MCRC.1699/2016

Ajay Nathani
v.
State of M.P. & anr.

24/01/2017

Shri R.B.Tripathi, counsel for the applicant.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.1/State.

Shri B.S.Chauhan, counsel for the respondent no.2.

This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.1037/2014 registered by Police Station-Janakganj, District-Gwalior for offences punishable under Sections 420 and 406 of IPC.

The necessary facts for the disposal of this case are that the complainant/respondent no.2 filed a criminal complaint against the applicant for offences punishable under Sections 420 and 406 of IPC. The case of the respondent no.2 is that the house belonging to his wife is situated near Nehru Petrol Pump and the applicant is engaged in the business of construction being the proprietor of Satak Construction. The relations between the complainant and the applicant were cordial, therefore, in the month of May,2012 the applicant came to the house of the complainant and convinced his wife to raise construction over the said property. On pursuation of the applicant, the complainant agreed for getting the construction work done on the property of his wife and it was also assured by the applicant that he would

complete the construction work within a period of eight months at a price lesser than the rates which are prevailing in the market. On 18/07/2012, the complainant gave Rs.40,000/- to the applicant. However, inspite of receipt of advance of Rs.40,000/-, the applicant did not start the construction work and with great difficulties, on 29/09/2012, a written agreement was executed in which it was mentioned that the entire construction work will be completed within eight months and on the ground-floor, shops will be constructed and on the first and second floors, two flats will be constructed. The cost of the construction was assessed at Rs.42,48,000/- and during the period of 18/07/2012 to 26/02/2014, on different dates, either by checques or by cash, the applicant has already received an amount of Rs.39,43,500/- but still the applicant has not completed the construction work and in the month of February,2014, the work of about Rs.8,00,000/- was pending. As per the contract, the complainant is required to give only Rs.3,04,500. It was further stated that on the date when the applicant received amount of Rs.40,000/-, he had a clear intention to cheat the complainant and inspite of receiving an amount of Rs.40,000/-, the applicant did not start the execution of work till 12/09/2012 and by entering into the agreement, on 29/09/2012, with an intention to cheat the complainant, the applicant

made a false promise that he would complete the entire construction work within a period of eight months. It was further stated that after the expiry of eight months, the applicant has not completed the construction work and, thereafter, he refused to complete the work and has left the work in the midway. It was alleged that certain works were carried out contrary to the conditions of contract and as such the applicant has received Rs.4,95,500 in excess of the work which has been carried out by him. Accordingly, it was mentioned that the applicant has committed offences punishable under Sections 420 and 406 of IPC.

By order dated 10/10/2014, it was observed by the Magistrate that technical assistance is required with regard to the nature of enquiry and, therefore, directed for investigation under Section 156(3) of CrPC. On the basis of the order passed by the Magistrate under Section 156(3) of CrPC, the police has registered the FIR.

It is contended by the counsel for the applicant that if the entire allegations are accepted, then it would be clear that the dispute is predominantly of civil in nature and the complainant, in order to give a colour of criminal, has tried to convert the civil dispute into a criminal offence. It is further submitted by the counsel for the applicant that even otherwise the Magistrate was under obligation to apply its mind while passing an order under Section

156(3) of CrPC. The order dated 10/10/2015 was passed by the Magistrate without applying its mind as to whether the complaint discloses the commission of cognizable offence or not.

Per contra, the counsel for the State submits that the allegations made in the complaint *prima facie* discloses the commission of cognizable offence. Merely, because some civil dispute can also be said to be involved, therefore, the criminal prosecution cannot be quashed as the criminal ingredients are also involved in the case.

Heard the learned counsel for the parties and perused the documents filed alongwith the petition.

The Supreme Court in the case of **Priyanka Shrivastava and anr. v. State of U.P and ors.** reported in **(2015) 6 SCC 287** has held as under:-

> "20. The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C. has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:
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> "156. Police officer's power to investigate congnizable case. –(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try

under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned."

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others (1976) 3 SCC 252, had to express thus:

"17.....It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173."

22. In Anil Kumar v. M.K. Aiyappa (2013) 10 SCC 705, the two-Judge Bench had to say this:

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed (2008) 5 SCC 668 examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without

a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

23. In Dilawar Singh v. State of Delhi (2007) 12 SCC 641, this Court ruled thus:

"18. … '11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence is closed by the

complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.'*”

24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. (2005) 7 SCC 467, the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra (2013) 5 SCC 615, SCC pp.620-21, para 18)

“18.When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).”

25. Recently, in Ramdev Food Products (P) Ltd. v. State of Gujarat (2015) 6 SCC 439, while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p.456, para 22)

"22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."

26. At this stage, we may usefully refer to what the Constitution Bench has to say in Lalita Kumari v. State of U.P. (2014) 2 SCC 1, in this regard. The larger Bench had posed the following two questions: (SCC p.28, para 30)

"(i) Whether the immediate nonregistration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the

larger Bench opined thus: (Lalita Kumari case reported in (2015) 6 SCC 1), SCC pp.35-36, 41 & 58-59, paras 49, 72, 111 & 115)

"49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is dutybound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

111. … the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an

investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint." (emphasis in original) After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

After laying down so, the larger Bench proceeded to state: (Lalita Kumari v. State of U.P., (2014) 2 SCC 1), SCC p.61, para 120)

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial disputes/ family disputes (b) Commercial offences (c) Medical

negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section

156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple

application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

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> 29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."

Thus, it is clear that before passing an order under Section 156(3) of CrPC, the Magistrate is under obligation to apply its mind as to whether the allegations as contained in the complaint discloses the commission of cognizable offence or not. He is also under obligation to assign some reasons though briefly which may be indicative of application of mind.

