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Bhupendra Singh
V.
State of M.P. & Anr.

25/04/2017

Shri D.K.Kulshrestha, counsel for the applicant.

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

This application under Section 482 of CrPC has been filed for quashing the FIR in Crime No.67/2017 registered by Police Station Jaura, District Morena for offences under Sections 406,506,34 of IPC.

The necessary facts for the disposal of the present application in short are that the complainant Banti Dhakad lodged a FIR against the applicant and his father Maharaj Singh alleging that he had entered into an agreement to purchase 2 Bigha land situated in Gustoli Mauja belonging to the applicant and his father and an amount of Rs.8,50,000/- was given to them in front of Amritlal Dhakad and Surendra Dhakad and the applicant and his father had assured that the sale deed will be executed within 15 days. Thereafter, the applicant and his father did not come for executing the sale deed, therefore, the complainant, alongwith other witnesses, went to the house of the applicant. Then they were informed by the co-accused that the applicant is residing at Noida, therefore, the sale deed shall be executed as soon as he comes back. However, they refused to execute the sale deed even after the applicant came back. They assured that the applicant and the co-accused would repay the amount which was paid by the complainant. On 18/12/2006, the complainant went to

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Noida Salarpura where the applicant gave his personal cheque of Rs.50,000/- and one cheque of Rs.50,000/- from the account of his brother-in-law Naresh and one cheque from the account of one Balkishan Sharma was given and the applicant prayed for further time of 15 days for the repayment of the remaining amount. Thereafter, he refused to repay the remaining amount on 05/02/2017. A threat was extended that in case the remaining amount is demanded, then they will be killed.

It is submitted by the counsel for the applicant that even if the entire allegations are accepted in toto, then it would be a case of predominantly civil in nature because the complainant has statutory remedy of filing a suit for specific performance of contract because of non-execution of the sale deed. It is further submitted that the complainant has tried to adopt a short cut method to avoid the civil proceedings and has tried to convert the civil dispute into a criminal case. It is further submitted that no criminal intent is available in the case warranting his prosecution.

Per contra, it is submitted by the counsel for the State that it is not merely a case of specific performance of contract. From the FIR, it is clear that the complainant went to the applicant on number of occasions and every time an assurance was given that the remaining amount would be repaid but except paying a meagre amount of Rs.50,000/-, the remaining amount has not been paid, therefore, it is a clear case where the applicant, by misrepresenting that he would be selling his land, had

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persuaded the complainant to pay Rs.8,50,000/- and now has not only refused to execute the sale deed but has refused to return the money. It is further submitted that from the allegations as made in the FIR, it is clear that the intention of the applicant and the co-accused, from day one, was to cheat the complainant.

Heard the learned counsel for the parties.

The submission of the Counsel for the applicants that even if the entire allegations as made in the complaint are taken on their face value, then it would be clear that the case is predominantly of Civil in nature and the respondent no. 1 has tried to give colour of criminal case which is not permissible. It is further submitted that the respondent no.1 has an efficacious remedy of filing suit for specific performance of contract and in a case of mere breach of contract, criminal proceedings should not be allowed to continue. To buttress his contentions, the Counsel for the applicants has relied upon **ARCI v. Nimra Cerglass Technics (P) Ltd., (2016) 1 SCC 348, V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78** and **Sharon Michael v. State of T.N., (2009) 3 SCC 375** and submitted that mere failure on the part of the applicants to keep their promise at a later stage would not bring the case within the meaning of Cheating. Further it was submitted that unless and until, there is an intention to cheat the complainant on the day one, no offence can be said to be made against the applicants.

The centripetal question, for determination in the

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present case, is that when the owner of the land, after agreeing to sale the land and after accepting the consideration amount, either in part or in whole, refuses to execute the sale deed and also refuses to refund the amount, then whether it can be said to be a case of predominantly civil in nature or the criminal ingredients can also be said to be involved in the case.

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

“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.

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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

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“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

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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* (1996) 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; *Chundururu 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*

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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.”

Thus, a dispute which involves criminal intent also, cannot be quashed on the ground that it involves civil dispute also.

Now the question is that whether the allegations made in the present case are predominantly of civil in nature or they involve criminal intent also.

