RAVINDER SINGH

v.

SUKHBIR SINGH & ORS.

(Criminal Appeal No. 67 of 2013)

JANUARY 11, 2013

[DR. B.S. CHAUHAN AND V. GOPALA GOWDA, JJ.]

Code of Criminal Procedure, 1973:

s.482 – Quashing of criminal proceedings – Contempt petition for filing two criminal writ petitions on same facts and for same relief – High Court closed the proceedings – Criminal complaint u/s 3(1)(viii) of 1989 Act filed for filing the said two criminal writ petitions – Held: High Court in contempt petition has dealt with the issue involved and the matter stood closed at the instance of complainant himself – Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh – Inherent power of court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done –Thus, it is a judicial obligation on court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process – It may be so necessary to curb the menace of such criminal prosecution – Complaint filed u/s 3(1)(viii) of 1989 Act is quashed – Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989 – s.3(1)(viii) – Code of Criminal Procoedure, 1898 – s. 403(2).

CRIMINAL LAW:

Issued estoppel – Explained – Code of Criminal Procedure, 1898 – s.403(2).

Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989:

A *s.3(1)(viii) – Prosecution for filing of false, malicious or vexatious or criminal or other legal proceedings – Expressions, 'false', 'malafides' and 'vexatious – Connotation of – Held: Merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be* B *the sole ground for prosecution, for the reason that the offence mentioned under the Act should be committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or a Scheduled Tribe – An unsuccessful application for the purpose of quashing the FIR lodged by* C *complainant does not mean that a false case was filed against him.*

The appellant was arrested in connection with FIR No. 254/2005 for offences punishable u/ss 427, 447 and 506 read with s.34 IPC filed by respondent no. 1. On his D **release on bail, he engaged respondent no.2 as his advocate and filed W. P. (Crl.) No. 1667 of 2005, inter alia, seeking to quash FIR No. 254/2005. It was the case of the appellant that he was the owner and in possession of 1 bigha and 4 biswas of agricultural land with regard to** E **which respondent no. 1 made an attempt to take forcible possession and also filed the criminal case. The said writ petition was dismissed. However, final report u/ss.173 and 169 CrPC was submitted in the court in FIR No. 254; and the claim of respondent no.1 for inclusion of his** F **name in revenue records as a person in possession/ occupation was also rejected. Thereafter, W. P. (Crl.) No. 2657/2006 came to be filed by respondent no. 2 in the name of the appellant, containing the same averments as made in the first writ petition and seeking the same relief.** G **This writ petition was dismissed in default. Thereafter respondent no.1 filed Contempt Case (Crl.) No. 10/2007 before the High Court against the appellant for filing the said two criminal writ petitions. The appellant filed a reply expressing his ignorance regarding the filing of the** H **second criminal writ petition. Respondent no. 2 also**

tendered an unconditional apology. The High Court accepted the version of the appellant and the apology of respondent no.2 and, by order dated 16.02.2009, closed the criminal proceedings. Respondent no.1 then filed a criminal complaint u/s 3(1)(viii) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 against the appellant for filing the said two criminal writ petitions. The Metropolitan Magistrate by his order dated 13.08.2009 dismissed the complaint. However, the revision of respondent no. 1 was allowed. The petition of the appellant u/s. 482 CrPC seeking to quash the criminal complaint having been dismissed by the High Court, he filed the appeal.

Allowing the appeal, the Court

HELD: 1.1 In *Masumsha Hasanasha Musalman's* case, this Court has held that merely because the victim/ complainant belongs to a Scheduled Caste or a Scheduled Tribe, the same cannot be the sole ground for prosecution, for the reason that the offence mentioned under the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 (the Act) should be committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or a Scheduled Tribe. [Para 9] [258-E-G]

Masumsha Hasanasha Musalman v. State of Maharashtra, 2000 (1) SCR 1155 = AIR 2000 SC 1876 – relied on

1.2 The word 'false', in clause (viii) of s.3 (1) of the Act is used to cover only unlawful falsehood. It means something that is dishonestly, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word 'false' is used to characterise a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive.

