

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2633 OF 2023
(ARISING OUT OF SLP (CRL.) NO.9119/2021)**

MOHAMMAD ZIAD

APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

O R D E R

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Impugned Judgment and Order dated 23.10.2021 (hereinafter referred to as the "Impugned Order") passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench in Misc. Bench No.24188 of 2021, by which the prayer for quashing the First Information Report viz. Case Crime No.0016 of 2021¹ registered under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code, 1860 was rejected.

¹ Hereinafter referred to as the "FIR".

4. The brief facts giving rise to the FIR are that the Complainant/Informant/Respondent No.4² stated that he had paid Rs.1,01,000/- (Rupees One Lakh and One Thousand) to the appellant for getting a house in a scheme which was purportedly floated by the appellant's company but possession could not be handed over and when the appellant has given, as return, the cheque of Rs.1,01,000/- (Rupees One Lakh and One Thousand), it has bounced. When cheque was re-issued for the same amount and presented, the same also bounced, leading to the lodging of the FIR in question.

5. Learned counsel for the appellant submitted that, in any view of the matter, the complaint was of a civil nature as it relates to cheque-bouncing because the Complainant has not invoked a remedy/preferred any complaint under Section 138 of the Negotiable Instruments Act, 1881. Learned counsel stated that to get over the lacunae as also the limitation, the criminal case has been filed. It was submitted that the real intention of the appellant cannot be suspected for the reason that the underlying project was approved by the Uttar Pradesh Real Estate Regulatory Authority, and the construction also commenced and reached certain degree of completion. However, in the meantime, the Municipal Authority

² Hereinafter referred to as the "Complainant".

concerned also intervened and demolished the construction/building on the ground that the map was not pre-approved.

6. Thus, it was submitted that the appellant could not be held responsible for either non-completion of the project or for handing over the cheque to the complainant. Learned counsel drew our attention to the Order of this Court dated 03.12.2021, which reads as under:

“Learned counsel for the petitioner contends that it has not been a case of any criminal intent on the part of the petitioner and particularly refers to the fact that the project was indeed taken up for execution and houses were indeed constructed but then, they were demolished essentially for the reason of want of approval of plan under Section 14 of the UP Urban Planning and Development Act, 1973.

Learned counsel submits that the petitioner has always been ready and willing to make payment of reasonable amount payable to the complainant towards principal deposited as also interest thereupon but, criminal process may not be allowed to be used for money recovery.

Learned counsel further submits that to show his bona fides, the petitioner is ready to deposit an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) in this Court.

If the petitioner deposits an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) in the Registry of this Court within a week from today, notice may be issued to the respondents returnable in second week of January, 2022 and until the next date, no coercive proceedings shall be taken against the petitioner.

However, it is made clear that in case the petitioner fails to deposit the amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) within one week from today, this petition shall stand

dismissed without reference to the Bench."

7. It was contended that at the time when the above-referred order was passed, the Court wanted to ensure that the Complainant gets her money back with sufficient interest thereon, and the said Order was complied with inasmuch as the appellant had deposited Rs.2,00,000/- (Rupees Two Lakh) in the Registry of this Court which, pursuant to Order dated 29.03.2022, has been invested in an interest-bearing Fixed Deposit. It was prayed that this Court may put an end to this vexatious and malicious prosecution which is also an abuse of the process of the Court. It was advanced that the appellant could not be prosecuted on the criminal side for an act emanating allegedly out of breach of a contract between parties, where the only grievance of the Complainant pertained to money being deposited and not returned.

8. Learned counsel for the State, opposing the prayer, pointed out that the FIR in the present case is not an isolated instance, as other persons too have come forward with as many as five other cases against the appellant with similar allegations. The appellant, submitted learned counsel for the State, was in the business of duping customers with the promise of providing (selling/buying) housing over lands, which did not even

belong to him, without getting the map(s) sanctioned. It was further submitted that chargesheet has already been submitted and appellant should face trial. Learned counsel also relied on paragraph no. 15 of a 2-Judge Bench judgement of this Court in *R Kalyani v Janak C. Mehta*, (2009) 1 SCC 516.

9. By way of reply, learned counsel for the appellant submitted, that this Court may not dwell into the merits in detail for consideration of the present case as the principal argument being raised, was that the criminal justice system had been put into action, when the dispute actually is purely civil. It was urged that whatever may be the grievances of others against the appellant, that could not have any bearing on the facts and circumstances herein, much less, before this Court while considering the fate of the instant prayer for quashing. He summed up his arguments by urging that the appellant having deposited Rs.2,00,000/- (Rupees Two Lakhs) which has since been invested into a Fixed Deposit, the Complainant may be permitted to withdraw the amount along with interest accrued thereon and the case may finally be closed.

10. In *Gulam Mustafa v State of Karnataka*, 2023 SCC OnLine SC 603, this Court held:

'36. *What is evincible from the extant case-*

law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and/or money are given the colour of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the court. ...'

11. We have taken note of *R Kalyani (supra)*, pressed into service by the State, particularly Paragraph 15(4) which states '*(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.*' There is no quibble thereto. An FIR may not be quashed merely because the allegations of criminality have a civil element. But when the civil dispute is the overwhelming flavour of the criminal accusation, the Courts can intervene.

12. Having considered the matter, without delving into the finer details, this Court finds that it is a fit case where it can invoke Article 142 in exercise of extraordinary jurisdiction to render complete justice to the parties. Accordingly, the appeal deserves to be allowed, and subject to terms below, the Impugned Order of the High Court is set aside and the FIR is quashed. As a sequel thereto, all subsequent actions *qua* the appellant are quashed.

13. The interest of the Complainant will be taken care of as under. The Registry shall get the Fixed Deposit, along with the accrued interest, converted into a Bank Draft in the name of the Complainant. The Registry shall hand over the said Draft within two weeks from the date of receipt of this order to the learned counsel for the State, who, in turn, will get it delivered to the Complainant under proper receipt. Such receipt be filed in the Registry by the learned counsel for the State within two weeks thereafter.

14. The appeal is, accordingly, allowed in the above terms. However, it is clarified that the present order is passed in the afore-noted circumstances.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

NEW DELHI.
AUGUST 29, 2023.

ITEM NO.18

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s).9119/2021

(Arising out of Impugned Final Judgment and Order dated 23-10-2021 in MB No.24188/2021 passed by the High Court of Judicature at Allahabad, Bench at Lucknow)

MOHAMMAD ZIAD

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

Date : 29-08-2023 This petition was taken up for hearing today.

CORAM :

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Akhilesh Kalra, Adv.
Mr. L.K. Tripathi, Adv.
Mr. Rohit Kumar Singh, AOR
Mr. Ritik Anmol, Adv.

For Respondent(s) Mr. Adarsh Upadhyay, AOR
Mr. Divyanshu Sahay, Adv.
Ms. Pallavi Kumari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

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

(SONIA BHASIN)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER

[Signed Order is placed on the file]