Tiny Vs. Jacky

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Court : Kerala

Decided On : Oct-27-2011

Judge : The Honourable Mrs. Justice K. Hema

Appeal No. : O.P.(C) No.1792 of 2011

Appellant : Tiny

Respondent : Jacky

Judgement :

Can a plaint be quashed under Art.226 or Art.227 of the Constitution? This important question arises for consideration in this petition.

2. This petition is filed, mainly, on the following averments: In 1962, petitioner's father had taken a shop room on lease from 2nd respondent's father. The original landlord and tenant, both expired. Petitioner, his brothers and mother continued as tenants and they are running business in the shop room in photostat, telephone booth, fax, lamination etc., under the style, "City photostat". Formerly, textile business was conducted in the shop till 1986. Petitioner is paying profession tax and electricity bills for the room. His employees are also registered with labour department.

3. After death of original landlord, his children (one of them is 2nd respondent) tried to trespass into the shop room and on 16.10.208, a suit was filed by petitioner and his mother as O.S. No.2881/2006 to restrain forceful eviction from the shop

room. The suit was decreed on 16.10.2008 and injunction was granted. The copy of judgment is Ext.P4.

4. After about two years, in 2010, 1st respondent made attempts to trespass into the room and demolish the wall of the shop room and to obstruct the business conducted in the room, on the claim that he purchased the room. Petitioner and his mother were constrained to file a suit on 16.7.2010 as O.S. No.2180/2010 against 1st respondent to prohibit such illegal acts. The copy of the plaint in the said suit is Ext.P5. The 1st respondent also filed a suit as O.S. No.2426/2010 against petitioner, his mother and brothers claiming exclusive title over the property. In the said suit, first respondent also filed an interlocutory application for injunction against petitioner and his mother but it was dismissed 06.09.2010 with costs. The copy of the order is Ext.P6.

5. First respondent and his goondas started threatening petitioner forcing him to vacate the shop room. Petitioner was forced to file a complaint on 18.7.2010 before police (Vide Ext.P7 and Ext.P8). But, under his influence from 1st respondent, the Sub Inspector took the side of 1st respondent and he also started threatening petitioner. Therefore, petitioner made a representation against Sub Inspector before Deputy Superintendent of Police, as per Ext.P9. Despite all these, harassment from police also continued.

6. Petitioner was forced to file a Writ Petition against police harassment, as W.P.(C) No.36924/2010. In the said Writ Petition, Government Pleader made a submission that police will not interfere since it is a civil dispute and the Writ Petition was disposed of, accordingly. The copy of the judgment is Ext.P10. However, first respondent filed an undertaking dated 19.7.2010 as Ext.P12 in O.S. No.2180/2010 that he will not forcefully dispossess petitioner from property, he will not cut open the wall of the room etc.

7. Thereafter, on 21.4.2011, 1st respondent and his hench men entered premises of the shop room and broke open the lock and removed furniture and equipments kept in the room. Certain other valuable articles were also removed. Northern wall of the room was partly demolished to create an opening to the adjacent room on its north. A complaint was again filed by petitioner before police and a case was

registered on 22.4.2011 against 1st respondent and copy of F.I.R. is Ext.P11.

8. First respondent's threat continued and petitioner apprehended illegal dispossession. Petitioner was therefore forced to move this Court for police protection, as per W.P.(C) No.12638/2011. An interim order dated 26.4.2011 was passed by this court in the Writ Petition granting effective police protection to enable petitioner to carry on the business smoothly in the shop room. The interim order was, later, made absolute, as per Ext.P13-order, after hearing 1st respondent also on merit.

9. First respondent had also tried to get power connection to the room disconnected, by influencing Corporation and it was disconnected also, for some time. Petitioner had to approach higher authorities for re-connection. Petitioner also had to file Writ Petition as No.2496/2011 for a direction to the Corporation authorities not to disconnect electric connection, except in accordant with law.

10. Having failed in all attempts to evict petitioner from the shop room forcibly and illegally, 1st respondent filed a suit before Munsiff court on 6.5.2011 as O.S.No.1654/2011. A copy of the plaint is Ext.P1. The prayer in the suit is to issue a direction to 3rd respondent-Corporation to prohibit second respondent from doing any business of prohibitory articles etc., being carried on in the shop room, without permission from the Corporation.

11. An interlocutory application was also filed in the suit for injunction against 2nd respondent and as per an Ext.P2 order dated 27.5.2011, an interim injunction was issued restraining 2nd respondent from conducting any business in prohibitory articles without licence or without permission from the Corporation. Pursuant to Ext.P2-order, Health Officer, Corporation issued Ext.P3 order dated 1.6.2011, directing to close down the shop within 24 hours, failing which, petitioner was also informed that the shop will be closed down by the Department without any further notice.

12. Even though Ext.P3 order is issued to 2nd respondent, it was served on petitioner, since he is in possession of the room. Petitioner was asked to close down the shop failing which he was also informed that the shop will be closed

down by Corporation. Petitioner who is actually conducting business in the shop is aggrieved and affected by Exts.P2 and P3 orders. According to petitioner, the very filing of suit as per Ext.P1 is vitiated by fraud, mala fides and illegalities. It is filed in collusion with 2nd respondent with a view to harass petitioner and to defeat his rights. Hence, petitioner seeks to quash Ext.P1 plaint, Ext.P2 and also Ext.P3 orders.

13. Notice was served on all respondents, but only 1st and 3rd respondent filed counter affidavit and contested the matter. The second respondent, against whom the suit (Ext.P1) is filed, remained ex parte.

