

Court No. - 77

Case :- APPLICATION U/S 482 No. - 22660 of 2024

Applicant :- Mahesh Chandra Joshi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Prateek Kumar

Counsel for Opposite Party :- G.A.,Imtiaz Husain

Hon'ble Manoj Bajaj,J.

1. This application has been filed by applicant under Section 482 of the Code of Criminal Procedure for quashing of Complaint Case No.1572 of 2022 as well as the summoning order dated 20.10.2023 passed by Civil Judge (Junior Division)/ Judicial Magistrate, Hasanpur, Amroha.

2. Briefly the facts leading to the case are that the opposite party no.2 namely Jane Alam brought a complaint No.1572 of 2022 with the allegations that he is engaged in the working of A.C.P. interior exterior room, roof ceiling etc through his firm namely M/s Jane Alam Fabricators. The accused-applicant was impressed with his work, who introduced himself as owner of banquet hall and requested the complainant to do the work for him. The complainant had seen the said banquet hall situated at village- Phalat Nia- Dafaur Road, Bagheshwar and agreed to do work for him. A contract dated 08.07.2021 was reduced in writing through a notary detailing the nature of the work, material and rate etc. and pursuant to the said contract, the complainant executed the job with full dedication, sincerity and the accused being satisfied with the work had also been making payments to the complainant. The entire job was completely finished by the complainant and it was to the satisfaction of the

accused. As per the terms of the written contract, the total cost of the work came out to be Rs.30,07,890/- and against this, only a sum of Rs.24,10,274/- was paid to the complainant. Apart from it, the accused also utilised the complainant's bill book, letter head and got a loan from Canara Bank and a sum of Rs.6,10,275 was credited in the account of the complainant on 06.10.2021, but on the asking of the accused, a sum of Rs.3 Lacs was deposited in the account of Kiran Joshi, daughter of the accused by issuing two cheques bearing no.6295 and 6294, and the last payment of Rs.50,000/- was made on 06.04.2022, so an outstanding of Rs.5,97,616/- was to be cleared by the accused in terms of the contract dated 08.07.2021. Few alterations requested by the accused were also completed on 28.11.2021, and thereafter, the complainant asked for the payment of balance amount as the payments were to be made to labour etc. The accused asked for some more time, and despite repeated requests by complainant, the accused kept on postponing the payment, who finally stopped taking his phone calls. The complainant prayed that the accused turned dishonest and embezzled his amount of Rs.5,97,616/-, and prayed for summoning him for prosecution and punishment.

3. In support of the complaint, the statement of the complainant was recorded under Section 200 Cr.P.C. as CW-1, whereas Mohd. Subahaan s/o Shahzad Hussain was examined under Section 202 Cr.P.C. Vide order dated 23.05.2023, the trial court called for a police report from the concerned SHO under Section 202 Cr.P.C. and after receiving the said report, the accused was summoned vide order dated 20.10.2023 for the alleged commission of offence punishable under Section 406 IPC.

4. The application under Section 245(2) Cr.P.C. was filed by the accused who prayed for his discharge, and vide order dated 07.06.2024, the said application was dismissed by the Judicial

Magistrate, Hasanpur, Amroha. Hence, this application.

5. Learned counsel for the applicant has argued that the complainant has falsely implicated the applicant in the above mentioned case and admittedly against total outstanding of Rs.30 lacs, only a sum of nearly Rs.6 lacs is outstanding and since the complainant had not completed the work, therefore, the said payment was not made. Learned counsel has further argued that in case the complainant completes the work, the accused would make the remaining payment also. Learned counsel submits that the trial court has mechanically passed the summoning order without analysing the allegations contained in the complaint as well as evidence on record as the material on record does not even make out a *prima facie* commission of offence punishable under Section 406 IPC. He further submits that the dispute otherwise between the parties is of a civil nature and no offence as alleged by the complainant is made out, even if, the entire case of the complainant is taken to be true on its face value. He submits that though an application for discharge was moved before the Magistrate, but the same has wrongly been dismissed on the ground that as the pre-charge evidence has not been recorded under Section 244 Cr.P.C., therefore, the accused cannot be discharged. Learned counsel argued that Section 245(2) Cr.P.C. clearly lays down that the Magistrate can discharge the accused even at any previous stage also, who further contends that the impugned complaint is an abuse of process of law, therefore, the proceedings arising out of it be quashed, in the interest of justice.

6. The prayer is opposed by the learned counsel for the complainant who has argued that the complainant had completed the entire job work as per the written contract dated 08.07.2021 and the work done by the complainant was further to the satisfaction of the accused, who has already made the payment of approximately Rs.24 Lacs. Learned

counsel has argued that in absence of any particulars of the left out work, withholding of payment of Rs.6 Lacs, is nothing but dishonest intention of the accused, and it *prima facie* amounts to criminal breach of trust. He submits that the evidence adduced by the complainant before the trial court is carefully examined by the trial court and finding a *prima facie* commission of offence, the accused has been summoned for alleged commission of offence punishable under Section 406 IPC. According to the learned counsel at this stage, the trial court is not required to satisfy itself that whether the case would certainly end in conviction of the accused, therefore, the summoning order dated 20.10.2023 and the entire proceedings arising out of the impugned complaint do not call for interference by this Court in exercise of inherent powers under Section 482 Cr.P.C. He prays that the application be dismissed.

7. After hearing learned counsel for the parties and considering their submissions, this Court finds that the entire dispute revolves around commercial transaction between the parties and the grievance of the complainant relates to non payment of Rs.5,97,616/- i.e. outstanding amount for the work done by him for the accused. As far as the facts are concerned, there is no conflict between the parties and even the accused-applicant has also specifically pleaded in the application that he is ready and willing to make the balance payment, in case the complainant completes the job work as per the written contract dated 08.07.2021.

8. Thus, in this background, the sole question which falls for determination by this Court is: Whether the facts and circumstances of the case make out a case for prosecution of accused for commission of offence punishable under Section 406 IPC, or is it only a civil dispute between the parties?

9. Here, it becomes necessary to analyse the definition of criminal breach of trust enshrined in Section 405 IPC and the same reads as under:

405. Criminal breach of trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

10. A reading of the above makes it abundantly clear that to constitute an offence of criminal breach of trust, the essential ingredients are "Entrustment of property" to the accused and "Dishonest use of the same" by him. A perusal of the complaint filed by the opposite party no.2 would show that these ingredients of "entrustment" and "dishonest use" are missing in the complaint, as only a job work was given to the complainant and against the work done by him the payment of approximately Rs.24 Lacs has already been made by the accused. Apparently, the dispute between the parties is purely of civil nature and no offence as alleged by the complainant would be made out against the accused.

11. At this juncture, reliance can be placed upon the decision of the Hon'ble Apex Court in ***Paramjeet Batra v. State of Uttarakhand and others***, passed in ***Criminal Appeal No. 2069 of 2012***, wherein while examining a similar issue in the context of exercise of inherent powers under Section 482 Cr.P.C. The Hon'ble Apex Court made the following observations:-

"7. 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 criminal proceedings to prevent abuse of process of court."

12. In **Vesa Holdings Pvt. Ltd. and another vs. State of Kerala & Ors reported in 2015 (8) SCC 293**, the Hon'ble Supreme Court examined the abuse of process of law in the context of civil disputes between the parties and made the following observations:-

"9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."

13. Further, a close examination of the impugned summoning order dated 20.10.2023 would indicate that the trial court has not carefully examined the contents of the complaint as well as the statement of complainant recorded under Section 200 Cr.P.C., which only reflects alleged breach of promise by the applicant. Most importantly, in absence of any entrustment of any property etc. in favour of the accused, no case for prosecution under Section 406 IPC would be made out, therefore, the impugned summoning order calls for interference by this Court in exercise of inherent powers under Section

14. The Hon'ble Apex Court in ***State of Haryana and others v. Ch. Bhajan Lal and others, 1991(1) RCR (Criminal) 383 : 1992 Supp(1) Supreme Court Cases 335***, had laid down the principles and guidelines for exercise of inherent powers under Section 482 Cr.P.C. The relevant portion of the judgment is reproduced below :-

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C., 1973 can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. As a result of the above discussion, the Complaint Case No.1572 of 2022 (Jane Alam v. Mahesh Chandra Joshi) under Section 406 IPC, Police Station Hasanpur, District- Amroha, the summoning order dated 20.10.2023 as well as the entire proceedings arising therefrom, pending in the Court of Civil Judge (J.D.)/ Judicial Magistrate, Hasanpur, Amroha, are ordered to be quashed.

16. The application is **allowed**.

Order Date :- 7.4.2025

P Kesari