The Supreme Court in the case of **Kamlesh Kumari v. State of U.P., (2015) 13 SCC 689** held as under :

5. The appellants moved a petition under Section 482 of Code of Criminal Procedure, 1973 (CrPC) before the High Court challenging the criminal proceedings initiated against them pleading that they are innocent and falsely implicated in the case. However, they admitted that they did had a talk regarding the sale of their land through a broker Tara Chand and they received an amount of Rs 5,00,000 as advance

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money. It is alleged by the appellants that in their petition before the High Court that though as per the agreement within one month remaining sale consideration was to be paid to them, but for two years they kept on waiting for the full payment. They also disclosed that in the year 2009, they have already sold the property to third party, and that is why as a counterblast the first information report was got lodged by Respondent 2 in 2011 i.e. five years after the talks were held in 2006. Further stating that the criminal proceedings are based on malice, the appellants sought quashing of the proceedings of criminal case. However, the High Court, after hearing the parties and perusal of the papers on record, declined to interfere with the trial of the case. Hence this appeal through special leave.

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8. On behalf of the appellants, our attention is drawn to *Ram Biraji Devi v. Umesh Kumar Singh*, and it is contended that the High Court should have quashed the proceedings as the dispute between the parties is, in substance, of property dispute. We have carefully gone through the said case law and we find that the facts of the said case cannot be said to be similar to the present one. In the present case, after investigation, charge-sheet has been filed, and investigating officer has stated that an amount of Rs 42,00,000 in several instalments was paid by Respondent 2 to the appellants, which the appellants appeared to have dishonestly retained with them. From the rejoinder-affidavit, it appears that the appellants have

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repaid only Rs 5,00,000 to Respondent 2 through two bank drafts mentioned above, that too after charge-sheet is filed. In such a situation, we cannot apply the law laid down in *Ram Biraji Devi* to the case at hand.

9. In *R. Kalyani v. Janak C. Mehta*, in paras 15-16, this Court, interpreting the inherent powers of the High Court under Section 482 CrPC, has laid down the law as under: (SCC p. 523)

“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

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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 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.”

10. In view of the principle of law laid down by this Court, as above, and considering the facts and circumstances of the case, we do not find any illegality with the impugned order passed by the High Court to quash the criminal proceedings against the appellants in exercise of power under Section 482 CrPC.

This Court in the case of Hemant Singh & Ors. V. Raghvendra Singh & Ors., by order dated 14/02/2012 passed in MCRC No.5730/2016 has held as under:-

“Thus, if the facts of this case are considered in the light of the judgment passed by the Supreme Court in the Case of **Kamlesh Kumari (Supra)**, then it would be clear that the applicants by entering into an agreement to sell had received an amount of Rs. 6,29,550 by way of advance and thereafter they did not turn up for execution of sale deed and in spite of the notice issued by the respondent no.1, they neither repaid the amount so received by them at the time of the agreement to sell nor they executed the sale deed. Thus, prima facie the element of criminal intent is also available and it cannot be said that the case is predominantly of civil in

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nature.”

In the light of the judgment passed by the Supreme Court as well as this Court, it is clear that after receiving the consideration amount of the property in dispute, either in whole or in part, if the owner of the property refuses to execute the sale deed and at the same time refuses to refund the amount so received by him, then it cannot be said that the allegations are predominantly of civil in nature. If for the reasons beyond the control of the owner of the property, he is not in a position to execute a sale deed and if the intending purchaser demands his money back, then the owner is under obligation to refund the money. If the owner refuses to refund the money in spite of the repeated demands made by the intending purchaser, then it cannot be said that the refusal by the owner to execute the sale deed does not involve a criminal intent. Apparently, an inference can be drawn that the purchaser has cheated the intending purchaser and has an intention to cheat the intending purchaser right from very inception, otherwise, if at a subsequent stage, the seller, because of one reason or the other, is not in a position to execute the sale deed, then he should refund the amount to the intending purchaser. In case, if the intending purchaser refuses to accept his money back, then it can be said that the case is predominantly of civil in nature because the intending purchaser would be required to file a suit for specific performance of contract seeking equitable relief of specific performance and execution of the sale

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deed. Whether the intending purchaser will be entitled for an equitable relief of specific performance of contract or not and whether the seller is under obligation to execute the sale deed or not can only be decided by the Civil Court but where the intending purchaser, instead of insisting upon the execution of the sale deed, prays for refund of the amount and when the said demand made by the intending purchaser is declined by the seller, then it would be a clear case to show that prima facie the intention of the seller was to cheat the intending purchaser and to misappropriate the consideration amount paid either in part or in whole.

Thus, under these circumstances, it cannot be said that the dispute in question is predominantly of civil in nature not involving the criminal intent.

Prima facie, the criminal intent on the part of the applicant is involved in the case and, therefore, it cannot be said that the complainant, by lodging the FIR, has converted the same into a criminal case.

Accordingly, this application fails and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge