



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 22nd OF APRIL, 2025

MISC. CRIMINAL CASE No. 16788 of 2024

VISHAL GOYAL AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Mahesh Goyal, Advocate for applicants.

Shri Mohit Shivhare, Public Prosecutor for respondent No.1/State.

Shri Lokendra Shrivastava, Advocate for respondent No.2.

ORDER

This application, under Section 482 of Cr.P.C, has been filed for quashment of FIR in Crime Number 661 of 2022 registered at Police Station Kotwali, District Morena for offences under Sections 420, 406 and subsequently enhanced 409 of the IPC.

2. According to the prosecution case, complainant lodged an FIR stating that he was in need of money for his business purposes. Co-accused Ankush Goyal is running a jewellery shop. Complainant took a loan of Rs.40 lacs from Ankush and pledged 1 kg of gold by way of security. In the month of February 2022, the amount of Rs.40 lakhs was returned back by him to Ankush in the



presence of Ankush, his wife Manju Goyal, and Sonu Goyal, and he demanded his gold back. It was informed by Ankush that he has kept the gold in Agra and will return it back within a period of 7-8 days. Thereafter, on multiple occasions, complainant went to the house of Ankush and Ankush, as well as applicants, who are brothers of Ankush, informed him that they are not in a position to take back the gold from Agra and since the complainant has no faith in them, therefore they would give 88 kgs of silver in lieu of gold as the total worth of 88 kgs of silver is equivalent to the price of 1 kg of gold. It was further agreed that the complainant would return the silver after the gold is returned. It is alleged that accordingly, by relying upon them, complainant took 87 kilograms and 800 grams of silver from them and kept the same in his house. Again in the month of May 2022, he requested Ankush and his brothers/applicants, but in spite of multiple requests for returning the gold and to take back the silver, they continuously avoided the same. On 15/6/2022 at about 12:00 p.m., complainant went to the house of Ankush but he was not available in the house and his mobile was also switched off. Complainant then asked the applicants but they also did not give any satisfactory answer. Thereafter, complainant became suspicious and got the silver checked from Ravi Soni, who informed him that the silver given by applicants and co-accused Ankush is artificial/fake and it is copper with silver polish. Thereafter, complainant went to the house of Ankush. The house was locked and his phone was also switched off. He talked to the applicants, then they replied that they will call Ankush and on this pretext 8 to 10 days were passed. Now the applicants have refused to return the gold.

3. Challenging the FIR lodged by respondent No. 2, it is submitted by counsel for applicant that respondent No. 2 had pledged the gold with Ankush



and no transaction had taken place with applicants. In order to put additional pressure on Ankush, they have been falsely implicated. Even otherwise, the entire transaction is a business transaction and therefore the same should not be allowed to be converted into criminal case. To buttress his submissions, counsel for applicant has relied upon judgment passed by Supreme Court in the case of **Rikhab Birani & another Vs. State of UP & another** decided on 16/4/2024 in **SLP (Criminal) No. 8592 of 2024**.

4. *Per contra*, application is vehemently opposed by counsel for respondent No. 2. It is submitted that it is true that gold was pledged with Ankush but applicants as well as Ankush had jointly given fake/artificial silver of 87 kgs and 800 grams and therefore the applicants are equally responsible. It is submitted that as the applicants have given fake/artificial silver to complainant, therefore it cannot be said that allegations are predominantly of civil in nature without any criminal ingredient.

5. Heard learned counsel for the parties.

6. The Supreme Court in the cases of **Harmanpreet Singh Ahluwalia and others v. State of Punjab and others** reported in (2009) 7 SCC 712, **Mohammed Ibrahim and others v. State of Bihar and another** reported in (2009) 8 SCC 751, **Mahmood Ali and others v. State of U.P. and others** reported in 2023 SCC OnLine SC 950, **Usha Chakraborty and another v. State of West Bengal and another** reported in 2023 SCC OnLine SC 90 and **Amit Kapoor v. Ramesh Chander and another** reported in (2012) 9 SCC 460 has held that not only the civil and criminal proceedings can proceed simultaneously but a litigation can be quashed only if the dispute is predominantly of civil in nature and if the act of suspect or accused involves criminality, then the same cannot be quashed.



7. The Supreme Court in the case of **Amit Kapoor (supra)** 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.

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

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

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave



error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

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

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

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

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

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

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

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is



maintainable, does not mean that a criminal complaint cannot be maintained.

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

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

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

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC



749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; *State of U.P. v. O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; *Ganesh Narayan Hegde v. S. Bangarappa* [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; *Shakson Belthissor v. State of Kerala* [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] ; *V.V.S. Rama Sharma v. State of U.P.* [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; *Lalmuni Devi v. State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; *Savita v. State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of Gujarat* [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

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 with the requirements of the offence.

(Emphasis Supplied)

8. Thus, it is clear that if the allegations made in the FIR contain civil ingredients as well as criminal ingredients, then the FIR cannot be quashed by holding that it also involves civil ingredients also. Only if the allegations are



predominantly of civil nature, then the criminal prosecution can be quashed. Considering the facts, it is clear that the incident took place in two parts:

1. Complainant pledged his 1 kg of gold with Ankush by way of security of loan of rupees 40 lakhs and later on the loan amount of rupees 40 lakhs was returned. Thereafter, Ankush informed the complainant that since the gold has been kept in Agra, therefore he would return it after 8 to 10 days.
 2. When Ankush could not return the gold, then in order to gain confidence of complainant, it is alleged that applicants as well as Ankush offered 88 kgs of silver which was of the same value with a clear understanding that after the gold is returned to complainant, they would take back the silver. When the gold was not returned, then complainant became suspicious and when he got the silver tested, it was found that it is fake/artificial silver.
9. Giving artificial/fake silver to complainant with an intention to develop confidence in him would certainly involve criminal ingredients. If holistic view of the entire incident is taken, then it is clear that since complainant was in need of money for his business, therefore he took a loan of Rs. 40 lakhs from Ankush and pledged 1 kg of gold. Even after Rs. 40 lakhs were returned by the complainant, Ankush did not return the gold and later on applicants along with Ankush, with an intention to obtain confidence of complainant, offered 88 kilograms of silver which according to them was of the same worth and later on it was found that in the name of original silver, fake/artificial silver was given and in fact it was copper with silver polish.
10. Thus, it is clear that the act of applicants in giving fake/artificial silver in the name of original silver was with an intention to cheat the complainant because the applicants were aware of the fact that silver which was given to the



complainant is not original but it is silver-polished copper. Furthermore, even police has seized fake/artificial silver which was handed over by the applicants to complainant.

11. Under these circumstances, this Court is of considered opinion that it cannot be said that the transaction is a business transaction and predominantly of civil in nature. The allegations involve civil as well as criminal ingredients and in the light of judgment passed by Supreme Court in the case of **Amit Kapoor (Supra)**, FIR cannot be quashed.

12. Accordingly, application fails and is hereby dismissed.

(G. S. AHLUWALIA)
JUDGE

(and)