

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC No.2039 of 2017 along with CRLMC Nos.343, 3059 & 3285 of 2018, 2805, 2806, 3184 & 3185 of 2019 and 13 of 2021.**

(These are the applications under Section 482 of the Code of Criminal Procedure, 1973)

In CRLMC No.2039 of 2017

*Jindal India Thermal Power Limited Petitioners
and Ors.*

-versus-

State of Odisha and Ors. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

*For Petitioners : Mr. Ashok Mohanty, Sr. Adv.
Mr. Prafulla Ku. Rath, Adv.
Mr. Satyajit Mohanty, Adv.*

-versus-

*For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.P.3)*

In CRLMC No.343 of 2018

*M/s. Sinhotia Metals and Minerals Petitioners
Pvt. Ltd and Ors.*

-versus-

State of Odisha & Ors. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioners : Mr. Rajjeet Roy, Adv.

-versus-

*For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)
Mr. A.K. Sahoo, Adv.
(for O.P.3)*

In CRLMC No.3059 of 2018

*Jindal India Thermal Power Limited Petitioners
and Ors.*

-versus-

State of Odisha and Anr. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

*For Petitioners : Mr. Biswa Mohan Patnaik, Sr.
Adv.*

Mr. Satyajit Mohanty, Adv.

-versus-

*For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)*

*Mr. A.K. Panigrahi, Adv.
(for O.P.2)*

In CRLMC No.3285 of 2018

Shyam Jindal Petitioner

-versus-

State of Odisha and Anr. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

*For Petitioners : Mr. Biswa Mohan Patnaik, Sr.
Adv.*

Mr. Satyajit Mohanty, Adv.

-versus-

*For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)*

*Mr. A.K. Panigrahi, Adv.
(for O.P.2)*

In CRLMC No.2805 of 2019

*Jindal India Thermal Power Limited Petitioners
& Ors.*

-versus-

State of Odisha and Anr. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioners : Mr. Satyajit Mohanty, Adv.
-versus-

For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.P.2)

In CRLMC No.2806 of 2019

Shyam Sunder Jindal Petitioner
-versus-
State of Odisha and Anr. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioner : Mr. Satyajit Mohanty, Adv.
-versus-

For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.P.2)

In CRLMC No.3184 of 2019

Jindal India Thermal Power Limited Petitioners
& Ors.
-versus-
State of Odisha and Anr. Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioners : Mr. Satyajit Mohanty, Adv.
-versus-

For Opp. Parties : Mr. Karunakar Gaya, ASC
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.P.2)

In CRLMC No.3185 of 2019

Shyam Sunder Jindal *Petitioner*
-versus-
State of Odisha and Anr. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Shyamalendu Pattnaik,*
Adv.

-versus-

For Opp. Parties : *Mr. Karunakar Gaya, ASC*
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.P.2)

In CRLMC No.13 of 2021

M/S. Sinhotia Metals and Minerals *Petitioners*
Pvt. Ltd. & Anr.
-versus-
State of Odisha and Anr. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioners : *Mr. Rajjeet Roy, Adv.*

-versus-

For Opp. Parties : *Mr. Karunakar Gaya, ASC*
(for O.P.1)
Mr. A.K. Panigrahi, Adv.
(for O.Ps.2 & 3)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-22.03.2022

DATE OF JUDGMENT:-13.05.2022

S.K. Panigrahi, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') have been filed with a prayer to quash the proceedings emanating from ICC Case No.33 of 2017, ICC Case No.74 of 2017, ICC Case No.57 of 2018 pending before the learned Sub-divisional Judicial Magistrate, Talcher and ICC Case No.44 of 2019 pending before the learned Sub-divisional Judicial Magistrate, Angul. As the petitions involve the similar facts, they are being decided by this common judgment and order.