A **The word false may also be used in a wide or narrower sense. [Para 11] [259-C-E]**

Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics, **2010 (11) SCR 627 = (2010) 9 SCC 630 – relied on.**

B **1.3 Mala fides, where it is alleged, depending upon its own facts and circumstances, in fact has to be proved. It is a deliberate act in disregard of the rights of others. It is a wrongful act done intentionally without just cause or excuse. Legitimate indignation does not fall within the**
C **ambit of a malicious act. In almost all legal inquiries, intention as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with an intentional act without just cause or excuse. [Para 14 and 16] [260-C-D; 261-D]**

D

Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors., **2000 (4) Suppl. SCR 248 = AIR 2001 SC 24 – relied on.**

West Bengal State Electricity Board v. Dilip Kumar Ray,
E **2006 (9) Suppl. SCR 554 = AIR 2007 SC 976;** *State of Punjab v. V.K. Khanna & Ors.* **2000 (5) Suppl. SCR 200 =AIR 2001 SC 343;** *State of A.P. & Ors. v. Goverdhanlal Pitti,* **2003 (2) SCR 908 =AIR 2003 SC 1941;** *Prabodh Sagar v. Punjab SEB & Ors.,* **2000 (3) SCR 866 = AIR 2000 SC 1684; and**
F *Chairman and MD, BPL Ltd. v. S.P. Gururaja & Ors.,* **2003 (4) Suppl. SCR 587 = AIR 2003 SC 4536 – referred to**

1.4 The word "vexatious" means 'harassment by the process of law', 'lacking justification' or with 'intention to
G **harass'. It signifies an action not having sufficient grounds and which, therefore, only seeks to annoy the adversary. The hallmark of a vexatious proceeding is that it has no basis in law (or at least no discernible basis); and that whatever the intention of the proceeding may be,**
H **its only effect is to subject the other party to**

inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court. Such proceedings are different from those that involve ordinary and proper use of the process of the court. [Para 17] [261-E-H]

1.5 In the event that the appellant preferred an application for the purpose of quashing the FIR lodged by respondent no.1, and was unsuccessful therein, the same does not mean that the appellant had filed a false case against respondent No. 1. There is a difference between the terms 'not proved' and 'false'. Merely because a party is unable to prove a fact, the same cannot be categorized as false in each and every case. [Para 13] [260-A-B]

A. Abdul Rashid Khan (dead) & Ors. v. P.A.K.A. Shahul Hamid & Ors., **2000) 10 SCC 636 – relied on.**

2.1 The principle of issue-estoppel is also known as 'cause of action estoppel' and the same is different from the principle of double jeopardy or; *autre fois acquit,* **as embodied in s. 403 Cr.P.C (1898). This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a finding has been reached in favour of an accused. If the cause of action was determined to exist, i.e., judgment was given on it, the same is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per *rem judicatam.* [Para 18] [262-A-B-F-G]**

Manipur Administration, Manipur v. Thokchom, Bira Singh **1964 (7) SCR 123 = AIR 1965 SC 87;** *Piara Singh v. State of Punjab,* **1969 (3) SCR 236 =AIR 1969 SC 961;** ***State of*** *Andhra Pradesh v. Kokkiligada Meeraiah & Anr.,* **1969 (2) SCR 626 = AIR 1970 SC 771;** *Masud Khan v. State*

A *of U.P.*, **1974 (1) SCR 793 = AIR 1974 SC 28;** *Ravinder Singh v. State of Haryana*, **1975 (3) SCR 453 =AIR 1975 SC 856;** *Kanhiya Lal Omar v. R.K. Trivedi & Ors.*, **1985 (3) Suppl. SCR 1 = AIR 1986 SC 111;** *Bhanu Kumar Jain v. Archana Kumar & Anr.*, **AIR 2004 (6) Suppl.** B **SCR 1104 = 2005 SC 626; and** *Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors.*, **2005 (3) SCR 556 =AIR 2005 SC 2392;** *Shiv Shankar Singh v. State of Bihar & Anr.*, **2011 (13) SCR 247 = (2012) 1 SCC 130;** *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* **1962 Suppl.** C **SCR 297 = AIR 1962 SC 876;** *Jatinder Singh & Ors. v. Ranjit Kaur* **2001 (1) SCR 707 = AIR 2001 SC 784;** *Mahesh Chand v. B. Janardhan Reddy & Anr.*, **2002 (4) Suppl. SCR 566 = AIR 2003 SC 702;** *Poonam Chand Jain & Anr. v. Fazru* **2004 (5) Suppl. SCR 525 = AIR 2005 SC 38 –** D **referred to.**