14. First respondent filed counter affidavit and took up the following contentions: a petitioner under Ar.226 of Constitution is not maintainable against an order of Civil Court. Ext.P2-order is appealable under O.XLIII R.1(r) of C.P.C. and hence efficacious remedy is available to petitioner. Ext.P2 does not suffer from any error or excess of jurisdiction and it was passed, on being satisfied of the allegation in the affidavit filed along with the injunction petition. The extra-ordinary jurisdiction under Ar.227 therefore, cannot be invoked to quash Ext.P2 order.

15. In spite of Ext.p2-order, petitioner continued to run the shop for a few days in violation of the court order. Hence, he is not entitled to discretionary reliefs. Since petitioner is carrying on business without licence, this information was conveyed by 1st respondent to Corporation (vide Ext.R1(b). It is also averred by first respondent in the counter affidavit that Ext.P3 is passed under Kerala Municipalities Act and it is also appealable. The filing of this petition amounts to gross abuse of process of court and it is not maintainable, it is further contended.

16. The 3rd respondent-Corporation filed counter affidavit and contended that 1st respondent filed an application dated 31.3.2011 under Right to Information Act to know whether petitioner had licence to conduct business in the shop room. Hence, an enquiry was conducted by Corporation and it was revealed that photostat and STD booths were being run in the shop and stationary items are also sold in the shop, without obtaining licence. Petitioner was therefore, directed to take out a licence for the business but, he informed that there is some dispute in respect to the building and the matter is pending before the civil courts.

17. According to Corporation, petitioner informed the Corporation that an application would be filed for licence along with consent letter of the owners, after final orders are passed by the civil court in the matter. It is also stated in the counter affidavit filed by Corporation that Ext.P3 order was issued by Corporation, directing the party to close down the business within 24 hours of receipt of the notice and report compliance.

18. Heard both sides in detail. Exts.P1 to P13 and Ext.R1(a) to R1(f) are marked on either side. Taking into consideration, the nature of legal issues involved in this case. Sri. N. Subramaniam, Advocate was appointed as amicus curiae for getting an independent view on the legal aspects involved and to assist me to take a right decision in the case. He was also heard in detail.

19. The very maintainability of this petition is challenged by 1st respondent. Learned senior counsel for respondent Sri. K. Ramakumar argued that the relief sought for to quash the plaint by itself is very strange and unheard of and if such relief is granted, there will be flood of litigation in the High Court. It is also vehementally argued that such a relief cannot be granted, either under Art.226 or 227 of the Constitution, since adequate and effective remedy is available against Exts.P2 and P3 orders as they are appealable orders.

20. If petitioner is aggrieved by Ex.P2 order, he can very well approach the civil court itself, by seeking modification of the order, it is submitted. A petition is filed to implead petitioner in the suit, as per Ext.R1(c). It is also pointed out by learned counsel for 1st respondent that Ext.P2 and P3-orders are not issued against petitioner and hence, he does not have locus standi to file these petitions. It is also submitted that petitioner made false averments in the petition that notice was issued to him by Corporation to close down the business in the shop etc. Ext.P2 and Ex.P3 are issued to second respondent and not to petitioner, it is pointed out.

21. No writ can be issued to Munsiff Court, as held in Naresh v. State of Maharashtra (AIR 1967 SC 1), which is followed in Nallakoya v. Administrator, Union Territories of Laccadives etc.(1968 KLT 60), it is further argued by learned, counsel for 1st respondent. He also argued that the question of fraud cannot be examined in a proceedings under Art.227. Referring to a decision reported in State

of Uttar Pradesh and Another v. Pramod Kumar Shukla and Anr. (2008) 12 SCC 267), it is argued on behalf of the 1st respondent that fraud is to be established before civil court itself, after getting petitioner impleaded in the suit and not before this Court.

22. It is also submitted that attempt of petitioner is to carry on business without licence from Corporation and if the impugned orders are quashed by this court, the result will be to allow him to continue business without licence, it is argued. On the settled principles, High Court may not interfere with the orders challenged in this petition, it is submitted.

23. The argument raised by Sri. Jijo Paul, learned counsel for petitioner are in the following lines: The facts of this case and every step taken by 1st respondent will clearly reveal that first respondent has fraudulently filed the suit (vide Ext.P1) to harass petitioner and to see that the business run in the shop is closed down. He has filed the suit having failed in all illegal attempts to evict petitioner from the shop room which was in his possession as a tenant for a very long time.

24. First respondent deliberately and fraudulently omitted to implead petitioner as a defendant to the suit in order to obtain an order from court so that it could be misused to cause Corporation to pass an order to close down the shop, it is submitted. The suit is a collusive one and false averments are made in the plaint that 2nd respondent is in possession of the room, even though 1st respondent is fully aware that petitioner himself was doing business in the building because of the several litigation between petitioner and first respondent.

25. It is also submitted that first respondent gave false details in the plaint that hazardous and prohibited articles are kept in the shop room etc., knowing fully well that a photostat shop and a telephone booth etc., are run in the shop. Learned counsel also submitted that 1st respondent caused the Corporation to issue Ext.P3 order and got it served on petitioner, even though the order is addressed to second respondent. All these are done by 1st respondent with mala fide intention to harass petitioner and by defrauding the Munsiff Court, it is submitted.

