



REPORTABLE

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

**CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of S.L.P.(Crl.) No.3343 of 2022)**

DINESH GUPTA **...Appellant(s)**

VERSUS

**THE STATE OF UTTAR
PRADESH & ANR.** **...Respondent(s)**

WITH

**CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of S.L.P.(Crl.) No.564 of 2023)**

RAJESH GUPTA **...Appellant(s)**

VERSUS

**THE STATE OF UTTAR
PRADESH & ORS.** **...Respondent(s)**

J U D G M E N T

VIKRAM NATH, J. & RAJESH BINDAL, J.

1. Leave granted.
2. Unscrupulous litigants should not be allowed to go scot-free. They should be put to strict terms

and conditions including costs. It is time to check with firmness such litigation initiated and laced with concealment, falsehood, and forum hunting. Even State actions or conduct of government servants being party to such malicious litigation should be seriously reprimanded. In the instant case, we find initiation of criminal proceedings before a forum which had no territorial jurisdiction by submitting incorrect facts and giving frivolous reasons to entertain such complaints. A closer look at the respondent's actions reveals more than just an inappropriate use of jurisdiction. The core issue of the dispute, which involves financial transactions and agreements, clearly places it in the realm of civil and commercial law. Yet, the respondent chose to pursue criminal charges in a quest to abuse the

criminal justice system with a motive to seek personal vengeance rather than seeking true justice. This unnecessary turning of a civil matter into a criminal case not only overburdens the criminal justice system but also violates the principles of fairness and right conduct in legal matters. The apparent misuse of criminal proceedings in this case not only damages trust in our legal system but also sets a harmful precedent if not addressed.

3. A common order¹ passed by the High Court² dismissing the petitions filed by the appellants seeking quashing of the summoning order³ has been impugned in the present appeals.

¹ Dated 17.02.2022 in Applications under Section 482 Cr.P.C. No(s).29852 of 2021 & 25990 of 2021

² High Court of Judicature at Allahabad

³ Dated 15.02.2021 in Case No.2828 of 2021 (re-numbered as 4084 of 2021)

FACTUAL MATRIX –

4. Karan Gambhir, who owns M/s D.D. Global Capital Pvt. Ltd. (hereinafter referred to as ‘the Company’) is the complainant in the FIR⁴ which was registered against Sushil Gupta, Rajesh Gupta, Dinesh Gupta, Baljeet Singh & others. Three private limited companies had also been arrayed as accused i.e. BDR⁵, Gulab Buildtech⁶ and Verma Buildtech⁷. The individuals, namely, Sushil Gupta, Rajesh Gupta and Dinesh Gupta are stated to be the promoters of the aforesaid three companies.
5. Only two of the accused persons, i.e. Dinesh Gupta and Rajesh Gupta approached the High

⁴ FIR No.1271 of 2018 dated 29.07.2018 registered at Gautam Budh Nagar Police Station, NOIDA

⁵ M/s BDR Builders and Developers Pvt. Ltd. (hereinafter referred to as ‘BDR’)

⁶ M/s Gulab Buildtech Pvt. Ltd. (hereinafter referred to as ‘Gulab Buildtech’)

⁷ M/s Verma Buildtech and Promoters Pvt. Ltd. (hereinafter referred to as ‘Verma Buildtech’)

Court seeking quashing of the summoning order and the FIR. Nothing was pointed out at the time of hearing that any matter filed by any other accused is pending either in this Court or High Court.

6. It is alleged by the complainant that his company was induced to extend short-term loans of ₹ 5,16,00,000/- to Gulab Buildtech and ₹ 11,29,50,000/- to Verma Buildtech respectively. Later, the said loan was converted into debt equity allegedly promising high returns from real estate business to the complainant. The shares were allotted at an exorbitant price. The complainant acquired 21% shareholding in Verma Buildtech, whereas, in Gulab Buildtech, the shareholding was to the tune of 4.53%. A share pledge agreement was forged, allegedly to have been executed in favour

of Sushil Gupta, one of the accused (not before this Court). Some scheme of amalgamation was made by Gulab Buildtech and Verma Buildtech to amalgamate the aforesaid companies with BDR, as a result of which, the percentage of shareholding of the company reduced considerably. No notice was served on the company of the proposed amalgamation. The amalgamation was got approved from the Delhi High Court. The share certificates were allegedly never physically handed over to the complainant.

