

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 168 OF 2020

Govind Prasad Kejriwal

.. Appellant(s)

Versus

State of Bihar & Anr.

.. Respondent(s)

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Law.in
J U D G M E N T

M. R. Shah, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 21.04.2017 passed by the High Court of Judicature at Patna in Criminal Misc.No.30284 of 2011 by which the High Court has dismissed the said quashing petition preferred by the original accused and has refused to quash the criminal proceedings in Complaint Case No. 464 of 2001 for the offences

under Sections 323, 341 and 379 IPC, original Accused has preferred the present appeal.

2. That the private respondent herein Gopal Prasad son of Shri Shyam S. Prasad, brother of one Ramesh Kumar – a partner of a firm called Kejriwal Films filed the criminal complaint being Complaint Case No.464 of 2001 in the Court of Additional Chief Judicial Magistrate, Barh against the appellant herein – one of the partner of Kejriwal Films, for the offences under Sections 379, 323, 504, 506, 406, 452, 147, 148/34 IPC. The complaint reads as under:

“1. That the complainant is the brother of Ramesh Kumar, who is a partner of a firm called Kerjiwal Firms. The accused Balabhadra Prasad Kejriwal is also a partner in the said firm. Both the accused persons are father and son by relation.

2. That the aforementioned Kejriwal Films has taken the Savera Chitra Mandir on lease and carry on their film business there, whose licence was taken in the name of Govind Prasad Kejriwal.

3. That in order to cause loss to the complainant's brother and his partner Satyanarayan, both the accused persons had hatched a conspiracy and thereby had surrendered the cinema filming licence before the District Magistrate. As such, the cinema filming has been closed since 5.2.2000 and the building has been locked. The complainant and

his brother were looking after the building from outside. The complainant's brother is staying outside for the last some days.

4. That during the time of the occurrence, the complainant was going towards the market. When the complainant reached near the Savera Chitra Mandir, saw the gate open. Seeing the gates open, the complainant went inside the Savera Chitra Mandir and saw that the accused persons Govind Prasad Kejriwal and Balbhadra Prasad Kejriwal and 4-5 other unknown people have broke the lock of the cinema hall and its office and had kept their Maruti Car No. HR 51D 8974 inside. The accused Govind Prasad Kejriwal was putting the documents of the cinema hall in a baggage. The accused Balbhadra Prasad Kejriwal was removing the electric fan and other machines by some other people. The accused Balabhadra Prasad Kejriwal himself was holding an electric starter in his hand.

5. That when the complainant objected, the accused persons Govind Prasad Kejriwal and Balabhadra Prasad Kejriwal gave a kick to the complainant and threatened him to kill. The other unknown accused persons pointed their pistol on the complainant and rove him away from the cinema hall.

6. That the accused persons Govind Prasad Kejriwal and Balabhadra Prasad Kejriwal kept the bag containing the documents in their car whose number is HR 51D 8974. The other accused persons removed the fan etc. and kept those in the car.

7. That the accused persons Govind Prasad Kejriwal and Balabhadra Prasad Kejriwal and two unknown accused persons went towards the market in their car. They asked their other people

to put their new lock in the cinema hall and threw the old locks. Then the other accused persons came out of the hall and fled in an auto rickshaw towards the market.

8. That those accused persons, with ill-intention, and cause loss to the complainant's brother and partner Ramesh Kumar and with the intention to misappropriate the properties of partnership firm had entered inside the cinema hall by breaking its locks and taken away all the valuable instruments. They had broken the old lock of the cinema hall and put new locks in it and caused damage inside the hall driving out the complainant from the premises.

9. That the complainant's brother had suffered a loss of Rs.50,000/- due this theft. There is possibility of causing irreparable loss on account of theft of important documents. The description of these documents can be known only when the complainant's brother arrives.

10. That after the occurrence, the complainant had gone to the local police station to lodge a report thereof. But the police did not lodge the report. Then the complainant went to the Sub-Divisional Police Officer, but he did not accept the report of the complainant. There is illegal collusion between the police and the accused persons.

Hence, it is being prayed to summon the accused persons and punish them adequately.”

