

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL. M.C. 4931/2005, CRL.M.C. 4932/2005 & CRL.M. NO.11095/2006

Reserved on 01.05.2007

Date of decision : 28th January , 2008

RAGHUBIR SINGH & ANR.

... Petitioners

Through : Mr. G.S. Narula, Advocate

Vs.

THE STATE & ANR.

... Respondents

Through Mr. V.K. Malik, Advocate for State
Mr. Satinder S. Gulati, Ms. Kamaldeep Kaur,
Advocate for R-2

CORAM:

Mr. Justice S. Ravindra Bhat:

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat:

1. The petitioners in these proceedings, under Section 482 of the Criminal Procedure Code (“the Code”) seek directions to quash orders of the Metropolitan Magistrate, and the Additional Sessions Judge, summoning in complaints alleging commission of offences under Sections 409 and 420, Indian Penal Code (IPC), lodged by the respondent No. 2.

2. It is averred that the first petitioner in 1981 had applied to the Directorate of Industries for allotment of a Flatted Factory to carry on business of manufacturing Sports Goods under the name and style M/s. Akal Sahai and was subsequently allotted the premises bearing No. C-127, Flatted Factory Complex, Okhla Estate, New Delhi. A lease Deed dated. 7th January 1982 was executed between the first petitioner and the Director of the Industries and duly was later registered. Due to medical reasons, Sh. S. Harbhajan Singh started to look after the accounts and business of the first petitioner. Since S. Harbhajan Singh was a Government employee at the relevant time and unable to enter into a Partnership with the petitioner, he inducted his mother Smt. Harwant Kaur, his brother-in-law S. Gurcharan Singh and his friend S. Labh Singh as Partners into the Firm M/s. Akal Sahai, permission for which was granted by the Directorate of Industries on 6th April 1984. Pursuant to this a Partnership Deed dated 16th April 1984 was executed and business was carried out from the aforesaid premises. The first Petitioner, it is averred, however, did not have any intention of transferring, alienating or assigning the lease Hold rights in the premises in favour of the partnership firm and the first Petitioner continued to occupy the premises.

3. Due to the retirement S. Labh Singh from the partnership, the firm was dissolved and a fresh partnership deed was executed between the remaining partners. In March 1986 approval was sought from Directorate of Industries for the reconstitution of the partnership, but the same

has not been given till date.

4. From 1991 to 1994, the first petitioner obtained Cash Credit limits for his firm M/s Akal Sahai Wood Products from Dena Bank, where Sh. Harbhajan Singh stood as Surety/Guarantor. In 1994 the first petitioner inducted his son, the second petitioner into the partnership. To expand business interests, the first petitioner applied to enhance his CC Limits from Rs.1.2 Lakhs to Rs.2.00 lakhs, for which he mortgaged the lease of the said premises along with which he submitted the approval letter dated 6th April 1984 from Directorate of Industries for inclusion of partners and the Evaluation Report and Letters/NOC from partners dated 9th December 1994. The petitioner also avers that for this application for enhancement, Sh. Harbhajan Singh stood as Surety/Guarantor and he also submitted the latter's Salary Certificate, Income Tax Assessment Orders, Letters of Shares etc and a copy of No Objection Certificate submitted by others partners of the other firm M/s Akal Sahai to Dena Bank.

5. Subsequently, disputes arose between the first petitioner and the second Respondent due to which they locked the said premises on 3rd April 1997 with the intervention of police. On April 10th the first petitioner issued legal notice to the second respondent intending to dissolve the partnership deed, followed by a publication in the newspaper on 22nd April. After an exchange of several notices between the parties, Suit No.268/1987 was filed by Smt. Harwant Kaur against the Dena Bank and the first Petitioner No.1 claiming that the lease deed, mortgaged

with the Bank by the first petitioner should be returned without any encumbrances. While disposing of an interim application in the matter the judge held as follows, an appeal against this is still pending:

“... There is nothing to suggest from a bare perusal of the partnership deed that the defendant No.2 (Raghubir Singh) had in fact pooled the disputed “Premises” into the partnership firm or that the factory “Premises” was as an asset of the firm.... Though it has been mentioned in Clause 2 (f) of the lease deed that the lessee shall not subject, sell transfer, assign or otherwise part with the possession of the “premises” without the consent of the lessor. However it is upto the defendant No.1 Bank or the defendant No.2 (Raghubir Singh) who shall be responsible for its effect. However, the lessor is the only competent person to initiate any action in cases of any breach of the said clause...”

