

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

**M.Cr.C. No.5863/2008**

**1 Subodh Kumar Gupta  
S/o Shri Rajaram Gupta,  
R/o Kothi No.17,  
Sector – 4,  
Chandigarh**

**..... Applicant**

**Vs.**

**1 Smt. Alpana Gupta,  
W/o Shrikant Gupta,  
R/o Rajaram Gupta and  
Brothers Premises,  
Mhow- Neemuch Road,  
Mandsaur**

**2 Manakchand Agrawal (Jain),  
S/o Shri Ajit Prasad,  
R/o Baser Colony, Mandsaur**

**..... Respondents**

**M.Cr.C. No.5317/2010**

**1 Manakchand Agrawal (Jain),  
S/o Shri Ajit Prasad,  
R/o Baser Colony, Mandsaur**

**..... Applicant**

**Vs.**

**1 Subodh Kumar Gupta  
S/o Shri Rajaram Gupta,**

**R/o Kothi No.17,  
Sector – 4,  
Chandigarh**

**..... Respondent**

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**In M.Cr.C. No.5863/2008**

Shri S.C. Bagadia, learned Senior Counsel with Shri D.K. Chhabra, learned counsel for the applicant.

Shri Jai Singh, learned Senior Counsel with Shri M. Bachawat, learned counsel for the respondents.

**In M.Cr.C. No.5317/2010**

Shri Jai Singh, learned Senior Counsel with Shri M. Bachawat, learned counsel for the applicant.

Shri S.C. Bagadia, learned Senior Counsel with Shri D.K. Chhabra, learned counsel for the respondent.

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**ORDER**

**(Passed on 19/11/2014)**

This common order shall govern the disposal of M.Cr.C. Nos.5863/2008 and 5317/2010.

2. The facts giving rise to these two applications under Section 482 of Cr.P.C. are that the applicant of M.Cr.C. No.5863/2008 Subodh Kumar Gupta who shall be referred to as applicant, for sake of convenience filed an criminal complaint against the respondents Smt. Alpana Gupta and Manakchand Agrawal, who shall be referred to as respondent Nos.1 and 2 respectively, for sake of convenience, before the

Court of Chief Judicial Magistrate, Mandsaur. The complaint was filed under Sections 406, 420, 461, 471 and 120 B of IPC.

3. According to the averments made in the complaint, the applicant owned a modern Dairy Farm in which 200 cattle heads of hybrid hostenprison, jersey cows, bulls and calves were kept. The total cost in the year 1980 was Rs.40,269/-. According to the applicant, he handed over possession of the farm along with 200 cattle heads to respondent No.2 on lease. The lease rent was Rs.12,000/- per year. Respondent No.2 paid lease rent upto the year 1992-1993 which was deposited in the personal account of the applicant on 08.12.1992. After the year 1992-1993, the respondent No.2 stopped paying lease rent. When the present applicant demanded the amount, he refused to pay him the amount and also refused to handover the cattle heads. Even after he stopped paying lease rent, as the respondent No.2 was his relative, he did not take any action in good faith. However, on 07.06.2002, he served a notice to respondent No.2 but respondent No.2 did not reply the notice. He also sent a complaint to Superintendent of Police, Mandsaur by a registered letter. Finally, he lodged the complaint before Police Station City Kotwali, Mandsaur on

23.07.2003. However, the police did not take any action. According to the applicant, the respondent No.2 had even shown payment of lease rent in his income tax return as he was an income tax payee. On 22.07.2003 when he again claimed the cattle heads, the respondent No.2 refused to handover the cattle heads and informed him that he handed over all the cattle to respondent No.1 Smt. Alpana Gupta.

4. According to the applicant, from the very beginning the intention of the respondent No.2 was to deceit him. He entered into a conspiracy with respondent No.1 and they both committed the offence of breach of trust in respect of the cattle heads. On this premises, the complaint was filed before the Court of Chief Judicial Magistrate, Mandsaur. It transpires from the record that the learned Chief Judicial Magistrate ordered investigation under Section 156(3) of Cr.P.C., on which the Crime No.138/2004 was registered at Police Station City Kotwali, Mandsaur under Sections 406, 420, 468, 471 and 120 B on 27.02.2004. After investigation, a final report (closure) was filed by the police station under Section 173 of Cr.P.C. as closure No.91/2004 on 31.07.2004. It was stated in the final report that no evidence was found for registering the

crime under aforesaid sections. It is also stated in the report that no documents in respect of giving the farm on lease to respondent No.2 was submitted before the police. On receiving the closure report the learned Chief Judicial Magistrate proceeded to inquire under Section 200 and 202 of Cr.P.C. The statements of complainant Subodh Gupta and another witness Anil Kumar Gupta was recorded by the learned Chief Judicial Magistrate and thereafter the learned Magistrate passed the order dated 13.01.2008 whereby the learned Magistrate taking into consideration the statements of the present applicant and the witness gave a finding that prima-facie no offence under Sections 406, 420, 461, 471 and 120 B appear to have been committed. Accordingly, he dismissed the complaint and also excepted the closure report submitted by the police in Crime No.138/2004.

