
(2011) 04 CAL CK 0035
In the Calcutta High Court
Case No : CRR No. 3842 of 2009

Ratan Chakraborty and Another	Vs	APPELLANT
The State of West Bengal and Another		RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 405, 438, 482
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2011) 2 CALLT 642

Hon'ble Judges : Mrinal Kanti Sinha, J

Bench : Single Bench

Advocate : Saswata Gopal Mukherjee and Ranadeb Sengupta, for the Petitioners, for the Appellant; Rameswar Bhattacharjee and Tanmoy Chowdhury and Swapan Kumar Mallick, for State, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Advocates appearing for the parties.

This revisional application u/s 482 of the Code of Criminal Procedure of 1973 has been filed by the Petitioners praying for quashing of the proceedings of G.R. case No. 2678 of 2009 arising of Kotwali Police Station case No. 507 of 2009 dated 14.08.2009 under Sections 406/420 of the Indian Penal Code and setting aside of the orders passed therein.

2. It is the case of the Petitioners that pursuant to a complaint lodged by the defacto-complainant Manabendra Nath Chakraborty on 14.08.2009 at Kotwali Police Station, which was treated as First Information Report, the Petitioners were made accused persons in Kotwali Police Station Case No. 507 of 2009 dated 14.8.2009 under Sections 406/420 of the Indian Penal Code. The said complaint was lodged with the allegation that the Petitioners knowing fully well when they took money that they would not perform their promise, falsely assured the defacto-complainant that they would construct a flat with the facilities of lift, generator, spiral staircase etc., and on the assurance of the Petitioners the said

defacto-complainant handed over a sum of Rs. 5,59,000/- to the Petitioners for developing the flat, and the Petitioners were entrusted to carry out the work of the said flat, but since the date of said payment the Petitioners did not take any step to perform their promise in spite of repeated requests of the defacto-complainant. Prior to the lodging of the instant case the defacto-complainant preferred an application before the "District Consumer Disputes Redressal Forum, Jalpaiguri, in the year 2007, which was registered as C.F. case No. 31/2007 dated 19.02.2007. The Petitioners entered appearance in the said case and contested the same. After hearing both the sides the learned Members of the said Forum, Jalpaiguri, were pleased to allow the defacto-complainant's prayer. Even after obtaining order from the appropriate Forum the defacto-complainant lodged the aforesaid complaint at Kotwali Police Station. In pursuance of the order passed by the said Forum, Jalpaiguri, the Petitioners have paid Rs. 52,000/- to the defacto-complainant. According to the agreement on 16.12.2003 the Petitioners have delivered possession of the residential flat situated in the second floor of the building named as "Lokenath Housing Complex" at Babupara, Jalpaiguri, to the said complainant, and issued "certificate of possession" in favour of the defacto-complainant. There was no fraudulent intention of the Petitioners to cheat the defacto-complainant nor any intention to harass the defacto-complainant, and so possession of the said flat was delivered to him in due time. The Petitioners preferred an application u/s 438 of the Code of Criminal Procedure, 1973, before the Hon"ble High Court at Calcutta bearing CRM No. 12917 of 2009, but the Hon"ble High Court has been pleased to turn down the prayer of the Petitioners. There has been delay in installing other devices mentioned in the said agreement due to huge financial loss suffered by the Petitioners in their business, but still then the Petitioners have taken necessary step to install the elevator in the said apartment and have already paid a sum of Rs. 1,12,500/- on 30.08.2009 to a concern namely "Thermo-gen" for installation of the elevator.

3. Being aggrieved by and dissatisfied with the continuation of the impugned proceeding pending in the Court of learned Chief Judicial Magistrate, Jalpaiguri, the Petitioners have move this revisional application before this Court on the ground that the impugned proceeding is a vexatious one and continuation of such mala fide and vexatious proceeding will serve no purpose, but will result in severe prejudice to the Petitioners as the Petitioners have already deposited a sum of Rs. 52,000/- as compensation and cost as per the order of the said Forum, and the continuation of the said proceeding is otherwise bad in law and will be gross abuse of the process of the Court, and so that is liable to be quashed as other wise Petitioners will suffer irreparable loss and prejudice.