2. Shorn of unnecessary details, the facts of the present matter are as follows:

i. The Complainant Company, one M/s Quartz Infra and Engineering Private Limited is engaged in the business of civil engineering and providing construction services. The Complainant Company had undertaken a back to back sub-contract work from one M/s GSR Ventures Private Limited to execute the construction of a boundary wall as well as area grading and leveling work in March 2010 at the newly constructed 2x600 MW Thermal Power

Plant belonging to Jindal India Thermal Power Limited (hereinafter referred to as “M/S JITPL”, present Petitioner No.1 in CRLMC No.3184 of 2019, CRLMC No.2085 of 2019, CRLMC No.3059 of 2018 and CRLMC No.2039 of 2017) at Derang, Odisha (hereinafter referred to as the “Derang Power Plant”).

ii. The Complainant Company then entered into six Civil engineering work contracts with M/S JITPL between April 2011 to February 2012 for construction of; peripheral roads and drains, internal roads and drains, security sheds, boundary wall, raw water reservoir extension and execution of the balance work left in the Ash Dyke by M/s GSR Ventures Private Limited, all for the said Derang Power Plant. To that end the Complainant Company submitted three bank guarantees for a total sum of Rs. 2.72 Crores towards security/earnest money for the same.

iii. At the relevant point of time, in December 2012, the work pertaining to the construction of the boundary wall was completed, the work pertaining to the construction of security sheds was closed and the work pertaining to the remaining four contracts i.e. construction of; peripheral roads and drains, internal roads and drains, raw water reservoir extension and execution of the balance

work left in the Ash Dyke by M/s GSR Ventures Private Limited was underway.

iv. It is the contention of the Complainant Company, that prior to terminating the contracts with the Complainant Company, M/S JITPL maliciously entered into an understanding with one M/s Sinhotia Metals and Minerals Private Limited (hereinafter referred to as “M/s SMMPL” and present Petitioner No. 1 in CRLMC No.3285 of 2018 and CRLMC No.13 of 2021) in December 2012 itself, to usurp the work contracts from the Complainant Company at the Derang Power Plant at a rate much higher compared to the one awarded to the Complainant Company.

v. Subsequently, the Complainant Company's contracts with M/S JITPL were unilaterally terminated on 31.1.2013 and the bank guarantees furnished by the Complainant Company for a total sum of Rs.2.72 Crores were encashed on 29.1.2013 without any prior notice or intimation to the Complainant. The Complainant Company was then asked to draw up its final bills after measurement of its work done till 31.1.2013 and vacate the premises of the Derang Power Plant forthwith.

vi. It is the contention of the Complainant Company that despite its strong protest in relation to the manner of the illegal termination of their contracts

as well as the fact that M/s SMMPL had already entered into the work site, the Complainant Company who was by this pushed into a corner, was forced to accept the promise of the officers of M/S JITPL who assured them that the entire work site would get measured and the final bill would be processed within 9 days on the meeting dated 6.2.2013.

vii. Pursuant to the same, a joint verification of the work done till 31.01.2013 as well as a measurement of the materials of the Complainant Company lying in store at the Derang Power Plant was conducted by the officers of M/S JITPL, officers of one M/s Currie & Brown and officers of the Complainant Company. After due measurement, the details of which were recorded in ground level books and the officers of the aforesaid attested to the same by putting their signatures. A final bill of Rs. 1.53 Crores was submitted which was also duly endorsed by the concerned officers of M/S JITPL. The Complainant Company subsequently vacated the premises of the Derang Power Plant. M/S JITPL thereafter admittedly made a payment of Rs. 92.25 lacs but did not make any payment for the remainder amount of about Rs. 60.8 lacs as claimed by the Complainant.

viii. It is the Complainant's case that despite the repeated requests for releasing the payment of the remainder amount, when M/S JITPL paid no heed to the Complainant Company, the Complainant Company was constrained to invoke arbitration clause as was contracted between them.

ix. During the course of the arbitration proceedings the Complainant Company assailed not only the non-payment of the remainder amount as aforesaid of the final bill but also disputed the termination of the contracts as well as encashment of the bank guarantees. In the reply filed by M/S JITPL before the learned Arbitral Tribunal, the Complainant Company has alleged that it was shocked to learn that M/S JITPL has forged/fabricated, and in the process altered, the final bill and the ancillary 29 level books containing measurements of the works to show that the final bill amount was Rs.94.88 lacs. It was also contended that M/S JITPL has submitted documents wherein they themselves have contradicted the alternate amount arrived by them and stated that the final bill was a further reduced amount of Rs. 92.25 lacs which has been fully paid to the Complainant Company.

x. It was further submitted that these alleged manipulated, forged and fabricated bills as well as ancillary documents were relied upon by M/S JITPL

throughout the course of arbitration much to the chagrin of the Complainant Company in an effort to defraud the learned Tribunal.

xi. Finally, the Learned Tribunal, for reasons other than for the alleged forgery, manipulation and fabrication, in its majority award dated 21.2.2017, rejected all contentions raised by M/S JITPL and, awarded a total sum of Rs.9.71 Crores in favour of the Complainant Company including the entire sum of Rs.1.53 Crores of the final bill.

xii. It is around this time that the Complainant Company filed the four criminal complaint petitions against various persons including M/S JITPL, M/s SMMPL and Mr. Shyam Sunder Jindal (present Petitioner No.1 in CRLMC No. 3185 of 2019, CRLMC No. 2806 of 2019 and CRLMC No.3285 of 2018) who are the parties before this Court seeking quashing of the four criminal complaint petitions through the present criminal miscellaneous petitions.

