

(2024) 10 ILRA 789
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.10.2024

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Criminal Misc. Writ Petition No. 13827 of 2024

Vinay Kumar Pandey ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Dheeraj Kumar Pandey, Mukesh Kumar Pandey

Counsel for the Respondents:

G.A., Anand Kumar Singh

(A) Criminal Law – Constitution of India, 1950 – Article 226, 246(2) & 254(2) - Bhartiya Nagarik Suraksha Sanhita, 2023 - Sections 173, 174 & 174(2) – Bhartiya Nyaya Sanhita, 2023 - Section 351(2), Criminal Law (Amendment) Act, 1932 – Section 10 - Indian Penal Code, 1860 - Section – 506 - Writ Petition – Validity of FIR – petitioner argued that Section 351(2) of the B.N.S., corresponding to Section 506 IPC, constitutes a non-cognizable offence under the B.N.S.S., consequently, only a Non-Cognizable Report (N.C.R.) can be registered under Section 174 B.N.S.S., and any investigation requires prior approval from a Magistrate under Section 174(2) B.N.S.S. - cognizability in U.P. - the court held that St. Notification dated 31.07.1989 made Section 506 IPC cognizable - Section 531(2)(b) B.N.S.S. preserves this, ensuring Section 351(2) B.N.S. remains cognizable - Legal Interpretation - Articles 246(2) and 254(2) of the Constitution permit St. amendments, and the Criminal Law (Amendment) Act, 1932, already authorizes such modifications. (Para – 14, 15, 16, 19)

(B) Criminal Law – Constitution of India, 1950 – Article 226, 246(2) & 254(2) - Bhartiya Nagarik Suraksha Sanhita, 2023 - Sections 73, 174 & 174(2) – Bhartiya Nyaya Sanhita, 2023 - Section – 351(2), - Criminal Law (Amendment) Act, 1932 – Section 10, - Indian Penal Code, 1860 - Section – 506 - Writ Petition – Validity of FIR - allegation of Mala-fide FIR - the petitioner argues that the FIR was lodged to cancel anticipatory bail in Case Crime No. 102 of 2024 – court finds that, multiple civil and criminal disputes exist between the petitioner and the informant – the FIR lacks specific details (date, place, time of incident), raising concerns of malicious intent – hence, - notice issued to respondent No.5. - A.G.A. granted three weeks to file a counter affidavit - Petitioner granted two weeks to file a rejoinder affidavit - Next hearing scheduled for the week commencing 11.11.2024 - No coercive action against the petitioner until the next hearing. (Para – 20, 21, 22, 23, 25)

Writ Petition Pending. (E-11)

List of Cases cited:

1. St. of Haryana & ors. Vs Bhajan Lal & ors., 1992 Supp. (1) SCC 335,
2. Aires Rodrigues Vs Vishwajeet P. Rane & ors., (2017) 11 SCC 62,
3. Rakesh & ors. Vs St. of U.P.; Application u/s 482 No. 23628 of 2021, delivered on 29.11.2021,
4. Mata Sevak Upadhyay Vs St. of U.P.; Criminal Misc. Writ Petition No. 7215 of 1994,
5. Arnold Rodricks & anr. Vs St. of Mah. & ors.; AIR 1966 SC 1788
6. Vinod Rao Vs St. of Guj.; 1980 SCC OnLine Guj 86.
7. Harishankar Bagla & anr. Vs St. of M.P.; (1954) 1 SCC 978.

(Delivered by Hon'ble Vivek Kumar Birla, J.
&

Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Mukesh Kumar Pandey, learned counsel for the petitioner, Sri Anand Kumar Singh, learned counsel for the respondents and Sri Pankaj Saxena, learned AGA for the State.

2. The present petition has been filed with the following prayers:-

"a) to issue a writ, order or direction in the nature of certiorari quashing the order dated 08.07.2024 passed by Additional Police Commissioner Commissionerate Ganga Par P.S. Tharwai Prayagraj (Respondent no. 3).

b) to issue a writ, order or direction in the nature of certiorari quashing the impugned First Information Report dated 12.07.2024 registered as F.I.R. No. 196 of 2024, under Section 351(2) of the Bharatiya Nyaya Sanhita, 2023, Police Station- Tharwai, Commissionerate Prayagraj."

3. Learned counsel for the petitioner at the very outset submits that he is not pressing prayer no.'a' and he confines his argument for the prayer no.'b' only.