26. Learned counsel for petitioner also vehemently argued that if any order passed by any court or authority results in manifest miscarriage of justice, even if the order as such may not be unjustifiable, on the facts pleaded, the High Court can interfere with such order of a subordinate court under Art.227, as held in Radhey Shyam and Anr. V. Chhabi Nath and Ors. ((2009) 5 SCC 616), Surya Dev Rai v. Ram Chander Rai and Ors. (2003 (3) KLT 490 (SC) = AIR 2003 SC 3044), Jai Singh and Ors. V. Municipal Corporation of Delhi and Anr. (2010 (4) KLT SN 20 (C.No.22) SC = (2010) 9 SCC 385), Shalini Shyam Shetty and Anr. V. Rajendra Shankar Patil (2010 (3) KLT SN 86 (C.No.90) SC=(2010) 8 SCC 329).

27. Learned counsel for petitioner also argued that inherent power vested in the High Court both under Art.226 and Art.227 of the Constitution are wide enough and the court to adopt any procedure as it deems fit, in delivering justice to parties. Various other decisions were also cited by learned counsel for respondent to fortify this argument (vide Sali and Others v. Santhosh (2010 (1) KLT 676), General Secretary, K.T.D.C. Workers Association v. Labour Court (2002 (1) KLT SN 88) (C.No.112), Krishan Kumar v. State of Rajasthan (AIR 1992 SC 1790), Radhey Shyam and Anr. V. Chhabi Nath and Ors. ((2009) 5 SCC 616), Shalini Shyam Shetty and Anr. V. Rajendra Shankar Patil (2010 (3) KLT SN 86 (C.No.90) SC-(2010) 8 SCC 329), Jai Singh and Ors. V. Municipal Corporation of Delhi and Anr. (2010 (4) KLT SN 20 (C.No.22) SC=(2010) 9 SCC 385) TGN. Kumar v. State of Kerala and Ors. (2011 (1) KLT 362 (SC)=(2011) 2 SCC 772) and Kanaiyalal Lalchand Sachdev and Ors. V. State of Maharasthra and Ors. (2011 (1) KLT SN 87 (C.No.117) SC=(2011) 2 SCC 782).

28. The petitioner being not a party to the suit and Ext.P3 being issued not in the name of petitioner, (even though it is served on petitioner), there is no other remedy for him before any other forum and hence, this petition is maintainable under Art.226 and 227 of Constitution, it is further argued. Learned counsel for petitioner also argued that if an injunction order is passed by the trial court is per se illegal, it can be challenged under proceedings, under Art.227 by an affected person who is not a party to the suit, without recourse to remedy of appeal as held by this Court in Manoj v. Guruvayoor Devaswom (2011 (2) KLT 1022).

29. It is also argued by learned counsel for petitioner that orders of a civil court can be examined in exceptional cases, where manifest miscarriage of justice has been occasioned. Ex.P1-plaint, P2 and P2 orders have resulted in gross miscarriage of justice and hence this is one of the best cases, in which entire proceedings are quashed with exemplary costs to petitioner since conduct of 1st respondent himself as revealed by various documents produced in this case warrants such a course, it is strongly argued.

30. Sri. N. Subramaniam, learned counsel who is appointed as amicus curiae, at the very outset drew my attention to the sad state of affair in the civil courts of the State wherein, ever so many suits are pending which are either per se not maintainable or which are filed with ulterior motive and with mala fides to harass the opposite party or a person who is not even a party to the suit. Many suits filed in civil courts are collusive in nature and if such proceedings are allowed to continue, it will result in gross miscarriage of justice and amount to abuse of process of court, it is strongly urged.

31. To prevent gross miscarriage of justice and abuse of process of court, this Court must intervene in fit cases under Art.226, 227 or S.151 of C.P.C., learned amicus curiae strongly opined. It is also pointed out by him that powers are even traceable to S.151 of the Civil Procedure Code ('C.P.C.' for short) and under Art.226 or Art.227 of the Constitution of India to interfere in fit cases. It is also submitted that as per provisions of C.P.C., a plaint can be rejected, only if there is no cause of action, but S.151 of C.P.C. can be invoked to terminate the proceedings, if the court is satisfied that continuance of the suit will amount to abuse of process of the court. He placed strong reliance upon the decision of the Madras High Court reported in Ranipet Municipality v. Shamsheer Khan (1997 (2) LW 761 = 1998 (2) KLJ 879).

32. Sri Subramaniam.N, learned counsel strongly opined that Ranipet Municipality's case is an instructive and illustrative decision wherein discussion is held as to what amounts to abuse of process of court etc. It is also submitted that if the courts finds, on facts of the case, that a party is approaching the court by indirect means and by circumventing the procedures established by law, this Court

shall certainly intervene to prevent abuse of process of court.

33. Learned counsel Sri. N. Subramaniam, also argued that power to prevent abuse of process of court is inherent in every court. If a suit or legal proceedings is not intended for the purpose for which it is instituted, but it is malicious, this Court has to intervene and put a stop to the proceedings and this principle is reflected in the decision reported in Sreedharan v. Seethala (1988 (2) KLT 732) and Brijraj Singh and Anr. Sheodan Singh and Ors. (1913 (35) ILR (All.) 337, a decision of the Privy Council.

34. It is also argued by learned Amicus Curiae that if the court is satisfied that a wrongful gain is obtained by a party by institution of a malicious proceedings and it resulted in miscarriage of justice, it is fit to invoke the powers under Art.227 of the Constitution (Vide Shree Ramachandran v. Krishna Raj (1996 Law Weekly 559 (Mad.). Learned counsel also maintained the strong stand that the shrewdness of a party who approaches the court with malicious intention shall not be rewarded, but the court must put his foot down to remove the illegality. Though the above observations are made in a decision of the Gujarat High Court Bhupati Lal v. Bhanimati (AIR 1984 Guj.10) in some other context, the principles can be borrowed in a case of this nature, it is submitted.

