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MCRC No.37683/2020
Pradeep Kumar Shinde vs. Sate of M.P. & Anr.
&
MCRC No.38528/2020
Pramod Shinde vs. State of M.P. & Anr.

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(Single Bench)

Misc. Criminal Case No. 37683/2020

Pradeep Kumar Shinde	 APPLICANT
	Versus	
State of MP and Another		...RESPONDENTS
&		

Misc. Criminal Case No. 38528/2020

Pramod Shinde	APPLICANT
	Versus	
State of MP and Another		...RESPONDENTS

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Deependra Singh Kushwah, Advocate for applicant
Pradeep Kumar Shinde.

Shri Vivek Jain, Advocate for applicant Pramod Shinde.

Smt. Upendri Singh, Panel Lawyer for respondent
No.1/State.

Shri S.S. Rajput, learned counsel for respondent No.
2/complainant.

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Whether approved for Reporting :

Reserved on : 07.11.2020

ORDER

(Passed on 08th December, 2020)

This order shall govern the disposal of both Misc. Cri. Case Nos. 37683/2020 and 38528/2020, as both the cases have been filed by the applicants in connection with same Crime No.15/2020 registered at Police Station Madhoganj, District Gwalior.

2. Both the petitions under Section 482 of the Code of Criminal Procedure have been preferred by the applicants praying for quashment of First Information Report No. 15/2020 registered at Police Station Madhoganj, District Gwalior for offence punishable under Sections 420 and 120-B of the IPC and its all consequential proceedings.

3. The facts are taken from **MCRC No.37683/2020** as under:-

The prosecution story in nutshell is that the complainant filed a complaint in Police Station Madhoganj, District Gwalior on 07/12/2019 alleging therein that he had executed an agreement in Nov, 2015 to purchase a flat bearing no. FO-

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401, which is situated at H.G. Hights, Pan Patte ki Goth, Kampu, Lashkar, Gwalior, with Pradeep Shinde, Arun Shinde, Pramod Shinde, Uday Shinde and Suheel Shinde, Proprietor of Kaivalya Construction for which he had given an advance amount of Rs.25,00,000/- vide cheque no. 318543 on 10/11/2015 to Suheel Shinde and the rest amount was to be given after transfer of the flat in dispute. It has also been mentioned in the aforesaid agreement that in case the ownership of the disputed flat is not transferred to the complainant within two years from the date of agreement, the advance amount, which has been given by the complainant, shall be refunded to him but even after passing of more than four years, neither the ownership of the disputed flat has been transferred in the name of the complainant nor the advance amount has been refunded to him. On this complaint, FIR No. 15/2020 has been registered by Police Station Madhoganj, District Gwalior against present applicants and co-accused Arun Shinde, Uday Shinde and Suheel Shinde and for the quashment of the same, present petitions have been filed by the applicants.

4. Learned counsel for the applicants submit that a false report has been lodged against the applicants. In November, 2015, with ill intention, co-accused Suheel Shinde entered into an agreement to sale Annexure P-4 with complainant Yudhistra Arora whereby agreeing to sale the flat in dispute

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bearing no. 401, which as per agreement Annexure P-2, executed between the applicants, their brothers and Suheel Shinde, Proprietor of M/s. Kewalya Construction, was under the ownership of present applicants and their brothers. It is further submitted that neither the applicants nor their brothers had any knowledge of the agreement executed between the complainant and co-accused Suheel Shinde nor they had signed any documents being party no. 1 (owner of the flat) and the signatures shown in the agreement Annexure P-4 are forged one. In this regard, on 14/11/2019, a representation was had also been submitted by applicant Pramod Kumar Shinde before the Superintendent of Police, Gwalior submitting therein that the applicants and their brothers had not signed in the agreement to sale Annexure P-4 and the signature shown in the agreement Annexure P-4 is a forged one and the same could be tallied from the signatures in their bank accounts and also prayed for free an fair investigation in the matter but so far no heed has been paid on the aforesaid representation. It is further submitted that the aim of investigation is ultimately to search for truth and to bring the real offender to book. In support of their submission, learned counsel for the applicants have relied upon the judgments passed by the Supreme Court in the cases of **Manohar Lal Sharma vs. Union of India**, [(2014) 2 SCC 532], **Vinay Tyagi vs. Irshad Ali**, [(2013) 5 SCC 762] and **Akhtar Shakeel vs. State of U.P. & Ors.**,

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[Criminal Appeal No.217/2020, decided on 03/2/2020].

