alleged that a Writ [¶]Criminal (Misc) Petition No. 2342 of 2019 was also filed before the High Court in the name of the first informant. The first informant was also allegedly forced to work in the office of the accused persons virtually as a hostage, and threats were administered to kill him. It is alleged that the accused persons are involved in illegal mining, etc. and are exploiting poor persons.

5. The appellants herein went before the High Court by filing Criminal Miscellaneous Writ Petition No. 7335 of 2022 for the purpose of getting the FIR quashed. The High Court declined to quash the FIR by way of an order dated 08.07.2022 which reads thus:-

“Heard learned counsel for the petitioners and learned AGA for the State.

This writ petition has been filed with the prayer to quash the First Information Report, registered as Case Crime No.127 of 2022, under Sections 420, 467, 468, 471, 342, 386, 504, 506 IPC, Police Station Mirzapur, District Saharanpur, on the ground that petitioners have been falsely implicated.

The First Information Report is by the informant, who claims to be an illiterate person and was in the employment of accused petitioners from 1.8.2008. It is alleged that in order to protect his employment the informant was made to sign on dotted lines and without his knowledge he was also shown/made Director of a company. It is alleged that the accused petitioners are involved in illegal mining etc. and are exploiting poor persons. It is also stated that a petition was also filed at the instance of informant without his knowledge. As per [¶]the FIR allegations the accused petitioners are extending threats to the informant and therefore prayer is made to protect their life and liberty.

Learned AGA points out that the third petitioner has a criminal history of 21 cases lodged by the State and 09 complaint cases, whereas the second petitioner has a criminal history of 14 cases and the first petitioner has a criminal history of 09 cases.

Learned counsel for the petitioners with reference to the supplementary affidavit filed states that in most of these cases appropriate protection has already been granted by the competent authority.

Be that as it may, this Court is not required to make any observation with regard to correctness or otherwise of the FIR allegations. The ascertainment of facts in respect of the FIR would be open for examination at the stage of investigation.

Considering the fact that there are large number of criminal cases lodged against the petitioners and *prima facie* allegations with regard to commissioning of cognizable offence in the FIR are disclosed, we decline to exercise our extraordinary jurisdiction in the matter in view of the law laid down by the Supreme Court in the case of State of Telangana Vs. Habib Abdullah Jellani, (2017) 2 SCC 779, as also in the case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others, (2021) SCC Online SC 315.

Writ petition, accordingly, is dismissed.

Dismissal of this writ petition, however, will not preclude the petitioners from seeking appropriate protection under the Code of Criminal Procedure, which shall be dealt with on its own merit and in accordance with law."

¶6. In view of the aforesaid, the appellants are before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

7. Mr. Siddhartha Dave, the learned senior counsel appearing for the appellants herein in his written submissions has stated as under:-

"(a) The allegations in the First Information Report are not only absurd but also highly improbable given that the said incident allegedly occurred in the year 2008 while the FIR has been lodged after an inordinate delay of 14 years, that is, on 4.06.2022, which has not been explained.

(b) It is respectfully submitted that the alleged First Information Report is absolutely false and frivolous, and on a reading of the said FIR, the offence under Sections 420, 467, 468, 471, 342, 386, 504 and 506 of IPC is clearly not made out against the Petitioners. Although the Complainant has alleged that upon coming to know about his fraudulent appointment as a Director of a Company, he resigned from the Company way back in the year 2017 but no complaint during this period was ever lodged by the Complainant. Further the name of the said Company has also not been mentioned in the FIR.

(c) It is submitted that the Respondents have incorrectly projected the Petitioners to be hardened criminals when the fact is that every time the Petitioners and their family members were granted protection by the Courts, the Police immediately registered new FIRs against them. It is submitted that the State of Uttar Pradesh is misusing its administrative as well as police machinery to harass the Petitioners and their family members by registering false cases against them. Further the State authorities have not only illegally demolished three residential houses of the Petitioners but has also registered false criminal cases against even those persons who stand surety for the Petitioners and their family members in cases where bail or

anticipatory bail has been granted to them. The ↑Petitioners are neither members of any Gang nor are they involved in illegal mining or land grabbing activities.

(d) It is submitted that after the change of Government in the State of Uttar Pradesh in the year 2017, the ruling party came to power and immediately after the change of Government the Petitioners along with their family members were falsely implicated in more than 30 criminal cases at the behest of the ruling party. The Petitioners are being unnecessarily harassed by the State machinery including the Police. Although the Respondent State is heavily relying upon the criminal cases registered against the Petitioners and their family members to show that they are habitual offenders but till date the Petitioners have not been convicted by any Court of law and moreover every time the Petitioners or their family members gets protection (anticipatory bail or stay of arrest) from either this Hon'ble Court or the Hon'ble High Court, the local Police immediately registers false cases against them.

