

Munna Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-31-1997

Reported in : 1997CriLJ3095; 1998(1)WLC575; 1997(1)WLN367

Judge : M.A.A. Khan, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Indian Panel Code - Sections 147, 397, 406, 420, 452 and 504

Appeal No. : Criminal Misc. Petn. No. 193 of 1995

Appellant : Munna

Respondent : State of Rajasthan and ors.

Advocate for Def. : Poonam Bhandari, Adv. and; M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : Amin Ali, Adv.

Judgement :

ORDER

M.A.A. Khan, J.

1. This petition Under Section 482, Cr. P.C. seeks cancellation of the First Information Report No. 43 of 1995 registered at Police Station Jalupura, Jaipur on February 3, 1995 for offences Under Sections 406,420, IPC against (1) Fazlur

Rehman, (2) Munna, the petitioner and (3) Nazir Khan A.S.I. The facts and circumstances, leading to the registration of the said FIR may briefly be stated as under:-

2. On February 3, 1995 one Smt. Shamim Khan, the informant, presented a written complaint at P.S. Jalupura alleging therein that she had been residing as a tenant at a rent of Rs. 500/- p.m. in Plot No. 6 admeasuring 126.77 59 yards situate at Jalupura Mohalla for the last 10-12 years, that Fazlur Rehman, the owner-landlord verbally agreed to sell the said plot to her and promised to execute a registered sale deed in her favour and also received some amount by way of advance money 2 years before his going to Haj pilgrimage some times back and though he continued to assure her of the transfer of the Plot and used to receive the rent also during the meanwhile yet at the same time he and his relative continued to harass her and tried to assault her and throw her belongings out of the house in question in respect of which Crime No. 181/94 Under Sections 147, 452, 504, IPC was registered against them at P.S. Jalupura on 28-6-94. It was further alleged that Fazlur Rehman and his men again repeated the same types of acts and Crime No. 266/94 Under Section 397, IPC was registered against them at the same Police Station. Regarding the occurrence alleged to have taken place in respect of Crime No. 43/95 Under Section 406, 420, IPC, which is presently under our consideration, the informant alleged that on November 19, 1994 the three persons named in the FIR including the present petitioner, through their mediator, Badoo Khan by name, dishonestly and fraudulently obtained Rs.10,000/- from her towards alleged outstanding dues on account of rent due upto October 1994 though they had regularly received such rent from January 1991 onward. The allegation made against Nazir Khan A.S.I, were that he had been all along helping the other two persons, Fazlur Rehman and Munna Khan.

3. Mr. Mohd. Amin, the learned counsel for the petitioner vehemently urged that the contents of the FIR No. 43/95 disclose no offence at all and, therefore, it was required to be cancelled as the same amounted to gross abuse of the process of law. In this behalf the learned counsel relied upon the cases reported in (1992) 1 Crimes 426 (Raj) and (1992) 1 Crimes 622, (1996) 2 Crimes 465 (Patna) and (1996) 3 Crimes 66 (Kant). The learned counsel further submitted that the earlier

cases (FIR No. 181/94 and 266/94) terminated in submission of Final Reports and that all the transactions relating to any amount paid by the informant to Fazlur Rehman and/or the petitioner through Bundoo Khan, had taken place under the direct instructions and supervisions of the top officials of the Police Deptt. and that Nazir Khan A.S.I, had been dragged into this litigation out of malice simply because he happened to be a distant relation of the petitioner and posted at Jaipur and waiting for his promotion. In the end Mr. Amin Submitted that as is evident from the facts stated in the FIR itself the dispute between the parties was purely of civil nature and for the determination of their rights and liabilities the parties have already approached the civil Court through Civil Suit No. 46 of 1995 filed in the Court of Distt. Judge, Jaipur City, Jaipur.

4. The learned Public Prosecutor for State Resp. No.1 and Mr. Poonam Bhandari Advocate for Respondent No. 2 however, supported the pending investigation.

5. With a view to acquaint myself with the true state of affairs I had called for the case diaries pertaining to Crime Nos. 181/94, 266/94 and 43/95 and perused them. The copies of the relevant documents have also been placed on the record of the case by the petitioner. I have studied them as well and thoughtfully considered the submissions advanced by the learned counsel for the parties before me.

6. At the very outset I would like to observe that it is by now well settled that the powers of this Court Under Section 482, Cr. P.C. are though quite wide in the sense that they may reach the abuse of the process of law and failure of justice, in whichever form and wherever they are found, but, at the same -time, those powers are to be sparingly exercised in rarest of rare cases with great care and caution. It is particular so in the cases seeking cancellation of investigations of prosecutions for cognizable offences in their very inception. The rule of prudence which has, in fact, been recognised as a rule of practice and procedure, is that if the first information report/complaint discloses the commission of an offence the investigation or enquiry, as the case may be, into such cases should not be interfered with and cancelled in exercise of the powers Under Section 482, Cr. P.C. For investigation into cognizable offences, is the right of the Investigating

