HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Misc. Criminal Case No. 3968 OF 2005

Sanjay Baichen

-Vs-

M/s Navbharat Press (Bhopal) Pvt. Ltd.

Shri Atul Gupta, counsel for the applicant.

None for the respondent even in the second round.

O R D E R
(19/01/2017)

This petition under Section 482 of Cr.P.C. has been filed against the order dated 29.7.2005 passed by 11th Additional Sessions Judge, (Fast Tract Court), Gwalior by which the order dated 9.3.2005 passed by Judicial Magistrate First Class, Gwalior in Criminal Case No.38/2004 has been affirmed.

The necessary facts for the disposal of this application are that the complainant has filed a criminal complaint against the applicant for offences punishable under Sections 420, 465, 467, 468 of IPC. It is the case of the complainant that the head office of the complainant is situated at Indira Press Complex, Maharana Pratap Nagar Zone-I and its office is situated at Navbharat Bhawan, City Centre, Gwalior from where Navbharat Newspaper, Gwalior edition is published. Deepak Bhatnagar is posted as General Manager and he is competent and authorized to take legal action on behalf of the respondent/complainant. It is further alleged in the complaint that the newspaper agency of

Navbharat Newspaper was given to the applicant on 7.9.1995 for the sale of newspapers. It was the duty of the applicant to collect the advertisements which were to be published in the newspaper. The agency was terminated on 1.2.2001 and at that time, total amount of Rs. 4,79,420/- was outstanding against the applicant towards the amount of sale of newspapers and also an amount of Rs. 3,72,245/- was outstanding towards the advertisement charges. By issuing the public notice in the newspaper on 1.2.2001 his agency was terminated and the general public was informed that they should not enter into any transaction with the applicant. It is further stated that after the general notice was published in the newspaper on 1.2.2001, the applicant with an intention to cheat, prepared forged receipts in the name of the complainant and by forging the signatures of the General Manager continued to collect the money from the persons who are interested to give their advertisement in the newspaper whereas he was not authorized to do so. Complaints were made by several persons in the office of the complainant and accordingly another public notice was issued on 5.5.2001 and the applicant was warned not to illegally recover the money in the name of the complainant but inspite of that the applicant continued to recover the money on the basis of forged receipts. The applicant was called in the office of the complainant to deposit the amount and he did come to the office of the complainant on 2.4.2003 and although he admitted that he has recovered the money from the various persons but refused to deposit the same with the complainant. Thus, according to the complainant, as per the record available with the office of the complainant, a total amount of Rs. 8,51,665/- has been misappropriated by the applicant and it was alleged that he

has also committed the offence of breach of trust and cheating. A complaint to the police was made but as no action was taken, therefore, the complaint was filed.

The complainant examined Deepak Bhatnagar and Dashrath Jha under Sections 200 and 202 of Cr.P.C. and after considering the complaint as well as the documents filed along with the complaint and in the light of statements of the witnesses, the Trial Magistrate by order dated 24.1.2004 took cognizance of the offence and directed for registration of the complaint against the applicant for the offences punishable under Sections 420, 465, 467, 468 of IPC. Arrest warrants were issued.

An application was filed by the applicant under Section 245 (2) of Cr.P.C. By this application it was submitted by the applicant that there is no evidence on record so as to take cognizance under Sections 420, 465, 467, 468 of IPC. and there is nothing on record that the amount which was so collected by the applicant was not remitted back to the respondent. Whatever bills have been produced along with the complaint are prior to that of 1.2.2001 and since the applicant was authorized by the complainant, therefore, it cannot be said that any forged documents and forged bills have been produced. It was further submitted that since the complaint is of civil in nature, therefore, the same is liable to be dismissed.

A reply was filed contending inter alia that as the cognizance has already been taken by the Court, therefore, at this stage if the applicant wants to challenge the said order, then he has to file a revision before the Sessions Court. The complainant would lead evidence under Section 244 of Cr.P.C. and at that stage the applicant may make his submissions for his discharge.

Another application under Section 91 of Cr.P.C. was filed by the applicant for production of certain documents.

By order dated 9.3.2005 both the applications filed by the applicant were rejected considering the fact that once the cognizance is taken and process has been issued then the Court cannot recall his own order. Further, it was observed that on the basis of the allegations made in the complaint it cannot be said that the dispute is of purely civil in nature and accordingly the application under Section 245(2) of Cr.P.C. was rejected. As regards application under Section 91 of Cr.P.C., it was submitted by the complainant that whatever documents were in its possession, a photocopy of the same have already been supplied to the accused/applicant, hence the application under Section 91 of Cr.P.C. was also dismissed.

Being aggrieved by the order of the Trial Magistrate, the applicant filed a criminal revision which too has suffered dismissal by order dated 29.7.2005.

It is contended by the counsel for the applicant that even if the entire allegations are accepted on their face value then it would be clear that the offence is predominantly of civil in nature and, therefore, the court below committed an error by taking cognizance of the complaint as well as by dismissing the application filed under Section 245 (2) of Cr.P.C.

