
(2013) 09 AHC CK 0060
In the Allahabad High Court
Case No : No. 4302 of 2013

Shatrughan Khetan alias Shatrughan Kumar Agarwal APPELLANT
Vs
The State of U.P. and Another RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 ALJ 21

Hon'ble Judges : Saeed-uz-Zaman Siddiqi, J

Bench : Single Bench

Advocate : Vyas Narayan Shukla, for the Appellant; Umesh Singh and V.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Saeed-uz-Zaman Siddiqi, J.—By means of this application, u/s 482, Cr.P.C. the petitioner has sought for quashing of the charge-sheet No. 79 of 2013, dated 07.05.2013 in case crime No. 96 of 2013 u/s 406/420/506, IPC, P.S.-P.G.I. District-Lucknow registered as case No. 1068 of 2013. Brief facts of the case are that the opposite party No. 2 lodged an FIR against the applicant on the allegations, inter alia, that the opposite party No. 2 started business as sole distributor of VOX Company. After few months, the petitioner has started as super Distributor. The opposite party No. 2 had negotiation with the petitioner and after the negotiation, he transferred his entire stock through sole voucher on 19.12.2010, which was signed by the petitioner and it was agreed upon between the parties that within forty five days, the amount of Rs. 12,90,416/- shall be paid by the petitioner to opposite party No. 2. The petitioner did not pay and, as such, the opposite party No. 2 suffered tension and economic loss and, as such, the FIR was lodged. After investigation, the Police submitted charge-sheet and the Judicial Magistrate took cognizance, hence this application has been preferred.

2. I have heard learned counsel for both the parties and gone through the records.

3. The entire FIR disclose a breach of contract. There are no allegations of cheating as defined u/s 415, Cr.P.C. nor even an allegations of fraud as defined u/s 17 of Indian Contract Act, 1872. This is purely a civil dispute for which civil remedies are available. No criminal offence is made out. The allegations of criminal breach of trust are also missing as defined u/s 405, I.P.C., which runs as under:--

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.

4. At this stage, the definition of cheating u/s 415, I.P.C. is being reproduced below:--

415. 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.

5. Section 17 of Indian Contract Act, 1872, defines fraud which runs as follows:--

"Fraud" defined.--"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- 1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 2) the active concealment of a fact by one having knowledge or belief of the fact;
- 3) a promise made without any intention of performing it;
- 4) any other act fitted to deceive;
- 5) any such act or omission as the law specially declares to be fraudulent.

6. Subsequent to this provision, the Indian Contract Act, 1872 as defined misrepresentation. It may be noted at this point of time that the jurisdiction of Section 482, Cr.P.C. has to be exercised with great care. In exercise of its jurisdiction, this court is not to examine the matter superficially. It is to be seen that a matter which is essentially of civil nature has been given a cloak of criminal offence. The criminal proceedings are not a short cut of every 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. In support of the contention, the Hon''ble Apex Court has held in *G. Sagar Suri and Another Vs. State of U.P. and Others*, , which is as under--

This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction u/s 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.

7. While holding this the Hon''ble Apex Court has also held as under:--

In *State of Karnataka Vs. L. Muniswamy and Others*, this Court said that in the exercise of the wholesome power u/s 482 of the Code High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed.

8. In the facts and circumstances of the present case the filing of charge-sheet is certainly an abuse of the process of law.

9. In *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, , the Hon''ble Apex Court has held as under:--

While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

10. While holding this the Hon''ble Apex Court has relied upon its earlier law laid down in *G. Sagar Suri and Another Vs. State of U.P. and Others*, . In the case mentioned above the Hon''ble Apex Court has laid down certain guidelines, which are as follows:--

The principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, , *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, , *Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta*, , *State of Bihar Vs. Rajendra Agrawalla*, , *Rajesh Bajaj Vs. State NCT of Delhi and Others*, , *M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological*

E. Ltd. and Others, , Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, , M. Krishnan Vs. Vijay Singh and Another, , and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

11. In Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, , the Hon"ble Apex Court has relied upon its earlier law laid down in State of Karnataka Vs. L. Muniswamy and Others, , in which following observations have been made:--

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue

would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed, The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

12. In the above mentioned case the Hon''ble Apex Court has also made following observations:--

Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction u/s 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

In a proceeding u/s 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of two courts below. Inherent powers u/s 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution.

