

**SUPREME COURT OF INDIA****Full Bench: Justices B.R. Gavai, Satish Chandra Sharma, and Sandeep Mehta****Date of Decision: 15 May 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). \_\_\_\_\_ OF 2024

(Arising out of SLP (Criminal) No(s). 1400 of 2024)

**SHIVENDRA PRATAP SINGH THAKUR @ BANTI ...APPELLANT(S)****VERSUS****STATE OF CHHATTISGARH AND ORS. ...RESPONDENT(S)****Legislation:**

Sections 447, 427, 294, 506 read with Section 34 of the Indian Penal Code, 1860

Section 482 of the Code of Criminal Procedure, 1973

Article 142 of the Constitution of India

**Subject:** Appeal seeking quashment of FIR and charge sheet under various sections of IPC related to alleged criminal trespass and property damage.**Headnotes:**

Criminal Law - Quashing of FIR and Charge-sheet – Criminal Appeal against High Court order rejecting petition to quash FIR for criminal trespass, property damage, and threats – FIR filed for offenses under Sections 447, 427, 294, 506 read with Section 34 IPC – Allegations involve trespass and demolition of property – Appellant contends the FIR is false, with significant delay in filing and no substantial evidence – Supreme Court finds FIR lacks clear dates of incidents and substantiated claims of damage – Held that continuing proceedings against appellant is an abuse of process of law, quashing the FIR and charge-sheet. [Paras 1-18]

Role of Accused in Alleged Trespass and Damage – Analysis – Held – Finds no substantial evidence of the appellant's involvement in the alleged criminal

acts – Notes absence of complaints from key witness Sushma Kashyap whose property was allegedly damaged – Observes possible animus and delayed FIR filing as indicative of retaliatory motives. [Paras 13-16]

Decision – Quashing of FIR and Charge-Sheet against Appellant – Court quashes the FIR and charge-sheet against the appellant, citing lack of evidence and procedural lapses – Exercises power under Article 142 of the Constitution to prevent abuse of the legal process. [Paras 17-18]

**Referred Cases: None cited.**

## **J U D G M E N T**

### **Mehta, J.**

1. Leave granted.
2. The instant appeal by special leave has been filed by the appellant herein for assailing the order dated 2<sup>nd</sup> August, 2023 passed by the learned Single Judge of the Chhattisgarh High Court dismissing Criminal Miscellaneous Petition No. 1675 of 2023 preferred by the appellant seeking quashment of FIR No. 590 of 2019 registered at the instance of respondent No. 5 at P.S. Sarkanda, District Bilaspur for the offences punishable under Sections 447, 427, 294, 506 read with Section 34 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') and the charge sheet filed as a consequence of investigation of the said FIR. 3. The pith and substance of the allegations set out in the FIR is that respondent No. 5-Barkat Ali i.e. the complainant, had purchased the land bearing Survey No. 559/1Chh/30 admeasuring 21 decimals situated at Ashok Nagar, Khamtarai Bilaspur from one Geeta Rai, for a consideration of Rs. 25,00,000/-. A registered sale deed for 10 decimals of the said land was executed on 20<sup>th</sup> December, 2017. The complainant came into possession of the said land. The adjacent plot admeasuring 12 decimals, was purchased by one Sushma Kashyap, wife of Rajkumar Kashyap from the land owner Geeta Rai in the year 2016. The complainant and Sushma Kashyap were allegedly in possession of their respective plots and had raised construction of houses thereupon. The

complainant alleged that he had built a boundary wall for the protection of his plot with a gate and grill and that he had stored cement, rods and other construction materials on the plot. It was alleged that accused Saurabh Pratap Singh Thakur and appellant Shivendra Pratap Singh Thakur @ Banti, in furtherance of their common intention prior to 20<sup>th</sup> May, 2019, trespassed into the land in possession of the complainant and demolished the under construction house of Sushma Kashyap and the boundary wall of the complainant-Barkat Ali. The accused also stole raw materials kept at the complainant's land thereby, causing loss of Rs.4 lakhs and Rs. 6 lakhs to Sushma Kashyap and the complainant, respectively.

4. The complainant confronted the accused about their criminal acts, on which the accused threatened the complainant of dire consequences in presence of witnesses Uma, Shankar Sahu, Vishnu Sahu and other labourers. On the basis of this report, an FIR No. 590 of 2019 came to be registered at P.S. Sarkanda, District Bilaspur for the offences punishable under Sections 447, 427, 294, 506 read with Section 34 of the IPC. Upon conclusion of investigation, the Investigating Officer, proceeded to file a charge sheet for the offences punishable under Sections 447, 427, 294, 506 read with Section 34 of the IPC against the accused persons showing them to be absconding.

