

**(Rahul Mathur & Ors. vs. State of M.P. & Ors.)**

**04.01.2017**

Shri R.K. Sharma, counsel for the applicants.

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

Heard on the question of admission.

This petition has been filed under Section 482 of Cr.P.C. for quashing the FIR in Crime No.51/2016 registered by Police Station Morar, District Gwalior for offence punishable under Section 420, 34 of IPC.

The facts necessary for the disposal of this petition in short are that on 21.1.2016, the complainant Atisunder Singh lodged a FIR against the applicants alleging that the applicant No.1 is the owner and in possession of his ancestral house No.7, Ward No.25 situated in front of Maharani Laxmibai Girls School, Ajad Nagar, Garam Sadak, Morar, District Gwalior in which the applicant No.1 has 1/4<sup>th</sup> share. The applicants by expressing that they are in need of money for their business, entered into an agreement to sell 1/4<sup>th</sup> share in the property for a consideration of Rs. 50,00,000/-. The said amount of Rs. 50,00,000/- was taken by the applicants in four installments. However, after receiving the entire consideration amount, the applicants are not executing the sale deed and they have left their place of residence and their whereabouts are also not known. Even the applicants have shut their mobiles off as a result of which he is not in a position to contact them. Therefore, it appears that the applicants right from day one had an intention to cheat the complainant and their intention was to misappropriate an amount of Rs.

50,00,000/-. If the applicant No.1 had not given the assurance of executing the sale deed then the complainant would have never given the amount of Rs. 50,00,000/- to them. On the basis of said complaint, police registered the offences punishable under Sections 420, 406 and 120-B of IPC.

It is contended by the counsel for the applicants that even if the entire allegations as made in the FIR are accepted then it would be clear that it is a case of civil nature and the complainant has an efficacious remedy of filing a suit for specific performance of contract and in order to adopt a shortcut, the complainant has lodged the FIR.

*Per contra*, the counsel for the State has submitted that if the intention of the applicants was not to cheat the complainant and for one reason or the other if they were not in a position to execute the sale deed then there was no reason for them to leave their residence and to shut off their mobiles. Leaving their residence and shutting off their mobiles clearly indicate that their intention from the very inception was to cheat the complainant and, therefore, it cannot be said that the allegations are predominantly of civil in nature. Accordingly, it is submitted that the police has rightly registered the FIR. It was further submitted by the counsel for the State that as the matter is still under investigation, therefore, the FIR may not be quashed.

Heard the learned counsel for the parties.

Before advertng to the facts of the case, it would be appropriate to consider the legal position.

The counsel for the applicants in order buttress his contention that the case is predominantly of civil in nature

and therefore, criminal proceedings should not be allowed to continue, relied upon the judgments of the Supreme Court in the case of **U.Dhar and another Vs. State of Jharkhand and others (AIR 2003 SC 974)**, **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and others (AIR 2006 SC 2780)**, **Inder Mohan Goswami Vs. State of Uttaranchal and others (AIR 2008 SC 251)**, **Dalip Kaur and others Vs. Jagnar Singh and another (AIR 2009 SC 3191)**, **Chandran Ratnaswami Vs. K.C. Palaniswami (AIR 2013 SC 1952)**, **All Carbo Movers India (P) Ltd. Vs. Dhanesh Badarmal Jain ((2007) 14 SCC 776)**, **Sharon Michael Vs. State of Tamilnadu ((2009) 3 SCC 375)**, **Rajib Ranjan and others Vs. R. Vijay Kumar ((2015) 1 SCC 513)**, submitted that the tendency of converting the civil cases into criminal cases should be discouraged and therefore, considering the fact that the present case is merely a case of breach of contract, the criminal proceedings are liable to be quashed.

The Supreme Court in the case of **Mahesh Chaudhary vs. State of Rajasthan & Anr.** reported in **(2009) 4 SCC 439** has held as under:-

"14. While saying so, we are not unmindful of the limitations of the court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole. In *Kamaladevi Agarwal vs. State of W.B.* (2002) 1 SCC 555, this Court opined: (SCC pp. 559-60, para 7)

"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.