7. The complainant further alleged that when he asked the accused to return the loan with interest, initially time was sought stating that there is slump in the real estate market and thereafter, the accused started ignoring the complainant. That is when the complainant

decided to take legal recourse against the accused. Prayer was made in the police complaint for registration of a case of cheating and forgery against the accused. While filing the complaint, the complainant had given his address as 'C/o A & A Earth Movers, D-9, Sector-2, Noida Sector-20, Gautam Budh Nagar, U.P.'

8. After investigation, the police found that a case was made out against the accused under Sections 420, 467 and 120-B of the IPC. A charge-sheet was filed on 29.12.2020. Accordingly, the Chief Judicial Magistrate, Gautam Budh Nagar, *vide* order dated 15.02.2021 took cognizance and issued summons to the accused.
9. The appellants filed petitions under Section 482 of the Cr.P.C. before the High Court seeking

quashing of the FIR and the summoning order dated 15.02.2021. The petitions having been dismissed by the composite order passed by the High Court, the same are under challenge in the present appeals.

ARGUMENTS OF THE APPELLANTS -

10. Mr. Kapil Sibal, Mr. Nakul Dewan and Ms. Anjana Prakash, learned senior counsels for the appellants submitted that the complainant who owns the company invested a sum of ₹5,16,00,000/- in Gulab Buildtech and ₹11,29,50,000/- in Verma Buildtech by acquiring equity shares thereof. Prior to the investment, a resolution was passed by the company in the meeting of the Board of Directors held on 25.03.2011, approving investment of ₹11,29,50,000/- in the equity shares of Verma Buildtech. Similarly, by a

resolution dated 26.08.2011, investment in the equity shares of ₹5,16,00,000/- was approved in Gulab Buildtech. Hence, the complainant's case that it was a short-term loan given by the company, was totally contrary to the record since a conscious decision had been taken by the company to make investments in the equity shares of Gulab Buildtech and Verma Buildtech. The above two resolutions are reproduced hereunder:

First Resolution:

“AUTHORIZATION TO INVEST INTO THE EQUITY SHARES OF M/S VERMA BUILDTECH & PROMOTORS PRIVATE LTD.

The Chairman apprised the Board of Directors of the Company about the benefit of investment into the equity shares of M/s Verma Buildtech & Promoters Private Ltd offered by way of private placement. The Directors discussed about the same at length and the following resolutions were passed.

"RESOLVED THAT the company be and is herewith authorized to make an investment of Rupees Eleven Crore Twenty Nine Lacs and Fifty Thousand only (Rs.11,29,50,000/-) in pursuance of the provision of the companies Act, 1956."

"RESOLVED FURTHER THAT Mr. Narender Kumar and Mr. Tarun Kumar Director of the company be and are hereby severally authorized to do the necessary act including the signing of the documents, deed and agreement and other necessary paper which are incidental and consequential to give effect to the above said resolution and collect the Share certificates."

Second Resolution:

AUTHORIZATION TO INVEST INTO THE EQUITY SHARES OF M/S GULAB BUILDTECH PRIVATE LIMITED.

The Chairman apprised the Board of Directors of the Company about the benefit of investment into the equity shares of M/S GULAB BUILDTECH PRIVATE LIMITED offered by way of private placement. The Directors discussed about the same at length and the following resolutions were passed.

"RESOLVED THAT the company be and is herewith authorized to make an investment of Rupees Five Crores Sixteen Lacs only (Rs.5, 16,00,000/-) in pursuance of the provision of the companies Act, 1956."

"RESOLVED FURTHER THAT Mr. Narender Kumar and Mr. Tarun Kumar Director of the company be and are hereby severally authorized to do the necessary act including the signing of the documents, deed and agreement and other necessary paper which are incidental and consequential to give effect to the above said resolution and collect the Share certificates."

11. In 2012, when the petition⁸ was filed seeking amalgamation of Gulab Buildtech and Verma Buildtech with BDR, the Delhi High Court, as per requirements, had issued notice to all the shareholders of the two companies on 09.07.2012. No objection was raised by the complainant or the company at that stage. On 20.02.2013, the scheme of amalgamation was

⁸ Company Petition No.287 of 2012

approved by the Delhi High Court in terms of which the company became entitled to 3,74,280 shares of BDR. On 08.03.2013, a letter was written by Gulab Buildtech and Verma Buildtech to the complainant to surrender original share certificates of Gulab Buildtech and Verma Buildtech to facilitate issuance of new certificates.