4. It appears that on the basis of a written complaint of the opposite party No. 2 Manabendra Nath Chakraborty Kotwali P.S. case No. 507 of 2009 dated 14.8.2009 or G.R. case No. 2678 of 2009 under Sections 406/420 of the Indian Penal Code was initiated against the present Petitioners as accused persons, and the written complaint of the defacto-complainant was treated as First

Information Report of Kotwali Police Station case No. 507/09 dated 14.8.2009 of Jalpaiguri District, and the Petitioners have prayed for quashing of the impugned proceeding of G.R. case No. 2678 of 2009 pending in the Court of the learned Chief Judicial Magistrate, Jalpaiguri, as it has been initiated on the basis of the said First Information Report.

5. The opposite party No. 1 the State of West Bengal and the opposite party No. 2 Manabendra Nath Chakraborty are contesting the revisional application, but none of them has filed any affidavit-in-opposition in this matter.

6. It is to be considered in this matter as to whether the said proceeding bearing G.R. case No. 2678 of 2009 now pending in the Court of learned Chief Judicial Magistrate, Jalpaiguri, is liable to be quashed or not.

7. Mr. Mukherjee, learned Advocate for the Petitioners has submitted that the Petitioners have already delivered possession of the said flat to the opposite party No. 2 in writing and they have already paid Rs. 52,000/- to the opposite party No. 2 as compensation together with litigation cost as per order of the learned District Disputes Redressal Forum, Jalpaiguri, and the opposite party No. 2 has already granted money receipt to the Petitioners in that regard, and arrangement has also been made for installation of lift in the said housing complex including flat of the opposite party No. 2 and the matter has already been settled between the parties thereby and there were two agreements between the parties for which the second agreement will prevail and the dispute between parties is a dispute of civil nature and there is no ingredient of the alleged offences and as the dispute is a civil dispute which has already been settled by a Civil Forum, so no criminal proceeding is maintainable in this regard and for that reason there was no reason to initiate the said G.R. case by the opposite party No. 2 against the present Petitioners nor there is any reason to proceed with the same, which is liable to be quashed, and in support of his submission learned Advocate for the Petitioners has relied upon the decisions reported in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, in paragraphs 21 to 40 Ajay Mitra Vs. State of M.P. and Others, in paragraphs 15, 16, 18, Kishan Singh (D) through LRs. Vs. Guralpal Singh and Others, in paragraphs 21, 22, 24 and Tajmul Hossain Shah @ Taju Shah and Another Vs. State of West Bengal and Another,

8. Mr. Mallick, learned Advocate appearing for the opposite party No. 1 the State of West Bengal has submitted that there was agreement in 2003 between the parties and there is dispute between the parties regarding performance of works as per the said agreement, and as per the Petitioners they have already performed works as per agreement with the opposite party No. 2 and they have already paid Rs. 52,000/- to the opposite party No. 2 as per settlement of the said Forum, but it is the case of the opposite party No. 2 that all works have not yet been performed as per the said agreement between the parties, and so that matter has to be considered.

9. Mr. Bhattacharjee, learned Advocate for the opposite party No. 2 has submitted that the Petitioners took money from the opposite party No. 2 assuring that they will construct a flat with the facilities of lift, generator, spiral staircase etc. and on being so assured the opposite party No. 2 or the complainant paid Rs. 5,59,000/- to the Petitioners, but in spite of payment of such consideration money the Petitioners did not complete the work of construction as agreed upon between the parties, for which opposite party No. 2 or the complainant approached the District Disputes Redressal Forum, Jalpaiguri, to secure its civil right and the said Forum has already decreed the said case in favour of the opposite party No. 2 or the complainant. The said Forum by a judgment dated 19.2.2009 directed the Petitioners to pay Rs. 50,000/- to the opposite party No. 2 "for deficiency in service" and Rs. 2,000/- as litigation cost, and accordingly the Petitioners paid Rs. 52,000/- to the opposite party No. 2 on 24.8.2009, and it was agreed between the parties then that all the works of the said flat of the opposite party No. 2 would be completed within 28.2.2010, but those incomplete works have not been done thereafter, and all the ingredients of the alleged offences under Sections 406/420 of the Indian Penal Code are present in the First Information Report lodged by the opposite party No. 2 as complainant against the present Petitioners as accused persons and the said promoters intentionally have taken money and deceived the opposite party No. 2 fraudulently and dishonestly without completing works of his flat causing damage to the mind and reputation of the opposite party No. 2 aged about 73 years, and as such there is no reason to quash the impugned proceeding exercising inherent power of the Hon'ble High Court as per Section 482 of the Code of Criminal Procedure, and whether there are ingredients of the said offences in this case is a matter of evidence and trial and at this initial stage there is no reason to consider that point, and even if there be any civil dispute between the parties or the dispute between the parties may be termed as a civil dispute, then also that cannot be a ground for quashing criminal proceedings against the accused persons and criminal proceeding can be proceeded with even, if there be any such civil dispute between the parties, and in support of his submission learned Advocate for the opposite party No. 2 has relied upon the decisions reported in The State of Andhra Pradesh Vs. Vangaveeti Nagaiah, M. Krishnan Vs. Vijay Singh and Another, . in paras 4, 5,6.