2.2 In the instant case, the complaint in dispute filed by respondent no.1 is based on the ground that there has been a false declaration by the appellant while filing the second writ petition as he suppressed the truth that E **earlier for the same relief a writ petition had been filed and it was done so to gain a legal advantage and, therefore, it was a false, vexatious and malicious one attracting the provisions of s. 3(1)(viii) of the Act. The High Court while dealing with the contempt case did not record such a** F **finding. The first writ petition was dismissed *in limine* while the second was dismissed in default. The issue of filing a false affidavit has been dealt with by the High Court in contempt case which respondent no.1 did not press further. [Para 23] [264-G-H; 265-A-B]**

G **2.3 So far as Contempt Case (Crl.) No.10 of 1007 is concerned, the order of the High Court makes it crystal clear that the appellant had been guided by his counsel, namely, respondent no. 2, and further that the High Court had accepted the unqualified apology tendered by**

H

respondent no.2, and had decided to drop the said proceedings, as respondent no.1 did not wish to pursue his remedy any further. The petition was disposed of, as not pressed. The High Court has dealt with the issue involved and the matter stood closed at the instance of respondent no.1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. [Para 6, 8 and 25] [256-H; 258-C-E; 266-B]

2.4 The facts on record make it evident that the land on which both parties claim title/interest had initially been allotted under the 20 Point Programme of the Government of India, to a member of the Schedule Caste community, who transferred the same. The land further changed hands and was finally sold to the appellant in the year 2005. Respondent No. 1, who at the relevant time was holding a very high position in the Central Government, claimed that initial transfer by the original allottee was illegal and further that as the said land had been encroached upon by his father, he had a right to get his name entered in the revenue record. Transfer by the original allottee at initial stage, even if illegal, would not confer any right in favour of respondent no.1. Thus, he adopted intimidatory tactics by resorting to revenue as well as criminal proceedings against the appellant without realising that even if the initial transfer by the original allottee was illegal, the land may revert back to the Government and not to him merely because his father had encroached upon the same. [Para 24] [265-C-F; G-H]

2.5 The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary

judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. In such a fact-situation, the court must not hesitate to quash criminal proceedings. *Ex debito justitiae* is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint. Therefore, the judgments of the High Court and the revisional court are set aside. Order of the Metropolitan Magistrate dated 13.8.2009 is restored. The complaint filed by respondent no.1 under the provisions of s. 3(1)(viii) of the Act is quashed. [Para 25] [266-B-F]

Chandrapal Singh & Ors. v. Maharaj Singh & Anr., **AIR 1982 SC 1238 – relied on**

Smt. Somavanti & Ors. v. The State of Punjab & Ors. **1963 SCR 774 =AIR 1963 SC 151**; *Ballabhdas Mathuradas Lakhani & Ors. v. Municipal Committee, Malkapur,* **AIR 1970 SC 1002**; *Ambika Prasad Mishra v. State of U.P. & Ors.*, **AIR 1980 SC 1762; and** *Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr.*, **2002 (2) SCR 661 = AIR 2002 SC 1598**; *The Direct Recruit Class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors.*, **1990 (2) SCR 900 = AIR 1990 SC 1607**; *Daryao & Ors. v. State of U.P. & Ors.*, **1962 SCR 574 = AIR 1961 SC 1457; and** *Forward Construction Co. & Ors. v. Prabhat Mandal (Regd.), Andheri & Ors.* **1985 (3) Suppl. SCR 766 = AIR 1986 SC 391 – referred to**

Case Law Reference:

2000 (1) SCR 1155	**relied on**	**Para 9**

2010 (11) SCR 627	relied on	Para 12	A
(2000) 10 SCC 636	relied on	Para 13	
2000 (4) Suppl. SCR 248	relied on	Para 14	
2006 (9) Suppl. SCR 554	referred to	para 15	B
2000 (5) Suppl. SCR 200	referred to	Para 16	
2003 (2) SCR 908	referred to	Para 16	
2000 (3) SCR 866	referred to	Para 16	
2003 (4) Suppl. SCR 587	referred to	Para 16	C
1964 SCR 123	referred to	Para 18	
1969 (3) SCR 236	referred to	Para 18	
1969 (2) SCR 626	referred to	Para 18	D
1974 (1) SCR 793	referred to	Para 18	
1975 (3) SCR 453	referred to	Para 18	
1985 (3) Suppl. SCR 1	referred to	Para 18	E
2004 (6) Suppl. SCR 1104	referred to	Para 18	
2005 (3) SCR 556	referred to	Para 18	
2011 (13) SCR 247	referred to	Para 19	F
1962 Suppl. SCR 297	referred to	Para 19	
2001 (1) SCR 707	referred to	Para 19	
2002 (4) Suppl. SCR 566	referred to	Para 19	
2004 (5) Suppl. SCR 525	referred to	Para 19	G
AIR 1982 SC 1238	relied on	Para 20	
1963 SCR 774	referred to	para 21	
AIR 1970 SC 1002	referred to	para 21	H