12. Nearly one year after the amalgamation, on 31.01.2014, DD Global Capital Limited, the company of the complainant filed an application⁹ before the Delhi High Court seeking recall of the order of amalgamation passed by the High Court as it was without any notice to the company. Other grounds were also raised in this application for recalling the order of amalgamation. The aforesaid application was

⁹ Company Application No.321 of 2014

dismissed by the High Court on 15.03.2016 by a detailed order dealing with all the issues raised. The order attained finality as the company did not challenge the same any further. In the aforesaid proceedings, a letter dated 08.10.2014, allegedly written by Sushil Gupta, one of the accused (not before this Court), claiming that the shares of the company with Verma Buildtech were pledged to him, was also placed on record. This issue was also dealt with by the High Court.

13. More than two years after the application filed by the company was dismissed by Delhi High Court, the instant complaint was filed with the police at Gautam Budh Nagar, on the basis of which FIR in question was registered on 29.07.2018.

14. It is the appellants' submission that a purely civil dispute with reference to financial transactions between corporates is sought to be given colour of a criminal case. Though the company does not have any connection whatsoever with Gautam Budh Nagar and all the transactions were held at New Delhi between the parties, which are based in New Delhi, yet the complaint was filed at Gautam Budh Nagar. Even the address of the complainant given in the complaint is 'C/o A & A Earth Movers, D-9, Sector-2, Noida Sector-20, Gautam Budh Nagar, U.P.' which neither belongs to the complainant nor his company. The aforesaid facts clearly establish that the idea was only to harass the appellants.
15. In fact, the dispute amongst the parties has already been referred to Arbitration by the Delhi

High Court *vide* order dated 15.05.2019 and the company has already filed its claim before the sole Arbitrator.

16. The aforesaid facts clearly establish that no case was made out against the appellants. Further, there is no allegation pertaining to forging of any documents against them. It was a simple business transaction. Arm-twisting method to recover any dues cannot be permitted to be used. In support of the appellants' arguments, reliance was placed on the judgment of this Court in **Randheer Singh v. The State of U.P. & others**¹⁰.

17. It was submitted that there was total non-application of mind by the Trial court while passing summoning order, which is entirely non-speaking in nature. Even the High Court

¹⁰ 2021 INSC 440: (2021) 14 SCC 626.

failed to consider the arguments raised by the appellants.

**ARGUMENTS OF THE RESPONDENT -
COMPLAINANT**

18. On the other hand, Mr. Vikas Singh, learned senior counsel for the respondent-complainant, submitted that solely on persuasion of the accused, huge amount of short-term loan was advanced. Subsequently, shares were allotted, which were never handed over to the complainant. The companies whose shares were allotted, namely, Gulab Buildtech and Verma Buildtech were amalgamated with BDR. During the process of amalgamation, despite being a shareholder, the complainant was not issued any notice. As a result of amalgamation,

the percentage of shareholding of the company was reduced considerably.

19. The letter conveying that the company had pledged its shares to Sushil Gupta shows that certain documents had been forged. He further referred to the order dated 20.02.2013 passed by the High Court in Co. Pet. No. 287 of 2012, showing that the accused persons are connected with each other. He also referred to the Balance Sheet of Gulab Buildtech and Verma Buildtech to show that the amount advanced by the complainant was shown in the column of 'current liabilities'. Indian Accounting Standards have been referred to show the meaning of 'current liabilities' which is in the form of short-term loan.
20. The argument is that the accused persons in connivance with each other have cheated the

complainant for crores of rupees by making false promise of higher returns. There is no error in the order passed by the High Court. The appeals deserve to be dismissed.

FINDINGS –

21. We have heard learned counsel for the parties and perused the material on record.
22. On a complaint filed by the respondent no.2, FIR in question was registered on 29.07.2018. The address of the company D.D. Global was mentioned as ‘C/o A & A Earth Movers, D-9, Sector-2, Noida Sector-20, Gautam Budh Nagar, U.P.’ to be the present as well as the permanent address. This is the first misleading statement made by the complainant. From a copy of the resolution passed by the DD Global dated 25.03.2011, it is evident that the registered office of the DD Global is located at F-

1/9, Okhla Industrial Area, Phase-I, New Delhi. Even at the time of hearing, it remained undisputed that DD Global is not carrying on any business at Noida, nor has it rented the place mentioned above. Further, the firm 'A & A Earth Movers' whose c/o address has been given is not the sister concern of DD Global.