10. In the instant case it appears that the opposite party No. 2 intended to take a flat from the Petitioners and being assured by the Petitioners the opposite party No. 2 handed over a sum of Rs. 5,59,000/- to the Petitioners for constructing the said flat and for carrying out the works of the said flat, but thereafter the petitioners being husband and wife, did not complete the said flat as per their promise in spite of repeated requests by the opposite party No. 2 for which the opposite party No. 2 lodged a First Information Report bearing No. 507 of 2009 dated 14.8.2009 at Kotwali Police Station under Jalpaiguri District under Sections 406/420 of the Indian Penal Code, which was registered as G.R. case No. 2678 of 2009, and as per the Petitioners the proceeding bearing G.R. case

No. 2678 of 2009 is not maintainable according to law against the present Petitioners as the Petitioners have already delivered possession of the said flat to the opposite party No. 2 and have already paid Rs. 52,000/- as per order of the Consumer Disputes Redressal Forum, Jalpaiguri, and so the said proceeding and the orders thereto are liable to be quashed, but as per the opposite party No. 2 all the works have not yet been done as per the agreement and all the directions of the said Forum have not yet been complied with and no conveyance has yet been executed and registered and so there is no reason to quash the said criminal proceeding.

11. It also appears that while it is the case of the Petitioners that they have already completed the works of the flat as per their agreement and have delivered possession of the said flat to the opposite party No. 2, then it is the case of the opposite party No. 2 that all the works of the said flat have not yet been completed and the Petitioners have not complied with the direction of the Consumers Disputes Redressal Forum, Jalpaiguri, within the time specified thereby and consequently the Petitioner intentionally taken money from the opposite party No. 2 and have deceived him fraudulently and dishonestly without performing all the works of the said flat or completion of the said flat and have not yet executed and registered deed of conveyance for the said flat and apparently the opposite party No. 2 as complainant lodged a First Information Report against the present Petitioners as accused persons with the allegation of committing criminal breach of trust and cheating.

12. Section 405 of the Indian Penal Code defines Criminal breach of trust and Section 415 of the Indian Penal Code defines cheating; while Section 406 and Section 420 of the Indian Penal Code provide for the punishment for criminal breach of trust and cheating and so those sections should be looked into. The provisions of Section 405 reads 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 wilfully suffers any other person so to do, commits "criminal breach of trust.

The provisions of Sections 406 reads thus:

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.

Section 415 reads thus:

17. Cheating:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section.

Section 420 reads thus:

17. 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.

13. In this case it appears that the Petitioners have preferred this revisional application before this Court praying for quashing of the proceeding of G.R. case No. 2678 of 2009 arising out of Kotwali Police Station case No. 507 of 2009 dated 14.8.2009 under Sections 406/420 of the Indian Penal Code and it has been initiated on the basis of a First Information Report lodged at Kotwali Police Station by the opposite party No. 2 alleging commission of the said offences against the present Petitioners on the allegation that the Petitioners took money from the opposite party No. 2 assuring that they the flat with facilities of the lift, generator, spiral staircase etc. and on that assurance the opposite party No. 2/complainant paid Rs. 5,59,000/- to the Petitioner, but in spite of payment of such consideration money the Petitioners did not complete the work of construction as agreed upon between the parties and to secure his civil right the opposite party No. 2/complainant approached the District Consumer Disputes Redressal Forum, which has passed order in the case before it, but as per opposite party No. 2 the Petitioners did not act as per the direction of the said Forum also.

