

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12099 of 2007

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1. Kanodia Developers Pvt.Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its office situated at Pushpanjali Complex, Boring Road, PS. S.K. Puri, Distt-Patna through one of its Directors, Sri Anand Kanodia son of Late Indra Kumar Kanodia, Resident of Pushpanjali Plaza, Basant Vihar Colony, Boring Road, PS. Shree Krishna Puri, Distt-Patna.

2. Sri Anand Kanodia, son of Late Indra Kumar Kanodia, Resident of Pushpanjali Plaza, Basant Vihar Colony, Boring Road, PS. Shree Krishna Puri, Distt-Patna.

.... Petitioner/s

Versus

1. State of Bihar

2. Shri Abir Sinha, s/o Late Sabita Ranjan Sinha, R/O Flat No.2201, 2nd Floor, Sheela Residency, Bashundeo Lane, East Boring Canal Road, PS. Buddha Colony, Distt- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. S.D.Sanjay, Sr.Advocate
	Mr. Suraj Samdarshi, Advocate
For the State :	Mr. Ansarul Haque, APP
For O.P. No.2 :	None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 01-09-2015

From the successive order-sheets, it is apparent that perceiving the dispute amongst the parties to be contractual one, O.P. No.2 was noticed, whose appearance though was secured during admission stage having by way of counter affidavit (Flag A), but became absent since thereafter and further, it also transpires that on a disclosure that Request Case No. 61/2007 (Arbitration proceeding) was going on, therefore, parties were directed to avail the aforesaid opportunity in order to come to a logical end which is found lingering on account of non co-operation of O.P. No.2/complainant by way of their absence and thus, vide order dated 21.01.2014, instant petition

has been admitted. Again O.P. No.2/complainant has been noticed on the score of hearing even then, O.P. No.2 failed to appear and on account thereof, considering the matter pending since 2007, it has been heard.

2. It is also apparent from the record that initially, petition was filed by Kanodia Developers Private Limited as petitioner no.1 as well as Indra Kumar Kanodia, petitioner no.2 exposing himself to be Managing Director of petitioner no.1. During pendency of instant petition, Indra Kumar Kanodia died and on account thereof, I.A. No. 1870/2013 has been filed by one Anand Kanodia to permit him to pursue with the instant petition as a Director of the Company after death of Indra Kumar Kanodia, petitioner no.2 which had been allowed vide order dated 06.01.2014.

3. Petitioners have prayed for quashing of order dated 23.12.2006 passed by Sri Prem Chand Anal, Judicial Magistrate-1st Class, Patna by which, the learned Magistrate took cognizance for an offence punishable under Sections-403 and 418 IPC summoning the petitioners including other to face trial in Complaint Case No. 2918 (C)/2006.

4. The brief facts of the case as is evident from complaint petition (Annexure-1) filed by O.P. No.2 gave vivid picturisation of event, however, the gist is that, in between the parties there was a



contract for construction of multi-story building over 11 Katthas 5 Dhurs of land located at Sri Khrishna Puri, Patna which belong to complainant/OP. No.2 and his family members whereunder O.P. No.2/Complainant and his family members were entitled for 46% while 54% was allotted to the builder, petitioners/accused and for that an agreement was executed on 18.02.2001 wherein period of completion was specified as 3 and ½ years from the date of sanction from PRDA with further Clause of grant of grace period. It has also been disclosed that complainant had borrowed Rs. 15 Lakhs from the petitioners/accused which, in his view was a friendly loan but, accused clutched the aforesaid amount with 18% loan interest. It has also been disclosed that as the complainant's wife developed cancer, on account thereof, the complainant took further loan of Rs. 8,40,000/- over which, again accused persons are demanding 18% of interest. It is further disclosed that in spite of having specific averment regarding completion of construction work and handing over possession within stipulated period of 3 and ½ years from the date of sanction of PRDA, no construction was completed during intervening period. Even though, the accused persons disclosed that building is complete and so possession be taken, the same was not found according to their choice as well as the accused persons also advanced demand against electric fittings. It has also been averred that



accused persons in contravention of terms of agreement whereunder the flats were duly identified to be handed over to the complainant and his sister and others, they did not hand over rather some of the flats have illegally been retained by the builders. On account thereof, there happens to be breach of trust at the end of accused, who as per agreement was agent for the purpose of construction of house. It has further been submitted that during the intervening period accused persons have created forged document to defeat interest of complainant and his family members.

