

1. Mrs. Shama G. Bothe,
Director of Chinkara Motors Pvt. Ltd.,
aged 38 years, an Indian
Inhabitant residing at 1002 Sterling
Apartments, Lala Jamndas Gupta Marg.,
Deonar Farm Road, Mumbai 400 088.
2. Mr. Guido Bothe
Director of Chinkara Motors Pvt. Ltd.,
aged 59 years, an Indian Inhabitant
residing at 1002 Sterling
Apartments, Lala Jamndas Gupta Marg.,
Deonar Farm Road, Mumbai 400 088.

1. State of Goa,
Through the Senior Inspector of Police,
Panjim Police Station,
Panjim Goa.
2. Mrs. Indira Patel,
Director of M/s. Indian Ocean
Cruises, having its office at ADG/31/90,
Aldeia de Goa, Bambolim Goa.

.... Respondents

Mr. S. Bhobe, Advocate for Respondent No.2.

**Coram:- M. S. SONAK &
C. V. BHADANG, JJ.**

Reserved on : 18th November, 2019

Pronounced on : 22nd November, 2019

Judgment (Per M. S. Sonak, J)

The Petitioners who are the directors of Chinkara Motors Private Limited (CMPL), a company purported to be engaged in the business of building of boats, yachts etc., had instituted the present petition, invoking *inter alia* Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure (Cr.P.C.), to seek the following substantive reliefs :-

“(a) That this Hon'ble Court be pleased to call for the records and proceedings of C. C. No.191/S/2014/A from the Court of Chief Judicial Magistrate, at Panaji Goa;

(b) That this Hon'ble Court after going through the legality and propriety of the impugned order dated 28.12.2016 passed by the learned Magistrate, be pleased to quash and set aside the said order;

(c) That this Hon'ble Court after going through the legality and propriety of the impugned order dated 08.02.2018 passed by the Hon'ble Sessions Court, be pleased to quash and set aside the said order;

(d) That this Hon'ble Court after going through the legality and propriety be pleased to quash the proceedings in C. C. No.191/S/2014/A, pending on the file of learned Chief Judicial Magistrate, at Panaji Goa.”

2. The Petitioners, through their learned counsel, however, on 25th April, 2018, made a statement before this Court that they are not pressing for the reliefs in terms of prayer clauses (b) and (c) above, but are pressing for the relief only in terms of prayer clause (d) as above, i.e. for quashing of the proceedings in C.C. No.191/S/2014/A, pending on the file of the Chief Judicial Magistrate at Panaji Goa. This statement came to be recorded by this Court in its order dated 25th April, 2018.

3. The order dated 25th April, 2018, to the aforesaid effect, reads as follows :-

“An intervention is made on behalf of the complainant who has not been made party in this petition. The learned Counsel for the Petitioner states that the complainant will be made party respondent. Leave to amend for that purpose is granted. Amendment to be carried out during the course of the day. Copy of the Petition will be served on the learned Counsel for the complainant.

2. The learned Counsel for the Petitioner states that the Petitioner is not pressing for prayer clauses (b) and (c) and is only pressing prayer clause (d) i.e quashing of the Proceedings.

3. Stand over to 5 June 2018.”

4. Therefore, it is quite clear that in the present petition, we are only required to go into the issue as to whether the Petitioners have made out any case for quashing the proceedings in C.C. No.191/S/2014/A

pending on the file of the Chief Judicial Magistrate at Panaji Goa. The learned counsel for the Petitioners as well as the Respondents, in unison confirmed that this is indeed the position. No doubt, the learned counsel for the Respondents have raised the issue relating to the maintainability of the petition.

5. On 2nd July, 2013, the FIR No.269/2013 came to be registered against the Petitioners alleging the offences under Section 420 read with Section 34 of the Indian Penal Code (IPC).

6. Soon thereafter, the Petitioners instituted Criminal Writ Petition No.105 of 2013 seeking for quashing of FIR No.269/2013. The Petitioners, however, withdrew this Writ Petition on 29th January, 2014, without seeking any leave to institute any fresh petition.