3. That the said complaint was filed on 19.12.2001. From the record it appears that prior thereto, a written report was lodged by the appellant herein - Govind Prasad Kejriwal, against Ramesh

Kumar and others for the offence under Section 379 IPC. After the investigation, the I.O. filed the charge-sheet against all the four accused persons including the complainant herein and even Ramesh Kumar for the offence under Section 379 IPC. That the Learned Trial Court has taken cognizance against all the accused persons including Original private respondent herein – original complainant under Section 379 IPC. That the said trial is pending. That the complaint filed by the private respondent – original complainant herein - Gopal Prasad being Complaint No.464 of 2001 came to be dismissed by the Learned Judicial Magistrate vide Order dated 14.02.2003. That the Original complainant filed the Revision Application before the Learned Additional Sessions Judge, Barh. Vide Order dated 01.12.2004, the Learned Sessions Judge, Barh allowed the said revision application and set aside the order passed by the Learned Magistrate dated 14.02.2003 and remanded the case back to the Learned Magistrate for further inquiry and to pass fresh order in accordance with law. That pursuant to the remand order, the complainant deposed one witness in support of his case. Thereafter the Learned Magistrate vide order dated 25.07.2005 had

taken cognizance against the appellant herein under Sections 323, 341 and 379 IPC, against the order passed by the Learned Magistrate taking cognizance under Sections 323, 341, 379 IPC, the appellant herein preferred quashing petition before the High Court being Criminal Miscellaneous Application No.34168 of 2005. That vide order dated 16.05.2006, the High Court declined to interfere, however observed that the appellant is at liberty to move the Learned Lower Court. That thereafter brother of the original complainant – Ramesh Kumar filed a title suit against the appellant and the partnership firm for dissolution of the partnership and rendition of accounts. That the said suit came to be dismissed, against which the First Appeal was preferred by the said Ramesh Kumar which came to be dismissed as withdrawn vide order dated 17.01.2011. That Thereafter the appellant filed an application for discharge. Learned Magistrate vide order dated 04.08.2011 rejected the prayer of the appellant for discharge. That thereafter the appellant filed an application before the High Court for quashing of order dated 04.08.2011 passed by the Learned Judicial Magistrate rejecting the discharge application. Vide impugned Judgment and

order the High Court has dismissed the said application and has refused to discharge the appellant and has refused to quash the criminal proceedings. Hence, the original accused has preferred the present appeal.

4. Mr. Pankaj Bhagat, Learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in dismissing the application and confirming the order passed by the Learned Trial Court dismissing the discharge application.

4.1 Learned Advocate appearing on behalf of the appellant has vehemently submitted that the High Court has materially erred in not considering the facts and circumstances of the case and even considering the averments and the allegations in the complaint as they are, they do not constitute any offence against the appellant that too for the offences under Sections 323, 341, 379 IPC.

4.2 It is further submitted by Learned Advocate Mr. Pankaj Bhagat that the High Court has not appreciated the fact that the

complainant has tried to convert a civil dispute into criminal, which is nothing but an abuse of process of law and the Court.

4.3 It is submitted that therefore the High Court has materially erred in not exercising the jurisdiction vested in it.

4.4 Making the above submissions it is prayed to allow the present appeal and consequently discharge the appellant by quashing and setting aside the order passed by the Learned Magistrate as well as the High Court.

5. The present appeal is vehemently opposed by Mr. Pavan Kumar, learned Advocate appearing for the original complainant. It is vehemently submitted by Learned Advocate for Respondent No.2 – original complainant that in the facts and circumstances of the case and more particularly when after holding the inquiry under Section 202 Cr.P.C. when the Trial Court has taken cognizance against the appellant for the offences under Sections 323, 341, 379 IPC, the Learned Trial Court thereafter has rightly refused to discharge the appellant – original accused and the High Court has

committed no error in confirming the order passed by the Learned Trial Court taking cognizance and not discharging the accused.

5.1 It is vehemently submitted by the Learned Advocate appearing on behalf of the original complainant that at the time of inquiry under Section 202 Cr.P.C. and at the time of taking cognizance, the Trial Court is required to hold a limited inquiry to satisfy itself whether there is any prima facie case. In support of his above submission, learned counsel for the complainant has heavily relied upon the decision of this Court in the case of **National Bank of Oman vs. Barakara Abdul Aziz**, (2013) 2 SCC 488.

5.2. It is further submitted by the Learned Advocate appearing on behalf of the original complainant that in any case, the allegations are for the offence under Section 323 IPC also and the case is made out against the accused for the offence under Section 323 IPC also.

5.3 It is further submitted that in fact earlier the Learned Sessions Court set aside the order passed by the Learned Magistrate dismissing the complaint and remanded the matter to the Learned

Magistrate. It is submitted thereafter on remand and after holding necessary inquiry the Learned Trial Court has taken the cognizance against the accused. It is submitted therefore that no interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India more particularly when both, the Learned Trial Court and the High Court has refused to discharge the accused. It is submitted that whatever the submissions are made on behalf of the accused are his defenses, which are required to be considered at the time of the trial.

