

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 127 of 2016

Reserved on : 02.08.2021

Delivered on : 01.10.2021

Nitin Jain, S/o Tikamchand Jain, Aged About 38 Years, R/o Chawal Line, Hatri Bazar, Durg, Police Station- City Kotwali, Durg, District- Durg (C.G.)

---- Petitioner

Versus

1. Vikrant Kumar Shukla, S/o Late Ajhakumar Shukla, Aged About 38 Years, R/o Purani Basti, Kohka, Bhilai, Police Station- Supela, Bhilai, District- Durg (C.G.)
2. Jitendra Singh Gil, S/o D.S. Gil, Aged About 38 Years, R/o Quarter No. 410, Street No. 1/A, Shanti Nagar, Police Station- Supela, Bhilai, District- Durg (C.G.)

---- Respondents

For Petitioner	:	Ms. Fouzia Mirza, Sr. Advocate with Ms. Smita Jha, Advocate.
For respondents	:	Mr. Shrawan Agrawal, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 14.08.2015 (Annexure A/4) passed by learned Judicial Magistrate First Class, Durg (C.G.) by which, the complaint filed by the petitioner for registration of offence against the respondents for committing offence punishable under Sections 420, 467, 468, 471 read with Section 120B of I.P.C. has been dismissed by recording finding that after appreciating the preliminary evidence, there is no sufficient ground to proceed further. Thereafter, Criminal Revision No. 178/2015 (Annexure A/1) preferred by the petitioner has also been dismissed by Additional Sessions Judge, Durg (C.G.) vide order dated 14.10.2015. Both the orders have been assailed by the

petitioner in this petition.

2. The facts projected by the petitioner, in brief, are that the petitioner and respondent No. 1 entered into an agreement on 11.12.2012 for sale of diverted residential land area admeasuring 0.33 Hectare bearing Khasra No. 258/38 situated at Village- Borsi, Patwari Halka No. 19/23, Revenue Circle Durg-01, Tahsil & District- Durg (C.G.) for Rs. 1,15,00,000/-. The petitioner in pursuance of the said agreement paid Rs. 16,00,000/- in cash and Rs. 9,00,000/- through cheque No. 04041243 dated 17.12.2012 drawn at IDBI Bank Limited, Branch- Durg. As such, total Rs. 25,00,000/- was paid as advance and remaining amount of Rs. 90,00,000/- was to be payable at the time of execution of sale deed. The agreement was signed by respondent No. 1. The agreement dated 11.12.2012 was cancelled due to non-demarcation report and another agreement dated 13.01.2014 was executed between the petitioner and respondent No. 1, wherein, respondent No. 2 has signed in the agreement as witness.
3. It has been contended by learned counsel for the petitioner that respondent No. 2 has himself approached the petitioner for sale of land and even respondent No. 2 is involved in the criminal conspiracy with respondent No. 1. After execution of second agreement, the petitioner approached respondent No. 1 on 13.01.2014 for execution of sale deed, but they avoided the same. The petitioner sent legal notice on 30.01.2014 with regard to registration of agreement, but no reply has been submitted by respondent No. 1 and when the petitioner requested him to release the amount, he refused the same. Thus, the respondent No. 1 & 2 have committed offence of cheating to the petitioner and committed fraud of Rs. 25,00,000/- with the petitioner. The petitioner has made complaint on 30.04.2015 to the In-charge, Police Station- Durg, but no action has been taken, therefore, the petitioner has filed complaint under Section 156 (3) of the Cr.P.C. before the Judicial Magistrate First Class.

4. The petitioner to substantiate his contention, recorded preliminary statement of himself, Anupam Jain, Pushpendra Jain on 16.07.2015. The petitioner/complainant has deposed that respondents have not executed any agreement with owner of the property and has received the said amount as advance, thus, they have committed fraud. The other witnesses examined by the complainant have also deposed that the complainant has requested representative of Anupam Jain with regard to examination of the land, but he has said that no agreement has been executed by respondents on behalf of Anupama Jain, thus, they have committed fraud. The other witnesses have also deposed in the same manner. The learned Judicial Magistrate vide its order dated 14.08.2015 dismissed the complaint filed by the petitioner by recording finding that “परिवादी द्वारा एक पन्ने का बैंक का स्टेटमेंट की छायाप्रति पेश किया गया है। उक्त बैंक स्टेटमेंट में प्रथम पृष्ठ संलग्न नहीं होने के कारण यह स्पष्ट नहीं है कि उक्त स्टेटमेंट किस बैंक के किस व्यक्ति के किस खाता क्रमांक का है। उक्त बैंक स्टेटमेंट से दिनांक 18/12/2012 का विक्रांत शुक्ला को नौ लाख रु. आहरित होना दर्शित होता है। उक्त आहरण चेक क्र. 40123 के माध्यम से किया जाना प्रतीत होता है जबकि परिवाद पत्र में नौ लाख रु. चेक क्रं. 04041243 के माध्यम से अभियुक्त को प्रदान किया जाना उल्लेखित है।

