

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.19079 of 2012

and

M.P.No.1 of 2012

1.Durai Gunasekaran
2.V.P.R. Elamparithi

... Petitioners/Accused 6 & 7

Vs.

1.Inspector of Police,
Central Crime Branch,
Team XVII, Egmore,
Chennai - 600 008.

2.D.L.Raja ... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.359 of 2012, on the file of the Inspector of Police, Central Crime Branch, Team XVII, Egmore, Chennai- 600 008 and quash the same.

For Petitioners : M/s.UM. Ravichandran

For Respondents : Mr.P.Govindarajan (for R1)
Additional Public Prosecutor
Mr.Ramesh Kumar Chopra (for R2)

JUDGMENT

This petition seeks to call for the records in Crime No.359 of 2012 on the file of the Inspector of Police, Central Crime Branch, Team XVII, Egmore, Chennai and to quash the same.

2.The case is one wherein the petitioners herein are alleged to have committed the offences under Sections 420, 448, 465, 467, 468, 471 r/w. 465 and 120(B) of IPC.

3.The brief facts of the petitioners' case:

The 2nd respondent, who is the defacto complainant namely D.L.Raja has filed a complaint in C.M.P.No.3670 of 2012 before the learned XI Metropolitan Magistrate, Saidapet, Chennai against the petitioners herein and 8 others for the alleged offence under Sections 120(B), 420, 448, 465, 467, 468, 471

read with 34 of IPC. The above complaint was forwarded to the 1st respondent police. The said complaint was registered on 05.07.2012 for the alleged offences under Sections 420, 448, 465, 467, 468, 471 read with 465, 120(B) of IPC against ten persons.

4. In the above complaint, the first petitioner herein was arrayed as A6 and the second petitioner herein was arrayed as A7. During the argument, the petitioners' counsel restricts the prayer in the above Crl.O.P. in so far as these petitioners are concerned to quash the Crime No.359 of 2012 on the file of the 1st respondent. At the time of advancement of argument, the following points were raised by the petitioners counsel:

- (i) there is no prima facie case made out against the petitioners.
- (ii) the complaint amounts to abuse of process of court.
- (iii) no offence is made out against the petitioners as allegedly stated by the 2nd respondent / defacto complainant.

5. The first ground urged by the counsel for the petitioners is that they were permitted by Dr.D.L.Ramachandra Rao to occupy as tenants in one of the portions situated at No. 147, Santhome High Road, M.R.C. Nagar, Chennai-600 028 since July 2008. After four years the said Dr.D.L.Ramachandra Rao was died intestate as a bachelor. After the death of Dr.D.L.Ramachandra Rao, there are nearly about 10 persons have claimed ownership over the said property. Among the above said persons, the 2nd respondent/defacto complainant was one among them to claim the said property. The 2nd respondent/defacto complainant has admitted in his counter in para 7 that the said fact is true that several persons are claiming right over the property. While so, no offence was made out in the FIR as against these petitioners. Therefore the first respondent has no authority to investigate on the said complaint. As per the Constitution Bench of the Hon'ble Supreme Court of India in Lalitha Kumari Vs. Government of Uttar Pradesh & others, it was held in para 111 that ...

"i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint,

a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
 - b) Commercial offences
 - c) Medical negligence cases
 - d) Corruption cases
 - e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.
- The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

From the above dictum of the Supreme Court, it is very clear if the information discloses a cognizable offence then only the first respondent has the power to register the FIR and commence the investigation in the said complaint.

6. As per the dictum laid down by the Hon'ble Supreme Court is the need of this Court to analyze whether the present complaint constitute any of the offence as against the present

petitioners. The relevant portion of the complaint made in para 9 in respect of the petitioners herein is extracted hereunder:

"... reliably learns that the first accused has also entered into similar agreement with the other accused from fifth to ninth accused ..."

As per extracted portion of the said complaint, no offence is made out as against the said petitioners. The Hon'ble Supreme Court held in Ram Biraji Devi and another Vs. Umesh Kumar Singh and another, reported in AIR 2006 SC 2035 that when a complaint does not make out prima facie case and the complaint moreover makes out civil liability then the Criminal complaint is not maintainable. It was held in para 10, 11 and 12 that ...

"10. ... The averments of the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability inter se the parties and no criminal liability can be attributed to the appellants on the basis of the material on record. In Trisuns Chemical Industry's case (supra), relied upon by the complainant, this Court held as under:

"Quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions. Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases."