35. It is also pointed out by learned amicus curiae that in Surya Dev Rai's case. Supreme Court followed various decisions and made an elaborate discussion on the relevant topics and held that judicial court can be subject to jurisdiction of Writ. This position still holds the field and hence, this court can certainly placed reliance on the dictum laid down in the said decision, it is submitted. Hence, a Writ Petition seeking writ against court cannot any more be dismissed on the ground no writ will lie against a court, it is argued.

36. Learned counsel Sri. Subramaniam N. Also argued that this Court has power to strike off a suit under S.151 and Art.227, if the suit has no bona fides, as held in Moderator Church of South India C.S.I. Center Chennai v. J.S. Kingsley (1992 (2) MLJ 277), Mahadeb Jiew v. B.B. Sen (AIR 1951 Cal.563) and Ranipet Municipality v. M. Shamsheer Khan (1997 (2) LW 761) = 1998 (2) KLJ 879). It is also pointed out by learned amicus curiae that the Supreme Court observed in Ravinderkaur v.

Ashok Kumar ((2003) 8 SCC 289) that the diabolical method adopted by a party may bring bad name to judicial system and the courts have to intervene in appropriate cases.

37. On hearing both sides and learned amicus curiae and on a perusal of the pleadings and documents, I find some thing very strange and peculiar on the facts of this case. Though a suit was filed by 1st respondent before Munsiff Court (Ext.P1-plaint) for obtaining a decree to issue a direction to Corporation (R3) to prohibit 2nd respondent from conducting business without licence etc., it is crystal clear from the documents that first respondent never intended to procure any such decree against either of them. Instead, first respondent actually targeted petitioner who is not even a party to the suit. First respondent's only intention seems to be to get petitioner's shop and business closed down some how or other, as amply clear from the various documents.

38. To achieve this goal, first respondent very cleverly moved his coins, and as first step, filed the suit against a person (R2) who has nothing to do with the shop stating that he is in possession of the shop. He also pleaded in Ext.P1 that second respondent was letting various other people to conduct business in dangerous and hazardous articles in the shop etc., which is false to his knowledge. He knew fully well that petitioner was in possession of the room as a tenant for long years and he himself is conducting business in photostat etc.

39. The various documents produced in this case also reveal that much prior to filing of Ex.P1 plaint, there were various litigations between first respondent and petitioner before Munsiff Court and also before this court, in respect of the very same shop room, which is the subject matter in Ext.P1. It is revealed from Ext.p5 (copy of plaint) that a suit as O.S. 2180/2010 was filed by petitioner and his mother against 1st respondent about one year prior to filing of the present suit, to restrain 1st respondent from illegally evicting them from the very same shop room, disconnecting electric connection to the room and also from demolishing the northern room of the shop.

40. In Ext.P12, which is an affidavit dated 19.7.2010 filed by 1st respondent before Munsiff Court, he admitted that petitioner is in possession of the shop room. He

also undertook as per Ex.P12 that he will not evict petitioner by force or demolish the northern room of the shop room. Even an interim order was passed by this court on 26.4.2011 in a Writ Petition by which, effective police protection was ordered to enable petitioner to carry on business in the shop room, without illegal obstruction from 1st respondent. This order was later made absolute also (Vide Ex.P13).

41. In the above Writ Petition also (vide Ex.P13 order in the said petition), 1st respondent undertook that he will not throw petitioner out of possession of the room. At the time of final hearing of that Writ Petition it was made clear by 1st respondent's counsel that first respondent has no intention to indulge in any culpable acts as apprehended by petitioner etc. All these facts are revealed from Ex.P13 which is an order of this court in a Writ Petition filed by petitioner for police protection in which first respondent was a party who was heard on merit.

42. Ex.p10 order of this court further discloses that petitioner filed W.P.(C) No.36924/2010 against police harassment and the very same shop room is the subject matter in the said petition also that 1st respondent was a party to that petition also. Ex.P11 also reveals that even after the written undertaking filed by 1st respondent not before court that he will dispossess petitioner illegally, he allegedly continued illegal activities and hence petitioner filed a criminal complaint against 1st respondent in respect of the same room. A criminal case was also registered against 1st respondent and copy of the F.I.R. dated 22.4.2011 is Ex.P11.

43. Ext.P6 is an order passed by Munsif Court on 6.9.2011 in an injunction application filed by 1st respondent for interim injunction against petitioner in O.S. No.2426/2010. It is undisputed that the very same shop room was the subject matter of that suit also. Learned Munsiff observed in Ex.P6 that the need expressed by first respondent to effect periodical repairs in the shop room is only an attempt to evict petitioner etc., from the shop room. It was also held in Ext.P6 that 1st respondent has no bona fides in making the claim and the petition for injunction filed against 1st respondent dismissed with costs.

44. Above all these, Ext.R1(b) issued from Corporation office reveals that prior to filing of present suit, an application was filed by 1st respondent before the Corporation to ascertain whether any licence was issued in respect of the very same room and Corporation gave a reply to first respondent that notice was given to petitioner who is conducting the business in the said room and he informed Corporation that three suits were pending between himself and owners of the shop and until those are disposed of he would not get consent letter from the owners of the shop (Out of those three suits, two are between petitioner and 1st respondent). Ex.R1(b) also discloses that it was addressed to 1st respondent and Corporation informed him that petitioner was conducting photostat business under style “City photostat” in the shop room etc.

