

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47064 of 2013

Arising Out of PS. Case No.-256 Year-2005 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Shyam Nandan Prasad Son Of Late Brahmdeo Prasad, Resident of Village-
Baghi, P.S. Town Begusarai, District Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ravish Kumar Sinha, son of Late Rajendra Prasad, Resident of Village-
Baghi, P.S. Town Begusarai, District Begusarai

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Advocate Mrs. Y. Madhavi, Advocate
For the State	:	Mr. R.B.Ray Raman, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-12-2018

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief :-

*“For quashing of the order dated 06.09.2005
passed by the learned Judicial Magistrate-1st
Class, Begusarai in Complaint Case No.
256(C)/2005.”*

3. The original complainant was opposite party no. 2 and
upon his death has been substituted and after notice to him, he has
also entered appearance. However, nobody has appeared on his
behalf when the matter was taken up and heard.



4. The allegation against the petitioner is of getting false sale deed executed of land belonging to the complainant and his co-sharers by showing the vendor alive on 16.09.1981 when in the year 1980 itself, he had died. The vendor was also co-sharer and cousin brother of the complainant.

5. Learned counsel for the petitioner submitted that the dispute basically is whether the vendor of the sale deed dated 16.09.1981 was alive on that day and in this connection, the purchaser has also filed a Title Suit and the original complainant had also filed a Title Suit for declaration of their title over the land in question. It was submitted that only when the Civil Court gives a declaration with regard to the vendor not being alive on the date of the execution of the sale deed can there be a cause of action for any criminal case. It was further submitted that the criminal case is thus, dependent on the finding of the Civil Court with regard to the sale deed being executed by a fictitious person.

6. Learned A.P.P. submitted that both civil and criminal proceedings are maintainable simultaneously, if the allegations disclose criminal act and civil consequences also. It was submitted that in the present case, the criminal aspect is as prominent as the civil aspect, inasmuch as, it has been alleged that a person who was dead more than a year prior to execution and registration of a



sale deed has been shown to be alive on the date of execution of such sale deed. It was submitted that such act of having a fictitious person stand in as the vendor and execute a sale deed is patently a criminal offence for which criminal proceedings are very much maintainable. It was submitted that the civil consequences arising out of the effect of the sale deed which has been fraudulently executed are different and thus, rightly for deciding the title with regard to the land based upon such sale deed, the parties have separately approached the Civil Court in Title Suit, but the same will not have any adverse bearing on the criminal case instituted by the complainant.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The abstract proposition of law that whenever there is a purely civil dispute, no criminal proceedings should be initiated, as it would amount to abuse of the process of the Court, cannot be disputed. However, it is equally settled law that when both criminal and civil element is present, proceedings both on the criminal side and the civil side are not only maintainable but can also proceed simultaneously. For such proposition, the Court would refer to the decision of the Hon'ble Supreme Court in case of *M/s. Medchi Chemicals &*



Pharma P. Ltd. v. M/s. Biological E. Ltd. reported as 2000(3) PLJR (SC) 56, the relevant being at paragraphs no. 17 and 18, which reads as under :

*“17. Be it noted that in the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction. Recently, this Court in **Trisuns Chemical Industry vs. Rajesh Agarwal and others** (1999 (5) SCALE 609) observed :*

“5. Respondent's counsel in the High Court put forward mainly two contentions. First was that the dispute is purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned Single Judge has approved both the contentions and quashed the complaint and the order passed by the magistrate thereon.

6. On the first count learned Single Judge pointed out that there was a specific clause in the



Memorandum of Understanding arrived between the parties that disputes, if any, arising between them in respect of any transaction be resolved through arbitration. High Court made the following observations :

“ Besides supplies of processed Soyabean were received by the complainant company with any objection and the same have been exported by the complainant-company. The question whether the complainant-company did suffer the loss as alleged by it are the matters to be adjudicated by the Civil Court and cannot be the subject matter of criminal prosecution.”

7. Time and again this Court has been pointing out that the quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions [vide State of Haryana vs. Bhajan Lal (1992 Suppl. (1) SCC 335 and Rajesh Babaj vs. State NCT of Delhi (1999) 3 SCC 259)].

8. In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations :

“ It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were



committed in the course of commercial and also money transactions.”

9. *We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is 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 as indicated in State of Haryana vs. Bhajan Lal (supra).”*

“18. *On careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Section 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to*



*be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. it is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import” [vide **Pratibha Rani vs. Suraj Kumar (supra)**].”*

8. Similar view has been taken by the Hon'ble Supreme Court in the case of **Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.** reported as (2008)13 Supreme Court Cases 678, the relevant being at paragraph no. 22, which reads as under :

“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said



jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

9. Similar view has been taken by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation v. NEPC India Ltd.*** reported as ***(2006)6 Supreme Court Cases 736***, the relevant being at paragraph no. 12, which reads as under :

“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, Central Bureau of Investigation 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.”

10. In the present case, going by the allegations made in the complaint, clearly a criminal offence, i.e., of a fictitious person having executed a sale deed clearly would make the complaint maintainable and the criminal proceedings to continue and taken to its logical end. Even in the criminal case, the Court is competent to and would have to go into the question of whether the person who has executed the sale deed was alive on the day of the execution and based on the same, consequences would follow.

11. For reason aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

Nasimul/-

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