15. This Court in *B. Suresh Yadav vs. Sharifa Bee* (2007) 13 SCC 107 opined as under:

"13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before us that the appellant herein got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of

sale was executed on 30.9.2005 and the purported demolition took place on 29.9.2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so."

16. Recently in *R. Kalyani vs. Janak C. Mehta* (2008) 14 SCALE 85, this Court laid down the law in the following terms: (SCC p.523, paras 15-16)

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint

keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

The Supreme Court in the case of **Alpic Finance Ltd. vs. Sadasivan & Anr.** reported in **(2001) 3 SCC 513** has held as under:-

"5. Contours of the power under Section 482 Cr. P.C. have been explained in series of decisions by this Court. In *Nagawwa vs. Veeranna Shivalingappa Konjalgi* (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances: (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 complaint 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 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."

6. In *State of Haryana vs. Bhajan Lal* 1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Section 161 & 165 of IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised 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. However, this Court in *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* 1995 (6) SCC 194, held that "at the stage of quashing an FIR or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein."

7. In a few cases, the question arose whether a criminal prosecution could be permitted when the dispute between the parties is of predominantly civil nature and the appropriate remedy would be a civil suit. In one case reported in *Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre* 1988(1) SCC 692, this

Court held that if the allegations in the complaint are both of a civil wrong and a criminal offence, there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. That was a case relating to a trust. There were three trustees including the settlor. A large house constituted part of the trust property. The respondent and the complainant were acting as Secretary and Manager of the Trust and the house owned by the trust was in the possession of a tenant. The tenant vacated the building and the allegation in the complaint was that two officers of the trust, in conspiracy with one of the trustees and his wife, created documents showing tenancy in respect of that house in favour of the wife of the trustee. Another trustee filed a criminal complaint alleging that there was commission of the offence under Section 406, 467 read with Sections 34 and 120-B of the Indian Penal Code. The accused persons challenged the proceedings before the High Court under Section 482 of the Code of Criminal Procedure and the High Court quashed the proceedings in respect of two of the accused persons. It was under those circumstances that this court observed: (SCC Headnote)

"Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents, including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on



behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued."

8. In another case recently decided by this Court in Trisuns Chemical Industry vs. Rajesh Agarwal 999(8) SCC 686, the complainant company had alleged that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The Complainant Company had to pay the price in advance as demanded by the accused company. Complainant paid the amount through cheques. However, the accused supplied the commodity, which was of a most inferior and sub-standard quality and the complainant suffered a loss of Rs. 17 lakhs. The complainant alleged that he was induced to pay the price on the representation that the best quality commodity would be supplied. A criminal complaint was filed alleging commission of the offence punishable under Section 420-A. The Magistrate forwarded the complaint for investigation under Section 156(3) Cr. PC. The accused directors moved the High Court for quashing the complaint alleging that the dispute was purely of a civil nature and hence no prosecution should have been permitted. The High Court accepted this plea and the complaint was quashed. But this court held in para 8 and 9 of the judgment as follows: (SCC p. 690)

".....[M]erely because an act has a civil profile is not sufficient to denude it of its criminal outfit.

\* \* \*

We are unable to appreciate the reasoning that the provision incorporated in the

agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases..."

9. In *Pratibha Rani vs. Suraj Kumar* 1985(2) SCC 370, the question arose that when the civil as well as the criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the *Stridhan* property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her jewellery and other valuable articles entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the Criminal proceedings and the High Court quashed the same. The accused contended that the dispute was of a civil nature and no criminal prosecution would lie. Under that circumstance, this court held in paragraph 21 at pp. 382-83 as under: -

"... There are a large number of cases

where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import...."

10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating.

In order to prima facie take out an offence punishable under Section 420 of IPC, the complainant has to allege that the accused had an intention to cheat him from the very inception. This allegation can be considered in the light of the surrounding circumstances.