5. Against this order, revision was filed before the Sessions Court, Mandsaur which was made over to 4<sup>th</sup> Additional Sessions Judge, Mandsaur, who, vide order dated 14.07.2008 dismissed the revision, so far as it relates to respondent No.1. However, the learned Additional Sessions Judge ordered to proceed against the respondent No.2

observing that : -

“जैसा कि उपर की गयी चर्चा से प्रकट हुआ है कि प्रकरण में कम से कम प्रस्तावित अभियुक्त माणकचन्द अग्रवाल के सम्बन्ध में तो भारतीय दण्ड संहिता की धारा 406 के अन्तर्गत कार्यवाही किए जाने के प्राथमिक रूप से पर्याप्त आधार दिखाई दे रहे हैं, किंतु उसके बाद भी दोनों ही अभियुक्तों के संबंध में परिवाद को निरस्त कर दिये जाने का अधिनस्थ न्यायालय का उक्त आदेश युक्तियुक्त उचित और विधानसम्मत नहीं कहा जा सकता है और इस परिप्रेक्ष्य में ऐसा भी प्रकट हो रहा है कि अधिनस्थ न्यायालय के द्वारा स्वयं में व्याप्त क्षेत्राधिकार का समुचित उपयोग नहीं किया गया है। ”

6. Aggrieved by the order passed by the 4<sup>th</sup> Additional Sessions Judge, Mandsaur in aforesaid criminal revision, the applicant filed this application under Section 482 of Cr.P.C. which is registered as M.Cr.C. No.5863/2008 praying therein to revert the finding given by the learned Additional Sessions Judge and the Chief Judicial Magistrate be ordered to proceed against the respondent No.1 as well. In M.Cr.C. No.5317/2010, the respondent No.2 filed an application under Section 482 of Cr.P.C., praying thereby that the order of learned 4<sup>th</sup> Additional Sessions Judge be set aside.

7. Before proceedings further it may be observed here that admittedly the applicant and the respondents are closely related to each other. As a result of family feud, several civil litigations are pending between the parties. In several rounds

of litigation, the matter travelled upto this Court and on some occasion upto the Apex Court also. However, this being a criminal case, the disputes involved in civil litigation has no direct bearing on this case except that it conveys to us that the parties do not have cordial relation with each other.

8. The counsel for the respondents raised a preliminary issue at this stage placing reliance on the judgment of Hon'ble Apex Court in **Raghunath Raj Singh Rousha Vs. Shivam Sundaram Promoters (P) Ltd. (2009) 1 SCC (Cri) 801** and in **Rameshan P.O. Vs. Rakesh Kumar Yadav (2010) 1 SCC (Cri) 1115**. In these cases, it was held that disposing revision under Section 397 r/w Section 401 of Cr.P.C., filed against the order passed under Section 156 (3) of Cr.P.C., without issuing notice to the party against whom the investigation is directed or sought to be directed, is bad in law. The Court observed by not giving notice to the person against whom the prejudice is caused the principles of natural justice is violated.

9. The learned counsel for the respondents prays that in this case also the learned Additional Sessions Judge did not issue any notice to the respondents and passed an adverse order against the respondent No.2 without giving him an

opportunity of hearing. In such circumstances, he prays that the matter should be remanded back to the learned Additional Sessions Judge.

10. It is true that the principle as laid down by the Hon'ble Apex Court squarely applies on this case. It is also true that the learned Sessions Judge should have given notice to the present applicant. However, in my opinion, now both the parties are present before this Court. They have been given full opportunity of hearing by this Court and looking to the short question involved in the case, I do not find any benefit would arise by remanding the matter back to Additional Sessions Judge. This matter is pending since 2003 and have already travelled upto this Court, remanding back the matter to Additional Sessions Judge would further drag the matter which do not appear proper in the present situation, therefore, instead of remanding back, the matter is decided on merit.