A	**AIR 1980 SC 1762**	**referred to**	**para 21**
	2002 (2) SCR 661	**referred to**	**para 21**
	1990 (2) SCR 900	**referred to**	**para 22**
B	**1962 SCR 574**	**referred to**	**para 22**
	1985 (3) Suppl. SCR 766	**referred to**	**para 22**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 67 of 2013.

C From the Judgment & Order dated 14.12.2011 of the High Court of Delhi at New Delhi in Cr.M.C. No. 1262 of 2011.

Shekhar Naphade, Shubhangi Tuli, Parvinder Chouhan for the Appellant.

D Rakesh Khanna, ASG, Mukul Sharma, Prasoon Kumar, V.K. Sidharthan, Vivek Narayan Sharma, Raji Joseph, D.S. Mahra, B.V. Balaram Das, Abhishek Atrey for the Respondents.

The Judgment of the Court was delivered by

E **DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred against the impugned judgment and order dated 14.12.2011, passed by the High Court of Delhi in Crl.M.C. No. 1262 of 2011, by way of which the High Court has dismissed F the said application preferred by the appellant for quashing the criminal proceedings launched by respondent no. 1 under Section 3(1)(viii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act 1989').

G 2. Facts and circumstances giving rise to this appeal are that:

A. The appellant claims to be the owner of agricultural land measuring 1 bigha and 4 biswas, situated in the revenue estate H of village Nangli Poona, Delhi. Respondent no.1 allegedly

made an attempt to take forcible possession of the said land, and also filed FIR No. 254 of 2005 on 6.4.2005 under Sections 427, 447 and 506, read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). Though the appellant was arrested in pursuance of the said FIR, however, subsequently he was enlarged on bail.

B. Aggrieved, the appellant filed a complaint against respondent no.1, as well as against the police officials involved and in view thereof, FIR No.569 of 2005 under Sections 447, 323, 429 and 34 IPC was registered. The appellant engaged one Pradeep Rana, Advocate, respondent no.2 and filed Writ Petition (Crl.) No. 1667 of 2005, *inter-alia,* seeking a direction for quashing of FIR No. 254 of 2005. The said writ petition was dismissed *in limine* vide order dated 29.9.2005. In the meantime, in the criminal proceedings launched by the appellant, a charge sheet was filed against respondent no.1 in December, 2005.

C. After investigating the allegations made in FIR No. 254 of 2005 against the appellant, the police submitted a final report dated 20.2.2006, under Sections 173 and 169 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'), in the court of the Metropolitan Magistrate, Delhi. Respondent no.1 approached the revenue authorities i.e. Tahsildar, Narela, seeking the inclusion of his name in the revenue record as a person in possession/occupation of the said land. However, his claim was rejected by the Tahsildar vide order dated 22.6.2006.

D. It is at this time, Writ Petition (Crl.) No. 2657 of 2006 was filed in the name of the appellant by Pradeep Rana, respondent no.2 as counsel on 18.11.2006, on the basis of the averments made in the first writ petition i.e. Writ Petition (Crl.) No. 1667 of 2005, and seeking the same relief sought therein. The said writ petition was dismissed in default vide order dated 17.8.2007. Meanwhile, respondent no.1 tried to get his name recorded in the revenue record as being in cultivatory

A possession, but the same was rejected again by the Tahsildar, Narela, vide order dated 13.8.2007.

E. Respondent no.1 filed another complaint under Section 107/150 Cr.P.C. on 18.9.2007, and filed a fresh FIR No.16 of 2007 on 21.9.2007 under Sections 379, 427 and 34 IPC, and B subsequently added the provisions of Section 3(1)(v) of the Act 1989. Respondent no.1 also filed an appeal against the order of the Tahsildar, rejecting his application made for the purpose of recording his name in the revenue records.