4. Learned counsel for the petitioner submits that the impugned F.I.R. is bad in the eyes of law because Section 351(2) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as "B.N.S.") (corresponding to Section 506 I.P.C.) is non-cognizable offence as per the first Schedule of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "B.N.S.S.") for which only an N.C.R., under Section 174 B.N.S.S., can be registered and investigation of non-cognizable offence cannot be conducted

without the permission of Magistrate under Section 174(2) B.N.S.S.

5. It is further submitted by learned counsel for the petitioner that several civil and criminal disputes are pending between the petitioner and the first informant and the impugned F.I.R. is mala fide which has been lodged just to make out a ground to cancel the anticipatory bail of the petitioner in Case Crime No. 102 of 2024, under Sections 147, 148, 149, 323, 325, 504, 506, 392 I.P.C. which was also lodged by the present first informant. It is lastly by learned counsel for the petitioner that the impugned F.I.R. deserves to be quashed as the same is barred by Section 174(2) B.N.S.S. In support of his contention, learned counsel for the petitioner has also relied upon the judgement of the Apex Court in the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335** in which it is observed that if from the perusal of the F.I.R. no cognizable offence is made out then the F.I.R. deserves to be quashed.

6. Per contra, learned A.G.A. has submitted that though in the first Schedule of B.N.S.S. Section 351(2) B.N.S. is non-cognizable offence, but in the corresponding Section 506 I.P.C., the State Government in exercise of its power under Section 10 of the Criminal Law (Amendment) Act, 1932 has issued a notification dated 31.7.1989, making Section 506 I.P.C. a cognizable offence. Therefore, in view of Section 531(2)(b) of B.N.S.S., such amendment in Section 506 I.P.C. is saved and the same will continue to be cognizable offence in view of the State amendment. Therefore, Section 351(2) B.N.S. is cognizable offence in the State of U.P. in view of the State notification dated 31.7.1989. In support of

his contention, learned A.G.A. has relied upon the judgement of the Apex Court in the case of **Aires Rodrigues vs. Vishwajeet P. Rane and others; (2017) 11 SCC 62** as well as judgement of Single Bench of this High Court in the case of **Rakesh and others vs. State of U.P.; Application u/s 482 No. 23628 of 2021**, delivered on 29.11.2021.

7. After hearing learned counsel for the parties two questions have arisen for determination (i) whether Section 351(2) B.N.S. is a cognizable offence in U.P., in view of the notification dated 31.7.1989 and the impugned F.I.R. was correctly lodged under Section 173 B.N.S.S. instead of Section 174 B.N.S.S. and; (ii) whether the impugned F.I.R. suffers from mala fide as civil and criminal proceedings have been pending between the parties.

8. For deciding first question, it would be relevant to consider Section 531 B.N.S.S. which saves the notification issued under Cr.P.C. even after enforcement of B.N.S.S.; Section 8 of the General Clauses Act which prescribes the construction of references in any enactment regarding the repealed Act as well as Section 10 of the Criminal Law (Amendment) Act, 1932, which permits the State legislature to amend the Cr.P.C. Section 531 B.N.S.S., Section 8 of General Clauses Act and Section 10 of Criminal Law (Amendment) Act 1932 are being quoted as under:-

**" Section 531 of B.N.S.S.:-
Repeal and savings.-**

(1) *The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.*

(2) *Notwithstanding such repeal?*

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this

Sanhita or provisions are made in this Sanhita for the extension of time.

Section 8 of General Clauses Act:- Construction of references to repealed enactments.-

(1) *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.*

(2) *Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.*

Section 10 of the Criminal Law (Amendment) Act:- Power of State Government to make certain offences cognizable and non-bailable

(1) *The State Government may, by notification in the Official Gazette, declare that any offence punishable under sections 186, 188, 189, 190, 228, 295-A, 298, 505, 506 or 507 of the Indian Penal Code (45 of 1860), when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), be cognizable, and thereupon the Code of Criminal Procedure, 1898 (5 of 1898), shall, while such notification remains in force, be deemed to be amended accordingly.*

(2) *The State Government may, in like manner and subject to the like*

conditions, and with the like effect, declare that an offence punishable under section 188 or section 506 of the Indian Penal Code (45 of 1860), shall be non-bailable."