The appeal against the above order, it is stated, is pending consideration.

6. Subsequently, the first petitioner filed a suit for declaration and mandatory injunction in this Court, (which was later transferred to the Tis Hazari Court), and is pending decision. The Directorate of Industries in its written statement in that suit averred that as per the record only the first petitioner is the allottee/lessee of the said premises.

7. The Petitioners then received summons from the Court of Sh. Vinod Kumar, MM. Delhi on 23rd January 2003 in respect of a Criminal Complaint under section 409, 418 and 420 filed by the second Respondent for their appearance on 30th July 2003. Thereafter, they filed an application for recalling the summoning orders dated 23rd January 2003, which was dismissed by an order dated 24th November 2003.

8. Against this order of the Metropolitan Magistrate, New Delhi the Petitioners filed a Revision Petition bearing Criminal Revision No.13/04 which was dismissed by an order dated 7th July 2004. It is against this dismissal that the petitioner's have filed the instant petition, under section 482 of the Code of Criminal Procedure, 1973 (hereafter referred to as the "Code"). The petitioner seeks quashing of the aforesaid order and also the criminal complaint.

9. The Petitioners aver, and their counsel submits that Trial Court while passing the impugned order failed to appreciate that the Lease deed for the premises was executed between the Directorate of Industries and the first Petitioner as Lessee, where latter was carrying on his proprietorship concern of M/s. Akal Sahai from the year 1982 till 1984, when he had inducted the second respondent and others as partners. That the new firm did not get any rights in the leasehold property; it enures and subsists in the name of the first petitioner. By placing reliance on the judgments of the Supreme Court in *Kailash Verma v. Punjab State Civil Supplies Corporation*, (2005) JCC 2009 and *Delhi v. Navjot Sandhu alias Afsan Guru*, (2003) 6 SCC 641, the petitioners contend that wherever there is miscarriage of justice and abuse of process, the High Court can under section 482 exercise its inherent jurisdiction to correct the mistake committed by the revisional court.

10. The second respondent contends that the present petition filed purportedly under Section

482 Cr. P.C. is in fact a second revision petition. They submit that the Supreme Court in a number of cases has opined that Section 482 cannot be allowed to be used to circumvent the bar under Sections 397 (3) and 399 (3) of the Code. They place reliance on *Dharam & Ors. Vs. Smt. Ramshri & Ors.*, JT 1993 (1) SC 61, where the Court observed that:

“... Section 397 (3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision petition at the instance of respondent No.1, On this short ground itself, the impugned order of the High Court can be set aside.”

11. Counsel for the second respondent also contended that the inherent powers under Section 482 of the code can be exercised by the High Court only in exceptional circumstances and in rare cases, where the Court finds that permitting the proceeding to continue, or the orders of courts below to remain undisturbed will amount to abuse of the process of the Court and will result in failure of justice; no such case is made out in the present circumstances. In this regard, they rely on the following decisions: *Laxmi Bai Patel Vs. Shyam Kumar Patel*, JT 2002 (3) SC 409; *Deepti Alias Arati Rai Vs. Akhil Rai & Ors.*, 1999 (5) SCC 751; *Krishnan & Anr. Vs. Krishnaveni & Anr.*, JT 1997 (1) SC 657 and *Ganesh Narayan Hegde Vs. S. Bangarappa & ors*, 1995 (4) SCC 41. Further, they submit that by seeking to move this Court against the order of the revisional court, they are in fact challenging the summons order, which they cannot do directly due to the bar under sections 397 and 399. They cite the following observations made by

the Supreme Court in *Jasgir Singh v. Ranbir Singh* (1979) 1 SCC 560:

“In order to cross the hurdle imposed by Section 397(3) it was suggested that the revision application could be treated as an application directed against the order of the Sessions Judge instead of one directed against the order of the Magistrate. We do not think that it is permissible to do so. What may not be done directly cannot be allowed to be done indirectly, that would be an evasion of the statute. It is a well known principle of law that provisions of an Act of Parliament shall not be evaded by shift or contrivance.”