C F. Respondent no.1 also filed Contempt Case (Crl.) No.10 of 2007 before the High Court of Delhi against the appellant for filing two criminal writ petitions seeking the same relief, and for not disclosing the fact that he had filed the first writ petition, while filing the second writ petition, owing to which, the said writ D petition stood dismissed in default vide order dated 17.8.2007.

G. On receiving notice from the High Court, the appellant filed a reply expressing his ignorance regarding the filing of the second criminal writ petition, and further stated that he was an E illiterate person, owing to which, he had given all requisite papers to Pradeep Rana, Advocate, respondent no. 2, and that respondent no.2 might have filed the said petition, in collusion with respondent no.1. Notice was then issued to Pradeep Rana, respondent no.2 by the High Court, who appeared and tendered an apology for filing the second petition, without F disclosing such facts pertaining to the filing and dismissal of the first petition.

H. The appellant filed a complaint before the Bar Council of Delhi against respondent no.2 for filing the second writ G petition in collusion with respondent no.1 on 15.12.2008. The High Court accepted the version of events submitted by the appellant, and simultaneously, also the apology tendered by respondent no.2 and thereafter, it closed the said criminal proceedings at the instance of respondent no.1, vide order H dated 16.2.2009.

I. After a period of six months thereof, respondent no.1 filed a criminal complaint under Section 3(1)(viii) of the Act 1989, for the filing of a false criminal writ petition by the appellant in the High Court of Delhi, and further and more particularly, the second writ petition, without disclosing the factum of filing and dismissal of the aforementioned first writ petition. The Metropolitan Magistrate rejected the said complaint vide order dated 13.8.2009 on the ground that the High Court had closed the contempt proceedings initiated against the appellant, as well as against respondent no.2, at the instance of respondent no.1.

J. Aggrieved, respondent no.1 filed Revision Petition No.23 of 2009 before the ASJ, Rohini Court, Delhi. As regards FIR No. 16 of 2007, the Special Judge (SC/ST) refused to proceed against the appellant and others, making serious comments regarding the conduct of respondent no.1, as well as that of the investigating officer. The revision petition filed by respondent no.1 against order dated 13.8.2009, was allowed by the revisional court vide order dated 25.10.2010, which was then challenged by the appellant, before the High Court by way of him filing a petition under Section 482 Cr.P.C. as Crl.M.C. No.1262 of 2011, which has been dismissed by impugned judgment and order dated 14.12.2011.

Hence, this appeal.

3. Shri Shekhar Naphade, learned senior counsel appearing on behalf of the appellant, has submitted that filing the instant complaint case amounts to abuse of process of the court. The criminal complaint is barred by the principle of issue estoppel, as the same issue has been fully adjudicated by the High Court in a criminal contempt case before it, and the High Court was fully satisfied that the fault lay in the actions of Pradeep Rana, respondent no.2, counsel for the appellant. The High Court even accepted the apology of the respondent no.2 thereafter, and closed the said criminal proceedings at the instance of respondent no.1. As the issue has already been

A adjudicated, and finally closed by the High Court, the Magistrate court cannot sit in appeal against the said order passed by the High Court, closing the said case of criminal contempt, as the subject matter and allegations of the case before him, are *verbatim* and have already been adjudicated.

B To invoke the provisions of the Act 1989, it is not enough that the complainant belongs to a Scheduled Caste or Scheduled Tribe, as it must further be established that the alleged offence was committed with the intention to cause harm to the person belonging to such category. Moreover, the term C false, malicious and vexatious proceedings must be understood in a strictly legal sense and hence, intention (*mens rea)*, to cause harm to a person belonging to such category must definitely be established. Where genuine civil matter is *sub-judice,* and parties are settling their disputes in revenue D courts, such proceedings must not be entertained. The High Court therefore, committed an error in rejecting the application for quashing criminal proceedings.

4. Per contra, Shri Mukul Sharma, learned counsel E appearing for respondent no.1, has defended the impugned judgment and order and submitted that the findings recorded in the case of criminal contempt cannot preclude respondent no.1 from initiating such criminal proceedings and that whether the same are false, malicious and vexatious, is yet to be F established during trial. This is not the stage where any inference in this regard can be drawn. Furthermore, pendency of the issue regarding the ownership of the said land before the revenue court, is no bar so far as criminal proceedings are concerned. Thus, the appeal is liable to be dismissed.