11. There cannot be any disagreement to the well-settled proposition of law that the High Court should exercise its inherent powers in extreme exceptions to quash an FIR or a complaint. The ratio as laid down in Trisuns Chemical Industry's case (supra) is of no help and assistance to the complainant in the facts and circumstances of the present case. The complaint instituted does not disclose that an offence under Section 420 is made out. Cognizance taken by the Magistrate thereon against the appellants for offences u/Ss. 406, 419, 420 and 120-B IPC are clearly an abuse of the process of court and interference by this Court is expedient in the interest of justice. This is a case of extreme exception where the High Court ought to have

exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate impugned before it by the appellants.

12. For the aforementioned reasons, we quash the impugned order of the High Court of Judicature at Patna dated 13.01.2005 passed in Criminal Misc. No.11930 of 2004. Consequently, the complaint filed by the Complainant and subsequent order dated 8.8.2003 of the Judicial Magistrate, Gaya, in Complaint Case No.298 of 2003 T.R. 808/03 whereby and whereunder cognizance of offence under Sections 406, 419, 420, 120-B, IPC has been taken against the appellants and summons have been ordered to be issued against them for facing trial for the above-said offences shall also stand quashed."

The Hon'ble High Court of Calcutta has held in G. Sagar Suri & another Vs. State of U.P. & others reported in (2000) 2 SCC 636 by order dated 19.09.2016 it was held in para 10, 11 and 12 that ...

"... I have considered the materials on record. Prima facie, there are allegations of dishonest representation to induce an innocent student to part with money on the false promise of admission to a private medical college. This allegation, prima facie, disclose the ingredients of the offence. The delay, if any, in the registration of FIR is a question of fact which may be investigated in the course of investigation. However, in the face of the aforesaid allegations, registration of FIR and continuation of impugned investigation cannot be said to be without jurisdiction.

Coming to the issue of institution of prior prosecution under Section 138 of the Code of Criminal Procedure and the ratio in G. Sagar Suri & Anr. (Supra), I am of the opinion that if the facts of a case disclose ingredients of several offences, there is no bar in institution of FIR/prosecution in respect of said offences. In G. Sagar Suri & Anr. (Supra), the allegations, inter alia, related to advancement of a loan to a company and the ingredients of initial deception were absent. Lack bona fide of the complainant was further evident because he did not join the offences of cheating with the prosecution for dishonour of cheque.

The factual matrix of the instant case, as noted aforesaid, is entirely different as it exposes initial deception and dishonesty in inducing a student to part with money on the false promise of admission to a medical college.

Hence, on the basis of uncontroverted allegations disclosing ingredients of the offence of cheating, I am unwilling to stall the impugned prosecution and the ratio

in G. Sagar Suri & Anr. is clearly distinguishable on facts.

I, however, make it clear that all issues including bona fides of the de-facto complainant may be looked into in the course of ensuing investigation and in the event such investigation results in filing of police report against the petitioner, it shall be open to him to agitate all his defences before the trial court, if so advised.

With the aforesaid observations, the revision petition is disposed of. Photostat certified copy of this order, if applied for, be given to the petitioner on usual undertaking."

7. The Hon'ble Supreme Court has held in Anil Ritolla @ A.K. Ritolia Vs. State of Bihar & Anr, it was held in para 8, 9, 10, 11 and 12 that

"8. ... Section 23, 24 & 415 of the Indian Penal Code read as under: Section 23 - Wrongful gain "Wrongful gain" is gain by unlawful means of property which the person gaining is not legally entitled.

"Wrongful loss".--"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.--A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Section 24 - Dishonestly Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 415-Cheating Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation: A dishonest concealment of facts is a deception within the meaning of this section."

9. Ingredients of Section 420 of the Indian Penal Code are as under:

i) Deception of any person;
ii) Fraudulently or dishonestly inducing any person to deliver any property; or
iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
10. The transactions between the parties were for supply of goods. Admittedly, _____ and except supply of Form IX-C other terms and conditions of the contract had been complied with by them. Per se, supply or non-supply of Form IX-C of the Bihar Sales Tax Rules had nothing to do with the transactions for which the parties had entered into a contract. Non-issuance of the said form ex-facie cannot give rise to commission of any offence. If the appellant or their principal were obligated to act under a statute and failed to perform their duties as indicated hereinbefore, as the statute itself provides for a remedy, ordinarily the same is required to be taken recourse to. In any event, the second Respondent could have filed a suit for damages.

There cannot be any doubt or dispute whatsoever that an offence can be committed even if the parties had entered into a commercial transaction. In *Rajesh Bajaj* (supra) this Court held so. But it is equally well settled that the allegations contained in the complaint petition must, prima facie, show inducement of the victim by the accused by making a representation. In a case of this nature, we are of the opinion that no case has been made out to form an opinion that the appellant had the requisite intention.

