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## High Courts Have Duty To Quash Vexatious Criminal Prosecutions : Supreme Court

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29 Nov 2023 7:18 PM

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The Supreme Court (on November 28) underscored the duty of the High Court in providing protection against vexatious and unwanted prosecution.

Setting aside a judgment of the Allahabad High Court which refused to discharge the accused in a criminal case, the bench comprising **Justices Vikram Nath and Ahsanuddin Amanullah** observed :

*“The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts”.*

In this regard, reference was made to *Priyanka Mishra v State of Uttar Pradesh 2023 INSC 729*, which highlighted the duty of the High Courts to protect individuals from frivolous prosecutions.

While finding the impugned order to be unreasoned and being the watchful guardian, the Court decided to intervene in the matter. Consequently, the accused persons (appellants) were discharged after more than a decade had already passed since the commencement of their trial.

*“The High Court should have intervened and discharged the appellants. But this Court will intervene, being the sentinel on the qui vive.”* the Court opined.

In the instant case, the complainant (respondent 2) was a tenant of a shop. As per the allegations, the accused persons on 29.06.2011, locked the door of respondent 2's shop from inside, broke the wall and looted several items including certain amount of sale money. This resulted in registration of FIR under Sections 448 (Punishment for house-trespass), 454 (Lurking house-trespass) and 380 (Theft in dwelling house) of the Indian Penal Code, 1860. However, as per the charge sheet, dated 07.08.2011, only offence under Section 448 was made and consequently the trial commenced based on this provision.

Prior to approaching the Top Court, the appellants had also filed application for discharge before the Trial Court. However, having the same rejected by the Trial Court, the appellants approached the High Court under Section 482 (inherent

powers of High Court) of the Criminal Procedure Code, 1973, but the same was also dismissed. Thus, the present appeal.

At the outset, the appellants, who are husband and wife, pleaded that the allegations were frivolous. It was also claimed that the same was being alleged only to prevent the appellant, who was also the owner of the shop, to prevent him from enjoying his property.

Apart from this, the appellants pointed out that a regular suit was also filed by respondent no 2, claiming to be a tenant, for permanent injunction. The same suit was filed around two months before the registration of the FIR. However, the same was based on a forged '*Memorandum of Agreement of Tenancy*' dated 24.11.2005, as the present symbol of the Indian National Rupee i.e., ₹, was shown in the memorandum when the said symbol instead came into being only in the year 2010.

Bolstering the above argument, appellants contended that since R2 was never in possession of the property, the FIR itself was a misuse and abuse of the process of law.

### **Analysis and Observations of the Court**

At the outset, the Court took note of the fact that respondent no. 2's entire claim of tenancy was based on a document which was, prima facie, found to be forged and fabricated. This did not stop here as the concerned court had also directed lodging of a criminal case for this.

*"When coupled with the fact that the police did not find any offences having been made out against the appellants under Sections 454 and 380, IPC, the case against the appellants under Section 448, IPC finds itself on shaky ground,"* the Court added.

Moving forward, the Court cited a catena of judgments discussing the contours of the scrutiny that can be conducted by the Court while considering the discharge application. This included the case of **Rumi Dhar v State of West Bengal, (2009) 6 SCC 364**, wherein the Court, while considering the discharge application, held that judge has to '*... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.*'

The Court also drew its strength from the decision rendered in **Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76**, wherein the Apex Court had opined '*... it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*'

If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused (**Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368**).

Adverting to what is meant by 'strong suspicion', the court placed its reliance upon the case of **Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547**, wherein the Court described the same as '*... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.*'

In view of these facts and circumstances the Court, in the present case, held that "*... we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged.*" Accordingly, the Court discharged the appellants.

**Case Title: VISHNU KUMAR SHUKLA & ANR v. THE STATE OF UTTAR PRADESH & ANR., CRIMINAL APPEAL No.3618 OF 2023**

## Citation : 2023 LiveLaw (SC) 1019

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