3. Before proceeding to record the submissions made by the parties, this Court finds it apposite to firstly succinctly encapsulate the allegations contained in each of the four impugned criminal complaint petitions. The pith and substance of the criminal complaint petitions is as follows:

i. ICC Case No.33 of 2017, pending before the learned Sub-divisional Judicial Magistrate, Talcher.

The Complainant Company has alleged commission of offences under Sections 447/ 403/ 379/ 406/ 408/ 409/ 420/ 426/ 341/ 109/ 120-B IPC r/w Section 34 IPC contending that the Opposite Parties therein (including present Petitioners M/S JITPL in CRLMC No 2039 of 2017 and M/s SMMPL in CRLMC No.343 of 2018) have misappropriated the Complainant Company's property that was lying in the work site of the Derang Power Plant for their own individual benefit while colluding, conniving and acting in a concerted manner in furtherance of criminal conspiracy to illegally oust the Complainant Company from the work site for their own gratification. The Opposite Parties have surreptitiously entered the work site of the Derang Power Plant and taken over the work of the Complainant Company in a *malafide* manner behind the Complainant Company's back. The Opposite Parties have also forced the Complainant Company to sell its materials on the work site to M/s SMMPL on a much lower rate than acceptable out of which also the full payment was never realized despite multiple reminders and requests. As such, the Opposite Parties have dishonestly

misappropriated the Complainant Company's movable property and have cheated the Complainant Company while also committing criminal breach of trust. Thus, the accused persons have colluded with each other to cheat the Complainant so as to unlawfully cause loss of property and have therefore breached the agreement between them and are thereby guilty of criminal breach of trust.

ii. ICC Case No.74 of 2017, pending before the learned Sub-divisional Judicial Magistrate, Talcher.

The Complainant Company has alleged commission of offences under Sections 191/ 192/ 193/ 196/ 463/ 465/ 468/ 471 /120-B/ 420/ 427/ 506 IPC r/w Section 34 IPC contending that the Opposite Parties therein (including present Petitioners M/S JITPL in CRLMC No.2805 of 2019 and Shyam Sunder Jindal in CRLMC No.2806 of 2019) fabricated false evidence to defeat the claims of the Complainant Company before the Learned Arbitration Tribunal, placed reliance on the said evidence and misleading the tribunal despite knowing the same to be false and forged documents including level books to fraudulently create an altered final bill being thus guilty of cheating, forgery and fabrication. It is the Complainant

Company's submission that the Document. No 2 relating to specifications of Ash Dyke contract ran counter to the earlier filed Document No. 1 which was said to have been inadvertently filed by the Opposite Party, despite the fact that Document No. 1 was admittedly treated as undisputed document at the very threshold of the arbitration proceedings. This fabricated and forged Document No.2 was filed at a later point in time and was inconsistent while containing a completely different and more stringent set of requirements for performance by the Complainant Company and was a stark departure from the earlier specifications described and contained in Document No. 1. Upon scrutiny of the specifications contained in Document No. 3 as well, filed before the Learned Arbitral Tribunal, it is also alleged that the same has been forged and fabricated intentionally to frustrate and cause wrongful loss to the Complainant Company and hoodwink the Tribunal to secure an erroneous opinion against the Complainant Company by misleading the Learned Tribunal. Thus the Complainant Company makes out a serious case against the Opposite Parties of a well-planned and concerted effort to forge and fabricate documents to cheat the Learned Tribunal so as to secure a favourable award.

iii. ICC Case No.57 of 2018, pending before the learned Sub-divisional Judicial Magistrate, Talcher.