In the present case, it has to be kept in mind the distinction between mere breach of contract and the offence of cheating. The distinction is very fine, it depends on the intention of the accused at the very inception which may be judged by his subsequent conduct. However, the subsequent conduct may not be the sole test. It is clear that mere failure to keep the promise at the subsequent stage may not be an offence under Section 420 of IPC. Thus, the entire allegations are required to be considered in the light of the allegations. If the conduct of the applicants are considered in the light of the allegations made in this case, then it would be clear that by inducing the complainant, they obtained huge amount of Rs. 50,00,000/- on the pretext that the applicants would execute a sale deed to the extent of their 1/4<sup>th</sup> share in the property in dispute. However, after receiving the entire amount they left their place of residence without leaving their addresses. Shutting off their mobiles is with a clear intentions so that the complainant may not trace them out. Thus subsequent conduct of the applicants in eloping from their place of residence as well as shutting off their mobiles clearly show that they want to hide their whereabouts from the complainant. If the intention of the applicants right from day one was not to cheat the complainant then their subsequent conduct would have been something different. There was no need for them to elope from their place of residence and to shut off their mobiles. Thus, it can be safely inferred that the intention of the applicants was to induce the complainant to part away with a huge amount of Rs. 50,00,000/- on the false assurance of executing a sale deed in respect of 1/4<sup>th</sup> share

in their property and thereafter to leave their place of residence and to go in hiding.

Under these circumstances, it cannot be said that it is a case of purely civil in nature. Prima facie, it appears that the right from very inception, the intention of the applicants was to cheat the complainant. Further the investigation is still in progress.

The Supreme Court in the case of **Teeja Devi vs. State of Rajasthan & Ors.** reported in **(2014) 15 SCC 221** has held as under:-

“5. It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases, where the court is satisfied that the prosecution is malicious and vexatious.

6. In support of the aforesaid proposition the learned counsel for the State of Rajasthan placed reliance upon paras 15 and 16 of the judgment of this Court in *State of Karnataka v. Pastor P. Raju* (2006) 6 SCC 728.

7. The proposition of law indicated above has been consistently followed in a large number of cases and the learned counsel for the accused fairly submitted that the impugned order of the High Court can be sustained only in view of the factual report submitted by the investigating officer to the High Court. Since the report

showed that after some investigation the allegations were found to be incorrect, the High Court accepted the view of the investigating officer and held that the FIR appears to be only a counter-blast to the civil action initiated by the accused against the complainant for specific performance of an agreement for sale.

9. We have no hesitation of holding that in the facts of the case, the High Court was not justified in interfering with the police investigation and quashing the FIR. This is not at all a rare case. Without a thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not. Hence the investigation should have been allowed to continue so that on filing of the report under Section 173 CrPC the affected party could pursue its remedy against the report in accordance with law. Keeping in view the fact that the criminal case was at the stage of investigation by the police the High Court was not justified in holding that the investigation of the impugned FIR is totally unwarranted and that the same would amount to gross abuse of the process of the court."

In the case of **State of Orissa and Ors. vs. Ujjal Kumar Burdhan** reported in (2012) 4 SCC 547 has held as under:-

"8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extra-ordinary cases, where allegations in the complaint or the first information report, taken on its face value

and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of W.B. v. Swapan Kumar Guha* (1982) 1 SCC 561, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

"65...An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been

disclosed....

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence ."

(emphasis supplied)

10. On a similar issue under consideration, in Jeffrey J. Diermeier Vs. State of W.B. (2010) 6 SCC 243, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows:

"20.....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 Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High



Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.”

Keeping the aforesaid legal position with regard to the scope of powers of this Court under Section 482 of Cr.P.C., this Court is of the view that the FIR prima facie discloses the commission of cognizable offence and the allegations as made in the FIR do not suggest that they are predominantly of civil in nature and, therefore, as the ingredients of criminal law are also there in the FIR and the allegations, therefore, this Court is of the view that it is not a fit case to quash the FIR. Accordingly, this petition fails and is hereby dismissed.

**(G.S. Ahluwalia)**  
**Judge**

(alok)