14. it is not disputed that in pursuance of an order passed by the said learned Forum on the basis of a proceeding initiate by the opposite party No. 2 as Petitioner, the present Petitioners of the present revisional application have paid Rs. 52,000/- as compensation and cost to the opposite party No. 2 and has complied with the direction of the said Forum in part, but has not complied with the direction of the said Forum entirely within the time specified therein or within 28.02.2010 inasmuch as the Petitioners have not yet completed the incomplete works of the flat of the opposite party No. 2 and has not yet registered the sale deed in that regard as per the case of the opposite party No. 2. The Police Officer

concerned, who is investigating into the matter, has also reported that the lift has been installed but some other works as agreed by the Petitioners have not yet been done. As such the fact remains that the Petitioners have complied with some of the directions of the said Forum, but they have not complied with all the directions of the said Forum and thereby have not acted in terms of their agreement with the opposite party No. 2 regarding the said flat of the opposite party No. 2.

15. It also appears that though as per the submission of the learned Advocate for the Petitioners there were two agreements between the parties on 23rd June, 2003 and 19th September, 2009, yet it appears that all the agreed arrears works have not yet been completed and the sale deed has not yet been executed and registered in that regard and there are yet some works which have not been completed as per the report of the said Investigating Officer also besides the allegation of the opposite party No. 2. It also appears from the report of the Investigating Officer concerned dated 23.1.2011 that during investigation it has been revealed that as per agreement dated 19.9.2009 the construction of the lift at "Lokenath Housing Complex" has been completed, but presently not in working condition due to electric connection, and no generator was found in the said complex and some other works of the said complex have not yet been completed. As such it appears that though the Petitioners have complied with the direction of the said Forum in part, yet they have yet complied with all the directions of the said Forum within the specified time or within 28.02.2010 and thereby have not honoured their agreement with the opposite party No. 2 regarding his flat.

16. Though as per the submission of the learned Advocate for the Petitioners it appears that there were two agreements between the parties on 23rd June, 2003 and 19th September 2009, for which the first agreement has become redundant, yet the fact remains that by the said second agreement dated 19.9.2009 it was agreed between the Petitioners and the opposite party No. 2 vide Clause 9 of the Terms and Conditions of Settlement that all the aforesaid works, as mentioned therein, will be completed within 28.2.2010 as all the consideration money has already been paid for the transfer of flat No. 8 of the said complex at 2nd floor and the First part is in possession of the same, and as the Second part assured the First part that they would certainly execute all the works within the stipulated time stated herein above including the registration of the Deed of Sale positively, but as per the submission of the learned Advocate for the opposite party No. 2 the Petitioners have neither executed all the arrear works of the said flat including installation and operation of the lift, generator etc., neither has executed and registered Deed of Sale in favour of the opposite party No. 2 with regard to his flat No. 8 till date. There is nothing on record to show that the Petitioners have honoured their promise to do all the arrear works regarding the said flat of the opposite party No. 2 by the date fixed by the present Petitioners. It also appears from the report of the said Investigating Officer dated 23.01.2011 that during investigation it has been revealed that as per agreement dated

19.9.2009 lift in the "Lokenath Housing Complex" has been installed, but presently that is not in working condition due to electric connection and no generator was found in the said complex and some works have not yet been completed. As such it appears that the said second agreement has not also duly been honoured by the Petitioners by executing all the arrear works regarding the said flat of the opposite party No. 2 including the execution and registration of Deed of Sale in favour of the opposite party No. 2 in that regard.

17. Whether non-performance of their part of the said agreement entirely by the Petitioners would tantamount to criminal breach of trust and cheating or not, is a matter of evidence and trial, and that point cannot be considered in this revisional application at this stage. For the purpose of this revisional application it would be sufficient to note that the present Petitioners have not yet performed their part of the said agreement entirely and have not honoured the said agreement as they have not complied with all the directions of the said Forum. The direction of the said Forum may not be treated as a final adjudication of the entire matter by a regular Civil Court as the said Forum itself is not authorised to execute its direction as a regular Civil Court, and as the order or direction of the said Forum is required to be executed through a regular Civil Court having jurisdiction to adjudicate the matter finally, yet it appears that the Petitioners have complied with only a part of the direction of the said Forum by making payment of Rs. 52,000/- to the opposite party No. 2 as per the direction of the said Forum, but has not complied with all the directions of the said Forum.