7. On 19th August, 2014, the charge-sheet bearing case No.191/S/2014/A came to be filed in the Court of the Chief Judicial Magistrate, Panaji in FIR No.269/2013. Thereupon, the Petitioners filed application for discharge invoking provisions of Section 239 of the Code of Criminal Procedure. This application was rejected by the Chief Judicial Magistrate vide order dated 28th December, 2016.

8. The Petitioners, aggrieved by the Chief Judicial Magistrate's

order dated 28th December, 2016, instituted a Criminal Revision Application No.2/2017 in the Court of the Additional Sessions Judge, North Goa, Panaji. Even this application was dismissed vide judgment and order dated 8th February, 2018.

9. In prayer clauses (b) and (c) of this Criminal Writ Petition, the Petitioners, had earlier sought for quashing and setting aside the orders dated 28th December, 2016 and 8th February, 2018 made by the Chief Judicial Magistrate and the Additional Sessions Judge respectively. However, as noted in our order dated 25th April, 2018, the Petitioners have specifically given up their challenges to the orders dated 28th December, 2016 and 8th February, 2018. To that extent, the said orders, have attained finality.

10. Mr. Merchant, learned counsel for the Petitioners, quite fairly did not even make any submission in relation to the orders dated 28th December, 2016 and 8th February, 2018, in terms of which the Petitioners' application for their discharge came to be rejected by the Chief Judicial Magistrate and the Additional Sessions Judge.

11. Mr. Rivonkar, learned Public Prosecutor and Mr. Bhobe, learned counsel for Respondent No.2 have urged that the present petition by which the Petitioners, in effect question the FIR No.269/2013 is not

maintainable in view of withdrawal of Criminal Writ Petition No.105 of 2013 without seeking any leave to institute any fresh petition. They point out that the principles of Order XXIII Rule 1 of the Civil Procedure Code are required to be applied in such a situation, by taking into consideration the strong observations made by the Apex Court in the case of ***Sarguja Transport Service Vs State Transport Appellate Tribunal, M.P.***¹. They point out that if this is not done, then, the same will lead to encouragement of bench hunting, which is required to be avoided at all costs.

12. Mr. Rivonkar and Mr. Bhobe also point out that since the orders dated 28th December, 2016 and 8th February, 2018, in effect, for framing of charge against the Petitioners, have attained finality, the present petition for quashing of proceedings in C.C. No.191/S/2014/A will not be maintainable, as otherwise there might arise inconsistency of orders. For these reasons as well, the learned counsel for the Respondents urged that the present petition be dismissed, as not maintainable.

13. Mr. Merchant, learned counsel for the Petitioners, at the outset points out that the principles of *res judicata* do not apply to the criminal proceedings. He points out that in *Sarguja Transport Service* (*supra*) the Hon'ble Apex Court has itself made it clear that the decision is not applicable to a writ petition involving the personal liberty of an individual.

1 1987(1) SCC 5

He also relies upon *Daryao Vs State of U. P.*² to submit that the principles of *res judicata* do not ordinarily apply to the criminal cases. He also relies on *Anil Khadkiwala Vs State*³ to submit that even if a petition questioning the FIR is dismissed or withdrawn still, a petition to question the proceedings, once the charge-sheet is filed, are clearly maintainable because the filing of charge-sheet is a change in circumstance, on the basis of which the issue as to whether the prosecution should proceed any further or not, is required to be determined. For all these reasons, Mr. Merchant submits that the present petition is very much maintainable and is required to be decided on its own merits.

14. According to us, it may not be necessary for us to go into the issue of maintainability in too much detail because, upon examination of the matter on merits, we are quite satisfied that the Petitioners have failed to make out any case for quashing of proceedings in C.C. No.191/S/2014/A pending before the Chief Judicial Magistrate at Panaji Goa, for reasons indicated in the course of this judgment and order.

15. In any case, at least *prima facie*, we cannot say that any case has been made out to dismiss the present petition as not maintainable. This is because the principles of *res judicata*, do not ordinarily apply to the criminal proceedings. Besides, as was observed in *Anil Khadkiwala* (supra),

² AIR 1961 SC 1457

³ 2019 SCC OnLine SC 941

even when the first application for quashing of FIR by invoking the provisions of Section 482 of Criminal Procedure Code is dismissed, the second application to question the proceedings, once charge-sheet alongwith all material is filed before the Court, cannot be said to be not maintainable. This is on the premise that the material which is filed alongwith the charge-sheet may perhaps assist the Petitioner to demonstrate more effectively why the proceedings amount to abuse of legal process and therefore, deserves to be quashed. Therefore, without going too much in details on the issue of maintainability, we proceed to examine the matter on merits.