45. Ext.R1(b) was issued to 1st respondent prior to filing of the present suit, as per Ex.P1. Ex.R1(b) is dated 26.4.2011 whereas Ex.P1 plaint is filed on 6.5.2011, after about 10 days of issuance of Ext.R1(b). Ex.P6 to P9 and P11 disclose that there wee other proceedings also between petitioner and 1st respondent before police relating to the same shop. Admittedly, proceedings had also been initiated by petitioner against 1st respondent on the allegation that attempts wee made by 1st respondent to get the power supply to the room disconnected etc.

46. It is also clear from Ext.R1(a)-affidavit filed by first respondent in the present suit that he was also aware that there was a suit between petitioner and predecessor-in-interest of 1st respondent in respect of the same room and petitioner’s right over the room as tenant is fully established before the civil court. Thus, by virtue of various litigations and other proceedings, 1st respondent was fully aware much prior to the filing of the present suit itself that petitioner himself is in occupation of the room and he was conducting business therein as a tenant, since a very long time past. First respondent also knew that second respondent has nothing to do with the business run in the room.

47. In spite of all these, while filing the present suit, it is stated by 1st respondent in Ext.P1 plaint that second respondent is using the room and letting others to conduct business in prohibited and hazardous articles on weekly basis etc. He also did not make any whisper in the plaint about petitioner’s possession of the

shop room as a tenant. All the relevant facts were suppressed and he stated certain facts in Ex.P1-plaint and Ex.R1(a) affidavit which are all false to his own knowledge. Based on the false pleadings first respondent also obtained Ex.P2 injunction order from the Munsiff Court restraining second respondent, from conducting business in the shop room etc. Though the said order was obtained against second respondent, it was intended to be misused against petitioner.

48. After obtaining Ex.P2 order, Corporation was also caused to issue an order as Ext.P3 order, directing to close down the shop room. Though, Ex.P3 is addressed to second respondent, it was served on petitioner, who is actually doing the business in the room. Learned counsel appearing for Corporation Sri. V.M. Syamkumar fairly conceded that it was pursuant to Ext.P2 order that Corporation passed Ext.p3 order to close down the business in the room and even though the order is issued against second respondent, it was served on petitioner, since he was in actual possession of the room. Petitioner was also directed to close down the shop. These facts are also revealed from the counter affidavit filed by Corporation.

49. There can be no doubt that though Ex.P2 and P3 orders are procured by first respondent against second respondent, those are intended to be misused to harass petitioner. It is also clear that those orders are obtained to ensure that petitioner's shop and the business run by him for very long period are closed down. The means and methods adopted by 1st respondent to obtain Ex.P2 and P3-orders are most undesirable and those cannot be approved by any court.

50. It is unfortunate that an argument is raised by learned counsel for 1st respondent that Ext.p2 and Ext.P3-orders are passed against 2nd respondent and not against petitioner and hence, petitioner has no locus standi etc. A person who has obtained an order from a court, on the basis of pleading of facts which are false to his own knowledge, without making the person who is actually targeted a party to the proceeding with the sole intention to misuse the order against him, the former shall not be heard to say that the latter has no locus standi to challenge such order, only on the ground that the order is passed against some other person and not the targeted person.

51. If the court is satisfied that an order is obtained by any person deceitful means to harm another, it can even suo motu undo the harm. So the question of locus standi etc., is not very relevant in cases of this type. At any rate, no person shall be permitted by the court to take undue advantage of his own dishonesty and contend that the other party who is illegally wounded by him has no locus standi. He has no right to request the court to show a red signal to the other who rushes to the court for justice.

52. Hence, the argument that petitioner has no locus standi and that he has to go to the civil court to establish fraud etc., can only be rejected. On the other hand, I find considerable force in the argument that first respondent has adopted crooked and contemptuous step to dishonestly obtain Ext.P2 and Ext.P3 orders with sole intention to misuse them against petitioner to close down his shop. So, I am not inclined to dismiss this petition on the ground of locus standi etc.

53. There can be no doubt that Ext.p2-order would not have been passed, if true facts were stated by 1st respondent in Ext.P1 or in Ext.R1(a) affidavit/application for injunction. Had learned Munsiff been aware of the litigative history, an ex parte injunction order like Ext.P2 would not have been issued. Had learned Munsiff been aware that this court had granted effective police protection enabling petitioner to conduct the business in the very shop room (vide interim order as extracted in Ext.P13-order) it is unlikely that Ext.P2 order would have passed in respect of the business run in the same room, that too, without hearing petitioner. Had there not been an order like Ext.P2, first respondent would not have been in a position to cause Corporation to issue Ext.P3 order and get to served on petitioner, which happened to be to the detriment of the latter.

54. If the averments in Ext.P1-plaintiff and Ex.R1(a) which are false to the knowledge of 1st respondent are hypothetically struck off, there will be a truncated plaint, on the basis of which, no order could be issued by any court. No cause of action also would survive for decreeing the suit nor to get an injunction order like Ex.P2. In such circumstances, it will be unjust and unfair to ask petitioner (against whom orders are dishonestly obtained by 1st respondent) to get himself impleaded in the proceedings and fight out his cause, by following the procedure established

by law.

