

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1485 of 2011

Arjunlal Agrawal and another *Petitioners*

-versus-

Anil Kumar Gilra *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER

31.03.2022

Order

No.

07.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order of cognizance dated 27th December, 2010 passed by the learned S.D.J.M.(S), Cuttack in 1.C.C. No.934 of 2010.
3. Heard the learned counsel for the Petitioners. No one appears on behalf of the Opposite Party at the time of call.
4. The Petitioners have sought for quashment of the order of cognizance taken by the learned S.D.J.M.(S), Cuttack on the basis of complaint lodged by one Anil Kumar Gilra, who is the

Director of M/s. Cosboard Industrial Ltd., Phase-II, New Industrial Estate, Jagatpur, Cuttack against them.

5. As it appears, there was business transaction between the Petitioners and the complainant. The Petitioners regularly supplying chemicals to the complainant. However, a dispute between them having occurred which is subject matter of arbitration. In the arbitral proceeding, award has been passed on 5th August, 2010 under Annexure-9 in favour of the Petitioners. Thereafter, the complainant gave legal notice to the Petitioners under Annexure-10 wherein stated that the materials supplied were not of the standard as agreed and then file the complaint for cheating in supplying the materials of lower standard.

6. Learned counsel for the Petitioners submits that the aforesaid is nothing but to harass the Petitioners as after the award passed in the arbitral proceeding, complaint was filed with an oblique motive not to insist for payment of chemical supplied executing the arbitration award. If chemical at all supplied was lower quality, the complainant could have returned the stock. However, if any loss was caused by the

same, the same is purely is a business dispute and could have been ventilated in a suit or in the arbitral proceeding and there being clause of arbitral proceeding, he could have ventilated the same before the MSMIFC or in alternative could have sought for damage. But without doing the same, he has filed a complaint. The dispute is purely civil in nature and no criminality is involved, the aforesaid proceeding is liable to be quashed.

7. Needless to say that no doubt, even if cause of action arises during the business transaction, the said cause of action in certain circumstances allowed, the person aggrieved to redress the grievance both in civil forum for damages caused or the any other relief that cannot be granted in a criminal proceeding and proceed criminally to punish the person for such offence committed. However, now-a-days, it has become common for the reasons best known civil liability given criminal colour and criminal case also filed.

8. In the case of ***Indian Oil Corpn. v. NEPC India Ltd. and Others, reported in (2006) 6 SCC 736***, the Apex Court at paragraphs-12 to 14 have 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 Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*¹, *State of Haryana v. Bhajanlal*², *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*³, *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*⁴, *State of Bihar v. Rajendra Agrawalla*⁵, *Rajesh Bajaj v. State NCT of Delhi*⁶, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*⁷, *Hridaya Ranjan Prasad Verma v. State of Bihar*⁸, *M. Krishnan v. Vijay Singh*⁹ and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*¹⁰. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material, nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with 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.

13. *While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of UP¹¹, this Court observed : (SCC p. 643, para 8)*

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.*

1. (1988) 1 SCC 692 : 1988 SCC (Cri) 234
2. 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
3. (1995) (6) SCC 194 : 1995 SCC (Cri) 1059
4. (1996) 5 SCC 591 : 1996 SCC (Cri) 1045
5. (1996) 8 SCC 164 : 1996 SCC (Cri) 628
6. (1999) 3 SCC 259 : 1999 SCC (Cri) 401
7. (2000) 3 SCC 269 : 2000 SCC (Cri) 615
8. (2000) 4 SCC 168 : 2000 SCC (Cri) 786
9. (2001) 8 SCC 645 : 2002 SCC (Cri) 19
10. (2005) 1 SCC 122 : 2005 SCC (Cri) 283
11. (2000) 2 SCC 636 : 2000 SCC (Cri) 513"

9. From the materials available on record, as it appears that for non-payment of the dues to the Petitioners and the Petitioners' company is a company under the category of small and medium enterprises, they approach the MSMIFC against the Opposite Party for recovery of the principal amount wherein award was passed on 5th August, 2010 by the Registrar, Micro, Small and Medium Enterprises Facilitation Council, Chhattisgarh, Raipur. As such, notice was issued to the Opposite Party for repayment of the said amount, but without repayment of the said amount the complaint was filed. The Petitioners no doubt earlier approached this Court vide CRLMC No.285 of 2011, but the same appears to have been dismissed for non-production of the certified copy of the order of cognizance. Thereafter, they have come to this Court challenging the order of cognizance in this petition.

10. From the aforesaid, it appears to this Court that the dispute between the parties is purely civil in nature. The same has been given a colour of criminality and at a belated stage the order has been passed. In such premises, the prosecution

against the Petitioners would be nothing but an abuse of the process of the court.

11. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the entire criminal prosecution launched against the Petitioner vide 1.C.C. No.934 of 2010 on the file of the learned S.D.J.M.(S), Cuttack. The learned S.D.J.M.(S), Cuttack or the Court in seisin over the matter shall on receipt of the copy of this order/production of the copy of this order, do the needful in this regard.

12. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

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