18. Learned Advocate for the Petitioners has submitted with reference to the decision reported in AIR 2008 Supreme Court 251 in the case Inder Mohan Goswami and Anr. v. State of Uttranchal and Ors. and Kishan Singh (D) through LRs. Vs. Gural Singh and Others, that the dispute between the parties is a dispute of civil nature and the subject matter of dispute is not a matter of any criminal proceeding, and so instituting and continuing with any criminal proceeding against the Petitioners as vendors would be an abuse of process of the Court and the Court must ensure that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused and refusal to quash criminal proceedings in such a case is improper.

19. But it has also been observed by the Hon'ble Supreme Court in the aforesaid judgment reported in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, in paragraph 27 that:

...The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision where all the facts are incomplete and moreso, when the evidence has not been collected and produced before the court and the issues

involved, whether factual or legal, are of such magnitude that they can not be seen in their true perspective without sufficient material. of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

20. In the instant case, it appears that whether there is any substantial material or not against the accused persons for the said offences as alleged by the opposite party No. 2 in his First Information Report, can not be considered by this Court in this Revisional jurisdiction at this stage and that point can be well considered only at the time of consideration of charge or taking evidence or trial and at this stage only prima case is to be considered, but at this stage another circumstance may be noted here that the prayer of the Petitioners u/s 438 of the Code of Criminal Procedure, 1973, was turned down by the Hon'ble High Court. Though learned Advocate for the Petitioners has submitted with reference to the decision reported in Tajmul Hossain Shah @ Taju Shah and Another Vs. State of West Bengal and Another, that rejection of prayer for bail cannot be a ground for non-interference in revisional application, yet it appears that the said case related to two successive complaints and the decision of the said case is not applicable here as facts and circumstances of that case and this case differ.

21. Learned Advocate for the Petitioners has also submitted with reference to a decision reported in Ajay Mitra Vs. State of M.P. and Others, , that where the allegation made in complaint do not prima facie disclose commission of offence, then the complaint is liable to be quashed, and it has also been observed in the aforesaid decision that where the allegation made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the said First Information Report or complaint becomes liable to be quashed, but in the instant case it would be the pre-judging of the whole matter on merit to decide at this stage without taking evidence and before trial that the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence or make out a case against the accused.

22. Learned Advocate for the Petitioners has referred to a decision reported in Neelu Chopra and Another Vs. Bharti, that when there is no allegation as regards the offence of criminal breach of trust and cheating, then allowing prosecution to continue against the Appellants would be an abuse of process of law and the proceeding in this regard is liable to be quashed. In this regard also it can be said that it would be the pre-judging of the whole matter before taking evidence and trial to decide that there is no material for proceeding against the present Petitioners for the alleged offences under Sections 406/420 of the Indian Penal Code as there is specific allegation of criminal breach of trust and cheating in the First Information Report or complaint of the opposite party No. 2.

23. Learned Advocate for the Petitioner has also submitted with reference to a decision reported in Tajmul Hossain Shah @ Taju Shah and Another Vs. State of

West Bengal and Another, that issuance of process by the Magistrate on two successive complaints and filing of third complaint over the self-same incident amounts to abuse of the process of Court and the criminal proceeding pending in this regard was liable to be quashed. But here there is no such case that two successive complaints were filed by the complainant/opposite party No. 2 to ventilate his grievances, and only it appears that on the basis of a First Information Report lodged by the opposite party No. 2 a G.R. case bearing No. 2678 of 2009 arising out of Kotwali Police Station case No. 507 of 2009 dated 14.8.2009 under Sections 406/420 of the Indian Penal Code has already been initiated.

24. On the other hand learned Advocate for the opposite party No. 2 has submitted with reference to the decision reported in *The State of Andhra Pradesh Vs. Vangaveeti Nagaiah*, that inherent power u/s 482 of the Code of Criminal Procedure of quashing of First Information Report has to be exercised sparingly and the High Court would not ordinarily embark upon an enquiry whether evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained, and such inherent power should not be exercised to stifle a legitimate prosecution and interference at the threshold with First Information Report is to be in very exceptional circumstances. It has been observed by the Hon''ble Supreme Court in the aforesaid decision reported in *The State of Andhra Pradesh Vs. Vangaveeti Nagaiah*, at page 2648 in para 7 that:

...7. As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

25. Learned Advocate for the opposite party No. 2 has also submitted with reference to the decision reported in *AIR M. Krishnan Vs. Vijay Singh and Another, .*, that only because a criminal proceeding has been initiated or a dispute between the parties appears to be a dispute of civil nature the criminal proceedings cannot be quashed and pendency of a civil litigation should not be made a ground of quashing criminal proceeding and this is not also desired by law. In this regard it has been observed by the Hon''ble Supreme Court in the decision reported in *AIR M. Krishnan Vs. Vijay Singh and Another, ,* in paragraph 6 that:

...where factual foundations for the offence have been laid down in the

complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties...