G 5. We have considered the rival submissions, and heard both, Shri Rakesh Khanna, learned ASG for the State of Delhi, and Shri Prasoon Kumar, Advocate, for respondent no.2, and have also perused the record.

H 6. So far as Contempt Case (Crl.) No.10 of 1007 is

concerned, it is evident that the appellant, after becoming aware of the fact that a second writ petition was filed in his name, filed a complaint before the Bar Council of Delhi, through its Secretary against respondent no.2 on 29.12.2007 (Annx. P/11), wherein it was stated that the said second writ petition No. 1667 of 2005 was filed without his instructions, using papers signed by him in good faith, in the office of respondent no.2, at his instance. Upon considering the reply of the appellant, the High Court issued notice to Pradeep Rana, Advocate, respondent no.2 in Contempt Case (Crl.) No. 10 of 2007, and thereafter, respondent no.2 filed his reply, wherein he submitted that even though the second writ petition was filed on the instructions of the appellant, however, he inadvertently, failed to mention the fact that he had filed the earlier writ petition and that the same had been dismissed, for which he tendered absolute and unconditional apology.

7. The High Court, vide judgment and order dated 16.2.2009 disposed of the said contempt proceedings. The order reads as under:

> "Learned counsel for Ravinder Singh admits that Crl. Writ Petition No. 1667/2005 and Crl. Writ Petition No.2657/2006 were filed under his signatures but states that he being not well-versed in English would sign the petition and supporting affidavits in Hindi and that he was being guided by his counsel with respect to the contents of the petition.
>
> Mr. Pradeep Rana, learned counsel for Mr. Ravinder Singh express his regrets and tenders an unqualified apology for filing two identical petitions one after the other and not disclosing in the second petition that the first petition was filed and was dismissed.
>
> Keeping in view the young age of Mr. Pradeep Rana, learned counsel for the petitioner states that in view of the fact that Mr. Ravinder Singh has admitted that both petitions were filed under his signatures and given an

A explanation as to what had happened, **the petitioner does not want to pursue the remedy against the counsel, the instant petition may be disposed of as not pressed.**

B **We dispose of the petition as not pressed."**

(Emphasis added)

8. The aforesaid order hence, makes it crystal clear that the High Court was satisfied that the appellant had been guided C by his counsel and that he himself was not well-versed with the English language and had also filed his supporting affidavit in Hindi and further that it had accepted the unqualified apology tendered by Pradeep Rana, respondent no.2, and that considering the fact that the advocate was of a young age, even D though both petitions had been filed under the signature of the appellant, it had decided to drop the said proceedings, as respondent no.1 did not wish to pursue his remedy any further. Hence, the petition was disposed of, as the same was not pressed.

E 9. In *Masumsha Hasanasha Musalman v. State of Maharashtra,* AIR 2000 SC 1876, this Court has dealt with the application of the provisions of the Act 1989, and held that merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be the sole ground F for prosecution, for the reason that the offence mentioned under the said Act 1989 should be committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or Scheduled Tribe. In the absence of such ingredient, no offence under Section 3 (2)(v) of the Act is made out.

G 10. Section 3(1)(viii) of the Act 1989 reads as under:

"Punishment for offences of atrocities:(1) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe,-

H

(i) xx xx xx

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) xx xx xx

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

11. The dictionary meaning of word 'false' means that, which is in essence, incorrect, or purposefully untrue, deceitful etc. Thus, the word 'false', is used to cover only unlawful falsehood. It means something that is dishonestly, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word 'false' is used to characterise a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive. The word false may also be used in a wide or narrower sense. When used in its wider sense, it means something that is untrue whether or not stated intentionally or knowingly, but when used in its narrower sense, it may cover only such falsehoods, which are intentional. The question whether in a particular enactment, the word false is used in a restricted sense or a wider sense, depends upon the context in which it is used.

12. In *Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics,* (2010) 9 SCC 630, this Court, after relying upon certain legal dictionaries, explained that the word false describes an untruth, coupled with wrong intention or an intention to deceive. The Court further held that in case of criminal prosecution, where consequences are serious, findings of fact must be recorded with respect to *mens rea* in case a falsehood as a condition precedent for imposing any punishment.

A 13. In the event that the appellant preferred an application for the purpose of quashing the FIR lodged by respondent no.1, and was unsuccessful therein, the same does not mean that the appellant had filed a false case against respondent No. 1. There is a difference between the terms 'not proved' and 'false'. B Merely because a party is unable to prove a fact, the same cannot be categorized as false in each and every case. (Vide: *A. Abdul Rashid Khan (dead) & Ors. v. P.A.K.A. Shahul Hamid & Ors.,* (2000) 10 SCC 636).

14. Legitimate indignation does not fall within the ambit of C a malicious act. In almost all legal inquiries, intention as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with an intentional act without just cause or excuse. (Vide: *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors.,* AIR 2001 SC 24).

D

15. In *West Bengal State Electricity Board v. Dilip Kumar Ray,* AIR 2007 SC 976, this Court dealt with the term "malicious prosecution" by referring to various dictionaries etc. as :

E 'Malice in the legal sense imports (*1*) the absence of all elements of justification, excuse or recognised mitigation, and (*2*) the presence of either (*a*) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (*b*) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such F harm may result.

'MALICE' consists in a conscious violation of the law to the prejudice of another and certainly has different meanings with respect to responsibility for civil wrongs and G responsibility for crime.

Malicious prosecution means - a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:—Malice is not merely the doing of a wrongful act H

intentionally but it must be established that the defendant was actuated by *malus animus*, that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

16. Mala fides, where it is alleged, depends upon its own facts and circumstances, in fact has to be proved. It is a deliberate act in disregard of the rights of others. It is a wrongful act done intentionally without just cause or excuse. (See : *State of Punjab v. V.K. Khanna & Ors.,* AIR 2001 SC 343; *State of A.P. & Ors. v. Goverdhanlal Pitti,* AIR 2003 SC 1941; *Prabodh Sagar v. Punjab SEB & Ors.,* AIR 2000 SC 1684; and *Chairman and MD, BPL Ltd. v. S.P. Gururaja & Ors.,* AIR 2003 SC 4536).

17. The word "vexatious" means 'harassment by the process of law', 'lacking justification' or with 'intention to harass'. It signifies an action not having sufficient grounds, and which therefore, only seeks to annoy the adversary.

The hallmark of a vexatious proceeding is that it has no basis in law (or at least no discernible basis); and that whatever the intention of the proceeding may be, its only effect is to subject the other party to inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court. Such proceedings are different from those that involve ordinary and proper use of the process of the court.

A 18. The principle of issue-estoppel is also known as 'cause of action estoppel' and the same is different from the principle of double jeopardy or; *autre fois acquit,* as embodied in Section 403 Cr.P.C. This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a B finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or *res judicata* against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that C will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might be permitted by Section 403(2) Cr.P.C. Thus, the rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. If with respect to an offence, arising out of a transaction, a trial D has taken place and the accused has been acquitted, another trial with respect to the offence alleged to arise out of the transaction, which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial, is prohibited by the rule of issue estoppel. In order to invoke the E rule of issue estoppel, not only the parties in the two trials should be the same but also, the fact in issue, proved or not, as present in the earlier trial, must be identical to what is sought to be re-agitated in the subsequent trial. If the cause of action was determined to exist, i.e., judgment was given on it, the F same is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per *rem judicatam.* (See: *Manipur Administration, Manipur v. Thokchom, Bira Singh,* AIR 1965 SC 87; *Piara Singh v. State of Punjab,* AIR 1969 SC 961; G *State of Andhra Pradesh v. Kokkiligada Meeraiah & Anr.,* AIR 1970 SC 771; *Masud Khan v. State of U.P.,* AIR 1974 SC 28; *Ravinder Singh v. State of Haryana,* AIR 1975 SC 856; *Kanhiya Lal Omar v. R.K. Trivedi & Ors.,* AIR 1986 SC 111; *Bhanu Kumar Jain v. Archana Kumar & Anr.,* AIR 2005 SC

H

626; and *Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors.*, AIR 2005 SC 2392).

19. While considering the issue at hand in *Shiv Shankar Singh v. State of Bihar & Anr.*, (2012) 1 SCC 130, this Court, after considering its earlier judgments in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* AIR 1962 SC 876; *Jatinder Singh & Ors. v. Ranjit Kaur* AIR 2001 SC 784; *Mahesh Chand v. B. Janardhan Reddy & Anr.*, AIR 2003 SC 702; *Poonam Chand Jain & Anr. v. Fazru* AIR 2005 SC 38 held:

> "It is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

20. In *Chandrapal Singh & Ors. v. Maharaj Singh & Anr.*, AIR 1982 SC 1238, this court has held that it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by enabling them to invoke the jurisdiction of criminal courts in a cheap manner. In such a fact-situation, the court must not hesitate to quash criminal proceedings.

