
(2015) 02 AHC CK 0124

In the Allahabad High Court

Case No : Criminal Misc. Application Nos. 26680 and 32767 of 2009

Anurag Singhania

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 138, 34, 405, 406, 420

Citation : (2015) 3 ADJ 79 : (2015) 3 ALJ 731

Hon'ble Judges : Vipin Sinha, J

Bench : Single Bench

Advocate : Sharad Malviya and Vishal Kakkar, for the Appellant; Arun Kumar Mishra and Atul Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vipin Sinha, J.—Heard Sri. Dinesh Kakkar learned counsel for the applicants, learned counsel for the private opposite parties and learned AGA appearing for the State.

By means of the aforecaptioned applications under Section 482, the applicants have prayed for quashing of the charge-sheet No. 93/2008 dated 8.10.2008 under Sections 406 and 420 IPC submitted in case crime No. 176 of 2008 and also for quashing of the further proceeding in criminal case No. 4838 of 2009 pending in the Court of Additional Chief Metropolitan Magistrate-I, Kanpur Nagar.

Both the aforecaptioned applications under Section 482 were connected together vide order of this Court dated 18.12.2009 and as such both the matters are being heard and decided together by a common order. For the facts, Cri. Misc. Application under Section 482 No. 26680 of 2008 is being treated as a leading case.

2. The brief facts are as follows:

"Opposite party No. 2 has moved an application under Section 156(3) Cr.P.C. on

14.2.2008 seeking a direction for registration of a First Information Report. The said application was filed with the allegation that opposite party No. 2 was a reputed businessman of Kanpur and he was known to the family of the applicants. The applicants approached the opposite party No. 2 seeking investment of a sum of Rs. 10,00,000/- with the assurance that he will be made a Director in the Company in lieu of the said investment. The opposite party No. 2 was also assured that along with the post of Director he would also receive an interest between 12% to 14% of Rs. 10,00,000/-. Opposite party No. 2 had agreed to the offer and paid a sum of Rs. 10,00,000/- vide two Bank Drafts. The applicants had made part of the payment towards interest of the amount for certain period but subsequent payment was stopped and opposite party No. 2 was not made Director in the Company upon which the opposite party No. 2 has made a demand for reimbursement of the entire amount. On 8.4.2004 an amount of Rs. 5,32,646/- was paid to him as part payment. By a written notice dated 19.2.2007, this amount was demanded but no payment was made, accordingly, opposite party No. 2 had been cheated with mala fide intention. On 20.4.2007, a report was registered at P.S. Pheelkhana, Kanpur Nagar, however, no action was taken. A complaint was filed on 14.2.2008. On the said complaint, the concerned Magistrate directed the police to submit its report. The concerned police station submitted its report which clearly states that no cognizable offence has been made out and there is a business dispute between the parties which appears to be civil in nature. After receiving the said report from the concerned police station, the Magistrate concerned directed for registration of FIR and after registration of the FIR, the statements of Anupam Dalmia, Ashok Dalmia, Shantimal Singhvi and K.K. Srivastava were recorded. After recording the statements of the aforesaid persons, a charge-sheet was submitted under Sections 406 and 420 IPC upon which the Magistrate has taken cognizance on 24.1.2009 against which the aforecaptioned applications have been filed."

3. Before I deal with the respective contentions advanced by either sides, I deem it appropriate to have a thorough look at Section 482 Cr.P.C. as has been discussed in the case of *Rishipal Singh Vs. State of U.P.*, AIR 2014 SC 2567 : (2014) AIRSCW 3810 : (2014) 8 SCALE 298 : (2014) 7 SCC 215 , which is as under:

"482. Saving of inherent powers of High Court.--Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

A bare perusal of Section 482 CrPC makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard-and-fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no

straitjacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 CrPC.

11. This Court in *Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd.*, has discussed at length about the scope and ambit while exercising Power under Section 482 CrPC and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgment, which reads:

"2. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as the rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or Charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

12. This Court in a plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 CrPC. In *State of ar yana v. Bhajan Lal*, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) *CBI v. Duncans Agro industries Ltd.*, (2) *Rajesh Bajaj v. State (NCT of Delhi)* and (3) *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*. This Court in *Zandu Pharmaceuticals Works Ltd.* observed that:

The power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed.

13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint *prima facie*

establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the Criminal proceedings results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 CrPC. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact."