(e) It is submitted that the alleged Look Out Notice dated 10.05.2022 was issued much prior to the registration of the present FIR No. 195 of 2022 which was registered on 25.08.2022.

(f) It is respectfully submitted that the alleged First Information Report has been maliciously instituted at the behest of the present ruling party in the State of Uttar Pradesh to wreak vengeance and to settle political scores with Petitioner No.3 Iqbal alias Bala as he belongs to a rival political party and he was also a Member of Legislative Council from the period 2011 to 2016. The Petitioner belongs to a respectable family of Saharanpur and he is running several Charitable Institutions.

(g) The allegations made in the First Information Report do not prima facie constitute any offence or make out a case under Sections 420, 467, 468, 471, 342, 386, 504, 506 of IPC against the Petitioners and thus, the FIR is liable to be quashed. It is pertinent to mention that even after the charge sheet has been filed, the petition for quashing of a FIR is well within the powers of a Court of law [Please see: ANAND KUMAR MOHATTA & ANOTHER VS.

↑ STATE (NCT OF DELHI), DEPARTMENT OF HOME & ANOTHER (2019) 11 SCC 706 at paragraph 14 & 16].

(h) For the reasons mentioned above, the Special Leave Petition may be allowed and the order of the Hon'ble High Court refusing to quash the FIR No. 127 of 2022 dated 4.06.2022 be set aside.”
SUBMISSIONS ON BEHALF OF THE STATE

8. Ms. Garima Prasad, the learned Additional Advocate General appearing for the State of U.P. in her written submissions has stated as under:-

“(a) The Investigation has been completed and chargesheet is ready to file against the Petitioners but due to stay order of this Hon'ble Court, the chargesheet could not be submitted.

(b) It is submitted that the Petitioner Mohd. Iqbal @ Bala, his brother and their sons are the mining mafia in western Uttar Pradesh and several number of criminal cases are registered

against him and his family members.

(c) The Investigation Officer also recorded the statement of the independent witnesses and collected the other material evidence against the Petitioner and other accused persons, which *prima facie* shows that the Petitioner and other accused persons have committed the serious offences.

(d) It is correct and admitted that with the change of dispensation/Government, complainants/terrified peoples /aggrieved persons, who are poor persons, poor farmers, small contractors, have been able to come forward to register or lodge criminal complaints against the Gangster Iqbal @ Bala and his family members as well as associates. Due to illegal support by the earlier dispensation/ Government to these criminals, actions were not taken.

(e) Recently, this Hon'ble Court has held in case Mahendra Prasad Tiwari Vs Amit Kumar Tiwari & [¶] Anr reported as 2022 SCC Online SC 1057 held that delay in registration of the FIR is not ground to discharge.

(f) This Hon'ble Court has held in case Thakur Ram v.

State of Bihar, reported as (1966) 2 SCR 740, that barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book.

(g) It is submitted that this Hon'ble Court has held in case Sohan Singh and Another vs. State of Bihar, (2010) 1 SCC 68, has held that "When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of who has been criminally assaulted in such a manner. Obviously, the prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR."

(h) The impugned first information report *prima facie* reveals commission of cognizable offences and which inspire confidence that it is clear from the contents of the FIR that serious crime was committed by the Petitioner and other accused persons.

(i) In view of the aforementioned factual & legal submissions, it is most respectfully submitted that the present special leave petition of the Petitioners is liable to be dismissed with exemplary cost and the impugned order dated 08.07.2022 passed by the Hon'ble High Court in Criminal Misc. Writ Petition No. 7335 of 2022 is liable to be upheld." ANALYSIS

[¶]9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the FIR bearing No. 127 of 2022 should be quashed?

10. We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note

that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.

11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of State of Haryana v. Bhajan Lal, AIR 1992 SC 604. The parameters are:-

“(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of \blacktriangle a Magistrate within the purview of Section 155(2) of the Code.

(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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.” We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of Bhajan Lal (supra).

\blacktriangle 12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such

circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into ↑many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that ↑manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence ↑ or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....." (Emphasis supplied)

14. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 127 of 2022 dated 04.06.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed.

15. It is needless to clarify that the observations made in this judgment are relevant only for the purpose of the FIR in question and the consequential criminal proceedings. None of ↑the observations shall have any bearing on any of the pending criminal prosecutions or any other proceedings.

.....J. (B.R. GAVAI)J. (J.B. PARDIWALA) NEW DELHI;

AUGUST 08, 2023