21. There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding, particularly, when the same is that of a co-ordinate bench, or of a larger bench. It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said

A judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned". The case
B must be considered, taking note of the *ratio decidendi* of the same i.e., the general reasons, or the general grounds upon which, the decision of the court is based, or on the test or abstract, of the specific peculiarities of the particular case, which finally gives rise to the decision. (Vide: *Smt. Somavanti*
C *& Ors. v. The State of Punjab & Ors.,* AIR 1963 SC 151; *Ballabhdas Mathuradas Lakhani & Ors. v. Municipal Committee, Malkapur,* AIR 1970 SC 1002; *Ambika Prasad Mishra v. State of U.P. & Ors.,* AIR 1980 SC 1762; and *Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr.*, AIR 2002
D SC 1598).

22. In *The Direct Recruit Class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors.,* AIR 1990 SC 1607, a Constitution Bench of this Court has taken a similar view, observing that the binding nature of a judgment of a court
E of competent jurisdiction, is in essence a part of the rule of law on the basis of which, administration of justice depends. Emphasis on this point by the Constitution is well founded, and a judgment given by a competent court on merits must bind all parties involved until the same is set aside in appeal, and an
F attempted change in the form of the petition or in its grounds, cannot be allowed to defeat the plea. (See also: *Daryao & Ors. v. State of U.P. & Ors.,* AIR 1961 SC 1457; and *Forward Construction Co. & Ors. v. Prabhat Mandal (Regd.), Andheri & Ors.* AIR 1986 SC 391).

G 23. The instant case is required to be decided taking into consideration the aforesaid settled legal propositions.

The complaint in dispute filed by the respondent no.1 is based on the ground that there has been a false declaration
H by the appellant while filing the second writ petition as he

suppressed the truth that earlier for the same relief a writ petition had been filed and it was done so to gain a legal advantage and therefore, it was a false, vexatious and malicious one attracting the provisions of Section 3(1)(viii) of the Act 1989. The High Court while dealing with the contempt case did not record such a finding. The first writ petition was dismissed *in limine* while the second was dismissed in default. The issue of filing a false affidavit has been dealt with by the High Court in contempt case which the respondent no.1 did not press further.

24. The facts on record make it evident that the land on which both parties claim title/interest had initially been allotted to one Anant Ram, a member of the Schedule Caste community, under the 20 Point Programme of the Government of India (Poverty Elevation Programme) and he sold it to one Ram Lal Aggarwal in the year 1989, who further transferred it to his son Anil Kumar Aggarwal in the year 1990. Anil Kumar Aggarwal sold the same to appellant Ravinder Singh in the year 2005. Respondent No. 1, who at the relevant time was holding a very high position in the Central Government, claimed that initial transfer by Anant Ram, the original allottee, in favour of Ram Lal Aggarwal was illegal and he could not transfer the land allotted to him by the Government under Poverty Elevation Programme and further that as the said land had been encroached upon by his father, he had a right to get his name entered in the revenue record. Thus, it is clear that the respondent no. 1, became the law unto himself and assumed the jurisdiction to decide the legal dispute himself to which he himself had been a party being the son of a rank trespasser. Transfer by the original allottee at initial stage, even if illegal, would not confer any right in favour of the respondent no.1. Thus, he adopted intimidatory tactics by resorting to revenue as well as criminal proceedings against the appellant without realising that even if the initial transfer by the original allottee Anant Ram was illegal, the land may revert back to the Government, and

not to him merely because his father had encroached upon the same.

25. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of respondent no.1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. *Ex debito justitiae* is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint.

In view of the above, the judgment of the High Court impugned herein dated 14.12.2011 as well as of the Revisional Court is set aside. Order of the Metropolitan Magistrate dated 13.8.2009 is restored. The complaint filed by respondent no.1 under the provisions of Section 3(1)(viii) of the Act 1989 is hereby quashed. The appeal is thus allowed.

Before parting with the case, it may be necessary to observe that any of the observations made herein shall not affect by any means either of the parties in any civil/revenue case pending before an appropriate authority/court.

R.P. Appeal allowed.