Therefore, learned counsel for the applicants pray that the petitions may be allowed and the FIR No. 15/2020 lodged at Police Station Madhoganj, District Gwalior against the present applicants and other co-accused persons and its all consequential proceedings be quashed.

5. To the contrary, learned counsel for the non-applicants submitted that on the basis of material collected during investigation, no interference is warranted.

6. I have considered rival contentions of the parties and perused the record.

7. Section 482 of Code of Criminal Procedure reads as under:-

“482. Saving for inherent power of High Court – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

8. This Court in the case of **Colgate Palmolive India Ltd. vs. Satish Rohra, 2005 (4) MPLJ 380**, has held in the following manner:-

"6. I have heard the learned Counsel of both the parties and carefully perused the evidence and the material on record. Before considering the evidence and the material on record for the limited purpose of finding out

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whether a prima facie case for issuance of process has been made out or not, it may be mentioned at the very outset that the various documents and the reports filed by the petitioners/Company along with the petition can not be looked into at the stage of taking cognizance or at the stage of framing of the charge. The question whether prima facie case is made out or not has to be decided purely from the point of view of the complainant without at all adverting to any defence that the accused may have. No provision in the Code of Criminal Procedure grants to the accused any right to file any material or document at the stage of taking cognizance or even at the stage of framing of the charge in order to thwart it. That right is granted only at the stage of trial. At this preliminary stage the material produced by the complainant alone is to be considered."

9. The question is whether at this stage this Court can examine the documents and conduct a mini trial simultaneously. This aspect is no more *res integra*. The Apex Court in **Amit Kapoor vs. Ramesh Chander, [(2012) 9 SCC 460]** has held that where the factual foundation for an offence has been laid, 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 with the requirements of the offence. In the said case, the Apex Court laid down the relevant parameters, on the strength of which

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interference under Section 482 CrPC can be made. The said principles are as under:-

- "1. Though there are no limits of the powers of the Court under Section 482 CrPC 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 CrPC should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*
- 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.*
- 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.*
- 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 loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*
- 5. Where there is an express legal bar enacted in any of the provisions of CrPC 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.*

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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.*
7. *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*
8. *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. 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.*
9. *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.*
10. *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.

11. *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.*
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 with by the prosecution.*
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.*
14. *Where the charge-sheet, report under Section 173(2)CrPC, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*
15. *Coupled with any or all of the above, where the court finds that it would amount to abuse of process of CrPC or that 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."*

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10. As per the provision of law which flows from paras 11 and 13 of the judgment in *Amit Kapoor (supra)*, it is clear that at the stage, at which the present case is, the court should not examine the facts, evidence and material on record to determine whether there is sufficient material, which may end in a conviction. The court is only concerned with the allegations taken as a whole whether they will constitute an offence. Similarly, under section 482 CrPC the court cannot take into consideration external materials given by an accused for arriving to a conclusion that no offence was disclosed or there was possibility of her acquittal. The trial Court is best suited to examine the defence documents at appropriate stage. The defence taken by the petitioner is matter of evidence which is required to be proved during trial.

11. The truthfulness of the statement or circumstances or documents of the prosecution cannot be questioned at this stage by the defence. The material on record discloses the grave suspicion. On the basis of the material on record, it can be inferred that the accused might have committed an offence.

12. It has been held by the Apex Court in the case of **State of Haryana and others Vs. CH. Bhaiyalal, (AIR 1992 SC 604)** that when allegations in complaint clearly constitute cognizable offence, then quashing of FIR is not justified. Similarly, in the case of **State of Orissa and another vs. Saroj Kumar Sahoo, [(2006) 2 SCC 272]**, it has been

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observed that inherent powers are to be exercised sparingly and that too in the rarest of rare cases and the High Courts should not embark upon an inquiry as to reliability of evidence to sustain the allegations, which is the function of the trial Court.

13. Truthfulness or falsehood of allegations made by the complainant in his complaint is to be established by evidence to be produced before the trial Court and only looking to the FIR it cannot be inferred that *prima facie* no offence is made out against the present applicant. In the present case, from perusal of the documents available on record, it cannot be said that no offence has taken place or there is no ground available to proceed further with the trial against the present applicant. Therefore, in the case in hand, there is no question of invoking inherent powers impugned under Section 482 of Cr.P.C. for quashing of FIR.

14. Consequently, both the petitions (MCRC Nos.37683/2020 and 38528/2020) filed by the applicants under Section 482 of Cr.P.C. are hereby dismissed being devoid of merits.

AKS

**(Rajeev Kumar Shrivastava)
Judge.**