9. From the perusal of Section 531(2) of B.N.S.S., it is clear that the notification issued under the Code of Criminal Procedure, 1973, which was in force immediately before commencement of B.N.S.S., shall be deemed to be issued under the corresponding provision of B.N.S.S.

10. Similarly, as per Section 8 of the General Clauses Act, 1897 on repealing a Central Act which was re-enacted, reference of repealed Act under any enactment shall be deemed to be reference to re-enacted law. Therefore, reference of I.P.C. and Cr.P.C. in Section 10 of the Criminal Law (Amendment) Act will be deemed to be reference of B.N.S. and B.N.S.S. after the repealing of I.P.C. and Cr.P.C. Therefore, if any amendment is made by the State Government in exercise of its power under Section 10 of Criminal Law (Amendment) Act in I.P.C. and Cr.P.C., then same amendment will be deemed to be made in B.N.S. and B.N.S.S. after repeal of I.P.C. and Cr.P.C.

11. The State of U.P., in exercise of its power under Section 10 of the Criminal Law (Amendment) Act, 1932 which is a central legislation, had issued notification dated 31.7.1989, amending the First Schedule of Cr.P.C. and making Section 506 I.P.C., cognizable offence if same is committed in any of the districts of the State of U.P. It is relevant to mention here that Section 10 of the Criminal Law (Amendment) Act, 1932, which is still in force, has authorized the State Government to make certain offences, including offence

under Section 506 I.P.C., cognizable and non bailable. Therefore, amendment made by the State notification dated 31.7.1989 in Section 506 I.P.C., making it cognizable and non-bailable shall be deemed to be notification issued in respect of Section 351(2) B.N.S. For reference the U.P. State notification dated 31.7.1989 is being quoted as under:-

"In exercise of the powers conferred by Section 10 of the Criminal Law Amendment Act, 1932 (Act No. XXIII of 1932) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in supersession of the notifications issued in this behalf, the Governor is pleased to declare that any offence punishable under Section 506 of the India Penal Code when committed in any district of Uttar Pradesh, shall notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) be cognizable and non-bailable."

12. The Apex Court also considered this issue in the case of **Aires Rodrigues (supra)** and held that the amendment made in Code of Criminal Procedure, 1998 will be deemed to be amendment made in Code of Criminal Procedure, 1973 and such amendment will be saved under Section 484 Cr.P.C., 1973. Paragraph Nos. 8 & 9 of the **Aires Rodrigues (supra)** is quoted as under:-

"8. Section 10 of the Criminal Law Amendment Act, 1932, under which the said Notification has been issued, is as follows:

"10. Power of State Government to make certain offences cognizable and non-bailable.-(1) The [State Government] [Substituted for "Provincial Government" by

A.L.O., 1950] may, by notification in the [Official Gazette] [Substituted for "Local Gazette" by A.O., 1937] , declare that any offence punishable under Sections 186, 188, 189, 190, 228, 295-A, 298, 505, 506 or 507 of the Penal Code, 1860, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), be cognizable, and thereupon the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The [State Government] [Substituted for "Provincial Government" by A.L.O., 1950] may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Penal Code, 1860 shall be non-bailable."

There is no dispute that the 1932 Act is a Central legislation and even today it is operative and power conferred under Section 10 can be exercised.

9. In these circumstances, merely because the 1898 Code has been repealed and replaced by the 1973 CrPC, could not affect the situation. Section 484 CrPC, 1973 as well as Section 8(1) of the General Clauses Act, 1897 saved a notification which may have been issued under CrPC of 1898. Section 8 of the General Clauses Act is as follows:

"8. Construction of references to repealed enactments." (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a

different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

In these circumstances, we are unable to sustain the view taken in the impugned orders."

13. This issue again came into consideration in a full Bench judgement of Allahabad High Court in the case of **Mata Sevak Upadhyay vs. State of U.P.; Criminal Misc. Writ Petition No. 7215 of 1994**, decided on 8.9.1995. In that case the full Bench held that Section 10 of the Criminal Law (Amendment) Act is valid and the State Government notification dated 31.7.1989, making Section 506 I.P.C. cognizable and non-bailable in exercise of power under Section 10 of the Criminal Law (Amendment) Act, is also valid. In this case, the full Bench has relied upon the judgement of the Apex Court in the case of **Arnold Rodricks and another vs. State of Maharashtra and others; AIR 1966 SC 1788** as well as a Division Bench judgement of the Gujarat High Court in the case of **Vinod Rao vs. State of Gujarat; 1980 SCC OnLine Guj 86** and observed in paragraphs No. 108, 109, 110 of **Mata Sevak Upadhyay (supra)** are quoted as under:-