55. Such a course adopted by the court in a case like this will result in gross injustice to the party who has already been wronged by a mischievous litigant who misused the authority of court to achieve his wicked goal. The rules of procedure and law are meant to do justice and not injustice to any individual by following the same. Hence the moment it is brought to the notice of the court that any party has procured an order from the court by making false averments in the plaint or affidavit, with the sole intention to harm or harass any other person, and the court is used as an instrument to do so, the court shall rip open and examine the whole matter without any delay to undo the harm done.

56. It must be borne in mind that any proceeding which is initiated with an ulterior motive will ordinarily be supported by all necessary pleadings. In fact, such a brief will be better drafted than a genuine one to ensure that it does not miss the target. Therefore, in such cases, it may not be an easy task for the court to identify an ill-motivated litigation at the inception, especially if the opposite party who is targeted is deliberately kept out of picture. So, it is possible that an order passed in such a suit may not be unjustified apparently.

57. But, if the court comes to know later that an order is obtained by any person by making averments and pleadings in the plaint or affidavit which are false to his own knowledge, the court shall do everything possible to undo the harm caused, if any, by such order. The court shall hypothetically strike off all such false pleadings from the plaint and affidavit and read them without such pleadings and see if anything is left therein to proceed and further. If nothing survives in the truncated plaint or affidavit, the court shall put an end to the proceedings initiated on the basis of a plaint which contained false pleadings. It shall refuse to proceed any further in the matter. According to me, this course if inevitable to retain the public confidence in judiciary and system of administration of justice and to prevent abuse of process of court.

58. So also, if any person is impleaded as a defendant against whom plaintiff does not intend to obtain a decree or order but be is impleaded with mala fide intention to harass another, name of such defendant shall also be hypothetically deleted

from the proceeding. If the court finds that there is nobody in the party array against whom any decree or an order as sought for can be passed, there is no logic or reason in saying that the court must still proceed. According to me the court shall put a stop to the proceedings, instead of keeping the suit on file, just to accommodate a dishonest litigant to enable him to implead another person and amend the plaint suitably.

59. No law or society expects the court to indulge in such unfairness or injustice, though technically, the procedural law may make all these possible. Hence, in my considered opinion, the court shall not honour a litigant (who adopts a deceitful method to obtain an order from court to harm another) by keeping his brief intact on its file. According to me, the dishonesty of a litigant who makes the court a tool to achieve his evil goal to harm another person must be discouraged and condemned in all possible manner. None shall be allowed to abuse the authority of court.

60. The Court must remember that any order procured by dishonest means may destroy the very reputation of the judiciary and shake public confidence in the system of administration of justice. The shrewdness of the party who approaches the court with soiled hands and malicious intention shall not be rewarded by the silence of the court. The court must speak firmly and loudly and also act positively, to uphold public confidence in this institution.

61. It is sad and highly abominable that the court is made an instrument by certain individuals to achieve their shady goals. The process of court is at times, more abused or misused than used for a right cause. The courts shall not allow such tendency to grow. It must be nipped and snapped when it sprouts so that justice will not be a casualty at the hands of such litigants. The court must find its own way to terminate once for all, the proceedings which are commenced with sole motive to harm another by making the court an instrument to achieve the desired result.

62. But, then, if the question is, where is the power for the court to terminate a civil suit, it can be found in Art.226, 227 and even in S.151 of C.P.C. Art.227 of the Constitution can be invoked to meet ends of justice. In State v. Navjot Sandhu

(2003 (2) KLT SN 101 (C.No.132) SC=(2003) 6 SCC 641), the Supreme Court held thus: “The powers under Art.227 are wide and can be used, to meet the ends of justice” Referring to Art.227 of the Constitution, it is held in Ramesh Chandra Sankla v. Vikram Cement ((2008) 14 SCC 580) as follows:

“It can be exercised ex debito juistiae i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must “advance the ends of justice and uproot injustice”.

63. The Supreme Court held in Roshan Deen v. Preeti Lal (2002 (1) KLT SN 37 (C.No.43) SC=(2002) 1 SCC 100) reminded the courts of purpose of the power under Art.226 and 227 as follows:

“12. …Time and again this Court has reminded that the power conferred on the High Court under Arts.226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law”.

64. In Ramesh Chandra Sankla v. Vikram Cement ((2008) 14 SCC 58) the Supreme Court reiterated nature of power under Art.226 and 227 thus:

“From the above cases, it clearly transpires that powers under Arts.226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project”.

65. In Surya Dev Rai v. Ram Chander Rai (2003 (3) KLT 490 (SC)=(2003) 6 SCC 675) also, the Supreme Court emphasised that the paramount consideration behind vesting of power under Art.227 of the Constitution “is paving the path of justice and removing any obstacles therein.” I am not multiplying authorities on the

point. A research took me to many. The Supreme Court summed up in Surya Dev Rai like this, “the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge”.

66. Thus, there arises no doubt that this Court has ample power under Art.227 and Art.226 of the Constitution to interfere in any proceedings pending before the Subordinate court, if justice warrants such interference. But, such power being discretionary it shall be exercised only if the judicial conscience and practical wisdom dictate to the court to act, to uphold justice and prevent miscarriage of justice. But it shall not be used under all circumstances.

67. However, with reference to Art.227 of the Constitution, the Supreme Court also held “Ordinarily, it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the court or the tribunal subject to its superintendence” (vide State of West Bengal v. Samar Kuar Sarkar (2009 (4) KLT SN 52 (C.No.46) SC=(2009) 15 SCC 444). Learned counsel for 1st respondent gaining support from the above dictum strongly argued that there is no error or excess in jurisdiction in issuing Ex.P2 order and hence Art.227 cannot be invoked.

68. Turning back to the facts, I will answer this. As already pointed out by me earlier, it is evidence that Ext.P1-plaint was drafted by making suitable suppressions and by incorporating certain pleadings which are not true to the knowledge of 1st respondent himself. This is done with a view to get an order from court to his convenience, so that he can misuse the same against petitioner. Therefore, going by pleadings, it cannot be said that the court committed any error or excess of jurisdiction.

69. It cannot also be disputed that by a clever and dishonest drafting of a plaint, it may not be difficult for a person to procure an order sans error of jurisdiction can be easily obtained from a court. By a calculated drafting it may be possible to create a false cause of action to file a suit and procure an ex parte order which may not be vitiated by any error or excess of jurisdiction. A suit with a deceptive mask can easily be framed to procure an order which may be justified on the basis

of the pleadings. Therefore, only because there is no error or excess of jurisdiction, which is accountable to a mischievous drafting, this court shall not hesitate or refuse to invoke power under Art.227.

70. The Constitution of India visvualises a more subline role for the court. If the court, finds that the proceedings initiated by filing a plaint which is fraught with false details which are false to the knowledge of the plaintiff himself, and if the court is satisfied that continuance of such proceeding will result in gross injustice or amount to abuse of process of the court, the court must bring such proceedings to a halt. A false suit shall not be manured and watered to sprout out or survive in court with poisonous roots. The powers under Art.227 of the Constitution must be invoked at the earliest to strike off such suit from the file of the court, to uphold justice and uproot injustice.

71. The time of the court is valuable and it is meant to be spent for a person who is honest to the court. Its time shall be preserved and utilized for cause of a honest litigant who deserves justice from court. A party who approaches the court with a plaint containing pleadings which are false to his own knowledge is an abuser of process of court. He must be shown his way out to the exit door of the court. His plaint must be struck off, since it is no plaint at all, if the false pleadings are deleted from it. The power under Art.227 can be, and must be used to quash the plaint of such nature.

72. The Madras High Court in Ranipet Municipality represented by its Commissioner and Special Officer, Ranipet Municipality v. M. Shamsheerkan (1997 (2) LW 761) held follows:

“When the very initiation of legal proceedings itself is an abuse of process, it is the duty of the court to see that the respondent did not take advantage of that litigation and put a local authority to further hardship….Under the above circumstances,…the plaint filed in the suit is struck-off from the file”.

73. In Sreedharan v. Seethala (1988 (2) KLT 732), this court held thus:

“The power of the court to make such orders as are necessary to prevent abuse of the process of court is inherent in every court. (See S.151 C.P.C.)”

74. The above decisions also support my view. S.151 of the C.P.C. lays down that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It is well settled and well known that criminal proceedings initiated with mala fide intention are quashed by invoking inherent powers of this court under S.482 of Criminal Procedure Code (‘Cr.P.C.’ for short), even if the first information report disclosed an offence by clever drafting. S.151 of C.P.C. and S.482 or Cr.P.C. are brought into the statute for the same purpose. The inherent power of the court is to be invoked to secure ends of justice and such power is latent in every court. Such power is only secured further by the statute by laying down nothing shall limit such powers, to meet the ends of justice etc.

75. In Bhajan Lal v. State of Haryana (AIR 1992 SC 604), the seventh ground which entitles the High Court to quash the criminal proceedings is stated as follows:

“(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.”

76. As per settled principles, even though a first information report which prima facie discloses an offence shall not be quashed under S.482, if the court is satisfied that the proceedings are initiated with ulterior motive, or mala fides the court can quash the F.I.R. under S.482 of Cr.P.C. This is a clear indication that the courts must loath a mala fide litigation and smother the same, at the very commencement of the proceedings.

77. So, I do not understand why a distinction must be made between civil and criminal proceedings to quash a mala fide proceeding by invoking inherent power of the court, if the court finds the continuance of the proceeding, will amount to

abuse of process of court and it is initiated on the basis of false averments and allegations. If the court is satisfied that a suit is filed with mala fide intention and with ulterior motive by incorporating pleadings in the plaint which are false to the knowledge of the plaintiff himself, justice demands that such suit shall be quashed by invoking inherent power under S.151 of the C.P.C.

78. If the confidence and credibility of judiciary have to survive, individuals who are misusing the process of court have to be identified by courts and in appropriate cases, their evil attempts should be put an end to, by a strong hand of law. As V.R. Krishna Iyer, J. reminded us in T. Arivandandam T.V. Satyapal and Anr. ((1977) 4 SCC 467), "Long arm of law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive".

79. I also gain support from a decision of the Supreme Court in Eicher Tractor Ltd v. Harihar Singh (2008 KHC 6970=2008 15 SCALE 60), to take my view on the issue. The Supreme Court held in the said decision thus:

"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 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 continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice".

80. If still, any question survives, whether there is any power for the court to terminate civil proceedings which is commenced by filing a suit with ulterior motive, according to me, it can be found in Art.226 also. I have already cited certain decisions which refer to power under Art.227 as well as Art.226 earlier in this judgment. In Rukmini Narvekar v. Vijaya Satardekar (2008 (4) KLT SN 29 (C.No.29) SC=(2008) 14 SCC 1), it is held thus:

"13. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under S.482 Cr.P.C. or Art.226 of the Constitution has been laid down by this Court in State of Haryana v. Bhajan Lal (vide SCC paragraphs

102 and 103). This decision has been followed subsequently by a series of decisions e.g. Pepsi Foods Ltd. v. Judicial Magistrate, Minu Kumari v. State of Bihar, etc.”.