16. Mr. Merchant submits that the material on record makes it clear that this is a case of purely civil dispute between the complainant and the Petitioners. He submits that there is absolutely no criminal element involved in this matter and therefore, permitting the prosecution to proceed any further would amount to gross abuse of legal process. Relying upon the decision of the Hon'ble Apex Court in ***State of Haryana and others Vs Bhajan Lal and others***⁴, Mr. Merchant submits that the present proceedings are required to be quashed.

17. Mr. Merchant submits that in the present case, there is no allegation in the complaint that the Petitioners had some intention of

4 1992 Supp.(1) SCC 335

cheating the complainant right at the outset or at the time of inducing the complainant to enter into contract for supply of vessels. He submits that in order to make out an offence of cheating, it is not sufficient for the complainant to merely allege that some false representation was made, but it is necessary to allege that the representation was false to the knowledge of the Petitioners and that the same was made in order to deceive the complainant. He submits that mere breach of contract without anything more cannot give rise to criminal liability. He submits that even the material on record in the present case clearly establishes that this was not at all the case of cheating as defined under Section 415 of the IPC. Mr. Merchant relies upon *Ramlal Narang Vs State*, 1979 (2) SCC 322, *Ramesh Babhulkar Vs State*, 1995(2) Mah. LJ 724, *State of M. P. Vs Mohanlal Sohni*, AIR 2000 SC 2583, *Dhanajay Kumar Singh Vs State*, 2006 SCC OnLine Raj. 286, *Angad Kadam Vs State*, 2007 (2) MHLJ 394, *All Cargo Movers (India Pvt. Ltd. Vs Dhanesh Jain)* 2007 (14) SCC 776, *Hareshchandra Kumar Vs Rebati Lata Koley*, 2011(3) SCC 351, *Sterling Holiday Resorts Vs Murali Khemchand*, 2014(1) MWN (Cr) 108 (DB), in support of these contentions.

18. Mr. Merchant, without prejudice to the aforesaid, makes specific reference to the illustration (g) to Section 415 of IPC to submit that where an accused dishonestly induces the complainant to advance money upon faith to deliver certain goods but if the accused at the time of

obtaining money, intends to deliver goods and afterwards breaks the contract and does not deliver them, he does not cheat but is liable to civil action under the contract. Mr. Merchant submits that the material on record, in any case, brings the present case within the ambit of illustration (g) to Section 415 of IPC and therefore, the continuance of the criminal prosecution would amount to abuse of legal process.

19. Mr. Merchant submits that in the present case, the contract between the parties is quite clear, and in that contract the parties had agreed to go by the Indian Register of Shipping (IRS) Certification. He points out that the IRS certification is in place and therefore, there is absolutely no merit in the contentions of the Respondents that the vessels delivered or offered to be delivered by the Petitioners were not comparable to the contract specification. He points out that in the present case, it is not as if all the payments were made by the complainant in one go. He submits that the payments were made in instalments upon satisfaction that the construction of the vessels was in accordance with the contractual specification. He submits that the complainant actually visited the workshop of the Petitioners at Alibaug from time to time and only upon satisfying themselves that the construction of the vessels was in accordance with the contractual specification made payments in instalments. He submits that this position is borne out by the material accompanying the charge-sheet. He submits that in any case the Petitioners had placed before

the investigating agency unimpeachable material which would establish this position. The investigating agency for the reasons best known have avoided placing this material alongwith the charge-sheet. Mr. Merchant relies on *Kiran Desai Vs Napoleon Chemicals*⁵ to submit that fresh material absolving accused when brought to the notice of the investigating agency needs to be considered and withholding of such vital material by the investigating agency also constitute an abuse of legal process. Mr. Merchant submits that it is settled position in law that the material which is of unimpeachable nature can always be considered by the Court without examining whether any case is made out to interfere with the FIR or the criminal prosecution in a petition under Article 227 of the Constitution of India or Section 482 of the Cr.P.C. For all these reasons, Mr. Merchant submits that this petition be made absolute in terms of prayer clause (d) thereof.