उक्त समस्त तथ्यों को एक साथ संपूर्णता में विचार करने पर प्रकरण में परिवादी तथा साक्षीगण के प्रारंभिक साक्ष्य की पुष्टि नहीं होना एवं आगे कार्यवाही करने हेतु पर्याप्त आधार नहीं होना प्रतीत होता है। ”

5. Thereafter, the petitioner preferred Criminal Revision No. 178/2015 before Sessions Judge, Durg which was transferred to Additional Sessions Judge, Durg and the same was dismissed by the Revisional Court by recording finding that there is dispute between the revisioner and the respondents, which is of civil in nature and civil dispute cannot be converted into criminal case, as such, the learned Judicial Magistrate First has not committed any illegality or irregularity in dismissing the complaint filed by the petitioner. Accordingly, the revision application filed by the petitioner has also been dismissed. The learned Revisional

Court has also recorded finding that in absence of any report, it cannot be believed that respondent No. 1- Vikrant Kumar Shukla has taken cash for Rs. 16,00,000/- and Rs. 9,00,000/- by cheque as the petitioner failed to examine the witnesses from the bank.

6. Learned counsel for the petitioner would further submit that it is well settled by Hon'ble the Supreme Court that at the time of issuance of process, the probity of the materials on record by the prosecution or complainant has to be accepted as true for that particular stage. The averments in the complaint and the preliminary evidence and the documents on record certainly call for issuance of process. It has been further well settled by Hon'ble the Supreme Court that the Magistrate making an enquiry under Sections 200 and 202 of Cr.P.C. has no jurisdiction to weigh the evidence in golden scales as has been done by both the courts below at this stage. It is the bounden duty of the Magistrate to elicit all facts not merely with a view to protect the interest of an accused who is absent but also with a view to book a person against whom the allegations have been made. What has to be seen is that whether there are sufficient grounds for proceeding and not to see whether there are sufficient grounds for conviction.
7. On the other hand, learned counsel for the respondents would submit that initially agreement was executed on 11.12.2012 and after its cancellation, subsequent agreement took place on 30.01.2014, but this long period, no complaint or objection was raised by the petitioner/complainant. Even in the notice dated 30.01.2014, he would submit that he was cheated and it is purely a civil dispute, which the petitioner has converted the same into criminal case. He would rely upon the judgments of Hon'ble the Supreme Court, where the civil dispute is existing between the parties, invoked into criminal proceeding, which is nothing but an abuse of process of law. Learned counsel for the respondents would rely upon the judgments in **Inder Mohan**

Goswami & another Vs. State of Uttaranchal & others reported in **(2007) 12 SCC 1 (Page 42 & 46)**, **Vesa Holdings P. Ltd. & another Vs. State of Kerala & others**, reported in **(2015) 8 SCC 293 (Page 12)**, **Dalip Kaur & others Vs. Jagnar Singh & another**, reported in **(2009) 14 SCC 696 (Para 10 & 12)** & **Mehmood Ul Rehman Vs. Khazir Mohmmad Tunda & others**, reported in **(2015) 12 SCC 420 (Para 21 & Para 18, 19 & 20)**.

8. I have heard learned counsel for the parties and perused the documents with utmost satisfaction.
9. From bare perusal of the complaint, it is crystal clear that the complainant has enquired representative of owner of the land, then he has informed that no agreement has been executed between the petitioner & respondent No. 1 with regard to sale of the property. No agreement has been executed and the respondents are not owner of the land, but they have executed agreement for the land that they do not owned, therefore, *prima facie*, it is established that the respondents have caused loss by criminal conspiracy and committed fraud with the petitioner by taking a huge amount of Rs. 25,00,000/- as advance.
10. Hon'ble the Supreme Court in **Kewal Krishan Vs. Surajbhan**¹, has held in para 10 which is extracted as under.