12. Relying upon the *doctrine of merger*, counsel for the second respondent contends that summons order of the Metropolitan Magistrate got merged into the order dismissing the revision application by the Additional Session Judge. It therefore, does not exist independently in the eyes of law and cannot be challenged under section 482. They submit that aforesaid proposition of law is supported by the decision in *Chandi Prasad v. Jagdish Prasad* (2004) 8 SCALE 446, 450, where the Court held as follows:

“23. The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point time.

24. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court.

Therefore, it is submitted that the petitioners must not be allowed to circumvent the law and protract and delay the trial against them.

13. Learned counsel for the second respondent also places reliance on an affidavit submitted by the first petitioner to Dena Bank, where he declared that the leased premises was purchased by him, in stark contrast to whatever the first petitioner has averred before this Court and the revisional court, where he submitted that he is a lessee. This not only amounted to fraud but also was in blatant violation of the lease deed, whereby the first petitioner only secured lease rights and could not create third party interest without informing the lessor. The attention of this Court was drawn to the order of the revisional court, where the Additional Session Judge based his dismissal primarily on the following grounds:

- a) that the indemnity bond executed by all partners at the time of the change of the constitution of the firm showed that they derived interest in the premises as and when the permission for such change in constitution is granted by the Directorate of Industries;
- b) the undertaking in the indemnity bond in the lease deed whereby the premises could not be transferred, possession parted with or encumbered in any manner except with the permission of the lessor, the President of India and
- c) that the mortgage was made for the personal interest of the first petitioner in his firm M/s Akal Sahai Wood Products and not for the benefit of the partnership in

M/s Akal Sahai without disclosing the same to other partners.

14. The opening phrase Section 482 of the Code: “*Nothing in this Code*” is couched in wide terms, enabling the High Court to do full justice and therefore, must not be given a restrictive interpretation. However, because of its width and amplitude the power must be exercised with caution and on the basis of sound principles. The Supreme Court, in *Municipal Corpn. of Delhi v. Ram Kishan Rohtagi*, (1983) 1 SCC 1 held as follows:

*“6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. **If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code.**” (emphasis supplied)*

15. Discussing about the wide inherent power of the High Court under Section 482 of the Code, in *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551 the Supreme Court

approvingly quoted the following observations in *RP Kapur v. State of Punjab*, AIR 1960 SC

886, in relation to inherent powers under section 561-A of the earlier enactment;

“Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

16. First, the objection to maintainability of these proceedings on the applicability of the doctrine of merger. This doctrine is not founded on any principle of constitutional or statutory law, but based on common law principles of observance of hierarchy of courts. Yet, the Supreme Court has noted, in several previous rulings that the doctrine does not have any universal applicability; much would depend on the nature of the jurisdiction and the subject matter in issue. Recently, in *Kunhayammed v. State of Kerala*, AIR 2000 SC 2587. It was held that the doctrine of merger does not enjoy unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability or merger. Having regard to the nature of power and the obligation of this court under Section 482 to secure ends of justice, in terms of well established parameters, it has to be held that the objections as to merger of the trial court's order will not in any manner impinge upon the exercise of power if the facts of this case so warrant.

17. Two of the private respondent-complainants had undeniably filed a suit in the year 1997 alleging that the deposit of title deeds of the lease hold rights with the bank, to secure a loan was not binding upon them and the other partner, S. Gurcharan Singh. In the complaint it was alleged that Accused No. 2 and 3 in connivance with each other unauthorizedly and by misrepresentation, took away the original copy of lease deed from the office of the Directorate of Industries, without the knowledge of other partners and applied to bank for cash credit limit for

their personal benefits/ business and also deposited original lease deed as a collateral security. The facility was obtained from bank for another concern of accused No. 2 and 3 M/s Akal Sahai Wood Product without obtaining “NOC” from the department and other partners of the firm M/s Akal Sahai. The complainants alleged that accused had caused wrongful loss to the government as well as to the other partners of the firm and also misappropriated the property of the firm for personal use and in this regard a civil suit had also been filed.

18. The petitioner’s version is that the original partnership was dissolved, and a fresh firm was created in 1986. Both parties rely on the terms of this new deed. The petitioner also relies on the letter written to the Dena Bank, containing the concurrence of the other partners, for cash credit limits. He avers that from 1991 to 1994, the first petitioner obtained CC limits for his firm M/s Akal Sahai Wood Products from Dena Bank, where Sh. Harbhajan Singh stood as Surety/Guarantor. In 1994 the first petitioner inducted his son, the second petitioner into the partnership. In order to expand business interests, the first petitioner applied to enhance his CC Limits from Rs.1.2 Lakhs to Rs.2.00 lakhs, towards which he mortgaged the lease of the said premises along with which he submitted the approval letter dated 6th April 1984 from Directorate of Industries for inclusion of partners and the Evaluation Report and Letters/NOC from partners dated 9th December 1994. The petitioner also avers that in respect of this application for enhancement, Sh. Harbhajan Singh stood as Surety/Guarantor and that he submitted the latter’s

Salary Certificate, Income Tax Assessment Orders, Letters of Shares etc and a copy of No Objection Certificate submitted by others partners of the other firm M/s Akal Sahai to Dena Bank. The relationship between Harbhajan Singh and Smt. Harbans Kaur has not been specifically denied; what is denied generally is that the averments in the petition are not acceptable in that regard, since Harbhajan Singh is not a party to proceedings before the court.

19. It is apparent from a bare reading of the pleadings and documents that the first petitioner continued to be a lessee of the premises; initially he carried on business as a proprietor. The copy of the lease deed registered in favour of M/s Akal Sahai has been produced. It shows that the petitioner executed the document and signed as lessee. According to the first petitioner, due to illness, he inducted three partners, in 1984, i.e Jawahar Singh Arora; Smt. Harwant Kaur and Shri. Labh Singh. A copy of that partnership deed has been produced. That deed nowhere spells out that the leased premises are to be treated as assets of the firm. The terms also do not anywhere contain a prohibition from the first petitioner's use of the lease, or title deeds. The first partnership was dissolved in 1986 and in its stead, another firm was created where the petitioner and the respondent, as well as Smt. Harwant Kaur were named as partners. The latter executed indemnity bonds, stating that they would not part with their share of the lease; the same was deposited with the Directorate of industries. In the summoning evidence, which has been relied upon, the complainants produced an official witness from the Directorate, who claimed that the

complainant had a share in the lease and therefore, the first petitioner could not have pledged or mortgaged the lease, in terms of its conditions.

20. The records would show that the complainants were aware of the deposit of the title deeds in respect of the lease deed in 1997; a suit was filed. Their complaint is that the first petitioner's actions amount to misappropriation and cheating and thus punishable under Sections 409 and 420 of the IPC.

21. As regards the first offence, ie. Section 409, it criminalizes breach of trust committed by a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent. The reasoning which found favour with the lower courts while summoning the petitioners was that due to the creation of partnership firm, he had interest in the property only to a defined share; applying the general principles of agency in partnership, whereby every partner is deemed to be an agent of the firm, the courts held that the petitioners could be summoned in the proceedings. As a matter of law, besides the fact that the lease hold rights in the first instance were conferred upon the first petitioner, it has been held that unless there are clear indications in the partnership deed to the contrary, partners do not hold property in fiduciary capacity. In *Velji Raghavji Patel –vs- State of Maharastra* AIR 1965 SC 1433 the Supreme Court approved a decision of the Calcutta High Court that before criminal breach of trust is established it must be shown that the person charged has been entrusted with property or with dominion over property

and that a partner does not, in the ordinary course, hold property in a fiduciary capacity. It was further held that there is really no distinct or defined share of a partner in any item belonging to the partnership. Upon the dissolution of the partnership and after an account is taken it may turn out that a partner who retains an asset is entitled to the whole of the asset and may be much more. The Supreme Court held as under:-

"(6) It seems to us that the view taken in Bhuban Mohan Rana's case, ILR (1952) 2 Cal 23 : (AIR 1951 Cal 69 (FB)), by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of S. 405, I.P.C. It is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris, C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties."