20. Mr. Rivonkar and Mr. Bhobe submit that the scope of interference with the criminal prosecution at the very threshold by invoking of provisions of Articles 226, 227 of the Constitution of India or Section 482 of Cr. P.C., is quite limited. They point out that in the present case the material which the Petitioners seeks to rely upon at this stage is not really a part of the record before the Chief Judicial Magistrate's Court. They point out that such material is certainly not of unimpeachable or

⁵ (1999) 101 BLR 541

sterling quality. They point out that the said material in fact establishes that the Petitioners have indeed committed offences under Section 420 of IPC read with Section 34 of IPC.

21. Mr. Rivonkar and Mr. Bhobe point out that in this case, the Petitioners virtually held out that they had expertise in construction of vessels i.e. building of boats, yachts etc., and on such basis induced the complainant to enter into contract and part with over Rs.2 crores or thereabouts. They point out that the brochures and other representations made by the Petitioners indicated that the Petitioners have experience and expertise wherewithal to undertake such supply when in fact to the knowledge of the Petitioners, this was quite false. They point out that the brochures even referred to the Petitioners' manufacturing defence equipments, which again patently a false representation to the knowledge of the Petitioners. They point out that the Petitioners had no infrastructure whatsoever to undertake the construction of vessels in question and this is evident from the overwhelming material on record. They point out that the Petitioners were operating the workshop through the garage for servicing the motor vehicles and the Petitioners were very much aware that they were not in a position to either construct or deliver such vessels. They point out that the Chief Judicial Magistrate as well as the Additional Sessions Judge have considered the material on record in substantial detailed and concluded that there is more than ample material

for framing charge against the Petitioners. They point out that this order has attained finality for want of challenge and therefore, this petition deserves dismissal with costs.

22. The rival contentions now fall for our determination.

23. The offence of “*cheating*” is defined under Section 415 of IPC. This Section provides that 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.

24. There are several illustrations below Section 415 of IPC. However, since Mr. Merchant has laid particular emphasis upon illustration (g), the same, is transcribed below for convenience of reference.

“(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but

if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”

25. Section 420 of IPC deals with cheating and dishonestly inducing delivery of property. This Section provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

26. There can be no serious dispute that the proposition put forward by Mr. Merchant that a pure and simple breach of contract does not constitute offence of cheating. It is equally well settled that mere failure to discharge the contractual obligations or mere failure to abide by a promise, neither amounts to cheating nor can lead to some presumption of cheating. The rulings relied upon by Mr. Merchant no doubt, bear out that the intention to cheat has to be in existence right at the inception i.e. at the time when the promise was made or representation was held out or inducement was made. Since, there is really no dispute regards these propositions, it is not necessary to advert to the various rulings relied upon

by Mr. Merchant in support of these propositions. The issue really is whether in the facts and circumstances of the present case or rather, in the context of material placed on record in the present case, whether the Petitioners have succeeded in making out a case that this was nothing but pure and simple breach of contract or that there is absolutely no material on record to suggest that the element of cheating was present at the very inception.

27. Since, reference was made to the case of *Bhajan Lal* (supra), it is necessary to note the observations of Hon'ble Apex Court. In the said decision the Apex Court did hold that the High Court can exercise its powers and review in criminal matters either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, the exercise of such powers would depend on the facts and circumstances of each case. One of the guidelines for exercise of such powers is where the allegations made in the FIR 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 any case against the accused. In this case, the Hon'ble Apex court has further held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The Court will not be justified in embarking upon an

enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

28. In the present case, if the detailed complaint on the basis of which the FIR is lodged is perused, it cannot be said that the complaint, even if taken at its face value does not make out a case of cheating punishable under Section 420 of IPC. There are detailed allegations, in fact, backed by several documents that in the present case, the Petitioners held out that they have necessary expertise and infrastructure to manufacture multi hull design crafts, boats and FRP vessels. Even the brochures issued by the Petitioners made tall claims, including that they were manufactures of defence equipments, helicopters etc. However, the material placed on record by the complainant or the material collected by the investigating agency reveals that the company of which the Petitioners are the directors was registered only for manufacture of automotives. Despite opportunities being offered by the investigating agency, the Petitioners were unable to produce any documents in support of any licences for manufacture of boats or air crafts as was projected in the pamphlets and brochures. The material on record suggests that the Petitioners had no infrastructure or wherewithal for manufacture of contracted vessels. The surveyors who have visited the Petitioners' so called workshop at Alibaug have submitted the reports that this workshop was nothing but a motor garage, not at all equipped to undertake the

construction of the vessels as contracted.