5. The co-accused-Saurabh Pratap Singh Thakur and appellant Shivendra Pratap Singh Thakur @ Banti initially filed a writ petition being WPCR No. 10 of 2020 seeking quashing of the aforesaid FIR and the criminal case registered in pursuance thereof. The said writ petition was, however, not pressed with liberty to take recourse to the appropriate remedy against the charge sheet. Thereafter, the appellant and co-accused Saurabh Pratap Singh filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') before the High Court of Chhattisgarh for quashing of the said FIR and the charge sheet which stands rejected vide order dated 2<sup>nd</sup> August, 2023. The said order is subjected to challenge in this appeal by special leave. 6. Learned counsel representing the appellant urged that the entire case setup by the complainant in the FIR is false and fabricated. The land owner Sushma Kashyap whose under construction house was allegedly demolished/damaged by the appellant did not approach the police for lodging a complaint regarding the so called criminal act allegedly committed by the accused on her property. When the site inspection memo was prepared, the Investigating Officer did not find any

damage to the boundary wall on Barkat Ali's plot as had been alleged in the FIR. It was further contended that the impugned FIR and the charge sheet filed as a consequence thereof deserve to be quashed because on a plain reading of the charge sheet, the ingredients of the offences alleged are not made out.

7. Learned counsel urged that the appellant had lodged FIR No. 227 of 2014 against one Satraj Ali who is the *panchnama* witness of the complainant and that the present FIR is nothing but a counterblast to the FIR registered at the instance of the appellant.
8. Learned counsel further submitted that the incident is alleged to have taken place some time prior to 20<sup>th</sup> May, 2019 whereas, the FIR had been lodged on 29<sup>th</sup> June, 2019 and no explanation has been furnished for this gross delay in lodging of the FIR. He also pointed out that the complainant was not even sure of the date on which the offences were allegedly committed and that is why, the date of the incident has been mentioned in the FIR and the charge sheet as some time prior to 20<sup>th</sup> May, 2019 which clearly indicates that the allegations made by the complainant are totally vague and uncertain and unworthy of credence.
9. Learned counsel thus, implored the Court to accept the appeal and quash the FIR and consequential charge sheet filed against the appellant.
10. *Per contra*, learned counsel representing the State of Chhattisgarh vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the complainant had no motive to falsely implicate the accused appellant. Investigation was conducted by the Investigating Officer and during the course of the collection of evidence, the statements of complainant-Barkat Ali, Sushma Kashyap and so also her husband-Rajkumar Kashyap were recorded wherein, they fully affirmed the allegations levelled in the FIR.
11. He thus, urged that the appellant herein has failed to make out a case for interference in the impugned order and the charge sheet.
12. No one has appeared to contest the matter on behalf of respondent No. 5 i.e., complainant-Barkat Ali.
13. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material placed on record.
14. A bare perusal of the impugned FIR would reveal that the same was lodged by complainant-Barkat Ali on 29<sup>th</sup> June, 2019 with the allegation that the offences alleged were committed by the appellant and co-accused some time prior to 20<sup>th</sup> May, 2019. Thus, the complainant was not even sure of the date on which the alleged offences were committed. No reason whatsoever has

- been given in the FIR for huge delay of more than 39 days in approaching the police. The Investigating Officer prepared a site plan during the course of investigation which has been made a part of the record. A perusal of the said site plan would reveal that so far as the plot of Purnima Begum, wife of Barkat Ali is concerned, it is fully encumbered by a boundary wall and no damage is shown to this structure. The site plan indicates that there is some damage to the under-construction house of Sushma Kashyap. In the FIR, the damage suffered by the complainant was quantified at Rs. 6 lakhs whereas the damage suffered by Smt. Sushma Kashyap was quantified as Rs. 4 lakhs owing to the demolition of her under construction house. However, admittedly, Smt. Sushma did not lodge any complaint to the police.
15. On going through the contents of the FIR, we do not find any material therein which can justify invocation of the offence punishable under Section 294 IPC. Except for the offence under Section 447 IPC, all the remaining offences are non-cognizable whereas the offence under Section 294 IPC is *ex facie* not made out from the allegations set out in the FIR and the charge sheet. The allegation levelled by the complainant that the accused demolished the boundary wall constructed on the land in his possession has not been found to be substantiated during spot inspection.
  16. Neither Sushma Kashyap nor her husband-Rajkumar Kashyap lodged any complaint regarding the so-called criminal activity committed by the appellant and the co-accused on their land. The site plan further indicates that the plot of the co-accused Saurabh Pratap Singh Thakur is immediately adjoining the plots of complainant-Barkat Ali and Sushma Kashyap. It is thus, apparent that there is an imminent possibility of animus between the complainant and the accused persons on this count. The FIR which was lodged after 39 days of the incident, does not indicate the date or time, when the accused trespassed into the house of the complainant and caused damage to his property and committed the other offences for which the FIR came to be registered. Therefore, we are of the view that the impugned FIR seems to be nothing but a tool to wreak vengeance against the appellant herein.
  17. In this background, we feel that it is a fit case warranting exercise of powers conferred upon this Court under Article 142 of the Constitution of India so as to quash the proceedings of the criminal case.
  18. As a result, impugned FIR No. 590 of 2019 and all subsequent proceedings sought to be taken thereunder are hereby quashed and set aside.
  19. The appeal is allowed in these terms.

20. Pending application(s), if any, shall stand disposed of.

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