

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 726 of 2015

Sunil Kumar Arora S/o Shri Kishanlal Arora Aged About 52 Years
R/o Gurunank Nagar, On The Way Towards Malviya Nagar, Durg,
Tah. And District Durg Chhattisgarh.

---- Petitioner

Versus

1. Sanjay Shrivastava S/o Shri Krishna Bahadur Shrivastava Aged
About 40 Years R/o G-4, Adarsh Nagar, Durg, Tah. And District
Durg Chhattisgarh.
2. State Of Chhattisgarh Through The District Magistrate, Durg
Chhattisgarh.

---- Respondents

For Petitioner – Shri Shikhar Sharma, Advocate.
For Respondent/State – Smt. M. Asha, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

20/08/2015

1. Challenge in this petition is to the order dated 16/06/2015 passed by the Fifth Additional Sessions Judge, Durg in Criminal Revision No.0000029/2015 whereby the order dated 25/01/2014 passed by the Judicial Magistrate First Class, Durg in Complaint Case No.696/2014 has been affirmed.
2. Learned counsel for the petitioner submits that petitioner owns a land bearing khasra No.289/2. It is further submitted that complaint was filed wherein it was alleged that said land was purchased by the complainant/respondent. It was stated by the complainant that petitioner made an application to the Tehsildar for issuance of rin pustika in respect of the said land with copy of the police report of 16/11/2010 wherein it was stated that rin pustika in respect of the same land was missing. It was

stated in the complaint when complainant knew about such fact an objection was made before Tehsildar. Subsequently, when such objection was made before Tehsildar by the complainant as a counter blast to it, report was made by the petitioner on 3/02/2011 to the police that the complainant has stolen the rin pustika and other documents from the car of the petitioner, therefore police started investigation. Learned counsel for the petitioner submits that presence of rin pustika with the respondent would itself show that document have been taken without lawful authority by the respondent. Consequently, report which was made on 3/02/2011 was correct. He therefore submits that complaint case which is filed against the petitioner is completely fabricated and do not make out a case for registration of complaint. Consequently, it be quashed at the threshold.

3. I have gone through the order of the revisional court. Order purports that when petitioner filed an application to obtain the rin pustika it was objected by the complainant wherein a report was made on 3/02/2011 that the complainant has stolen the rin pustika and other documents from the car of the petitioner. Consequent to such report, on 4/02/2011 police personnel came to the house of the complainant and enquired about the fact as to whether he has stolen the documents and complainant was summoned to appear on 6/02/2011 at 10.30 at City Kotwali Durg. Order records that because of such summon and false report complainant felt humiliated and as such subsequently on enquiry it was found that rin pustika and other documents were not stolen.

4. Perusal of the order of the revisional court would show that revisional court while adjudicating the case has taken into note that complainant was summoned on 4/02/2011 from City Kotwali, Durg. Also it records the fact that police after investigation found that said report made

by the petitioner was false. On due consideration of the order, prima facie it appears that Judicial Magistrate First Class after examining the documents came to a finding that false averments were made by the petitioner so that it resulted into registration of the complaint. Complaint is at the initial stage.

5. Hon'ble Supreme Court has laid down the guidelines to exercise power under section 482 of Cr.P.C. and it is observed that power should be exercised sparingly, with circumspection and not on the mere asking, depending upon facts and circumstances of each case- Mini trial or roving inquiry not contemplated. Said proposition was laid down in case law reported in **(2015) 1 SCC 103** in between **Gunmala Sales Private Limited and others Vs. Navkar Promoters Private Limited and others**.

6. Further Hon'ble Supreme in a case reported in **(2014) 12 SCC 556** in between **Homi Rajvansh Vs. State of Maharashtra and others** has held at para 19 that inherent powers under Section 482 of the Code are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court.

7. Hon'ble Supreme Court in the case of **Homi Rajvansh** (supra) in para 16 and 19 has held as under:-

“16. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint prima facie make out a case or not and the Court is not to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial.”

“19. Though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. This Court, time and again, has observed that extraordinary power should be exercised

sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice.”

8. Hon'ble Supreme Court further in case law reported in **(2014) 10 SCC 663** in between **Binod Kumar and others Vs. State of Bihar and another** at para 10 has laid down the principles which are reproduced herein below:-

“10. In *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736, this Court has summarised the principles relating to exercise of jurisdiction under Section 482 CrPC to quash complaints and criminal proceedings as under: (SCC pp. 747-48, para 12)

“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* (1988) 1 SCC 692, *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194, *CBI v. Duncans Agro Industries Ltd.* (1996) 5 SCC 591, *State of Bihar v. Rajendra Agrawalla* (1996) 8 SCC 164, *Rajesh Bajaj v. State (NCT of Delhi)* (1999) 3 SCC 259, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* (2000) 3 SCC 269, *Hridaya Ranjan Prasad Verma v. State of Bihar* (2000) 4 SCC 168, *M. Krishnan v. Vijay Singh* (2001) 8 SCC 645 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122. 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.”

9. Therefore, by application of such principles in the instant case only on the basis of the statement made by the petitioner it cannot be stated that both the court below have wrongly exercised jurisdiction. Prima facie it appears there is no fault can be attributed for exercise of jurisdiction by both the court below and it can not be held that both the courts have exceeded its jurisdiction vested in it by law.

10. Consequently, no case is made out to invoke extra ordinary power of this court to quash registration of complaint. In a result, petition is dismissed at the admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE