



2023 INSC 688

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2345 OF 2023
(Arising out of S.L.P. (Criminal) No. 3613 of 2023)

HAJI IQBAL @ BALA
THROUGH S.P.O.A.

...APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J. :

1. Leave granted.
2. This appeal is at the instance of one of the accused persons of the First Information Report (FIR) No. 0007 of 2023 registered on 10.01.2023 at the Mirzapur Police Station, District Saharanpur, State of U.P. and is directed against the order passed by the High Court of Judicature at Allahabad dated 30.01.2023 in the Criminal Miscellaneous Writ Petition No. 982 of 2023 filed by the appellant herein by which the High Court rejected the Writ Petition and thereby declined to quash

the FIR for the offences punishable under Sections 395, 386, 365, 342 and 506 resply of the Indian Penal Code (IPC).

3. Respondent No. 3 herein is the original first informant.

He lodged the FIR in question which reads as thus:-

“The complainant is a contractor. In the year 2012, his firm by name V.S. Contractor received contracts for the construction work of a school building in Glocal University for Rs. 4.80 crore, a corporate office for Rs. 40 lakh and a girls’ hostel for Rs. 14 lakh. The work order was issued by the owner of the Glocal University viz. Mohd. Haji Iqbal alias Bala S/o Abdul Wahid, R/o Mirzapur. All the agreements were signed by the then Manager Saifuddin working with the Glocal University. Copy of the agreements is attached with the complaint. The construction work was completed by the company by the end of the year 2015. I received some money. However, a sum of Rs. 1,20,00,000/- was left outstanding to be paid by the owner of the Glocal University, Mohd. Haji Iqbal alias Bala S/o Abdul Wahid. A lot of construction material like 9849-iron plates, 3215 channel, 998 joint pins, 7780 prop. Jack, 407 laser pipes, 250 cup lop, 70 clip, 560 iron sheets were kept in the University campus worth around Rs. 1,86,00,000/-. I had gone to meet Mohd. Haji Iqbal alias Bala and his brother Mehmood Ali Iqbal in the year 2016 with a request to allow me to take back the construction material back and also for recovery of the outstanding bill amount. They kept on ignoring me for many years in the guise of giving me new a contract and later, they even declined to meet me. In the year 2021, when the rent of my construction material went about Rs. 4 crore, too much pressure was put on me by the owner of the goods owner and therefor once again, I went to meet Mohd. Haji Iqbal alias Bala in the Global University in March, 2021. Mohd. Haji Iqbal alias Bala and his brother Mehmood Ali and the sons of Bala viz. Javed, Afzal and Alishan refused to give back the construction material and goods and threatened to kill me if I came

back again. I again visited the Glocal University on the following Monday with my partner Yogesh Kumar S/o Dharam Singh R/o, Shiv Puri, Yamuna Nagar requesting to give back the construction material and the goods. I found a person at the university gate itself (who seemed to be very close to Iqbal, as he spoke on the phone, may be an employee of Glocal University or looking after Iqbal's land related work). I can recognise him when he comes face to face or by seeing his photo. He spoke to the owners and asked me to come with him. He took us to Haji Iqbal's residence, where Haji Iqbal alias Bala and his brother Mahmood Ali and Iqbal's sons Javed, Afzal and Alishan were present. When I demanded my money, they became very angry on us and forcefully snatched away car key, mobiles, a sum of Rs. 80,000/- from our pocket and I.D. Card. They asked us to bring the original copy of all the agreements and a sum of Rs. 10 lakh and threatened that they would kill both of us if we tell anyone about this. Later, after about 6 hours, around 5 p.m., one of our employee Karan Singh S/o Om Veer R/o Balu, District Saharanpur came at their residence with all the agreements and a sum of Rs. 10 lakh. Thereafter, they returned us the car key and mobiles only but did not return Rs. 80,000/-. Somehow, we escaped from there. They have great influence and power in the area, so we did not take any action against them fearing safety of our families. But now I have come to know through another contractor Karamjit Singh R/o Yamuna Nagar who is now doing construction related work in Global University that the owners of the Glocal University filed a case against me and my brother. Through the said new contractor, I also came to know that all the construction materials are kept in the steel yard of the University campus. Thereafter I came to the police station with the hope of getting justice through the administration. You are requested to kindly take legal action against all of them by registering the complaint against them. I want to inform that all the original agreements and documents relating to the goods are kept at Haji Iqbal's residence at Mirzapur and his residence/Glocal office, New Bhagat Singh Colony, Bajoriya Road because when Iqbal forcefully took the documents

from me, he kept them in his house at New Bhagat Singh Colony, Bajoriya Road, Balraj Sethi S/o Banshi Lal R/o 58, Vishnu Nagar, Yamuna Nagar (Haryana).”