So far as the rejection of application filed under Section 245 (2) of Cr.P.C. is concerned, suffice it to say that once the Court had taken cognizance of the complaint and had issued summons then the Court was not competent to recall the order. My view is fortified by the judgment of Supreme Court in the case of **Adalat Prasad vs. Rooplal Jindal & Ors.** reported in **(2004) 7 SCC 338**. The

Supreme Court has held that even if the process has been issued without there being any sufficient allegation, then the order of the Magistrate may be vitiated but the remedy is not by not invoking Section 203 of Cr.P.C. because it would amount to review of an order. Thus, in considered view of this Court, the Trial Court did not commit any error while rejecting the application filed under Section 245 (2) of Cr.P.C. for recall of order taking cognizance. So far as the contention of the applicant that the allegations are predominantly of civil in nature and, therefore, the complaint should be dismissed on the said ground is concerned, suffice it to say that merely because case is also of a civil nature then the same cannot be dismissed on that ground only.

The Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander and another** reported in **(2012) 9 SCC 460** has held as under:-

> **"25.** Having examined the interrelationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar

to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of *Indian Oil Corporation* v. *NEPC India Ltd. & Ors.* [(2006) 6 SCC 736], this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or

together, as the case may be:

27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5 Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7 The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise

and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11 Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed herewith by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie.*

27.14 Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15 Coupled with any or all of the above, where the Court finds that it would amount to

> abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.
> {Ref. *State of W.B.* v. *Swapan Kumar Guha (1982) 1 SCC 561*; *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692*; *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194*; *G. Sagar Suri* v. *State of U.P. (2000) 2 SCC 636*; *Ajay Mitra* v. *State of M.P. (2003) 3 SCC 11*; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate (1998) 5 SCC 749*; *State of U.P.* v. *O.P. Sharma (199*6) 7 SCC 705; *Ganesh Narayan Hegde* v. S*. Bangarappa* (1995) 4 SCC 41; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd. (2000) 3 SCC 269*; *Shakson Belthissor* v. *State of Kerala* (2009) 14 SCC 466; *V.V.S. Rama Sharma* v. *State of U.P.* [(2009) 7 SCC 234; Chunduru Siva Ram Krishna v. *Peddi Ravindra Babu* (2009) 11 SCC 203; *Sheonandan Paswan* v. *State of Bihar (1987) 1 SCC 288*; *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222*; *Lalmuni Devi* v. *State of Bihar* (2001) 2 SCC 17; *M. Krishnan* v. *Vijay Singh* (2001) 8 SCC 645; *Savita* v. *State of Rajasthan* (2005) 12 SCC 338 and *S.M. Datta* v. *State of Gujarat* (2001) 7 SCC 659.
> **27.16.** These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.

If the allegations made in the complaint are considered in the light of the judgment mentioned above, it would be clear that the applicant although collected the sale price of the newspaper as well as also the advertisement charges

from the persons concerned but did not remit the same to the complainant. As the advertisements were published in the newspaper published by the complainant from Gwalior, therefore, in fact the amount/fees required for such publication was to be remitted back to the complainant. When the applicant had recovered such amount from the persons concerned, then he was in possession of that amount in the capacity of a trustee. Similarly, the amount recovered from the customers by sale of newspapers is concerned, again the cost of the newspaper was to be remitted back to the complainant. The applicant had recovered the amount on behalf of the complainant and he was under obligation to transfer the same to the complainant and at the most he was entitled for his commission. If the applicant has not remitted the said amount after collecting the same from the persons concerned then it cannot be said to be a dispute purely of civil in nature. There are also allegations that the forged receipts were prepared by the applicant and after forging the signatures of the General Manager of the complainant he continuously collected the amount even after termination of his agency. If the entire allegations are taken on their face value then it would be clear that there was a criminal intent on the part of the applicant in not remitting the amount so collected by him to the complainant. It is submitted by the counsel for the applicant that certain amount was to be received by the applicant from the complainant by way of his commission and thus if he has withheld the amount then it would not amount to an offence. There is nothing on record to suggest that any notice or any objection was ever taken by the applicant with regard to non-payment of his commission. Thus, where

there is nothing on record that the applicant had ever raised any dispute with regard to non-payment of his commission then it cannot be said that the complaint merely discloses the business dispute and, therefore, the same cannot be termed as a dispute predominantly of a civil in nature. Under these circumstances, this Court is of the view that the court below did not commit any mistake while taking cognizance against the applicant and the Revisional Court also did not commit any mistake by dismissing the criminal revision.

Accordingly, this petition under Section 482 of Cr.P.C. fails and is hereby dismissed.

As the record of the court below was requisitioned by this Court, therefore, the office is directed to return the record of the court below immediately along with the copy of this order.

(G.S. AHLUWALIA)
Judge
(19.01.2017)

(alok)