In the present case, the Magistrate, by passing the order dated 10/10/2014, has directed for investigation merely on the ground that as the investigation from technical point of view is also necessary in order to appreciate the evidence and the allegations made in the complaint, therefore, an order under Section 156(3) of CrPC was passed.

This cannot be said to be a valid reason for directing an investigation into the matter. If the Magistrate was of the view that some assistance is required to appreciate the allegations as contained in the complaint, then he had an option to direct for an enquiry under Section 202 of CrPC.

Thus, in the considered view of this Court, the Magistrate, by passing an order dated 10/10/2014, committed material illegality. However, instead of setting aside order dated 10/10/2014 and remanding the case back to the Magistrate, it would be apposite to consider the allegations as contained in the complaint.

According to the complainant, the applicant did not complete the construction work as agreed upon between the parties. It is also not out of place to mention here that according to the complainant himself, an amount of Rs.39,43,500/- was paid in different installments which means that the amount on different dates were given by the complainant and therefore it can be inferred that such amount must have been given after noticing the progress of the construction work. From the complaint, it appears that the applicant had used the plastic pipes for Tap fittings and single phase electricity connection was done which was contrary to the terms of the agreement. Even according to the complainant, the applicant had received a total amount of Rs.4,95,000 in excess of the actual work

which he had carried out. It appears that some dispute arose between the applicant and the complainant and because of some differences of opinion with regard to the conditions of the agreement, either the complainant refused to make payment of the remaining amount or the applicant was not ready to complete the remaining work because of objections raised by the complainant. Be that as it may be, the question is that whether the allegations as made in the complaint were predominantly of civil nature or it involved criminal intention also.

The Supreme Court in the case of **Binod Kumar & Ors. v. State of Bihar & Anr.** reported in **(2014) 10 SCC 663** has held as under:-

> "8. In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection, it should be exercised to see that the process of law is not abused or misused. The settled principle of law is that at the stage of quashing the complaint/FIR, the High Court is not to embark upon an enquiry as to the probability, reliability or the genuineness of the allegations made therein.
> 9. In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, this Court enumerated the cases where an order of the Magistrate issuing process against the accused can be quashed or set aside as under: (SCC p.741, para 5)

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is a sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects such as, want of sanction, or absence of a complaint by legally competent authority and the like."

The Supreme Court pointed out that the cases mentioned are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash the proceedings.

10. In Indian Oil Corporation vs. NEPC India Ltd. And Ors., (2006) 6 SCC 736, this Court has summarised the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings as under:- (SCC pp.747-48, para 12)

"12. The principles relating to exercise of jurisdiction under Section 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 v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692, State of Haryana v. Bhajan Lal,1992 Supp (1) SCC 335; Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194, Central Bureau of Investigation v. Duncans Agro Industries Ltd (1996) 5 SCC 591; State of Bihar v. Rajendra Agrawalla (1996) 8 SCC 164, Rajesh Bajaj v. State NCT of Delhi,(1999) 3 SCC 259; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd(2000) 3 SCC 269 [pic]Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, M. Krishnan v. Vijay Singh (2001) 8 SCC 645 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque(2005) 1 SCC 122. 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 proceeding 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. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paragraphs (13) and (14) of the Indian Oil Corporation's case (supra), it was held as under:- (SCC pp.748-49)

"13. 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, [pic]leading to irretrievable breakdown 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. In G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

"8. … 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."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the

complainant. Be that as it may."

The Supreme Court in the case of **International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) & Ors. v. Nimra Cerglass Technics Private Limited and Anr.** reported in **(2016) 1 SCC 348** had held as under:-

> "13. The legal position is well-settled 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 uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 Cr.P.C. is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon facts and circumstances of each case. Vide State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335; State of T.N. vs. Thirukkural Perumal, (1995) 2 SCC 449; and Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr. (2006) 7 SCC 188.
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> 14. In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI and its officers for the alleged failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419

and 420 IPC. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of cheating.

15. The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the

transaction. In S.W. Palanitkar & Ors. vs. State of Bihar & Anr. (2002) 1 SCC 241, this Court held as under:

"21 ……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

The above view in Palanitkar's case was referred to and followed in **Rashmi Jain vs. State of Uttar Pradesh & Anr.** (2014) 13 SCC 553.

22. By analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan vs. Bhor Industries Ltd. & Anr. (2005) 10 SCC 228, this Court held as under:-

"6. … A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

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…. 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 complainant's 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."

23. In Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:- "13. 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 breakdown 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. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

'8. … 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."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would

> be justified in quashing the proceedings in the interest of justice ."

Considering the facts of the present case in the light of the judgment passed by the Supreme Court, it would be clear that there was some dispute with regard to the valuation of the work carried out by the applicant. The complainant might be aggrieved by the non-completion of work within the stipulated period of eight months. The applicant might be aggrieved from the valuation of work done by the complainant. The complainant might be interested in not making payment of the remaining amount before the completion of the entire work. However, it would not *ipso facto* mean that the applicant has committed any offence under Section 406 and 420 of IPC.

This Court is of the view that the allegations made by the complainant in the complaint were predominantly of civil in nature and, therefore, criminal prosecution of the applicant cannot be allowed to go on. If the complainant has any grievance against the applicant, then he has efficacious remedies under the civil law for redressal of his grievances but the civil law cannot be allowed to be converted into criminal law.

Accordingly, this petition succeeds and the FIR in Crime No.1037/2014 is hereby quashed.

(G.S.Ahluwalia)
Judge

AKS