The Complainant Company has alleged the commission of offences u/s 192/ 193/ 196/ 420/ 463/ 465/ 468/ 469 /471 /120-B/ 403 IPC r/w S. 34 of IPC and under Sections 66(c) and 66(d) of IT Act 2000 contending that the Opposite Parties (including present Petitioners M/S JITPL in CRLMC No. 3059 of 2018, M/s SMMPL in CRLMC No. 13 of 2021 and Shyam Sunder Jindal in CRLMC No. 3285 of 2018) have in active connivance arbitrarily terminated all the contracts with the Complainant Company in January, 2013. The Opposite Parties have further dishonestly altered the final ground level measurements as well as the end points of work to reduce the quantity of work executed and thereby cheating the Complainant Company by depriving it of the money rightfully due to it. The illegal alteration of measurements is to forge/fabricate a new final bill has resulted in misappropriation of the hard earned money of the Complainant Company and therefore the Opposite Parties have caused grave wrongful loss to the Complainant Company while causing wrongful gain to M/s SMMPL who would have then been in the position to charge M/S JITPL for an inflated

quantity of work than that done by them. On these facts, the Opposite Parties are alleged to be conjointly liable for commission of alleged offences of criminal conspiracy, misappropriation of amount, cheating, fabricating / forgery of critical documents besides adducing false evidence before the Learned Arbitral Tribunal.

iv. ICC Case No.44 of 2019, pending before the learned Sub-divisional Judicial Magistrate, Angul.

Here, the Complainant Company has alleged the commission of offences u/s 422 IPC r/w S. 120-B and 34 IPC on the contention that the Opposite Parties (including present Petitioners M/S JITPL in CRLMC No. 3184 of 2019 and Shyam Sunder Jindal CRLMC No. 3185 of 2019) have willfully dragged the arbitration proceedings for four years to inflict pain and mental agony on the Complainant Company and have thereafter filed an alleged false and frivolous application under Section 34 of the Arbitration and Conciliation Act challenging the award dated 21.2.2017 of the Learned Arbitration Tribunal as a counter to the Execution Case No.158 of 2017 filed by the Complainant Company for recovery of the awarded amount. After dismissal of the application under Section 34 of the Arbitration Act, the Opposite Parties have subsequently filed an

application under Section 37 of the Arbitration Act before this Hon'ble Court which is pending adjudication. As such, the Complainant Company alleges that the Opposite Parties have stalled the Execution Case No.158 of 2017 filed by the Complainant Company and have prevented the attachment of immovable and movable properties of the Derang Power Plant towards fulfillment of the debt i.e. the award dated 21.2.2017 of the Learned Arbitration Tribunal.

4. Learned counsel for the Petitioner M/S JITPL (*in CRLMC No.2805 of 2019, CRLMC No.3184 of 2019, CRLMC No.3059 of 2018 and CRLMC No.2039 of 2017*) vehemently submits that the allegations on the whole germinate from a dispute which is purely civil in nature and the criminal proceedings initiated by the Complainant Company amount to an abuse of the process of the Court. The said proceedings have all been allegedly initiated with *mala fide* and malice to wreak vengeance on the M/S JITPL Company and its officers. It is also submitted that the issue of forgery has been specifically dealt with by the learned Arbitral Tribunal in its award and therefore the present petitions may all be allowed to secure the ends of justice as the complaints amount to an abuse of the process of law primarily due to the reason that the disputes between the parties are primarily civil in

nature and the complaints are works of malice as they are vexatious in nature with the sole intent to harass the accused persons.

5. Thereafter, the Learned Counsel for the Petitioner M/s SMMPL (*in CRLMC No.13 of 2021 and CRLMC No.343 of 2018*) has ardently argued that the allegations contained in the impugned complaint petitions are entirely against the other Opposite Parties and have no material against the abovementioned Petitioner. As such, it is submitted that the dispute is entirely civil in nature and the abovementioned Petitioner has no role to play in the dispute which primarily involves the Complainant Company and M/S JITPL and its personnel. The allegations contained even if taken at their face value and accepted in its entirety do not satisfy the ingredients of the offences alleged to have been committed by the abovementioned Petitioners.

6. Learned counsel for the Petitioner Mr. Shyam Sunder Jindal (*in CRLMC No.2806 of 2019, CRLMC No.3185 of 2019 and CRLMC No.3285 of 2018*) has submitted that the abovementioned Petitioner is neither the Chairman, nor a Director, nor a Shareholder, nor an employee of M/S JITPL and is nowhere connected with the present matter. The abovementioned Petitioner is a stranger to the dispute between the Complainant Company and the other

Opposite Parties and as such allowing the proceedings to continue against him would tantamount to an abuse of the process of law.