“10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202, Criminal Procedure Code, there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The

¹ (1980) (suppl) SC 499

standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh's case (ibid), that even at the stage of framing; charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session”.

11. Hon'ble the Supreme Court in **Chandra Deo Singh vs. Prakash Chandra Bose**², has observed in para 7 to 9 which are extracted as under.

“7. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued ; nor can he examine any witnesses at the instance of such a person. of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No. 1 that the very object of the provisions of Ch. XVI of the' Code of Criminal

²

AIR 1963 SC 1430

Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects, behind the provisions of s. 202, Cr.P.C. is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under s. 202 can in no sense be characterized as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of respondent No. 1 but from the fact that they were persons who were alleged to have been the -associates of respondent No. 1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for respondent No. 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection; the' observations of

this court in *Vadilal Panchal v. Dattatraya Dulaji Ghadigsonkar* (1), may usefully be quoted "The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage for the person complained against can be legally called upon to answer the 'accusation made against him only when a process has issued and he is put on trial."

8. Coming to the second ground, we have no hesitation in holding that the test propounded by the learned single judge of the High Court is wholly wrong. For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. A number of decisions were cited at the bar in which the question of the scope of the enquiry under s. 202 has been considered. Amongst those decisions are : *Parmanand Brahmachari v. Emperor*, 1930 Pat 30, *Radha Kishun Sao v. S. K. Misra*, AIR 1949 Pat 36, *Ramkisto Sahu v. The State of Bihar*, AIR 1952 Pat 125; *Emperor v. J. A. Finan*, AIR 1931 Bom 524 and *Baidya Nath Singh v. Muspratt* ILR 14 Cal 141. In all these cases, it has been held that the object of the provisions of s. 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations, of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned judges in some of these cases have been at pains to observe that an enquiry under [HYPERLINK "https://indiankanoon.org/doc/1149595/"](https://indiankanoon.org/doc/1149595/) s. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-s. (1)

of s. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality, of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

9. This brings us to the third ground. Section 203 of the Code of Criminal Procedure which empowers a, Magistrate to dismiss a complaint reads thus :

"The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the witnesses and, the result of the investigation or inquiry, if any, under s. 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing."

12. Hon'ble the Supreme Court in **State of Bihar vs. Ramesh Singh**³, has observed in para 5 which is extracted as under:

"5. In Nirmaljit Singh Hoon v. The State of West Bengal and an- other(1)-Shelat, J. delivering the judgment on behalf of the majority for the Court referred at page 79 of the report to the earlier decisions of this Court in Chandra Deo Singh v. Prakash Chandra Bose(2) where this Court was held to have laid down with reference to the similar provisions contained in sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused." Illustratively, Shelat J, further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically

³ 1977 (4) SCC 39

untrustworthy, process cannot be refused if that evidence makes out a prima facie case."

13. From bare perusal of the complaint, it is crystal clear that *prima facie*, allegation of commission of offence is made out in the complaint against the respondents. As such, there is sufficient material before the Judicial Magistrate First Class to issue process to the respondents, despite this he has dismissed the complaint which *prima facie*, suffers from non-application of mind and thereafter the revisionary court has committed illegality in rejecting the revision filed by the petitioner. Even, it has been fairly settled by Hon'ble Supreme Court that though there may be a civil dispute between the parties, but filing of a criminal case is not barred as held by the Hon'ble Supreme Court in **Priti Saraf and another Vs. State of NCT of Delhi and another**⁴, wherein it has been held paras 31 and 32 which are extracted as under.

"31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is

the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings”.

14. Thus, considering the facts from all angles, it is clear that the learned Judicial Magistrate has committed illegality in dismissing the complaint and thereafter the Revisional Court has further committed material irregularity in dismissing the criminal revision filed by the petitioner. Considering totality of facts and circumstances of the case, I am of the view that the orders passed by learned Judicial Magistrate First Class, Durg and learned Additional Sessions Judge, Durg are liable to be and are hereby set aside.
15. Learned Judicial Magistrate First Class, Durg is directed to register the complaint and proceed with the matter in accordance with law. It is made clear that this Court has not expressed anything on merit of the case and it is for the learned Judicial Magistrate First Class to apply his mind after considering the facts of the case, evidence adduced before it during the course of trial in accordance with law.
16. With the aforesaid observations and directions, the instant petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge