IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1521 of 2017

Arising Out of PS. Case No.-693 Year-2015 Thana- NAWADA District- Nawada

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1. Archana Kumari Wife of Sanjeev Kumar Singh
2. Sanjeev Kumar Singh Son of late Binda Singh Both resident of Village- Barandi, P.S. Rahui, District- Nalanda.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Sanjay Kumar Son of late Bhattu Mahto Resident of Village- Baniya Bigha, P.S. Narhat, District- Nawada.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Adv.
		Mr.Prakash Kumar, Adv.
		Mr. Akshansh Ankit, Adv.
For the Opposite Party/s	:	Smt Renu Kumari, APP
For the Informant	:	Mr. Amresh Kumar Sinha, Adv .

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

7 16-04-2019 Considering the prayer having been made on behalf of petitioners in consonance with the facts of the case, it looks pertinent to have a brief of the facts in issue history in order to properly appreciate the same.

2. OP No.2 filed written report stating therein that both the petitioners, who are spouse, have got a firm duly registered, named and styled as "Archana Construction Private Limited", are engaged in getting Govt. tender and work as contractor. As such, they have procured the tender (details thereof has been made in the written report). It has further been stated that as the work so procured by the accused persons attracted heavy investment of money coupled with manpower, on account thereof, apart from the informant, other friends were also requested and as persuaded by them to provide money with an assurance that they will be given 20% of profit thereupon

informant as well as others deposited not only the amount in the account (so detailed) rather also managed the manpower and the expenses were borne by them (prosecution party) (Details of mode of payment have been disclosed). After completion of the work, they demanded money which the accused persons, on one pretext or the other, deffered and lastly, they issued cheques of Rs. 3 Lakhs as well as 15 Lakhs. The Cheque pertaining to Rs. 15 Lakhs was post dated cheque bearing date 10.09.2016 (No. 000539) while cheque of Rs. 3 Lakhs, as per instruction deposited in his account and was cleared but with regard to remaining amount which he had paid as well as invested bearing 24 Lakhs and 7 Lakhs, they kept completely mum irrespective of having been contacted times without number, accused persons were repeatedly approached for refund, they also exucated agreement. When the post dated cheque of Rs. 15 Lakhs was deposited in the bank, the same was returned having remark " fund insufficient". In the aforesaid background, it has been alleged that the accused persons with fraudulent intention since before, persuaded the informant and others, succeeded in duping such huge amount. Then thereafter, he had sent advocate notice and after expiry of the period, launched prosecution whereupon, Nawada PS Case No. 693/2015 has been registered.

3. It is further evident that at an initial stage, petitioners have asked for quashing of the prosecution of Nawada Town PS Case No. 693/2015. During midst thereof, as is evident, charge-sheet has been submitted against the petitioner no.2 Sanjeev Kumar Singh firstly keeping investigation pending against petitioner no.1, Archana Kumari whereupon vide order dated 22.02.2017, cognizance has been taken for an offence punishable under Sections 420, 406, 467, 468, 471, 120B of the IPC and 138 of the NI Act, summoning him separating the record whereupon the record against petitioner no,2 proceeded independently.

4. It is further evident that later on, charge-sheet has also been submitted against the petitioner no.1, Archana Kumari and vide order dated 22.01.2018/23.01.2018, it has been observed by the learned lower court that as the cognizance of an offence punishable under Sections 420, 406, 467, 468, 471, 120B IPC and 138 of NI Act has already been taken and is found duly surfaced prima facie even against Archana Kumari, hence, Archana Kumari is also liable to be prosecuted for an offence punishable under Sections 420, 406, 467, 468, 471, 120B of the IPC and 138 of the NI Act, and accordingly, ordered so. That is to say, two independent orders though

relating to same PS Case No. but relating to two different proceedings have been passed. On account thereof, both the orders have been brought under challenge by an IA No.1/2019 which reagitated under IA No.2/2019 .

5. So, now the dumpy level of instant petition, as is evident, is not only confined for quashing of the prosecution rather also for quashing of the respective order of the cognizance relating to both the petitioners though taken at two different stages as detailed hereinabove and the same is permissible as observed by the Hon'ble Apex Court in the case of ***Joseph Salvaraj A v. State of Gujarat*** reported in ***(2011) 7 SCC 59*** wherein it has been held as follows:-

> "16. ……. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not."

6. It has been submitted at the end of the petitioners that from plain reading of the FIR, it is evident that it is out and out a business transaction and for that, in worst case, the informant would have instituted a money suit or a suit for specific performance of contract and that being so, the whole prosecution coupled with the order impugned could not survive,

be quashed. In an alternative, it has also been submitted that from plain reading of contents of FIR, it is evident that no offence whereunder both the petitioners have been summoned, are made out, much less Section 138 of the NI Act, no police case cold be drawn up as prohibited under Section 142 of the NI Act. Therefore, the order impugned is fit to be set aside.

7. On the other hand, learned counsel for OP No.2 along with learned APP have submitted that each and every criminal prosecution is not liable for quashing invariably wherever plea of civil cause is pleaded, unless and until, there happens to be absence of mens rea since beginning. From the FIR itself, it is evident that in order to misappropriate the money, the petitioners lured their friends finding it a safe zone. Now they could not raise plea that in the background of nature of transaction having effected amongst the party, it should be considered breach of contract attracting civil action whereupon, the order impugned is liable to be quashed. That being so, the instant petition suffers from inherent lacunae and is fit to be dismissed.

8. Each and every commercial transaction could not justify its quashing unless and until the given set of facts speak about a purely civil cause. Whenever it suggests otherwise, it

would not.

9. In Indian ***Oil Corporation v. NEPC India Ltd as reported in (2006) 6 SCC 736***, it has been held as follows:-

> "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 Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. 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 vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :
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> (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.
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> 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.
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> (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 malafides/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 proceedings 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 ***M. Suresh v. State of Andhra Pradesh*** as reported ***in (2018) 15 SCC 273***, it has been held as follows:-

"10. We find from the documents on record, particularly the counter affidavit of the Respondent himself and the cancellation deed dated 9-10-2006 filed along with the counter affidavit that the dispute between the parties is purely of civil nature. Even the stand of the complainant is that the matter has already been resolved and the complainant has already received the amount of ` 95 Lacs against the payment of ` 85 Lacs. However, according to him, the Appellants were liable to pay further sum of ` 30 Lacs as the cheques for the said amount have been dishonoured. Mere fact that the cheques have been dishonoured and the Appellants may be liable to pay further amount to the complainant will not by itself make out a case of cheating. It is a dispute for which the Respondent-complainant can take his remedies under the law. We are conscious that merely because a case involves a civil dispute does not by itself bar remedy under criminal law if a case is made out. At the same time, process of criminal law cannot be pressed into service merely for settling a civil dispute when no offence is committed. Law on the point is well settled in series of judgments of this Court including Hridaya Ranjan Pd. Verma v. State of Bihar, (2000) 4 SCC 168, Anil Mahajan v. Bhor Industries Ltd. (2005) 10 SCC 228, Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736, Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1 and Chandran Ratnaswami v. K.C. Palanisamy (2013) 6 SCC 740.

11. So far quashing of the prosecution is concerned, the criterion has already been settled at rest in the case of ***State of Hariyana & Ors. Versus Bhajan Lal & Ors*** as reported in ***AIR 1992 SC 604*** which are as follows:-

"(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, on 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 grounds for proceedings 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 proceedings 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 malafide 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."

12. The aforesaid criterion have been subject to consideration in the case of ***Vineet Kumar v. State of UP*** as reported in ***(2017) 13 SCC 369*** under para 25 and also considered different pronouncement as follows:-

" 25. Paragraph 102 which enumerates 7 categories of cases where power can be exercised Under Section 482 Code of Criminal Procedure are extracted as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 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 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.

26. A three-Judge Bench in ***State of Karnataka v. M. Devenderappa and Anr***. [(2002)3 SCC 89] had the occasion to consider the ambit of Section 482 Code of Criminal Procedure. By analysing the scope of Section 482 Code of Criminal Procedure, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. Following was laid down in paragraph 6:

" 6...... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

27. Further in paragraph 8 following was stated: (***State of Karnataka v. M. Devenderappa and Anr***. [(2002)3 SCC 89]

"8..... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an Accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power Under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal.

28. In ***Sunder Babu and Ors. v. State of Tamil Nadu 2009 (14) SCC 244***, this Court was considering the challenge to the order of the Madras High Court where Application was Under Section 482 Code of Criminal Procedure to quash criminal proceedings Under Section 498A Indian Penal Code and Section 4 of Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed Under Section 482 Code of Criminal Procedure taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in Bhajan Lal case (supra) and held that the case fell within Category 7. Apex Court relying on Category 7 has held that Application Under Section 482 deserved to be allowed and it quashed the proceedings.

29. In another case in ***Priya Vrat Singh and Ors. v. Shyam Ji Sahai 2008 (8) SCC 232***, this Court relied on Category 7 as laid down in State of Haryana v. Bhajan Lal (supra). In the above case the Allahabad High Court had dismissed an Application filed Under Section 482 Code of Criminal Procedure to quash the proceedings Under Section 494, 120-B and 109 Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act. After noticing the background facts and parameters for exercise of power Under Section 482 Code of Criminal Procedure following was stated in paragraphs 8 to 12:

"8. Further, it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of Respondent 1.

10. The parameters for exercise of power Under Section 482 have been laid down by this Court in several cases.

11. "19. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (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. It is neither possible nor desirable to lay down any inflexible Rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of

any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20. As noted above, the powers possessed by the High Court Under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast Rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage."

[See Janata Dal v. H.S. Chowdhary, Raghubir Saran (Dr.) v. State of Bihar and Minu Kumari v. State of Bihar, SCC p. 366, paras 19-20.]

12. The present case appears to be one where Category 7 of the illustrations given in State of Haryana v. Bhajan Lal is clearly applicable.

13. Taking into account the materials available on the record, it is evident that the same satisfies the ingredients whereupon the order impugned did not attract interference save and except with the finding concerning under Section 138 of the NI Act as taken on police report being contrary to Section 142 of the NI Act, and in likewise manner, relating to Section 467, 468, 471 IPC as, no ingredients thereof are manifest, and to that extent, instant petition is allowed retaining the remaining part of the order impugned.

14. This petition is accordingly, partly allowed in terms as observed hereinabove.

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(Aditya Kumar Trivedi, J)

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