7. *Per contra*, learned counsel for the Complainant Company opposes the petitions on the grounds that it is the settled position of law that facts which may give rise to a civil claims can also tantamount to criminal offences and separate proceedings may be initiated under the law for prosecution of the same independent of each other. As such, an arbitration is a remedy limited to affording relief to a party affected by the breach of a contract but the arbitrator does not have the power to conduct a criminal trial of any offences that may have been committed by the party in connection with the self-same contract. The learned counsel further submits that a strong *prima facie* case is apparent on the face of the record wherein all the three present petitioners have actively connived and entered into a criminal conspiracy to fraudulently misappropriate the Complainant Company's property, cause wrongful gain to themselves in the process and purposely fabricate and forge important documents to defeat the claims of the Complainant Company before the Learned Arbitral Tribunal. He also submitted that although the criminal conspiracy and cheating have been committed both prior to and pending the

arbitration proceedings, the acts of forgery and fabrication have been committed in a concerted manner which only came into light during the course of the arbitration proceedings. Thus, the act of cheating has been a continuing offence hatched in deep conspiracy by the parties concerned.

8. Heard learned counsels for the parties and perused the materials on record. Before advertng to the facts of the case, it is apposite to refer first to the law applicable to the facts of the present case. It is well settled that though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it has been deemed neither to be feasible nor desirable to lay down an absolute rule which would govern or inhibit the exercise of inherent jurisdiction of the Court under Code of Criminal Procedure, 1973. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, *ex facie*, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. Reference may be made to the Hon'ble Supreme Court's decisions

in **R.P. Kapur v. State of Punjab**¹ and **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**².

9. In the case of **State of Haryana v. Ch. Bhajan Lal**³, the Hon'ble Apex Court has held that an FIR can be quashed at the initial stage where the allegations made, even if taken at their face value and accepted in its entirety, do not *prima facie* constitute any offence or make out a case against the accused. In a similar vein in the case of **Rishipal Singh v. State of Uttar Pradesh**⁴, the Hon'ble Supreme Court held that the High Court in exercise of its inherent power under Section 482 Cr.P.C., should not allow a vexatious complaint to continue, which would be a pure abuse of the process of law and the same ought to be interdicted at the threshold.

10. The principle relating to the nature and scope of exercise of power under Section 482 of the Cr.P.C. has now, by and large, been crystallized by the Hon'ble Supreme Court in the case of **Shakson Belthissor v. State of Kerala**⁵, relying upon its earlier judgment in the case of **Indian Oil Corpn. v. NEPC India Ltd.**⁶ and a plethora of case law on the subject matter has authoritatively laid down as under;

¹ AIR 1960 SC 866

² (1995) 6 SCC 194)

³ AIR 1992 SC 604

⁴(2014) 7 SCC 2015

⁵(2009) 14 SCC 466

⁶(2006) 6 SCC 736

“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 Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], *CBI v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], *Medchl Chemicals &Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. SharafulHaque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . 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 mala fides/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 proceeding 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.”

11. The aforesaid proposition of law was again reiterated by the Hon'ble Apex Court in ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre***⁷, wherein the Supreme Court has observed as follows;

“7. 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 the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

12. Furthermore, given that it has been vehemently urged that the allegations contained in the criminal complaints are civil in nature, it is also relevant to consider the position of law pertaining to whether a criminal complaint is maintainable when the same primarily arises from a civil dispute. It is now settled law that when in certain cases the very same set of

⁷AIR 1988 SC 709

facts may rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings as provided for in criminal law. In ***Pratibha Rani v. Suraj Kumar***⁸ the Hon'ble Supreme Court summed up the distinction between the two remedies as under;

“21. ... There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.”

The aforesaid view was reiterated by the Hon'ble Supreme Court in ***Kamaladevi Agarwal v. State of W.B.***⁹ as under;

“9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in State of Haryana v. Bhajan

⁸(1985) 2 SCC 370

⁹(2002) 1 SCC 555

Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Rajesh Bajaj v. State (NCT of Delhi) [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 : 1999 SCC (Cri) 401] this Court in Trisuns Chemical Industry v. Rajesh Agarwal [Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686 : 2000 SCC (Cri) 47] held :

‘7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions [vide State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Rajesh Bajaj v. State (NCT of Delhi) [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 : 1999 SCC (Cri) 401]].

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations : (Rajesh Bajaj case [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 : 1999 SCC (Cri) 401] , SCC p. 263, para 10)’

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.”

After referring to a plethora of decisions on the subject the Hon'ble Supreme Court has finally held in **KamaladeviAgarwal v. State of W.B**¹⁰ that;

“17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.”

13. The Hon'ble Supreme Court, tellingly, in a similar case where allegations of criminality arose during the course of arbitration proceedings and where the parties approached the Hon'ble High Court invoking its powers under S. 482 of the Cr.P.C., held in **Trisuns Chemical Industry v. Rajesh Agarwal and Ors.**¹¹ that:

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by

¹⁰Supra.

¹¹(1999) 8 SCC 686

breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .”

In a similar light, the Hon’ble Apex Court in **Lalmuni Devi v. State of Bihar**¹², observed that;

“8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.”

¹²(2001) 2 SCC 17

A similar fact situation was also ensconced in the case of **State of Orissa v. Ujjal Kumar Burdhan**¹³, wherein the Hon'ble Supreme Court observed;

“14. Further, the impugned order also notes that in view of the arbitration agreement between the agent and the Government, all the alleged violations fell within the purview of the Arbitration and Conciliation Act, 1996 and therefore, the respondent could not be held liable for any criminal offence. This observation is against the well-settled principle of law that the existence of an arbitration agreement cannot take the criminal acts out of the jurisdiction of the courts of law.

15. On this aspect, in S.W. Palanitkar v. State of Bihar [(2002) 1 SCC 241 : 2002 SCC (Cri) 129] , this Court has echoed the following views: (SCC p. 250, para 22)

“22. Looking to the complaint and the grievances made by the complainant therein and having regard to the agreement, it is clear that the dispute and grievances arise out of the said agreement. Clause 29 of the agreement provides for reference to arbitration in case of disputes or controversy between the parties and the said clause is wide enough to cover almost all sorts of disputes arising out of the agreement. As a matter of fact, it is also brought to our notice that the complainant issued a notice dated 3-10-1997 to the appellants invoking this arbitration clause claiming Rs.15 lakhs. It is thereafter the present complaint was filed. For the alleged breach of the agreement in relation to commercial transaction, it is open to Respondent 2 to proceed against the

¹³(2012) 4 SCC 547

appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie.””

From the aforesaid discussion, it therefore emerges that prosecution in criminal law is permissible in law in the event when an offence is committed in pursuance to a contractual agreement/commercial transaction. The filing of a civil suit or invoking the arbitration clause in the contract by a party is not a bar for filing a criminal complaint before a Court of law.

14. In the present case, the main issue underlying three of the four impugned criminal complaints, i.e. ICC Case No.33 of 2017, ICC Case No.74 of 2017 and ICC Case No.57 of 2018 revolves around allegations of forgery and fabrication of ground level books and measurements by the present Petitioners to create an alternative final bill than the one agreed to by and between the parties as well as illegal encashment of the bank guarantees so as to cause wrongful loss to the Complainant Company while simultaneously causing wrongful gain to the Opposite Parties including the present Petitioners.

15. In this regard, we may refer to the events that had transpired giving rise to such an allegation. Upon the alleged unilateral termination of the contracts of the Complainant Company, the Complainant Company was invited to conduct a joint verification of the work done till 31.01.2013 and measure the materials of the Complainant Company that remained at the work site of Derang Power Plant. The said verification/inspection was attended by representatives of M/s JITPL, the Complainant Company and M/s Currie & Brown. At the end of the verification which was recorded in various ground level books, a final bill was prepared and submitted by the Complainant Company amounting to Rs.1.53 Crores. The same was attested by the representatives of all three companies present there. After such a final bill was submitted, the Complainant Company vacated the work site. However, M/s JITPL only made a payment of Rs.92.25 lacs and did not make any payment for the remainder amount of about Rs.60.8 lacs. Despite multiple requests and reminders, such payment was not received and therefore, the Complainant Company invoked arbitration. During the course of the arbitration proceedings, "Document No.1" containing details of the joint verification and ground level books was submitted on the basis of which the final bill was prepared. It was at this point that M/s JITPL filed "Document No 2" and