23. Similar was the case with reference to the accused nos. 2 & 3, namely, Rajesh Gupta and Dinesh Gupta, appellants before this Court. Their incomplete addresses have been mentioned reflecting them to be the residents of Sector 20, Gautam Budh Nagar. The position is same in the case of Gulab Buildtech and Verma Buildtech. Though the complainant had invested crores of rupees in equity of the aforesaid two companies based at New Delhi, knowing well their place of business, yet in

those cases, incomplete addresses showing them at Sector 20, Gautam Budh Nagar, was deliberately mentioned. It is sufficiently clear that the idea was to falsely create jurisdiction in Gautam Budh Nagar which did not actually lie there.

24. The falsehood in the complaint, filed with reference to the addresses of the accused, was established at the time of filing of charge-sheet. Whereas in the FIR, the addresses of all the accused given were incomplete merely mentioning the address as 'Sector 20, Gautam Budh Nagar', in the charge-sheet addresses of not only the appellants, namely, Rajesh Gupta and Dinesh Gupta, were found to be 'D-393, New Friends Colony, New Delhi, even Sushil Gupta and Baljeet Singh were also found to be

residents of New Delhi. The following are the addresses of the parties involved in the matter:

Sr. No.	Party	Party Name	Address
1.	Complainant	Karan Gambhir	N-56, Panchsheel Park, New Delhi, 110017.
2.	Supporting Witness	Sanjay Gambhir	N-56, Panchsheel Park, New Delhi, 110017.
3.	Supporting Witness	Tarun Kumar	65/21, New Rohtak Road, New Delhi-110005
4.	Complainant's Company	M/s DD Global Capital Ltd.	226, Basement Cabin Number 11, Right Side, Sant Nagar, East of Kailash, New Delhi, 110065.
5.	Accused No. 1	Sushil Gupta	D-247, IInd Floor, Defence Colony, New Delhi, 110024.
6.	Accused No. 2	Rajesh Gupta	3/41, Shanti Niketan, New Delhi, 110021.
7.	Accused No. 3	Dinesh Gupta	B-393, New Friends Colony, New Delhi, 110014.

8.	Accused No. 4	Baljeet Singh	B-363, New Friends Colony, New Delhi, 110014.
9.	Accused Company (<i>Later amalgamated in BDR Builders</i>)	M/s Gulab Buildtech Pvt. Ltd.	31, Jangpura Road Bhogal, Northeast, New Delhi, 110014.
10.	Accused Company (<i>Later amalgamated in BDR Builders</i>)	M/s Verma Buildtech and Promoters Pvt. Ltd.	R-6A, IInd Floor, Green Park Extension, South Delhi, New Delhi, 110016.
11.	Accused Company	M/s BDR Builders and Developers Pvt. Ltd.	C 43, Jangpura Extension, New Delhi, 110014.

25. Though address of Karan Gambhir who was signatory of the complaint on the basis of FIR in question registered, was mentioned to be of Noida, same as was given in the complaint. However, his residential address was not given.

His parentage was also not mentioned. The second person shown in the chargesheet is a supporting witness, Sanjay Gambhir, who has shown his present and permanent address of 'P.S. Hauz Khas, N-58, Panchsheel Marg, New Delhi'. The same is the position with reference to Tarun Gambhir, who also is claimed to be a supporting witness. All other witnesses were officials who were involved in the investigation of the case.

26. The Chief Judicial Magistrate, Gautam Budh Nagar, *vide* order dated 15.02.2021 took cognizance thereof and issued summons to the accused. The order shows no application of mind, as no reasons have been assigned. The Magistrate also did not take into consideration the address of the complainant and the accused companies as also the addresses of their

Directors. There was complete lack of application of mind while taking cognizance and issuing summons.

27. Coming to the allegation of the complainant being misled for advancing loan, which was later on converted into equity, the appellants placed on record two resolutions dated 25.03.2011 and 26.08.2011 passed by the company *vide* which decision was taken by the complainant to invest in the equity of Gulab Buildtech and Verma Buildtech to the tune of ₹5,16,00,000/- and ₹ 11,29,50,000/- respectively. The said resolutions passed by the complainant have not been denied. Hence, the claim that the appellants had induced the complainant to advance loan and later on converted the loan into equity, is totally false. It was rather a deliberate decision taken by the

Board founded on above-mentioned company resolutions.

