

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3612 of 2010

<i>The Pride Hotel</i>		<i>Petitioner</i>
	<i>versus-</i>	
<i>State of Orissa and others</i>		<i>Opposite Parties</i>

CORAM: JUSTICE S. PUJAHARI

ORDER

07.03.2022

Order
No.

05.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 6th September, 2010 passed by the learned S.D.J.M., Bhubaneswar in 1.C.C. No.2178 of 2010 pursuant to which Saheed Nagar P.S. Case No.305 of 2010 which further corresponds to G.R. Case No.2799 of 2010, as well as the entire proceeding.
3. No one appears on behalf of the Opposite Parties No.3-Complainant.
4. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Parties No.1 and 2.

5. As it appears, pursuant to the direction of the learned S.D.J.M., Bhubaneswar in 1.C.C. No.2178 of 2010, the aforesaid P.S. Case was registered which corresponds to G.R. Case No.2799 of 2010 pending in the court of S.D.J.M., Bhubaneswar.

6. The facts relevant for disposal of the case are as follows:-

The Petitioner is an hotelier and has received certain amount towards booking of 100 rooms for the period from 5th January, 2011 to 9th January, 2011 from the Opposite Party No.3-Complainant by entering into an agreement. However, before the aforesaid date, due to certain reasons, the Petitioner cancelled the booking and returned the amount. But, thereafter, the Opposite Party No.3-Complainant alleged that he had been cheated him and made the aforesaid complaint which being sent to the police under Section 156(3) of Cr.P.C., for which, the aforesaid case has been registered for commission of offences punishable under Sections 405, 409, 420, 429, 467, 468, 471 of the I.P.C.

7. Mr. Suvashish Pattnaik, learned counsel appearing for the Petitioner submits that since the entire cause of action has been arisen within the jurisdiction of Ahmedabad and the money having been transferred there, no cause of action having arose within the jurisdiction of the learned S.D.J.M., Bhubaneswar, learned S.D.J.M., Bhubaneswar could not have entertain the compliant and directed the police to register the case. Otherwise also, he submits that there being no element of criminality as the matter arises out of purely contractual dispute and the Petitioner has already returned the amount received for cancellation of booking much prior to the date commenced, the learned S.D.J.M. should have out rightly rejected the petition and should not have sent to the police for registration of the same. Otherwise also prima facie allegation made in the F.I.R. being not disclosing any offence and the dispute is predominantly is civil in nature, the same is liable to be quashed.

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. After taking note of the aforesaid settled position of law and looking into the entire dispute, this Court is convinced of the fact that dispute is predominantly is civil in nature that have given a colour of criminality, as such, without going to the question of jurisdiction, the F.I.R. in Saheed Nagar P.S. Case No.305 of 2010 registered against the Petitioner pursuant to the direction of the learned S.D.J.M., Bhubaneswar in 1.C.C. No.2178 of 2010 is liable to be quashed, as it does not reveal a case of criminality against the Petitioner and the complaint was tainted with malice in order to harass the Petitioner. However, if in the meanwhile, charge sheet has been filed and cognizance has been taken, the proceeding shall be dropped by the learned S.D.J.M., Bhubaneswar in the said case.

10. With the aforesaid order, this CRLMC stands disposed of.

(S. Pujahari)
Judge

DA