4. It has been strongly contended by Sri Dinesh Kakkar, learned counsel for the applicants that there is much delay in lodging of the FIR. As per own case of the prosecution, the incident is of the year 1999 whereas the FIR got registered in the year 2008 and the reasons for delay have not been explained. He further contended that even if the averments as made therein are believed to be true, the ingredients of Section 420 IPC are missing and the version as given in the FIR discloses only the existence of a civil dispute between the parties. He also contended that for making out an offence under Section 420 IPC, it is for the opposite party No. 2 to show the existence of dishonest and deceitful intention of the accused from the very beginning of the transaction. He contended that there was no evidence on record to show that any inducement whatsoever was given to the complainant that he would be made a Director in the Company. It is an admitted position on record to show that the Company has paid regular interest to the opposite party No. 2 amounting to Rs. 5.00 lakh, a fact which has been admitted on record. Even in the legal notice, there is no such averment that an offer was given to the opposite party No. 2 that in lieu of his investment he would be inducted as a Director in the Company. It cannot be said that the applicant had a dishonest intention at the very beginning itself. In any view of the matter, even if the prosecution story is believed to be true, the dispute, if any, will be a civil dispute and, thus, it has been contended by Sri Dinesh Kakkar that the proceedings as initiated against the applicants are in the nature of abuse of process of Court.

5. In support of his contentions, Sri Dinesh Kakkar has referred to the FIR, copy of which has been annexed as annexure 1 to the affidavit and taken the Court towards the averments as made therein, perusal of which shows that version of the opposite party No. 2 in the FIR itself shows that admittedly some money was paid to him. The relevant extract is as under:

6. It has also been contended that it is also an admitted position that money was paid as far back in the year 1999 whereas the FIR was lodged in the year 2008. Learned counsel for the applicants has further drawn attention of the Court to the police report, copy of which has been annexed as Annexure 2 to the affidavit, wherein it has been mentioned as under:

and in view of the said report, it has been contended that no cognizance could have been taken by the Magistrate. He has also taken the Court towards the

averments as made in the legal notice, a perusal of which shows that stand taken in the legal notice is totally different from the version as given in the FIR. The legal notice talks only about financial assistance and it does not even make a mention of the alleged fact that some inducement was given to the opposite party No. 2 that in lieu of his investment of money, he would be inducted as Director in the Company. The relevant extract is as under:

"That you made some payments towards interest and also deducted TDS. A sum of Rs. 5,32,640/- was also returned by you to my client on or about 8.4.2000"

7. Thus, on the other hand, it is quiet clear from the notice that the dispute, if any, is that of a breach of promise and commercial transaction and, thus, cannot be a subject-matter of any criminal liability. By no stretch of imagination, can such an act be attributed as an offence under Sections 420 and 406 IPC, as the necessary ingredients are missing.

8. Counter-affidavits have been filed by the opposite parties and perusal of which shows that in none of the counter-affidavits, the factum of the police report being in favour of the applicants, has been denied, however, the rejoinder-affidavit has also been filed.

9. Sri Kakkar has relied upon the judgment of Apex Court passed in Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, AIR 2000 SC 2341 : (2000) CriLJ 2983 : (2000) 3 JT 604 : (2000) 2 SCALE 694 : (2000) 4 SCC 168 : (2000) 2 SCR 859 : (2000) AIRSCW 2077 : (2000) 3 Supreme 13 , wherein it has been held as under:

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

10. He further relied upon a judgment of Apex Court passed in Thermax Ltd. and Others Vs. K.M. Johny and Others, (2012) CriLJ 438 : (2011) 4 Crimes 179 : (2011) 4 RCR(Criminal) 409 : (2011) 13 SCC 412 : (2011) 11 SCC 412 : (2011) 11 SCC 128 : (2011) 6 UJ 3695 , wherein it has been held as under:

"The Courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the Courts below ought to have

appreciated that respondent No. 1 was trying to circumvent the jurisdiction of the Civil Courts which estopped him from proceeding on account of the law of limitation.

In the said judgment, the Apex Court has further held as under:

For our purpose, we are concerned with Sections 405, 406, 420 and 34 IPC which read thus:

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust.--Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Before considering the validity or acceptability of the complaint and the consequential action taken by the Judicial Magistrate under Section 156(3) of the Code, let us advert to various decisions on this aspect. In Suresh Vs. Mahadevappa Shivappa Danannava and Another, AIR 2005 SC 1047 : (2005) 100 CLT 83 : (2005) 1 CTC 600 : (2005) 2 JT 462 : (2005) 3 SCC 670 : (2005) 3 SCR 131 : (2005) AIRSCW 989 : (2005) 2 Supreme 59 , this Court, on the ground of delay/laches in filing the complaint and the dispute relates to civil nature finding absence of ingredients of alleged offence of cheating under Section 420 IPC, set aside the order of the Magistrate and that of the High Court. In that case, the alleged agreement to sell was executed on 25.12.1988.