"108. From this authority, it follows that to maintain the rule of flexibility, which is utmost necessary to run the administration, delegation of some

powers, which are not essentially legislative in nature, is necessary. Legislature cannot sit every time to make law to cover all situation arising time to time, and, therefore, after the essential legislative policy having been laid down, the Legislature can leave to the State Government to make necessary changes in the interest of smooth administration. The Legislature has made offence under Section 506, IPC, and has also laid down the essential procedure for trial thereof. So far as the cognizability or bailability of that offence is concerned, the State Government is empowered to change the schedule under Section 10 of the Act of 1932 to make the offence cognisable or non-bailable depending on the exigencies of the administration. In view of the rule laid down in Arnold Rodrick's (supra), the power conferred on the State Government to amend the schedule to the CrPC is permissible. What is amended is not the offence which is declared by the Legislature in the exercise of essential legislative power. Amendment by virtue of Section 13 is such which does not override the essential legislative power.

109. For the reasons Section 10 of the Act of 1932 as well as the notification of August 2, 1989, both the held valid.

110. In the premises, Sections 3, 4, 7, 8 and 14 of the Act of 1989 and Section 10 of the Act of 1932 and notification No. 777/VIII-9-4 (2) (87), dated July 31, 1989, published in the U. P. Gazette (Extraordinary) Part IV, Section Kha, dated 2nd August, 1989, are held valid."

14. Code of Criminal Procedure comes in the List-III (concurrent list). Therefore, the parliament as well as State Legislature can amend the same in view of the Article

246(2) of the Constitution of India which is quoted as under:-

"Article 246(2)- Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List?)."

15. However, in case there is repugnancy between the laws, made by the Parliament and the State Legislature then such law made by the State Legislature shall be reserved for consideration of the President and will prevail in the State only after getting the assent of the President in view of the Article 254(2) of the Constitution of India which is quoted as under:-

"Article 254(2)- Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

16. Though the Cr.P.C. is enacted by the Parliament, which made Section 506 I.P.C. as non-cognizable, but the State by its notification dated 31.7.1989, made it a

cognizable offence. In normal circumstances, the matter would have been sent for consideration of the President and only after receiving the assent of the President, the amendment made by the State would prevail in the State. However, the Criminal Law (Amendment) Act, 1932 is a central act and this Act itself authorizes the State Government to make Section 506 I.P.C. as cognizable offence in the First Schedule of the Code of Criminal Procedure. Therefore, there is no requirement for seeking assent of the President of India for prevailing the same in the State.

17. This issue was also considered by the Apex Court in the case of **Harishankar Bagla and another vs. State of Madhya Pradesh; (1954) 1 SCC 978**. In this case, the issue was if the Act of the Parliament itself permits to issue an order with an effect of amending the central Act, then this amendment will not be deemed to be made by the State Government but the same is the legislated declaration of the central Act. This amendment will have effect notwithstanding any inconsistency therewith contained in any other enactment other than this Act. Paragraph No.21 of **Harishankar Bagla (supra)** is quoted as under:-

"21. Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under Section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any act of the delegate, but the repeal is by the legislative act of Parliament itself. By enacting Section 6 Parliament itself has declared that an order made under Section 3 shall have

effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the legislature itself has declared its will that way in Section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in Section 6 and is not by force of the order made by the delegate under Section 3. The power of the delegate is only to make an order under Section 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the act of Parliament itself. There is no delegation involved in the provisions of Section 6 at all and that section could not be held to be unconstitutional on that ground."

18. Therefore, in view of the law laid down by the Apex Court in the case of ***Hari Shankar Bagla (supra)***, even the central Act can be amended by the State in exercise of power under Section 10 of the Criminal Law (Amendment) Act, which itself is a central legislation and in case of inconsistency, assent of the President is not required in such notification.

19. From the above analysis, it is clear that the notification dated 31.7.1989, issued in exercise of power under Section 10 of the Criminal Law (Amendment) Act under the first Schedule of Cr.P.C., 1973, will be deemed to be issued for amending

schedule-I of the B.N.S.S. making Section 351(2) B.N.S. (corresponding Section 506 I.P.C.) as cognizable and non bailable and such notification is already saved by Section 531(2) B.N.S.S. which is pari material of Section 484 of Cr.P.C., 1973. Therefore, in the State of U.P., Section 351(2) B.N.S. will remain cognizable and non bailable in view of the notification dated 31.7.1989 which was in force at the time of repealing the Cr.P.C. by B.N.S.S.

20. So far as the second question that the impugned F.I.R. suffers from mala fide is concerned, from the perusal of the record, it appears that two civil suits, regarding the property in dispute as well as criminal cases are pending between the parties and in the F.I.R. lodged by respondent No.5, in Case Crime No. 102 of 2024, under Sections 147, 148, 149, 323, 325, 504, 506, 392 I.P.C., P.S. Tharwai, District Prayagraj, the petitioner had ☐ got interim bail. Thereafter, the impugned F.I.R. was lodged without mentioning the date, place or time of the incident of threatening to respondent No.5. Thereafter, respondent No.5 also filed an application before the Deputy Commissioner of Police, Gangapur for cancelling the anticipatory bail application of the petitioner in Case Crime No. 102 of 2024.

21. Apart from the above, perusal of the impugned F.I.R. as well as application dated 3.7.2024 of respondent No.5, also show that the main emphasis of respondent No.5 to cancel the anticipatory bail of the petitioner in Case Crime No. 102 of 2024, registered at P.S. Tharwai, District Prayagraj, therefore, contention of the petitioner that the impugned F.I.R. suffers from mala fide, appears to have substance. Therefore, on this point the matter requires consideration.

22. Issue notice to respondent No.5.

23. Learned A.G.A. is granted three weeks' time to file counter affidavit. The petitioner shall have two weeks thereafter to file rejoinder affidavit.

24. List in the week commencing 11.11.2024.

25. Till the next date of listing, no coercive action shall be taken against the petitioner in F.I.R. No. 196 of 2024, under Section 351(2) of the Bharatiya Nyaya Sanhita, 2023, Police Station- Tharwai, Commissionerate Prayagraj, provided the petitioner cooperates in the investigation.

(2024) 10 ILRA 797
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.10.2024

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Misc. Writ Petition No. 16673 of 2024

Abdul Mannan & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
A.C. Srivastava, Ram Lakhan Deobanshi

Counsel for the Respondents:
C.S.C., Shahabuddin

Criminal Law - Indian Penal Code, 1860 - Sections 419, 420, 323, 504, 506, 467, 468, 471 & 120B - Waqf Act, 1995 - Sections 51, 52 & 83(2) - Quashing of FIR - Petitioners and opposite party no.4 belongs to same family - Ancestors of them created Waqf in 1959, in respect of property owned by him and was

registered by U.P. Sunni Central Waqf Board - The Board vide order dated 19.03.2019 appointed petitioner No. 1 as Mutawalli, to manage affairs of said Waqf - F.I.R was lodged by opposite party no.4 against petitioners - Allegations against them that they are damaging Waqf property for their personal gain, petitioner No.1 manipulated a 'Hiba-nama' dated 27.10.1969 in respect of part of said property and mutated in his name, in Revenue Records - They illegally alienated Waqf property even without approval of Board - Petitioners submitted that properties mentioned in Waqf-deed dated 14.03.1959 are different than properties mentioned in Hiba-nama. (Para 3, 4, 5, 6)

Held, informant tried to transform civil dispute into a criminal one - Dispute was adjudicable only by competent forum constituted u/s 83(1) of Waqf Act, thus impugned F.I.R without sanction of Board, was unsustainable in law and contravened the provisions of section 52A (3) of Waqf Act, quashed. (Para 14, 16)

Writ Petition allowed. (E-13)

List of Cases cited:

1. Indian Oil Corporation Vs NEPC India Ltd. reported in 2006 (6) SCC 736
2. Professor R.K. Vijayasathya & anr.Vs Sudha Seetharam & anr.reported in 2019 (16) SCC 739

(Delivered by Hon'ble Mohd. Syed Qamar Hasan Rizvi, J.)

1. Heard Shri A.C. Srivastava, learned counsel for the petitioners, Shri Anil Kumar Srivastava, learned counsel for opposite party no.4 and learned Additional Government Advocate for the State.

2. Since pure legal issue is involved in this case therefore, without calling counter affidavit, with the consent of the learned counsel for the parties, the present Writ