4. Thus, the allegations in the aforementioned FIR are that in the year 2012 the complainant Balraj Sethi's (Respondent No. 3 herein) Company namely, V.S. Contractor got the contract for construction work of a School Building in Glocal University (owned by the appellant) for Rs. 4.80 crore. All the agreements were made by the then Manager namely, Saifuddin in Glocal University. The said construction work was completed by the Complainant in the year 2015 after which a balance amount of Rs. 1.20 crore was left to be paid by the owner of Glocal University. It is further alleged that several construction articles worth Rs. 1.86 crore were also kept in Glocal University. In the year 2016 when the Complainant had gone to meet Mehmood Ali and Mohammad Wajid and asked them to return the said construction articles as well as the balance amount, they promised to give him a new contract and later kept refusing to meet the Complainant. On March 2021 when the Complainant had gone to meet the appellant to ask him to return the balance amount, the accused persons namely, Mahmood Ali, Javed, Afzal and Alishan refused to return the balance amount as well as the construction articles and

further threatened to kill the Complainant. It is further alleged that on a Monday when the Complainant along with his partner Yogesh Kumar had gone to Glocal University, they were taken by an unknown person to the appellant's residence, where all the accused persons were present and when the Complainant asked them to return the balance amount they forcibly snatched the Complainant's car key, mobile phone, a sum of Rs. 80,000/- (from their pocket) and their ID card. The accused persons then demanded the Complainant to hand over the original copy of all the agreements and a sum of Rs. 10 lakh, which was handed over to the accused persons on the same day. The accused persons kept all the agreements along with Rs. 10 lakh with them and returned only the Complainant's car key and mobile phones but did not return the amount Rs. 80,000/-. Thereafter the Complainant and Yogesh Kumar managed to escape from there.

5. It appears from the materials on record that the appellant herein went before the High Court by filing Criminal Miscellaneous Writ Petition No. 982 of 2023 for the purpose of getting the FIR quashed. The High Court declined to quash the FIR and accordingly rejected the Writ Petition. The impugned order of the High Court reads thus:-

“Heard Sri Indra Bhan Yadav, learned counsel for the petitioner, Sri Ankit Srivastava holding brief of Sri Vikas Mani Srivastava, learned counsel appearing for the informant and learned A.G.A for the State respondents.

Vide order dated 20.1.2023 learned counsel for the petitioner submitted that the matter may be referred to the Mediation Centre of this Court to which learned counsel appearing for the informant-respondent no. 3 sought time to seek instructions.

Today, learned counsel appearing for the informant stated in categorical terms that there is no possibility of mediation.

The relief sought in this petition is for quashing of the F.I.R. dated 10.1.2023 registered as Case Crime No. 7 of 2023 under Sections 395, 386, 365, 342, 506 IPC, Police Station Mirzapur, District Saharanpur. Further prayer has been made not to arrest the petitioner in the aforesaid case.

Submission of learned counsel for the petitioner is that the petitioner has been falsely implicated in the present case due to political reasons and the civil dispute is being given colour of criminal case.

Per contra, learned A.G.A. as well as learned counsel appearing for the informant confirmed that the petitioner has criminal history of 36 cases and in addition to that learned counsel appearing for the informant submitted that 11 cases have also been instituted as complaint case against the petitioner. Learned AGA as well as learned counsel appearing for the informant opposed the prayer for quashing of the FIR, which discloses cognizable offence.

Perusal of the impugned first information report prima facie reveals commission of cognizable offence. Therefore, in view Neutral Citation No. - 2023:AHC:23870-DB of the law laid down by Hon'ble Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh) decided on 07.10.2021, no

case has been made out for interference with the impugned first information report.

Therefore, the writ petition is dismissed leaving it open for the petitioner to apply before the competent court for anticipatory bail/bail as permissible under law and in accordance with law.”

6. Feeling aggrieved with the aforesaid order passed by the High Court, the appellant is before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

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

“a) 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 of dacoity is clearly not made out against the Petitioner. It is highly doubtful that the Complainant, who was aware of the criminal history of the Petitioner, would go to the house of the accused Petitioner with a huge sum of money, that is, Rs. 80,000/- in his pocket and after the alleged incident would remain silent for two years.

b) The allegations in the First Information Report are not only vague but also highly improbable given that apart from the bald allegation that the incident occurred on a Monday in the year 2021, there is no mention of the date and time of incident in the FIR. The said incident allegedly occurred in the year 2021 while the FIR has been lodged after an inordinate delay of 2 years, that is, on 10.01.2023. On a reading of the FIR it is evident that the entire dispute is with respect to the contract of construction work of the School building in Glocal University (owned by the Petitioner). Although the construction work had commenced in the year 2012 and

was completed in the year 2015 but no complaint during this period was ever lodged by the Complainant while allegedly there was a due amount of Rs. 1.20 crore along with construction articles lying in Glocal University. It is submitted that the nature of dispute is essentially civil and has been deliberately given a criminal colour. Moreover the alleged agreement for contractual work was entered into between the Complainant and Saifuddin (who was not made an accused in the FIR), the then Manager of Glocal University, for which payment was made by Glocal University thus there is no involvement of the Petitioner in fulfilling any demand of the Complainant.

c) It is submitted that although the Respondents have alleged that the Petitioner is a mining mafia in western Uttar Pradesh but there is not even a single case registered against the Petitioner with respect to illegal mining. Further the Petitioner has not been declared as a mining mafia by any authority or court of law.

d) The Respondents are maliciously attempting to project the Petitioner, who is a Chancellor of Glocal University, as a hardened criminal when the fact is that every time the Petitioner and his 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 Petitioner and his family members by registering false cases against them. Further the State authorities have not only illegally demolished three residential houses of the Petitioner but has also registered false criminal cases against even those persons who stand surety for the Petitioner and his family members in cases where bail or anticipatory bail has been granted to them.

e) 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 Petitioner along with his family members were falsely implicated in more than 30 criminal cases at the behest of the ruling party. The Petitioner is being unnecessarily harassed by the State machinery including the Police. Although the Respondent State is heavily relying upon the criminal cases

registered against the Petitioner and his family members to show that they are habitual offenders but till date the Petitioner has not been convicted by any Court of law and moreover every time the Petitioner or his 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.

f) 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. 07 of 2023 which was registered on 10.01.2023 and as such is inconsequential.

*g) 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 the Petitioner 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. The allegations made in the First Information Report do not prima facie constitute any offence or make out a case under Sections 395, 386, 365, 342 and 506 IPC against the Petitioner 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. 07 of 2023 dated 10.01.2023 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) That on the basis of written complaint of the Complainant i.e. Balraj Sethi S/o Bansi Lal, an FIR/Crime No. 7 of 2023 dated 10.01.2023 under section 395, 386, 365, 342, 506 IPC, registered at P.S. Mirzapur, District Saharanpur, wherein it was alleged that Petitioner i.e. Haji Iqbal @ Balais very much influential person. Further, it was alleged in the said FIR that the Complainant received a contract for construction work of school building in Glocal University for Rs. 4.80 Crore, corporate for Rs. 40 Lakh, Girls Hostel for Rs. 14 Lakh and agreements were executed. In terms of the agreement, the complainant completed the work and received only part payments. The Petitioner duped an amount of Rs. 1,20,00,000/- of the complainant. The complainant tried to ask the said amount, the Petitioner refused to pay the said amount and threaten the Complainant with dire consequences. It is also alleged in the FIR that when the complainant went to the petitioner’s residence, the petitioner, his brother Mahmood Ali and other accused persons namely Javed, Afjal and Alishan forcefully snatched the car keys of the complainant’s car, mobile phone, a sum of Rs. 80,000/- and ID card from the complainant’s pocket. It is further alleged that the above accused persons threatened the complainant and asked him to handover the original copies of the agreements and a sum of Rs. 10,00,000/- otherwise the accused persons will kill the complainant. Thereafter, when one of the employee of the complainant, Karan Singh S/o Om Veer came at the residence of the petitioner and handedover all the original agreements and Rs. 10,00,000/- then the accused persons returned the car keys and mobile phone of the complainant.

b) During investigation, the statement of Complainant was recorded under section 161 Cr.P.C. and other material evidence was collected wherein the claim of

the complainant is proved.

c) Further, the Investigation also recorded the statement of the independent witnesses to know that the complainant was duped by the Petitioner and other accused person, which proves that the Complainant was duped by the Petitioner and other accused persons.

d) 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.

e) It is pertinent to mention that the chargesheet has been filed against the other accused Persons.

f) It is submitted that the Petitioner Mohd. Iqbal @ Bala is the mining mafia in western Uttar Pradesh and several number of criminal cases are registered against him and his family members.

g) It is submitted that the Petitioner No. 1 is Ex-MLC and powerful persons and he is having all sources in the previous Government(s), due to fear & threat given by the Petitioner, the complainant did not raise his voice against the Petitioner No. 1 and his family members.

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 30.01.2023 passed by the Hon'ble High Court in Criminal Misc. Writ Petition No. 982 of 2023 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. 0007 of 2023 registered for the offences enumerated above discloses commission of any offence?

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 of dacoity punishable under Section 395 of the IPC is made out. What amounts to dacoity has been explained by us in detail in the judgment and order delivered by this very Bench in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 10656 of 2022 titled *Mohammad Wajid & Anr. v. State of U.P. & Ors.*

11. In the same manner, none of the ingredients to constitute the offence punishable under Section 365, 342 and 506 resply of the IPC are disclosed on plain reading of the FIR. The FIR is nothing but abuse of the process of law.

12. It is also pertinent to note that the FIR came to be lodged after a period of almost two years from the alleged incident of so-called dacoity, kidnapping, extortion, etc. The incident is shown to be of the year 2021 and the FIR relating to the same came to be lodged in the year 2023 and that too, without specifying any date and time of the alleged incident.

13. 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 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.”

14. We are of the view that the case of the present appellant falls within the parameters Nos. 1, 5 and 7 reply of **Bhajan Lal** (supra).

15. 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.

16. 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)

17. 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. 0007 of 2023 dated 10.01.2023 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed.

18. 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