In paragraphs 4, 5 of the aforesaid decision reported in AIR M. Krishnan Vs. Vijay Singh and Another, the Hon"ble Supreme Court has also observed that:

...4. Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single Judge of the High Court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the Appellant was not justified in resorting to the criminal proceedings.

....5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the Respondents had filed a civil suit with respect to the aforesaid documents. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court. Had the complainant failed to prove the allegations made by him in the complaint, the Respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made aground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with the acts complained of. The High Court was not, in any way, justified to observe:

In my view, unless and until the civil Court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the Petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous.

So, in this case there is no legal impediment to proceed with the said criminal proceeding against the present Petitioners as accused persons.

26. As per the provision of Section 482 of the Code of Criminal Procedure, 1973, the provisions of Section 17 can be invoked in certain specific cases mentioned

therein. The provision of Section 17 of the Code of Criminal Procedure, 1973 reads thus:

Section 17. Saving of inherent power 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.

27. So it appears that the provisions of Section 17 of the Code of Criminal Procedure can be invoked only in certain specified cases. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the code; (ii) to prevent abuse of the process of the Court; and (iii) to otherwise secure the ends of justice, but in the instant case there is no such circumstance.

28. It has also been held by the Hon''ble Supreme Court of India in the decision reported in Smt. Chand Dhawan Vs. Jawahar Lal and others, ., that:

...This Court has in various decisions examined the scope of the power u/s 17, Code of Criminal Procedure, and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the Respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the Court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint.

In the instant case it does not appear that the continuance of the present proceedings would be an abuse of the process of the Court or would defeat the ends of justice.

29. It has also been held by the Hon''ble Supreme Court in the decision reported in the 1993 SCC (Cri) 591 [Para 8] in the case of Radhey Shyam Khemka and Anr. v. State of Bihar that:

...This Court has repeatedly pointed out that the High Court should not, while exercising power u/s 17 of the Code, usurp the jurisdiction of the trial Court. The power u/s 17 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the Court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished

if the trial is allowed to proceed.

30. Having regard to the submission of the learned Advocates for the parties, materials on record and other circumstances, it appears that though as per the submission of the learned Advocate for the Petitioners the dispute involved in this matter is a civil dispute having two successive agreements between the parties and having an order of the Consumer Disputes Redressal Forum concerned the Petitioners have already complied with the direction of the said Forum, and so no criminal proceeding can be proceeded with regarding the alleged offences under Sections 406/420 of the Indian Penal Code against the present Petitioners, yet it also appears that the Petitioners have paid an amount of Rs. 52,000/- only to the opposite party No. 2 as compensation and cost, and complied with the directions of the said Forum in part only and not entirely. As per the decision reported in *The State of Andhra Pradesh Vs. Vangaveeti Nagaiah*, in the case of *M. Krishnan Vs. Vijay Singh and Another*, in the case of *M. Krishnan v. Vijay Singh and Ors.*, pendency of any civil dispute between the parties cannot be a bar to any criminal proceedings between the parties nor the same can be ground for quashing of the criminal proceedings against the accused and inherent power of the High Court u/s 482 of the Code of Criminal Procedure is not to be exercised to stifle a legitimate prosecution and it is also not the appropriate stage to consider as to whether the criminal prosecution against the present Petitioners as accused persons would stand or not without taking evidence or trial, nor it can be ascertained without taking evidence and trial as to whether the allegations made by the defacto-complainant against the present Petitioners as accused persons would be substantiated by evidence or not, for which reason it would not be just, legal and proper at this stage to quash the impugned proceedings. It also appears that by proceeding with the said criminal proceeding no abuse of process of the Court would be caused nor the ends of justice would suffer for not quashing the impugned proceedings, and as such there is no reason to interfere with the impugned proceedings.

31. Accordingly, the CRR No. 3842 of 2009 stands dismissed.

32. A copy of this judgment and order be sent to the learned Chief Judicial Magistrate, Jalpaiguri, for information and necessary action. Case Diary be returned back at once.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.