11. The question came up for consideration before this Court recently in *Indian Oil Corporation Vs. NEPC Indian Ltd. & Ors.* [(2006) 6 SCC 736] wherein, upon consideration of a large number of decisions, it was held:
"The essential ingredients of the offence of "cheating" are:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

It is not a case where the appellants can be said to have induced the respondent to enter into a transaction so as to deceive them with a view to cause unlawful losses to them and to make unlawful gain for themselves.

12. For the reasons aforementioned, in our opinion, the High Court has committed an error in not interfering with the order of the learned Magistrate taking cognizance of the offence. The impugned judgment cannot be sustained. It is set aside accordingly."

8. It is pertinent to note that the fraudulent or dishonest intention is shown right at the beginning of the transaction is a necessary ingredients to constitute an offence under Section 420 of I.P.C. for attracting the offence under Section 420 of IPC, it has to be established that he has not only cheated someone but also that by doing so he has dishonestly induced the person who was so cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he done so with the intention of causing wrongful gain to one person or wrongful loss to another person. As per the present case, there is no such inducement by the petitioners and there is no conversion of any other property for their own use which is an important ingredient to attract an offence under Section 420 of IPC.

9. Let us analyze whether the offence under Section 448 of IPC shall be attracted or not. It has to be established that the petitioners have entered into possession over the premises with the intent to commit an offence. When the petitioners were residing from the year 2008, the present complaint was given by the defacto complainant as if the petitioners herein are trespassers in the property is not sustainable in the eye of law and further the defacto complainant filed a petition in R.C.O.P.No.396 of 2014 on the file of the XI Small Causes Court, Chennai claiming rent from them as if the 1st petitioner was a tenant under the said Late.Dr.D.L.Ramachandra Rao. The meaning of criminal trespasser is not made out. The allegation in the complaint does not disclose an offence to be attracted under Section 448 of IPC.

10. As far as the other offence mentioned in the FIR in respect of forgery, all the other offences under Sections 465, 467, 468 and 471 of IPC are in respect of forgery. The above said all the offences making a false document in respect of the property intended to cause danger or injury to any person or support any claim or little or to cause any person to part with a property or enter into express or implied contract or with an intent to commit a fraud. The petitioners herein had never made any document or forged any records with intent to defraud any of them including the second respondent. So the offence under the above said section 465, 467, 468 and 471 is not made out as against the petitioners.

11. From the above said discussions it is very clear that no criminal act has been done by the petitioners, so the offence under Section 120(B) is not attracted because the petitioners have not conspired to commit any criminal offence.

Therefore the offence under Section 120(B) cannot be attracted against the petitioners.

12.The offences alleged in the F.I.R. lodged against the petitioners are not made out. It is clear that the respondent has abused the process of law by lodging an FIR against the petitioners for the alleged offence, since the dispute between these petitioners and the 2nd respondent is of a civil in nature and for which instead of approaching the Civil Court, the respondent has abused the process of law by lodging a criminal complaint against the petitioners.

The Hon'ble Supreme Court has held in Trilok Singh and others Vs. Satya Deo Tripathi, reported in AIR 1979 SC 850 that the proceedings initiated was clearly an abuse of the process of the Court. It was not a case where any process ought to have been directed to be issued against the accused (Appellants); It was held in para 5 that

"5. ... We are clear of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law if was very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. ...

6. In our opinion on the facts and in the circumstances of this case the criminal prosecution deserves to be quashed."

13.On the well settled principles of law, it is a very clear case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct.

The Hon'ble Supreme Court has held in D.P.Gulati, Manager Accounts M/s. JetkingInfotrainVs. State of Uttar Pradesh and another, reported in 2015 Cri. L.J. 4886, it was held in para 8, 9 and 10 that

"8. ... It is no doubt true that the courts have to be very careful while exercising the power under Section 482 CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold.

In Rishipal Singh (supra), the complainant, who was an accused in connection with an offence punishable under Section 138 of the Act, had filed a criminal complaint

relating to offences punishable under Sections 34, 379, 411, 417, 418, 467, 468, 471 and 477 of IPC.

"9. ... In view of above position of law, and having regard to the facts and circumstances of the case in hand, and after going through the criminal complaint filed against respondent No. 1 and thereafter, one filed by him against the appellant, we are of the view that it is a clear case of abuse of process of law on the part of the respondent No. 1.

10....Therefore, we are of the opinion that this appeal deserves to be allowed. Accordingly, the same is allowed. ..."

14.The Hon'ble Supreme Court has held in Mohammed Ibrahim and others Vs. State of Bihar and another, reported in 2009 (8) SCC 751 that Criminal Courts should ensure that criminal proceedings are not misused for settling scores or pressurizing parties to settle civil disputes. It was held in para 8 that ...