Making the above submissions it is prayed to dismiss the present appeal.

6. Heard the Learned Advocates appearing on behalf of the respective parties at length.

6.1 We have perused and considered the allegations made in the complaint as well as the order passed by the learned Trial Court taking cognizance against the accused. At the outset, it is required to be noted that summons have been issued against the accused for the offences under Sections 323, 341 and 379 of the IPC. Having

heard the learned counsel appearing for the respective parties and even considering/taking the allegations in the complaint as they are, we are of the opinion that initiation of criminal proceedings against the accused is nothing but an abuse of process of law and the Court. A purely civil dispute is tried to be given a colour of criminal dispute.

6.2 It is required to be noted that the original complainant, as such, has nothing to do with the partnership firm called Kejriwal Films. The original complainant claims to be the brother of one Ramesh Kumar who is a partner of the said partnership firm. The main allegations in the complaint are with respect to the partnership firm. Partner of the partnership firm has not made any complaint. The allegations in the complaint are with respect to surrender of cinema license before the District Magistrate. Admittedly, one of the accused – Accused No.2 is a partner in the aforementioned partnership firm. Appellant – Accused No.1 is the son of the said partner – Balbadhadra Prasad Kejriwal. The appellant is issued summons for the offences under Sections 379 and 341 of the IPC along with for the offence under Section 323 of

the IPC. None of the ingredients for making out the case under Sections 341 and 379 are satisfied. At this stage, it is required to be noted that prior to the impugned complaint/criminal proceedings, the appellant/petitioner lodged an FIR on 06.12.2001 alleging that one HMT Generator set was stolen from the premises of the Cinema. In the said case, a charge-sheet has been filed against the private respondent herein Gopal Prasad and others for having committed the theft. It is also required to be noted that subsequently even one title suit was filed by the brother of the complainant – Ramesh Kumar against the partnership firm and its partners which came to be dismissed, against which an appeal was preferred which came to be withdrawn by the said Ramesh Kumar. Therefore, the impugned proceedings are nothing but an abuse of process of law and the Court. A purely civil dispute is given a colour of criminal proceedings. As observed above, none of the ingredients of Sections 341 and 379 of the IPC, are satisfied.

6.3 Even none of the ingredients of Section 323 of the IPC, are satisfied. Therefore, even considering the allegations in the complaint as they are, to continue the criminal proceedings against

the accused even for the offence under Section 323 shall be an abuse of process of the Court and the law. Therefore, we are of the opinion that this is a fit case to exercise the powers under Section 482 Cr.P.C., and to quash the impugned criminal proceedings.

6.4 Insofar as the reliance placed upon the decision of Learned Additional Sessions Judge, Barh, in Criminal Revision Application No.31/235 of 2003 relied upon by the learned counsel for the complainant is concerned, it is required to be noted that in the said order there are no finding on merits by the Learned Revisional Court. Revisional Court had only remanded the matter back to the Learned Judicial Magistrate for further inquiry and to pass a fresh order in accordance with law.

6.5 Now so far as the reliance placed on the decision of this Court in the case of **National Bank of Oman** vs. **Barakara Abdul Aziz** (Supra) relied upon by the Learned Advocate appearing on behalf of the complainant is concerned, we are of the opinion that in the facts and circumstances of the case, the said decision shall not be of any assistance to the complainant. It cannot be disputed that

while holding the inquiry under Section 202 Cr.P.C. the Magistrate is required to take a broad view and a prima facie case. However, even while conducting/holding an inquiry under Section 202 Cr.P.C., the Magistrate is required to consider whether even a prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or the Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not. As observed hereinabove, the dispute between the parties can be said to be purely of a civil nature. Therefore, this is a fit case to quash and set aside the impugned criminal proceedings.

7. In view of the reasons stated hereinabove, the present Appeal succeeds. The order passed by the Learned Magistrate taking cognizance against the accused and issuing the summons against the accused for the offences under Sections 341, 323 and 379 of the IPC and also the impugned Judgment and order passed by the High Court are hereby quashed and set aside. The impugned criminal proceedings initiated against the accused arising out of the

Criminal Complaint No.464 of 2001 are hereby quashed and set aside.

.....J.
(ASHOK BHUSHAN)

.....J.
(M. R. SHAH)

New Delhi,
January 31, 2020