29. Mr. Merchant's contention that the complainants had themselves visited the workshop at Alibaug and were satisfied about the said workshop or about the progress of construction, deserves no acceptance at the present stage. At least no material has been pointed out by Mr. Merchant, in support of this contention. At one stage of the argument, Mr. Merchant went on to submit that the similar contentions were made by him before this Court at the stage of admission of this petition and since the same were not contested by the learned counsel for the Respondents at that stage, it is apparent that there is some truth in the Petitioners' case that the complainants had indeed visited the workshop and were satisfied with the workshop and construction of the vessels which were in progress. Such contention, can obviously not be accepted. None of the orders made by this Court from time to time record anything which even remotely bears out such contention. In any case, all these are matters which the Petitioners will have to establish in the course of trial. Based upon such contention, no case is made out for quashing of criminal proceedings.

30. Mr. Merchant then referred to the report of certain surveyors including one Mr. L. Natarajan and Mr. Derrick Menezes to point out that the vessels ultimately built by the Petitioners were as per the contractual

specification. The perusal of this material does not support the contention of Mr. Merchant. In any case, there are several other reports including the report of one Mr. Mahesh Pariani, which, in details points out that the vessels ultimately constructed by the Petitioners, nowhere meet the contractual specifications. More importantly the reports, point out that the Petitioners, never had either expertise or wherewithal or licence to manufacture and supply vessels with the contractual specification. All these are matters of which the Petitioners had knowledge but the Petitioners chose to misrepresent and thereby induced the complainant to part with considerable amounts of money. At this stage, it will not be appropriate for this Court to comment upon or evaluate the various documents on record, as such exercise will in fact prejudice the trial. Suffice to observe that there is more than ample material on record not only to sustain the charge-sheet and the Petitioners have not made out a case for quashing the criminal proceedings.

31. The record indicates that the Petitioners in order to vouch for their alleged expertise had referred to manufacture and delivery of vessels to one Mr. Sudir Deodhar and one Mr. John Lobo. In this context, it appears that the investigating agency, in the course of their investigations proceeded to record the statements of said persons. These persons also claimed that they were cheated by the Petitioners. These persons, in their statements, also maintained that the company of which the Petitioners are the directors

have neither any trained persons nor any proper infrastructure for construction of any vessels. One captain Archit S. Karpe has given a statement in the course of investigation that he visited the boat yard of the Petitioners at Alibaug and found that the same is not at all suitable for construction of boats. In fact, there is material on record to suggest that the boat yard was nothing but a motor garage totally lacking any infrastructure to construct vessels. This is important because the Petitioners, had represented through their brochures and website that they have expertise to build vessels as per IRS class; that they have a team of international designers, qualified architects and professionals for construction of boats. They had also claimed that they are equipped to handle FRT vessels upto 20 meters in length to international quality. The investigation however had revealed that all this was far from true. In these circumstances, it is not possible to accept the contention of Mr. Merchant that there are neither any allegations nor is there any material to suggest that the intention to cheat was not evident right from very inception or that the Petitioners based upon their dishonest inducement never induced the complainant to part with crores of rupees. Based upon all this material, it is not possible to accept Mr. Merchant's contention upon illustration (g) to Section 415 of IPC. The material on record does not suggest that the Petitioners, at the time of obtaining money from the complainant had intended to deliver vessel to the complainant. Accordingly, on merits, there is really no case made out to interfere with or to quash the prosecution launched against

the Petitioners.

