



2026:AHC-LKO:20838

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 3850 of 2023

Harikesh And Others

.....Applicant(s)

Versus

State Of U.P.Thru. Addl. Secy. Home Deptt. And
Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Arvind Kumar Srivastava

Counsel for Opposite Party(s) : G.A., Praveen Kumar, Saroj Kumar
Verma, Sudhanshu Srivastava

Court No. - 15

HON'BLE BRIJ RAJ SINGH, J.

1. This application under Section 482 Cr.P.C. has been filed seeking setting aside of the revisional order dated 01.03.2023 passed by the Sessions Judge, Sultanpur (in short "revisional Court") in Revision No. 334 of 2022 as well as impugned summoning order dated 24.02.2021 passed by the Additional Civil Judge (Avar Khand)/Judicial Magistrate, Room No. 29, Sultanpur (in short "trial Court") in Criminal Case No. 587 of 2020, under Sections 147, 148, 149, 427, 392, 504, 506 I.P.C., Police Station- Jagdishpur, District- Sultanpur.

2. It is a case of the applicant that the applicant no.7/Ram Awadh lodged FIR dated 30.11.2019 against the opposite party no.2 and other co-accused, registered as Case Crime No.0316 of 2019, under Section 3(2) of Prevention of Damage to Public Property Act, 1984 (in short "Act, 1984"), at Police Station- Jagdishpur, District- Amethi. The applicant no.1/Harikesh also lodged FIR dated 30.11.2019 against Ram Ujagir, who is brother of the opposite party no.2, registered as Case Crime No.0315 of 2019, under Section 506 IPC, at Police Station- Jagdishpur, District- Amethi.

3. It has been submitted that out of retaliation, the opposite party no.2 filed criminal case against the applicants before the court below 18.01.2020 subsequently after lodging of the FIRs by the applicant nos.1

and 7. In pursuance of the FIR lodged by the applicant no.7, the Tehsildar, Musafirkhana, Amethi (in short "Tehsildar") passed an order on 20.11.2019 for conducting inspection of the land i.e. Gata No.238 by the Revenue Inspector. In compliance of the order dated 20.11.2019, in presence of the police as well as revenue authorities, the encroachment made by opposite party no.2 has been demolished. The spot memo was also prepared and the relevant photographs have been brought on record as Annexure No.10 to the present application. The Revenue Inspector submitted his report on 29.11.2019 before the Tehsildar, in which he has mentioned that opposite party no.2 has again encroached the said land after demolition. On the basis of said report, the Tehsildar directed the Station House Officer, Musafirkhana, Amethi for lodging FIR against the opposite party no.2.

4. It has been further submitted that the entire criminal proceeding appears to be false, fabricated and out of malice for the reason that the applicant nos.1 and 7 had lodged FIRs against opposite party no.2, under Section 506 of IPC and Section 3(2) of Act, 1984, respectively. The Revenue Authority had also proceeded against him that is why he filed complaint subsequently on 18.01.2020.

5. It has been further submitted that the revisional Court has not considered the argument of the applicants and the revision has also been dismissed.

6. In support of his contention, learned counsel for the applicants has placed reliance upon the following judgements:-

- i. **State of Haryana and others Vs. Bhajan Lal and others**, reported in **1992 Supp (1) SCC 335**;
- ii. **Pepsi Foods Limited. Vs. Special Judicial Magistrate**, reported in **(1998) 5 SCC 749**.

7. On the other hand, learned counsel for opposite party no.2/complainant has submitted that statements under Sections 200 and 202 CrPC have been recorded and the impugned summoning order has been passed after considering the relevant records as well as the statements, therefore, there

is no illegality in the summons issued by the Court below.

8. Heard learned counsel for the applicants, learned AGA for the State and learned counsel for opposite party no.2.

9. In the case of **Bhajan Lal (supra)**, Hon'ble Supreme Court has held that 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 can be quashed. In the aforesaid judgement, Hon'ble Supreme Court while dealing with the similar situation has given the following categories of cases by way of illustration wherein the Courts could exercise the powers under Section 482 Code of Criminal Procedure either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Paragraph 102 of the said judgement, especially paragraph 102(7) reads as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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. (emphasis applied)".

10. In the case of **Pepsi Foods Limited (supra)** while considering the question that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. The relevant paragraph of the aforesaid judgement reads as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

11. After going through the record, it is evident that the applicant nos.1

and 7 had lodged FIRs on 30.11.2019, under Section 506 of IPC and Section 3(2) of Act, 1984, respectively. The Revenue Inspector submitted his report on 29.11.2019 before the Tehsildar, in which he has mentioned that opposite party no.2 has again encroached the said land after demolition. On the basis of said report, the Tehsildar directed the Station House Officer, Musafirkhana, Amethi for lodging FIR against the opposite party no.2. It appears that out of mala fide, the opposite party no.2 instituted the proceeding, subsequently on 18.01.2020. This Court finds that the present complaint is nothing but a counter blast to the FIRs lodged by the applicant nos.1 and 7 against opposite party no.2 because the same has been filed subsequently on 18.01.2020. Opposite party no.2 wanted to settle his personal score that is why he filed the present complaint with an expectation that some compromise may take place between the parties. Therefore, it can be inferred on the face of record that the present complaint has been filed by opposite party no.2 with mala fide intention. The case of the applicant is covered with the judgements of **Bhajan Lal (supra)** and **Pepsi Foods Limited (supra)**, therefore, the present proceedings cannot go on as it amounts to abuse of process of law and deserved to be quashed.

12. Application is accordingly **allowed**. The revisional order dated 01.03.2023 passed by the revisional Court as well as impugned summoning order dated 24.02.2021 passed by the trial Court in Criminal Case No. 587 of 2020, under Sections 147, 148, 149, 427, 392, 504, 506 I.P.C., Police Station- Jagdishpur, District- Sultanpur are hereby set aside qua the applicants.

(Brij Raj Singh,J.)

March 23, 2026

Mohit Singh/-