It is clear that in view of inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Section 420 IPC and also of the fact that at the most it is the dispute of civil nature, this Court quashed the orders of the Magistrate and the High Court.

It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention

can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction.

Inasmuch as there are number of documents to show that appellant-Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant-Company amounts to a breach of contract.

(20) Though Respondent No. 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No. 1-Company, who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegation with regard to their role."

11. A reference has also been made to the case of B. Suresh Yadav Vs. Sharifa Bee and Another, AIR 2008 SC 210 : (2008) CriLJ 431 : (2008) 1 CTC 338 : (2007) 12 JT 341 : (2007) 13 SCC 107 : (2007) 12 SCR 238 : (2007) AIRSCW 6592 : (2007) 7 Supreme 297 , wherein the Court while placing the reliance had dealt with the following case

"15. In G. Sagar Suri and Another Vs. State of U.P. and Others, AIR 2000 SC 754 : (2000) 100 CompCas 613 : (2000) CriLJ 824 : (2000) 2 CTC 107 : (2000) 1 JT 360 : (2000) 1 SCALE 271 : (2000) 2 SCC 636 : (2000) 1 SCR 417 : (2000) AIRSCW 296 : (2000) 1 Supreme 322 , this Court opined:

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Therein, having regard to the fact that a criminal complaint under Section 138 of the Negotiable Instruments Act had already been pending, the criminal complaint under Section 406/420 found to be an abuse of the due process of law."

16. In Anil Mahajan v. Bhor Industries Ltd. and another, (2005) 10 SCC 228 , this Court held:

8. The substance of the complaint is to be seen. Mere use of the expression cheating in the complaint is of no consequence. Except mention of the words deceive and cheat in the complaint filed before the Magistrate and cheating in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainants own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

17. In *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, AIR 2003 SC 2545 : (2003) CriLJ 3041 : (2003) 3 CTC 356 : (2003) 182 CTR 1 : (2003) 87 ECC 473 : (2003) 155 ELT 433 : (2003) 262 ITR 466 : (2003) 4 JT 381 : (2003) 4 SCALE 471 : (2003) 5 SCC 257 : (2003) 3 SCR 1118 : (2003) AIRSCW 2735 : (2003) 4 Supreme 274 , this Court opined:

It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. {See also *Suresh Vs. Mahadevappa Shivappa Danannava and Another*, AIR 2005 SC 1047 : (2005) 100 CLT 83 : (2005) 1 CTC 600 : (2005) 2 JT 462 : (2005) 3 SCC 670 : (2005) 3 SCR 131 : (2005) AIRSCW 989 : (2005) 2 Supreme 59 and *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, AIR 2006 SC 2780 : (2006) 4 CTC 60 : (2006) 6 JT 474 : (2006) 7 SCALE 286 : (2006) 6 SCC 736 : (2006) 3 SCR 704 Supp : (2006) AIRSCW 3830 : (2006) 6 Supreme 66

12. Thus, in view of the aforesaid consistent legal position and a fact that nothing has been shown to the contrary by the learned counsel for opposite party No. 2, the proceedings cannot be permitted to continue against the applicants

and the same falls squarely within the category mentioned in Clause-I of R.S. Raghunath Vs. State of Karnataka and another, AIR 1992 SC 81 : (1991) 4 JT 82 : (1991) 2 SCALE 808 : (1992) 1 SCC 335 : (1991) 1 SCR 387 Supp : (1992) 1 UJ 140 . Thus, from the aforesaid discussions, it is clear that even if all the averments made in the FIR are taken to be correct, yet the case for prosecuting under Sections 420 and 406 IPC is not made out. There is no averment in the FIR or in the legal notice itself so as to infer any fraudulent or dishonest inducement having been made by the applicants pursuant to which the opposite party No. 2 parted with the money even though in the FIR it has been mentioned that an assurance was given to the complainant that he would be inducted as a Director, but that by itself would not mean that the "intention" of the applicants was dishonest from the very beginning in view of the admitted fact that part of money has been repaid to the complainant. Moreover, the legal notice is absolutely silent about any such assurance being given and, thus, it can be safely concluded that no case for prosecution under Sections 420 and 406 is made out.

Accordingly, both the aforecaptioned applications under Section 482 are allowed and the proceedings impugned therein are hereby quashed. Consequently, charge-sheet No. 93/2008 dated 8.10.2008 under Sections 406 and 420 IPC submitted in case crime No. 176 of 2008 against all the applicants is also hereby quashed.