

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.611 of 2011

Rajdhani System & Estates (P) Ltd. and
others

Petitioners

Mr. Amitav Bagchi, Advocate

-Versus-

Satyabhama Sahu

....

Opposite Party

Mr. Niranjan Lenka, Advocate

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT: 01.12.2022

1. The petitioners have challenged the impugned order dated 5th January, 2011 for having taken cognizance of the offences punishable under Sections 294 and 506 IPC in ICC Case No.698 of 2010 by the learned S.D.J.M., Bhubaneswar on the grounds inter alia that the dispute between the parties is civil in nature and the opposite party should have availed remedy before a civil court and not by filing a complaint and setting the criminal law into motion.

2. As per the facts revealed by the petitioners, the opposite party, namely, complainant had approached them for purchasing a plot and in that connection, an agreement under Annexure-1 was entered into on 30th April, 2002. It is further made to appear that as per the aforesaid agreement, opposite party was to pay a sum of Rs.32,000/- towards purchase of the land in equal monthly installments of Rs.800/- per month besides other charges payable at the time of registration of the sale deed and in addition to the above, an amount of Rs.5,000/- to be paid at the time of booking the plot. It is claimed by the petitioners that the opposite

CRLMC No.611 of 2011

party filed a complaint alleging some overt acts against them with regard to an incident dated 18th February, 2010 which never happened. That apart, the petitioners contend that the dispute arises out of a contract and hence, the criminal proceeding is not tenable in law and is liable to be quashed in the interest of justice leaving the opposite party to go for a civil remedy.

3. Heard Mr. A. Bagchi, learned counsel for the petitioners and Mr. N. Lenka, learned counsel for the opposite party.

4. Mr. Bagchi, learned counsel for the petitioners submits that there has been considerable delay on the part of the opposite party to approach the court by filing a complaint which therefore should not have been entertained by the learned S.D.J.M., Bhubaneswar. A ground of limitation has been raised and in that respect, Mr. Bagchi cited a decision of this Court in the case of **Chandra Sekhar Mohanty Vrs. Japani Sahoo 2006 (II) OLR 133**. It is further contended that considering the civil nature of the dispute since the parties have had an agreement in the year 2002, the opposite party ought to have approached the civil court for the pending dues, however, without any reason and justification filed the complaint and the same was entertained by the court below. While contending so, Mr. Bagchi, learned counsel for the petitioners relies on one more decision of this Court in the case of **Mahindra and Mahindra Financial Services Ltd. and another Vrs. Rajiv Dubey 2008 (16) SCALE 62**, wherein, it has been held that in some categories of cases, inherent jurisdiction under Section 482 Cr.P.C. may be exercised. It is contended that apart from the fact that the dispute is civil in nature, the opposite party filed the complaint with a malicious intention so as to coerce the petitioners to refund the money which is one of the categories indicated in the decision (supra). In response to the above, Mr. Lenka, learned counsel for the opposite party would submit that

CRLMC No.611 of 2011

though there is an agreement between the parties but that cannot be a ground for quashing the criminal proceeding which is filed with regard to a specific incident dated 18th February, 2010.

5. Though the opposite party alleged cheating and fraud against the petitioners and accordingly, filed the complaint, however the learned court below while taking cognizance of the offences confined it to the incident dated 18th February, 2010 and consequently, passed the impugned order dated 5th January, 2011. In other words, the learned S.D.J.M., Bhubaneswar took cognizance of the offences under Sections 294 and 506 IPC and proceeded to summon the petitioners.

6. Now the question is, whether, in the aforesaid backdrop, inherent jurisdiction should be exercised to quash the criminal proceeding as has been prayed for by the petitioners on the ground of delay and also the dispute being civil in nature? As the law is well settled in the case of **State of Haryana Vrs. Ch.Bhajanlal and others AIR 1992 SC 604**, wherein, the Apex Court illustratively indicated the situations and circumstances under which the extra-ordinary power under Section 482 Cr.P.C. should be exercised. The relevant extract of the said decision is reproduced herein below for better appreciation.

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.

7. In fact, the Apex Court in the aforesaid case referred to the judgment in **R.P. Kapur Vrs. The State of Punjab AIR 1960 SC 862** which is legal classicus on the point. The decision in **Rajiv Dubey** (supra) is on similar lines. In fact, in the said decision of the Supreme Court referred to the case of **Ch.Bhajanlal** (supra). In the instant case, the order of cognizance passed by the court under Section 294 and 506 IPC is related to an incident dated 18th February, 2010 and the question is whether the complaint was filed so as to compel the petitioners to pay off the dues and with that in mind and motive, the opposite party initiated the criminal action. If the complaint, a copy of which is at Annexure-3 is

perused and gone through, the details of incident dated 18th February, 2010 stand described as to the manner in which the opposite party was abused and threatened. It is contended that the petitioners are the heads of the construction company and therefore, the opposite could not have had any occasion to meet them even and so the incident is utterly falsehood. There appears huge exaggerations since it is quite unusual and absurd to visualize a situation where the high officials of a company to have direct meetings with its customers. Mr. Bagchi applying the judgment in **Ch.Bhajanlal** (supra) submits that the complaint should be quashed since it is filed with a motive to wreck vengeance. Possibly the opposite party did not receive the kind of response he deserved and under the circumstances, out of despair filed the complaint. Furthermore, a contractual dispute between the parties did exist by then. The details of the circumstances narrated in the complaint appear to be highly unimaginable which a prudent person cannot think of and believe that the petitioners being the heads of the company can have a direct interactions with any of investors and indulge and engage themselves in such mischief. Hence, applying the standards set in **Ch.Bhajanlal** (supra), it has to be held that the criminal proceeding has to be terminated.

8. However, on the point of limitation, which has now become merely academic, the decision in **Chandra Sekhar Mohanty** (supra) so relied upon by Mr. Bagchi, the learned counsel for the petitioners, the Court, with due respect and humility, is of the view that it cannot render any assistance, since for the alleged incident dated 18th February, 2010, the complaint was filed on 9th March, 2010 which was well within the period specified and hence, not barred under Section 468 Cr.P.C. even though the order of cognizance was passed on 5th January, 2011. In fact, the law envisages and demands that the offence is to be reported

within the time limit as enumerated in Section 468(2) Cr.P.C. and on its failure, the bar applies and not otherwise and in no case, it does affect the jurisdiction in taking of cognizance even after expiry of the prescribed periods.

9. Accordingly, it is ordered.

10. In the result, the petition stands allowed. As a necessary corollary, the impugned order dated 5th January, 2011 passed in ICC Case No.698 of 2010 by the learned S.D.J.M., Bhubaneswar and the entire criminal proceeding is hereby quashed.



(R.K. Pattanaik)
Judge

U.K. Sahoo