"8. ... The Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

The Hon'ble Supreme Court has held in Devendra and others Vs. State of Uttar Pradesh and another, reported in 2009 (7) SCC 495 that a wrong committed on the part of a person may be civil wrong (para 27)

"27. ...Mr. Das submits that a wrong committed on the part of a person may be a civil wrong or a criminal wrong although an act of omission or commission on the part of a person may give rise to both civil action and criminal action. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

The Hon'ble High Court of Madras has held in Mr. SrinathRajamVs. Mr. Krishna Kumar Sood by order dated 11.02.2016 it was held in in para 3 and 6 ...

"3. ... Learned counsel for the petitioner submitted that during September 2008, the respondent/ landlord has given a complaint to the Inspector of Police, Ambattur, on the ground that the petitioner has committed an offence under Sections 406, 409 and 420 of IPC. He further submitted that the entire transaction is of civil in nature and that for his grievance, he should have worked out his remedy before the Civil Court and invoking criminal jurisdiction is only to bring the tenant to the premises of the landlord."

"6. ... As the dispute is of civil in nature, I find that the remedy available is only before the Civil Court and the prayer sought, by the petitioner is to be accepted and therefore the proceedings in C.C. No.439 of 2008 pending on the file of Judicial Magistrate, Ambattur, Chennai, is quashed. It is made clear that this order will not preclude the respondent from initiating any further proceedings, in accordance with law, in order to recover any amount, if any, payable by the petitioner or any of the sub tenants under the petitioner."

15.The Court of Allahabad held in Lourenco D" Souza Vs. State of U.P. and another by order dated 06.10.2016, it was held in para 13 that ...

"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 Vs. State of U.P. (2000) 2 SCC 636 the Hon'ble Supreme Court observed:

"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."

The Hon'ble Apex Court in a number of cases has laid down the scope and ambit of court's powers under Section 482 Cr.P.C.

In R.P. Kapur Vs. State of Punjab; AIR 1960 SC 866, this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In State of Haryana Vs. Bhajan Lal; 1992 Supp. (1) SCC 335, the Hon'ble Apex Court in the backdrop of interpretation of various relevant provisions of the Cr. P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to 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 156 (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 156 (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 a specific provision in the code or the concerned Act, 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.

Considering the facts and circumstances of the present case, this Court is of the considered view that the allegations in the F.I.R., even after taking on their face value and accepted in their entirety do not constitute the offence as alleged and the criminal proceedings lodged by opposite party no. 2 appears to be manifestly malafide and malicious, the dispute being purely of civil nature are liable to be quashed.

Accordingly the application is allowed. The summoning order dated 01.05.2012 passed by Chief Judicial Magistrate, Gautam Budh Nagar in Criminal Case No.3921 of 2012 (State of U.P. Vs. Lourenco D' Souza) under Sections 420, 406, 504 and 506 of IPC, Police Station Sector 58 Noida, District Gautam Budh Nagar arising out of Case Crime No.1085 of 2011 and the entire proceedings of the aforesaid criminal case are hereby quashed."

In a recent judgment of the Hon'ble Supreme Court of India held in Vineet Kumar and others Vs. State of U.P. and others, reported in 2017 (3) CTC 751, it was held in paragraphs 20, 21 and 39 that

20. ... Before we enter into the facts of the present case it is necessary to consider the ambit and scope of

jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

21. This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In paragraph 7 of the judgment following has been stated:

7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courts inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana vs. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of

operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana vs. Bhajan Lal, which is to the following effect:

(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.

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the State of Haryana vs. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO.

We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.

16. Therefore, as per the above said settled principle of law laid down by the Hon'ble Supreme Court of India and the various Hon'ble High Courts, this Court is of the considered view that allowing the proceedings to continue in respect of the alleged offences would amounts to a clear case of abusing process of law and as such, the entire proceedings so far as these petitioners are not made out against the petitioners and the same is liable to be quashed.

17. In view of the discussion above, I am constrained to quash the First Information Report registered in Crime No.359 of 2012, on the file of the 1st respondent / The Inspector of Police, Central Crime Branch, Team XVII, Egmore, Chennai in so far as these petitioners are concerned and this Criminal Original Petition No.19079 of 2012 is allowed.

18. Therefore, the Criminal Original Petition No.19079 of 2012 is allowed. Consequently, connected criminal miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Inspector of Police,
Central Crime Branch,
Team XVII, Egmore,
Chennai - 600 008.

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CrI.O.P.No.19079 of 2012
and
M.P.No.1 of 2012

SR(CO)
CA(07/08/2017)



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