5. On the basis of aforesaid complaint, the learned Chief Judicial Magistrate, Patna transferred the same under Section 192(2) Cr.P.C. for making an enquiry which was accordingly, conducted, concluded, ultimately summoning the petitioners and other to face trial for an offence punishable under Sections 403, 418 IPC. As a result of which, the instant petition has been filed.

6. It has been submitted on behalf of the petitioner that from perusal of the averment made in complaint petition itself speaks that it is out and out a contractual dispute and to illustrate the same, it has been submitted that there happens to be an admission on the part of the complainant that they took loan from the petitioners on two occasions, 15 Lakhs as well as 8.40 Lakhs. It is also apparent therefrom that in spite of having disclosure with regard thereto as well

as the aforesaid advancement was repayable along with interest having its incorporation in the deed of agreement, it was construed at his level only for making out a case that he thought of it being a friendly loan.

7. It has also been submitted that from deed of agreement Annexure-2 (Clause-35) shows presence of arbitrator in case there happens to be any kind of dispute having arisen amongst the parties and on account thereof, Request Case No. 61/2007 was already pending whereunder the Complainant/O.P. No.2 became absent during midst of proceeding like the present one.

8. It has also been submitted that it has not been averred by the complainant that they have not been able to retain 46% as per terms of agreement rather the dispute happens to be with regard to payment which admittedly borrowed from the petitioners as well as with regard to the expenses which incurred during installation of electrification. On account thereof, none of the Section, whereunder cognizance has been taken, is found applicable.

9. On the other hand, learned APP submitted that even if the transaction amongst the parties contains the colour of civil cause, that would not be sufficient to quash the order of cognizance. That being so, the order of cognizance should not be interfered with.

10. In the case of *Rajib Ranjan v. R. Vijaykumar* as

reported in (2015) 1 SCC 513, the controversial issue, that means to say, permitting the criminal prosecution in the background of dispute giving fragrance of civil cause also coupled with power of the High Court in terms of Section 482 Cr.P.C. has been taken into consideration in detail and has been held as follows:-

23. In *State of Haryana v. Bhajan Lal* (1992 Supp(1) SCC 335), this Court has laid down principles on which the court can quash the criminal proceedings under Section 482 CrPC. These are as follows: (SCC pp. 378-79, para 102)

“(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 a 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act

concerned, providing efficacious redress for the grievance of the 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.”

Principles 6 and 7 are clearly applicable in the present case.

24. Having regard to the circumstances narrated and explained above, we are also of the view that an attempt is made by the respondent to convert a case with civil nature into a criminal prosecution. In a case like this, the High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in *Indian Oil Corpn. v. NEPC India Ltd.* (2006) SCC 736, wherein the Court adversely commented upon this very tendency of filing the criminal complaints even in cases relating to commercial transaction for which civil remedy is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of: (SCC pp. 748-49, paras 13-14)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(200)2SCC636] this Court observed: (SCC p. 643, para 8)

‘8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the

basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.’

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

25. In *Inder Mohan Goswami v. State of Uttaranchal* [(2007) 12 SCC 1] the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words: (SCC pp. 10-11 & 16, paras 23-25 & 46)

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court; and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions*[1964 AC 1254], Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *Director of Public Prosecutions v. Humphrys*[1977 AC 1] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

11. In the background of aforesaid settled principle as laid down by Hon'ble the Apex Court as referred above, there has been deep, minute consideration of the facts enumerated under the complaint petition along with the statement (SA) as well as statement of sister of complainant along with fact of pendency of Request Case

No. 61/2007, the contents thereof, as well as factual aspect disclosed under counter affidavit (flag A), speak about the civil cause instead of criminal prosecution and that being so, the order impugned relating to petitioners is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
September 1st 2015
Perwez/AFR

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