11. The learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in **Balraj Khanna Vs. Moti Ram and Chandra Deo Singh Vs. Prokash Chandra Bose** reported in **AIR 1971 SC 1389** and **AIR 1963 SC 1430**. The Court observed in para 11 that : -



“..... In Chandra Deo Singh v. Prokash Chandra Bose (1964) 1 SCR 639 = (AIR 1963 SC 1430) it has been held by this Court that the object of the provisions of Section 202, Criminal P.C. is to enable the Magistrate to form an opinion as to whether process should be issued or not. At that stage what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant a conviction. It has been further pointed out that the function of the Magistrate holding the preliminary inquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out, even though much can be said on both sides, the committing Magistrate is bound to commit the accused for trial and the accused does not come into the picture at all till the process is issued.”

**12.** In the present case, the learned Judicial Magistrate, Mandsaur gave following grounds for not taking cognizance against the respondents : -

1. In the statements of the present applicant under Section 200 of Cr.P.C., he stated that he shifted to Chandigarh in the year 1974 till the year 1980. He ran a dairy farm at Mandsaur and thereafter he gave lease of the dairy farm to

respondent No.2. The learned Magistrate observed that looking to the style of functioning and business he conducted, it was not believable that without execution of any lease deed he handed over the possession of the farm to respondent No.2.

2. No other document is filed by the applicant to show that he gave the dairy farm and the cattle heads on lease to respondent No.2 in the income tax return. There is mentioned on lease rent, however, to whom and when it was paid is not mentioned in the income tax return.

3. During the investigation by police on being asked to produce documents showing that he gave the dairy farm and the cattle on lease to respondent No.1. The present applicant failed to produce any such documents and thereafter the Court instead of accepting the closure report submitted by the police, proceeded to further inquire into the matter and gave opportunity to the present applicant, he never produce any such documents before the Court also and, therefore, there is no ground to take cognizance under Section 406 of IPC. For the remaining Sections 420, 461, 471 and 120 B, the Court observed that no document is produce by the present applicant to show that respondent No.2 committed any deceit on him.

4. On these grounds, the learned Magistrate reached

to the conclusion that no prima-facie case existed for taking cognizance under aforementioned sections and accordingly dismissed the complaint and accepted the closure report submitted by the police.

13. The observation of the Revisional Court have already been quoted earlier in this order and need not be quoted again.

14. Going through the whole record of the impugned order, I find that only document indicating that the respondent No.2 Manakchand was running a dairy farm for which he obtained shed on rent. In his income tax return pertaining to assessment year 1993-1994 in para 1 (q) it is mentioned that:-

“(q) Dairy shed Rent – Rs.12,000/- Dairy Shed is on rent and a sum of Rs.12,000/- for the financial year 1992-93 has been debited under this head. The details have been enclosed alongwith the return.”

15. It may be seen that a sum of Rs.12,000/- was debited for the financial year 1992-1993 under this head. It is further mentioned that details had been enclosed with the return, however, the record shows no such details. It may further be observed that if it is assumed that there is a dairy farm on Mhow Neemuch Road which belonged to the present

applicant then it was the duty of the present applicant to produce the papers showing that he was the owner of the dairy farm. No such documents are filed by the present applicant. Apart from this, there is no other evidence available on record to substantiate the averments of the present applicant that he gave the farm on lease to present applicant. Thus, I find that the learned Judicial Magistrate did not commit any irregularity and illegality while passing the order. However, the learned Revisional Court committed an error while taking the cognizance against the respondent No.2.

**16.** This apart, it is clear that even if there is a dispute regarding the lease of the dairy farm to the respondent No.2, it is purely a dispute of civil nature and for this purpose the jurisdiction vested in a criminal court cannot be invoked to settle a dispute which is purely of civil nature.

**17.** Accordingly, I find that application filed by applicant Subodh Kumar Gupta under Section 482 of Cr.P.C. in M.Cr.C. No.5863/2008 has no merit and accordingly the application is dismissed. The application filed by respondent No.2 under Section 482 of Cr.P.C. in M.Cr.C. No.5317/2010 which is against the order passed by the revisional court is allowed.

The order passed by the revisional court so far as it relates to the direction to the Court of Chief Judicial Magistrate, Mandsaur to proceed in the case against the respondent No.2 Manakchand Agrawal is set aside. However, the order in relation to respondent No.1 is confirmed. The application filed by respondent No.2 which is registered as M.Cr.C. No.5317/2010 is disposed of accordingly.

**( ALOK VERMA )**  
**JUDGE**