



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 15th OF APRIL, 2025

MISC. CRIMINAL CASE No. 55597 of 2024

RAJESH UPADHYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ashfaq Khan – Advocate for applicant.

Shri Mohit Shivhare- Public Prosecutor for respondent/State.

ORDER

This application, under Section 528 of B.N.S.S., 2023, has been filed for quashment of FIR in Crime No.603/2024 registered at Police Station Ambah, District Morena (M.P.) for offence punishable under Sections 406 and 420 of IPC.

2. The facts necessary for disposal of the present application in short are that complainant lodged an FIR on the allegations that applicant had purchased Potatoes from him and from various other farmers but after selling those Potatoes, applicant has not made payment of the same to complainant as well as to the farmers. It was alleged that applicant was running Saraswati



Shishu Mandir for the last four years. In the year 2024, complainant had sown Potatoes in his field. Applicant assured that he would purchase his Potatoes at the rate of Rs.2,140/- per quintle. Accordingly, on 15.04.2024, complainant sold 325 quintle Potatoes to applicant at the rate of Rs.2,140/- per quintle. The amount of Rs.1,30,000/- was paid by applicant by way of advance and he was assured that the remaining amount of Rs.5,22,000/- shall be paid to him within a period of 10 days. However, applicant has not paid the amount and has misappropriated the funds after selling Potatoes. Applicant also went missing from his house situated in Datia. It was further pleaded that handwritten details as well as blank cheque issued by applicant is also available with the complainant. It was further alleged that similarly in the year 2024, applicant had cheated Rajkumar, Raghvendra, Vinod Parashar, Annu and Raju and did not pay Rs.3,37,000/- to Rajkumar, Rs.5,74,000/- to Raghvendra, Rs.1,55,000/- to Vinod Parashar, Rs.90,000/- to Annu and Rs.1,80,000/- to Raju. It was further alleged that applicant has also misappropriated the amount of other farmers.

3. Challenging the FIR lodged by complainant, it is submitted by counsel for applicant that on 27.08.2024, applicant made a complaint to Superintendent of Police, District Morena (M.P.) alleging that on 10.08.2024, he was abducted by Omveer Singh Tomar and his 2-3 companions and an amount of Rs.90,000/- was looted from him and certain blank papers were got signed from him. It is submitted that so far as blank cheque is concerned, it is the same cheque which was forcibly got signed by Omveer Singh Tomar after abducting him. It is further submitted that father of applicant has also lodged complaint under Section 175(3) of BNSS, 2023 against Omveer Tomar, Pope Singh, Raghvendra, Gaurav Dandotiya, Rajkumar, Vinod Parashar, Annu and



Raju. However, counsel for applicant fairly conceded that he has not filed the order sheets of the Court to show the status of complaint. It is further submitted by counsel for applicant that it is well established principle of law that where the allegations are predominantly of civil in nature, then the said case should not be permitted to be converted into criminal case.

4. *Per contra*, application is vehemently opposed by counsel for respondent/State. It is submitted that it is not simply a business transaction but applicant has misappropriated the amount of various farmers and has run away from his house.

5. Heard learned counsel for the parties.

6. Before considering the facts of the case, this Court would like to consider the law relating to criminal proceedings where civil ingredients are also involved.

7. The Supreme Court in the case of **Amit Kapoor v. 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.

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 GuhaMadhavrao Jiwhajirao Scindia v. Sambhajirao



Chandrojirao Angre; Janata Dal v. H.S. Chowdhary; Rupan Deol Bajaj v. Kanwar Pal Singh Gill; G. Sagar Suri v. State of U.P.; Ajay Mitra v. State of M.P.; Pepsi Foods Ltd. v. Special Judicial Magistrate; State of U.P. v. O.P. Sharma; Ganesh Narayan Hegde v. S. Bangarappa; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque; Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd.; Shakson Belthissor v. State of Kerala; V.V.S. Rama Sharma v. State of U.P.; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu; Sheonandan Paswan v. State of Bihar; State of Bihar v. P.P. Sharma; Lalmuni Devi v. State of Bihar; M. Krishnan v. Vijay Singh; Savita v. State of Rajasthan and S.M. Datta v. State of Gujarat.]

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.

28. At this stage, we may also notice that the principle stated by this Court in Madhavrao Jiwajirao Scindia was reconsidered and explained in two subsequent judgments of this Court in State of Bihar v. P.P. Sharma and M.N. Damani v. S.K. Sinha. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.”

8. The Supreme Court in the case of **Naresh Kumar & Anr. Vs. The State of Karnataka & Anr.** decided on **12.3.2024** in **S.L.P.(Cr.) No.1570/2021** has held as under :-

6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the



inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P.* (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty and Anr. v. State of West Bengal and Anr.* 2023 SCC OnLine SC 90, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

9. Thus, it is clear that where the dispute is predominantly of civil in nature, then parties should not be made to take recourse to criminal proceedings as a weapon of harassment.



10. Now, the only question for consideration is as to whether the allegations made in the FIR are predominantly of civil in nature or they involve criminal ingredients also?

11. It is well established principle of law that failure to keep the promise at a later stage would not bring the act within the purview of Section 420 or 406 of IPC unless and until the facts indicate that the intention of the accused right from very inception was to cheat the complainant. If the facts of the present case are considered, then it is clear that applicant is not a businessman. In fact, he was running a school. He agreed to purchase Potatoes at the rate of Rs.2140/- per quintle from various farmers. Although it is alleged that applicant has sold Potatoes which were taken from farmers but has not paid the amount to farmers. Had it been a case where applicant could not sell Potatoes in open market for any reason, then whether intention of applicant from the very inception was to deceive or to cheat the farmers or not would not have arisen. But once he has purchased Potatoes from farmers and then sold them in the open market and thereafter misappropriated money by not making payment of price of Potatoes to farmers, it can be inferred that intention of applicant from the very inception was to cheat the farmers.

12. So far as complaint lodged by applicant with regard to his abduction and signing of blank papers is concerned, the same cannot be relied upon because allegations made by applicant have not been found to be proved. Furthermore, why a person would be abducted only for getting signatures on blank papers unless and until it is shown by applicant that he had certain old enmity with the person against whom he has levelled allegations.



13. Thus, *prima facie* it appears that a false complaint was made by applicant to the Superintendent of Police, Morena to create a defence with regard to handwritten calculation pertaining to purchase of Potatoes.

14. Considering the totality of facts and circumstances of the case, this Court is of considered opinion, no case is made out warranting interference.

15. Application fails and is hereby *dismissed*.

(G. S. AHLUWALIA)
JUDGE