32. Mr. Merchant has in fact referred to the report of certain surveyors which according to him supports the Petitioners' defence. In particular, Mr. Merchant relied upon report of Mr. Derrick Menezes and Mr. L. Natarajan. According to us, such reports can hardly be referred to as some unimpeachable material or documents of sterling quality which can be taken into consideration at this preliminary stage. If at all there is any report which supports the defence of the Petitioners, it is for the Petitioners to examine such surveyors in the course of the trial including, by way of leading defence evidence. However, based upon such material, the criminal proceedings cannot be quashed at the very threshold. In fact, Mr. Bhobe pointed out that if the report of Mr. Menezes is carefully perused then, the same more than establishes the veracity of the complainant's case rather than supports the defence of the Petitioners. Mr. Mahesh Pariani's report, is totally against the Petitioners and the same supports the case of the prosecution.

33. Mr. Merchant at one stage pointed out that the complainant has already instituted a civil suit against the Petitioners and therefore, this is clearly a case of civil dispute having no criminal profile whatsoever. He also made reference to certain orders made in these proceedings where it is recorded that there were some settlement talks. He also referred to certain

statements made by the counsel in the context of recovery of amount. According to us, such without prejudice statements cannot be taken into consideration for deciding the issue as to whether the dispute has essentially a civil profile.

34. In *Medchl Chemicals and Pharma Vs Biological E. Limited*⁶, the Hon'ble Apex Court has held that if a *prima facie* case is made out disclosing the ingredients of offence alleged against the accused, the Courts should not quash the complaint merely because the offence may have been committed in the course of commercial transaction. For quashing of complaint, the Courts have to see whether on the fact situation, civil profile outweighs the criminal outfit. In fact, in this case, the Hon'ble Apex Court took cognizance of illustration (g) to Section 415 of IPC and held that this illustration makes the position clear enough to indicate that mere failure to deliver in breach of contract does not attract offence of cheating and it is this concept what was weighed with the Single Judge in quashing the proceedings. The Hon'ble Apex Court however observed that considering the factual aspect of the matter, it must be held that the issue involved in the said case is not one in which the criminal trial should not have been short circuited. The Petitioners in the present case, seek to short circuit the trial and taking into consideration the material on record or even the material which the Petitioners erroneously styles as

6 AIR 2000 SC 1869

unimpeachable material, it is not possible to accept the Petitioners' plea for quashing the proceedings and short circuiting the trial.

35. In *Vinod Raghuvanshi Vs Ajay Arora and others*⁷, the Hon'ble Apex Court has held that it is settled proposition that while considering the case for quashing of the criminal proceedings the Court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, *prima facie*, establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein.

36. In *ARCI Vs Nimra Cerglass Technics Private Ltd., and another*⁸ the Hon'ble Apex Court has held that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court

⁷ (2013) 10 SCC 581

⁸ (2016) 1 SCC 348

being superior court of the State should refrain from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 of Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 of Cr.P.C. is to be used sparingly only in rare cases. The powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon the facts and circumstances of each case. While exercising inherent jurisdiction under Section 482 of Cr. P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial Court.

37. In *M. Krishnan Vs Vijay Singh and another*⁹, the Hon'ble Apex Court has rejected the contention that the pendency of a civil suit between the parties is a good ground to quash the criminal proceedings against the accused. The Hon'ble Apex Court has held that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. The Hon'ble

⁹ (2001) 8 SCC 645

Apex Court has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, do not *prima facie* disclose the commission of an offence or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused. In the present case, the Petitioners have not at all made out a case of this nature so as to warrant any interference.

38. In *S. Krishnamoorthy Vs Chellammal*¹⁰, the Hon'ble Apex Court has held that the High Court committed grave error of law in examining allegations and counter-allegations which are disputed and factual in nature in the proceedings under Section 482 of Cr.P.C. The Hon'ble Apex Court by referring to its earlier decision in *Padal Venkata Rama Reddy Vs Kovvuri Satyanarayana Reddy*¹¹ has held that it would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In the proceedings instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and

¹⁰ (2015) 14 SCC 559

¹¹ (2011) 12 SCC 437

every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal.

39. Applying the aforesaid principles to the facts and circumstances of the present case, we are not satisfied that the Petitioners have made out any case for quashing of proceedings pending on the file of the Chief Judicial Magistrate.