22. The facts of this case point to the asset, i.e lease having been acquired by the first respondent; indeed, he signed in that capacity, as sole proprietor. Later, the venture changed its character twice; yet the lease deed was not varied. No doubt, some documents were lodged with

the Directorate signifying change in composition of the firm. Yet in the absence of a clear intention of all partners that the lease would be the property of the firm, in either partnership document, it cannot be inferred that it became the firm's asset, having to be dealt with as such under Section 14 of the Partnership Act; in any case the petitioners were not entrusted with it. Therefore, taken together, the materials do not disclose that the offence punishable under Section 409 IPC was committed.

23. In a luminous judgment reported as *Hridaya Ranjan Prasad Verma –vs- State of Bihar* 2000 (4) SCC 468, the Supreme Court, after analyzing the different *species* of the offence of cheating enacted in Sections 415 to 420, remarked as follows:

*“In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of **cheating** is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his sub-sequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for **cheating** unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of **cheating** it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”*

24. The complainants have nowhere suggested that they were induced by the petitioners' behavior to part with property or induced by them to so behave, when they entered into the

partnership deed in 1986. Indeed, they were inducted as partners by the first petitioner. They sought to raise a dispute that the loan secured by the other firm, Akal Sahai Wood Products, by depositing a lease deed, could not bind them. They were unsuccessful in securing interim injunction; the trial court's order was made as far back as on 18.05.1999. The civil court observed:

“ There is nothing to suggest from a bare perusal of the partnership deed that the defendant No. 2 (Raghubir Singh) had in fact pooled the disputed “premises” into the partnership firm or that the factory “premises” was as an asset of the firm.... ”

The Court further held

“..... though it has been mentioned in Clause 2(f) of the lease deed that the lessee shall not sublet, sell, transfer, assign or otherwise part with the possession of the “premises” without the consent of the lessor. However it is upto the defendant No. 1 Bank or the defendant No. 2(Raghubir Singh) who shall be responsible for its effect. However, the lessor is the only competent person to initiate any action in case of any breach of the said clause...”

The petitioners filed a suit for declaration in 1998; that fact too has not been denied. In this background, the complaint of their having committed offences under Sections 409 and 420, rings hollow. Taken together, the materials relied upon do not disclose the commission of an offence.

25. The power of the High Court to quash criminal complaints and first information reports, to secure ends of justice, has been upheld in several judgments of the Supreme Court. Though the jurisdiction has to be used with circumspection, as long as the facts warrant its exercise, the

court can invoke it to secure ends of justice, which is the paramount consideration. Commenting on the parameters within which this jurisdiction is to be exercised, the Supreme Court in *Indian*

Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 observed thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre , State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides /malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint,

merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

26. In view of the above findings, and after considering the overall conspectus of the case, this court is of the view that the complainant has sought to implicate the petitioners in a civil dispute, which is pending in two separate proceedings. The material averments and the complaints also establish that the conduct of the petitioners do not prima facie constitute any offence; the complaint does not make out the case alleged against the accused. In the circumstances, ends of justice require that the criminal proceedings which led to issuance of the impugned orders, should be quashed.

27. Accordingly, the petition must succeed; it is allowed. Complaint Case No. 54/1 of 1998, titled Gurcharan Singh –vs- Dena Bank and others, so far as it concerns the petitioners, is hereby quashed; the orders of the courts below are consequently set aside. No costs.

Dated : 28th January,2008

(S. RAVINDRA BHAT)
JUDGE