28. Further, it is apparent that the complainant had concealed material facts which were within his knowledge at the time of filing of complaint. These facts pertained to the complainant's knowledge of the merger of Gulab Buildtech and Verma Buildtech with BDR, details whereof are noted hereinafter.
29. A Company Petition No.287 of 2012 was filed in the High Court for merger of the Gulab Buildtech and Verma Buildtech with BDR. As required, due notice was issued to all the concerned stake holders including all the shareholders and creditors. The same was published in the newspapers also. The complainant neither raised any objection nor appeared before the High Court. After

considering the material placed on record, the High Court allowed the merger application on 20.02.2013, as a result of which Gulab Buildtech and Verma Buildtech were merged into BDR. Nearly, one year thereafter on 31.01.2014, the complainant company filed a Company Application No. 321 of 2014 for recall of the order dated 20.02.2013. The grievance raised was that the order of merger was passed without notice to the company, which held substantial percentage of shares in both the companies. The aforesaid application was dismissed by the High Court *vide* order dated 15.03.2016. The same was not challenged by the company any further and, hence, attained finality.

30. It would be relevant to note that in the application filed for recall of the merger order by

the complainant, it was nowhere mentioned that initially the complainant had advanced loan, which was later on converted into debt equity. It only mentioned that the complainant was a shareholder of the transferor company and as a result of merger their percentage of shareholding and value of shares decreased. It was also nowhere pleaded in the application that the shares held by the company were mortgaged to Sushil Gupta by forging the documents. The new story of forging documents was built up in the complaint filed with the police only to give a criminal colour which actually was commercial in nature.

31. Not only this, despite dismissal of the application filed by the complainant for recall of the merger order by the High Court *vide* order dated 15.03.2016, in the complaint made to the

police on 29.07.2018 i.e. more than two years and four months later, still the complainant did not furnish complete details thereof, especially the filing and dismissal of the application for recall of the merger order. Rather, it merely stated that he got the documents from the High Court which were filed along with the amalgamation application and came to know about certain facts therefrom but did not mention about the application filed for recall of the order of amalgamation and the result thereof. Non-disclosure of such relevant facts was a deliberate and mischievous attempt on the part of the complainant to maliciously initiate criminal proceedings for ulterior motives.

32. Most importantly, it needs to be noticed that it was a plain and simple transaction between the

corporates. Even as per the complainant's case, the short-term loan was advanced in the year 2010 for a period of one year. However, when the same was not returned, no steps were taken by the complainant to recover the same until the FIR in question was registered on 29.07.2018 i.e. 8 years & 7 months later.

33. Further, the complainant came to know about the merger of the Gulab Buildtech and Verma Buildtech with BDR in the year 2013 itself. However, even after dismissal of the application filed for recall of the merger order passed by the High Court on 15.03.2016, no steps were taken to recover the amount, except getting the FIR registered more than two years later. All these facts clearly reflect upon the ill designs of the complainant.

34. The entire factual matrix and the time lines clearly reflects that the complainant deliberately and unnecessarily has caused substantial delay and had been waiting for opportune moment for initiating false and frivolous litigation.
35. Further, it has been noticed by the High Court in the impugned order that on an application filed by the appellants, an Arbitrator was appointed by the Delhi High Court *vide* order dated 15.05.2019 to settle the dispute amongst the parties and the said matter was still pending.
36. In view of the aforesaid discussion, we find that the FIR in question, if proceeded further, will result in absolute abuse of process of court. It is a clear case of malicious prosecution. Hence, the same is required to be quashed.

37. The appeals are accordingly allowed. The impugned order passed by the High Court is set aside. FIR No.1271 of 2018 dated 29.07.2018 registered with Gautam Budh Nagar Police Station, Noida, and all subsequent proceedings thereof qua the appellants are quashed.
38. Before parting with the judgement, we are reminded of the opening remarks. The respondent Karan Gambhir having misused the legal system by lodging false and frivolous complaint with non-disclosure of necessary facts must bear its costs. The registration of FIR at Noida despite having registered offices of companies in question at Delhi shows a wishful forum shopping by the Complainant, casting serious doubts on their bona fides. The Complainant had already sought remedy against amalgamation order before the High

Court and the High Court had dismissed the same. However, Complainant chose to again use judicial mechanisms to raise his grievances. A criminal complaint was filed and FIR was registered against appellants despite the commercial nature of dispute. Such ill intended acts of abuse of power and of legal machinery seriously affect the public trust in judicial functioning. Thus, we find ourselves constrained to impose cost on Complainant with a view to curb others from such acts leading to abuse of judicial remedies.

39. Considering the above facts and circumstances of the case, we impose costs of ₹25 lakhs on the respondent Karan Gambhir to be deposited within four weeks from today with the Registry of this Court. Upon receipt of the said amount, the same will be transmitted in equal amount to

the SCBA & SCAORA to be utilised for the development and benefit of their members.

.....**J.**
(VIKRAM NATH)

.....**J.**
(RAJESH BINDAL)

NEW DELHI
JANUARY 11, 2024