40. In this case, as noted earlier, the Chief Judicial Magistrate's Court by a detailed order dated 28th December, 2016 has found that there was no case for discharging the Petitioners and that there was overwhelming material on record for framing of charge against the Petitioners. The learned Chief Judicial Magistrate has also noted that in the investigation it is disclosed that even the ISO certification of the Petitioners' company is fake. It has been found that in the brochure, the company claimed to be world leaders in building of sailing vessels, boats and gyro copters. However, the investigation disclosed that the company was only registered for main business activities of commission agents involved in the sale of new passenger motor vehicles, lorries and trailers. Thus, *prima facie*, we find that there is material to infer that the representation at the very inception that the Petitioners' company is an ISO certified company and that they are world leaders in the building of sailing vessels, etc., was false to the knowledge of the Petitioners. The Chief

Judicial Magistrate has discussed in some details the material on record and in fact considered most of the contentions now raised by Mr. Merchant in support of the present petition. The Petitioners, challenged the order dated 28th December, 2016 by instituting Criminal Revision Application No.2/2017 before the Additional Sessions Judge, Panaji. Again by a detailed judgment and order dated 8th February, 2018, the Additional Sessions Judge has dismissed the Petitioners Revision Application.

41. As noted earlier, the aforesaid two orders have attained finality. The Petitioners, have made a statement that the Petitioners do not press any challenge as against the said two orders. The said two orders, in terms refer to voluminous material on record and conclude that such material is more than sufficient to frame charge against the Petitioners. Even assuming that Mr. Merchant is right in his submission on the aspect of maintainability of the present petition, surely, this Court cannot ignore the orders dated 28th December, 2016 made by the Chief Judicial Magistrate's Court and the order dated 8th February, 2018 made by the Additional Sessions Judge, North Goa, Panaji, which orders have now attained finality. These orders approved additional grounds to dismiss this petition.

42. The Petitioners are interested in only stalling the trial and short circuiting the legal process. To this end, the Petitioners initially instituted Writ Petition No.105 of 2013 to quash the FIR lodged against

them. However, perhaps realizing that there was no merits in the said petition and rather than inviting a dismissal, Criminal Writ Petition No.105 of 2013 was withdrawn without seeking any liberty. Thereafter, the Petitioners in the year 2014 applied for discharge, which application was disposed of after almost two years by order dated 28th December, 2016 by the Chief Judicial Magistrate's Court holding that there was no case made out to discharge the Petitioners and rather, there was ample material on record for framing of charge. The Petitioners then instituted a Criminal Revision Application No.2/2017 before the Additional Sessions Judge which was then disposed of on 8th February, 2018 i.e. after almost two years. The Petitioners then instituted the present petition and secured a stay on the trial. Considerable time was spent by informing the Court that some settlement is being explored.

43. Even before this Court, perhaps after it was realized that the orders dated 28th December, 2016 and 8th February, 2018 made by the Chief Judicial Magistrate and the Additional Sessions Judge were not vulnerable, the challenge to the said orders were not pressed by the Petitioners but the Petitioners, continued with their challenge to the proceedings before the Chief Judicial Magistrate's Court. The Petitioners, far from making out any case of abuse of criminal process by the Respondents, have themselves indulged into abusing legal process by taking out multiple proceedings, only to stall further progress of the trial. Taking

into consideration all these aspects, this appears to be a fit case to saddle costs upon the Petitioners. However, now that we propose to expedite the trial, we refrain from imposing any costs upon the Petitioners.

44. Though, we are dismissing the present petition, we make it clear that the observations made in this order are for limited purpose of deciding whether any case is made out by the Petitioners for quashing of the proceedings in C.C. No.191/S/2014/A on the file of the Chief Judicial Magistrate's Court at Panaji and therefore, such observations should not be taken into consideration in the course of trial before the Chief Judicial Magistrate.

45. This petition is accordingly dismissed. The interim order made by this Court is hereby vacated. The parties or their Advocates to appear before the Trial Court on 2nd December, 2019 at 10.00 a.m. The Trial Court is directed to dispose of the C.C. No.191/S/2014/A as expeditiously as possible, and in any case within a period of 12 months from today, since the same is pending since 2014.

C.V. Bhadang, J.

M.S. Sonak, J.

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