The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether

the case ends in conviction or acquittal. (Vide Dhanalakshmi Vs. R. Prasanna Kumar and Others, ; Ganesh Narayan Hegde Vs. S. Bangarappa and Others,); and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others,).

In the landmark case of State of Haryana and others Vs. Ch. Bhajan Lal and others, this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (1) Where 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 prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In Indian Oil Corporation Vs. NEPC India Ltd. and Others, a petition u/s 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles:

1. The High courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out (a) purely a civil wrong, or (b) purely a criminal offence or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

In *State of Orissa and Another Vs. Saroj Kumar Sahoo*, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

11. ...It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

13. The above observations made in *State of Karnataka Vs. L. Muniswamy and Others*, have been relied upon in a recent judgment in *Chandran Ratnaswami Vs. K.C. Palanisamy and Others*, . A catena of decisions of Hon'ble Apex Court shows that tendency of settling civil disputes by involving criminal offence deserves to be deprecated and discouraged and the criminal prosecution should not be allowed to be used as an instrument of harassment with an ulterior motive to pressurize the accused. In the case of *Chandran Ratnaswamy (supra)* the Hon'ble Apex Court has relied upon its earlier decisions in *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, , *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, . It was held in this case that it would be an abuse of process of the Court to allow any action which would result in injustice.

14. As observed earlier, the complaint of opposite party No. 2 does not show any criminal offence at all much less an offence u/s 420, I.P.C. and the present case is a case of purely civil dispute between the parties, for which remedy lies before the Civil Court, by filing a properly constituted suit. In view of these facts, allowing the criminal proceedings to continue would amount to abuse of process of the Court and to prevent the same it is justified and expedient for this Court to quash the same by exercising the powers conferred u/s 482, Cr.P.C.

15. Before parting with this application u/s 482 of Cr.P.C. I may observe that undoubtedly, this Court possesses inherent powers u/s 482, Cr.P.C. but they are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. It may also be observed that in *Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others*, , the Hon''ble Apex Court has held as under:--

This court time and again has observed that the extraordinary power u/s 482, Cr.P.C. should be exercised sparingly and with great care and caution. The court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power u/s 482, Cr.P.C. it has become necessary to recapitulate the ratio of the decided cases.

Reference to the following cases would reveal that the courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

16. Even in civil cases based upon fraud, the Hon''ble Apex Court has taken a very serious view which is lying for the subordinate courts as well as this Court that such litigation must be summarily thrown out at any stage of the litigation. In the case of *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Hon''ble Apex Court has held, as under:--

This Court is constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

17. I have carefully considered to the fact that powers u/s 482, Cr.P.C. cannot be invoked to stifle or scuttle a legitimate prosecution. I have deeply scrutinized the allegations of the F.I.R. and the documents to apply the test whether the uncontroverted allegations as made from the records of the case and documents submitted with *prima facie* establish the offence or not and I find that allegations are so patently absurd and inherently improbable that no prudent person can ever! reach such a conclusion and the basic ingredients of a criminal offence are not satisfied, then this Court must interfere. It is not a case where this court should not unduly interfere. The exercise of power is absolutely essential to prevent the miscarriage of justice. In view of the discussions made above, the petition deserves to be allowed and is accordingly allowed. The impugned charge-

sheet No. 79 of 2013, dated 7.5.2013 filed in Case Crime No. 96 of 2013 under Sections 406/420/506, I.P.C. Police Station P.G.I., District Lucknow, registered as Case No. 1068 of 2013, pending before the learned Additional Chief Judicial Magistrate IVth, Lucknow, are hereby quashed.