Agency and such a right of the Police should not be curtailed by the Court. But if the contents of the FIR/complaint do not disclose the commission of any offence the machinery of law and process of the Court should not be allowed to be abused to satisfy the vengeance of a person against the other. Neither the Investigating Agency nor the criminal Courts are the forums for wrecking vengeance of one against the others. They are meant to prosecute and punish offenders and not to harass innocent and law abiding citizens. Thus even the element of malice on the part of the informant/complainant against the person proceeded against is not of much relevance. If the facts and circumstances, taken in their totality, speak of commission of no offence, the machinery of law and the process of Court cannot be allowed to be misused and abused. Law is meant not only to punish the guilty but also to protect the innocent from being harassed and humiliated by an unscrupulous person. Law is the protector of the oppressed and not a convenient tool of oppression in the hand of the oppressor (see *State of Haryana v. Bhajan Lal* 1992 Suppl (1) SCC 335 : (1992 Cri LJ 527), *Rupam Deol Bajaj v. K.P.S. Gill* (1995) 6 SCC 194:(1996 Cri LJ 381), *Bihari Lal Jaiswai v. CIT* (1996) 1 SCC 443 : (1995 AIR SCW 4587), *State of Maharashtra v. Iswar Peeraji* (1996) 1 SCC 542 : (1996 Cri LJ 1127), *State of HP v. Pirthi Chand* (1996) 2 SCC 37 : (1996 Cri LJ 1354) and *State of Orissa v. Banshidhar Singh* (1996) 2 SCC 194 : (AIR 1996 SC 938)).

7. In the instant case it is the undisputed position that the informant was a tenant in Plot No. 6 and there was dispute between the informant and her landlord over payment of rent. According to the informant she was a tenant of the whole plot on rent @ Rs. 500/- p.m. According to the petitioner the Plot was owned by the daughter of Fazlur Rehman and sister of the petitioner and who resided at Sikkar and the petitioner and other member of his family used to reside in half portion of the Plot and in the remaining half the informant was residing as tenant at a monthly rent of Rs. 1500/- but was not paying the same and which was reduced to Rs. 500/- p.m. by the police authorities. The version given by the petitioner appears to be getting sufficient support from the documents filed by him. Letter No. 190 dated 3-2-94 written by the Dy. SP. Circle Sadar to the SHO P.S. Jalupura with reference to Addl. I.G.Ps' letter Nos. 234-235, dated 12-1-1994 clearly shows that the I.G.P. (Vigilance) had directed that the receipt of payment of

Rs. 10,000/- along with the report on raising the wall between the portion's of the plot occupie'd by the tenant-informant and the landlord and of the closure of the window which opened towards the upper portion of the plot in occupation of the tenant-informant be sent to him. The Dy. S.P. instructed the SHO to get the needful done within three days. The SHO had directed his S.I. Narain Singh to act accordingly (Annexure-5). The receipt dated 28-9-94 evidences that the tenant-informant had paid Rs. 10,000/- towards rent payment of her liability to the mediator Sri Bundoo Khan, (Annexure-4). Annexure 3 is a letter written by the SHO to Fazlur Rehman directing him to appear before the Superintendent of Police on 19-11 -94 at 10 a.m. Annexures 6 to 9 are the notices issued by the SHO to Fazlur Rehman and his families to maintain peace and appear before him on 28-7-95. The above documents clearly speak that looking, perhaps, to the fact that the informant in the case happened to be a lady the high ups in police administration had not only patiently looked into her complaints (FIR Nos. 181/94 and 266/94) but had also got the matter settled by getting part payment of Rs. 10,000/- made by her to the landlord and getting the same utilized also in raising the divider wall and the window closed. What more did she expect of the police personnel? The Police Officers had acted and behaved as good law enforcement officers in this case. They were repeatedly troubled by the petitioner in a matter of civil nature and even then they tried to help her. The informant cannot be further allowed to repeatedly abuse the police force in a matter in which the high ups had risen to her help, when demand. The amount of Rs. 10,000/- which is alleged either to have been entrusted to Bundoo Khan (who is not made an accused in the case) or at the same time to have been obtained fraudulently and dishonestly from her, was in fact paid by her as per reconciliation brought about by the Police Officers.

8. It is noteworthy that though the said amount was stated to have been paid and received on 19-11-94 yet the FIR No. 34/95 in respect thereto was lodged as late as on 3-2-1995. Since the amount of Rs. 10,000/- was neither entrusted to the petitioner or his father Fazlur Rehman or Nazir Khan ASI nor did they obtain the same from the informant by making any false, dishonest or fraudulent representation, instead the same was paid consequent to and under direct and active efforts and supervision of the police officials, no offence u/Section 406 or

Section 420, IPC was committed by any of the persons named in the FIR.

9. Nazir Khan ASI is not found to be in any way involved in this case. He appears to have been maliciously implicated in this case. It has not even been averred in the FIR that the disputed amount was paid to him or in his presence. The allegations made against him are quite vague, baseless and malicious and there is no incriminating circumstances against him. He seems to have been involved in this case for his simply being a relative of Fazlur Rehman and the petitioner, as alleged in the petition. In the FIR the informant herself did not mention as to how he was concerned with either the entrustment of Rs. 10,000/- by her to Bundoo Khan or in making any false representation to her.

10. To sum up the contents of the FIR No. 34/ 95 disclose commission of no offence Under Sections 420, 406, IPC or for that matter any other offence by any of the person named in the FIR. It has been lodged with the ulterior motive of unnecessarily harassing the petitioner and other persons named in the FIR. Registration of a case for offence Under Sections 406,420, IPC on the basis of such FIR and initiation and pendency of investigation into those offences by the Police simply amount to the abuse of the police organisation for ulterior motive and hence abuse of the process of law. Such abuse of the process of law cannot be permitted.

11. In view of the above discussion, FIR No. 43/95 Under Section. 406/420, IPC registered at Police Station Jalupura, Jaipur, against Munna-petitioner, Fazlur Rehman and Nazir Khan A.S.I, is hereby quashed and the investigation initiated and being made by the Police Officers on the basis of the said FIR are hereby directed to be dropped and the case closed.

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