81. If in the opinion of Supreme Court, criminal proceedings initiated with mala fides shall not be allowed to continue in a court and those can be quashed under Art.226, it must equally apply to a civil proceeding also because both such proceedings if maliciously and falsely initiated may adversely affect the rights and liberties of citizens of this country and those may also result in gross injustice to them. The court shall not discriminate a civil proceeding or suit to invoke constitutional powers under Art.226, without any logic or reason.

82. It is true that the Supreme Court held in Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006 (2) KLT 525 (SC)=2006) 3 SCC 658), “a writ of certiorari ordinarily would not be issued by a writ court under Art.226 of the Constitution against a judicial officer. (See NareshShridhar Mirajkar v. State of Maharashtra)” as pointed out by learned counsel for 1st respondent, but in Surya Dev Rai v. Ram Chander Rai (2003 (3) KLT 490 (SC)=(2003) 6 SCC 675), as pointed out by learned counsel for petitioner the Supreme Court, after an elaborate discussion of various aspects and referring to various precedents laid down as follows:

“19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Art.226 of the Constitution.”

83. Therefore, in the light of the above pronouncement, it cannot any more be doubted whether the judicial courts subordinate to High Court are amenable to writ jurisdiction under Art.226. They can also be subjected to the writ jurisdiction under Art.226 of Constitution.

84. Taking all the above facts and circumstances, into consideration I hold that nothing shall in the way of this Court to terminate a civil proceeding initiated with mala fides or with ulterior motive, the continuance of which will amount to abuse of process of court. No threat of flood of litigation in the High Court dissuades or

baffles me from taking this view. The courts exist to uphold justice without baseless apprehensions or fear. So, to secure ends of justice and to uproot gross injustice, this court has power under Art.226, Art.227 or S.151 of C.P.C. to quash a plaint which contains pleadings which are false to the knowledge of the plaintiff and without which, the plaint is no plaint at all.

85. A person who suffers at the hands of another who has filed a false suit cannot be sent back to the civil court by saying that he has another remedy under law. May be, he has another remedy, but it may not be as efficacious as the remedy of quashing an ill-motivated and false plaint which is filed with ulterior motives. The question is not whether a party has any other remedy, but the real question is whether the remedy, if any, available is as efficacious as the one which can be granted under Art.226 or Art.227.

86. On the facts of this case, I am satisfied that 1st respondent filed Ext.P1-plaint containing many facts, which are false to his knowledge. If such facts are struck off hypothetically from the plaint, nothing will be left in the plaint to grant any relief. So also, if the name of second respondent is hypothetically struck off from the party array, no order like Ext.P2 could be passed. Ext.P3 order is passed pursuant to Ext.P2 order. In such circumstances, the plaint Ext.P1 and the orders Ext.P2 and Ext.P3 are to be quashed, under Art.226, Art.227 and S.151 of the C.P.C. in the light of what is laid down in this judgment.

87. Learned counsel for 1st respondent submitted in this context that petitioner is impleaded in the suit during the pendency of this proceedings and hence petitioner may be directed to seek his remedy before the trial court. If such a course is adopted by me, it will be like rewarding first respondent by affording another opportunity to harass petitioner, who has already suffered at the soiled hands of 1 st respondent by running from pillar to post for justice. I have no re-thinking in the matter and according to me, the only efficacious remedy is to quash all proceedings initiated on the basis of Ext.P1.

88. As a measure to prevent any further harassment to petitioner and also to prevent further abuse of process of the court at the instance of 1st respondent, I also find exemplary cost has to be ordered against 1st respondent as submitted by

learned counsel for petitioner. Considering all the facts and circumstances of this case, I fix `25,000/- as a reasonable exemplary costs. In Satyapal Singh v. Union of India, (2010) 12 SCC 70), such a course is approved and it is held as follows:

“Exemplary costs are levied where a claim is found to be false or vexatious or where a party is found to be guilty of misrepresentation, fraud or suppression of facts”.

In Ila Vipin Pandya (2) v. Smita Ambalal Patel ((2007) 6 SCC 750), also the Supreme Court held thus:

“24. We have advisedly given the detailed history of this litigation to emphasis that those who attempt to take court proceedings lightly or try to subvert the judicial process to their advantage, do so at their peril. The imposition of exemplary costs must, as a consequence, follow”.

89. In Amitabh Bachchan Corpn. Ltd. v. Manila Jagran Manch ((1997) 7 SCC 91) the Supreme Court laid down as follows:

“But this should serve as a warning that in future such abuse of the judicial process may visit the petitioners with an order for payment of exemplary costs”.

90. Before concluding, a few more words, as part of my duty: With great admiration, I place on record, my sincere appreciation for the service and assistance rendered to this court by Sri. N. Subramaniam, learned counsel who is appointed as amicus curiae. I would also mention here that be expressed his strong resentment to the litigative society which misuses and abuses the authority and process of the court. To them, this judgment is my message.

In the result, the following order is passed.

(i) Ext.P1-Plaint and all further proceedings initiated on the basis of the said plaint are hereby quashed.

(ii) Ext.P2 and Ext.P3 orders are also quashed.

(iii) The Munsif Court is directed to drop all further proceedings initiated on Ext.P1.

(iv) First respondent shall pay exemplary cost of `25,000/- to the petitioner within one month from date of receipt of copy of this order.

This petition is allowed with costs.