“Document No.3” whereby the specifications of the verification, the ground level measurements as well as the conditions of performance of the contracts were all substantially altered. According to M/s JITPL, the final bill was revised after the measurements were revised and the final bill in their records was for Rs.92.25 lacs only, which had been cleared. This was strongly disputed by the Complainant Company who had no knowledge of any revision or alternation being made to the final bill or measurements. It was the Complainant Company’s submission that if at all any such changes had been made; the same should have been brought to the notice of the Complainant Company at the relevant time and could not have occurred unilaterally behind the Complainant Company’s back. As such, the final bill and all ancillary documents presented by M/s JITPL were disputed to be forged and fabricated and the Tribunal was urged to disregard them as they did not bear any evidentiary value. This Court’s attention was then drawn to the relevant portion of the Arbitral Award dated 21.02.2017 which deals with the veracity of the documents presented by M/s JITPL. The relevant observations of the learned Tribunal are reproduced hereunder:

“426. In this connection it would be noticed that although measurement book and level books have been brought on records, the Claimant has pointed out that the same had

been amended without giving any opportunity to the Claimant."

"427. This Tribunal is of the opinion that the measurement and level books should not be amended and if any amendment is carried out therein, the same should be signed by all concerned, so that it may become a part of the joint measurement. However, it is not denied or disputed that quantities of the work done are calculated on the basis of level books and thus, integrity thereof should have been maintained so that the measurements could have been verified. The level books filed by the Respondent contain many corrections without any endorsements."

"428. Had some officer of M/s Currie and Brown been examined, he could have been questioned with regard to any mistake which had been found in the level books. Non-examination of any officer of M/s Currie & Brown speaks a volume."

"429. As indicated hereto before, the Respondent, while purporting to make corrections in the final bill did not assign any reasons no has examined any competent witness including a representative of M/s Currie and Brown to show why the same was done or found to be necessary."

"453. It is not in dispute, that before effecting such deductions, the Claimant has not been given any opportunity of hearing by the Respondent. No reason has been assigned as to why the same has been done."

"455. Even the other parts of the bill were reduced without giving an opportunity of hearing to the Claimant and/or without assigning any reason. No material has been brought on record to show that such deductions are otherwise justified."

"456. It appears from the records that so far as joint measurement is concerned, the same

was conducted between 5.2.2013 to 23.3.2013 whereafter Quartz left the site which according to CW1, [See question No 282 and its answer] the Respondent was unilaterally taking decisions as regards to the next step to be taken."

"457. The Respondent although has itself produced the documents certified by M/s Currie and Brown, curiously it called upon the Claimant to produce the said documents"

"458. In this connection it is pertinent to mention that the Respondent despite not having been called upon to do so sought to file 29 original level books only for the purpose of confronting CW1. Why the said documents were not filed before the oral evidence began has not been explained. The Claimant did not get an opportunity to properly inspect the documents and adduce his evidence with regard thereto."

"459. Despite opportunities, the Respondent did not examine any site Engineer nor did it examine the concerned officers of M/s Currie and Brown, which in the facts and circumstances of the case, it was obligated to do."

"460. Adverse inference must, therefore, be drawn against the Respondent. Moreover, the burden of proof to justify the deductions made from a bill which bear the signature of both the parties to the dispute as also M/s Currie and Brown was on the Respondent. It failed to discharge the said burden."

"461. Furthermore, the corrections made in the bills and/or the level books being not authenticated and having not been proved in accordance with law, no reliance can be placed thereupon."

"464. The Respondent had prepared its own final bill two weeks later. RW-2 has not made any statement before this Tribunal as to the

reasons for doing so, nor any material has been brought on record to show the legality, justifiability or correctness thereof."

"471. As noticed hereto before, the alternative final bill prepared by M/s Curie and Brown / the Respondent cannot be said to have been proved inter alia on the premise that it had used wrong figures.

"473. As M/s Currie and Brown made calculations on the basis of a wrong figure and it was not summoned / examined despite being called upon to do so by the Claimant/ it cannot be said that the alternative bill prepared by it, can otherwise be relied upon; particularly in view of the fact that at no point of time the Claimant was informed that its calculations of various jobs done by it, in the final bill was wrong."

"484. It may be pertinent to note that the Respondent has not examined either Mr. Sailesh or the representative of M/s Currie and Brown to establish as to under what circumstances the purported corrections have been made, despite the quantities of the work executed by the Claimant bear the signature of all concerned."

It is with such a backdrop of findings that the Learned Tribunal finally recorded as follows:

"485. The Claimant has filed an application alleging forgery on the part of the Respondent in so far as the level books are concerned."

16. It is evident from the above that even when the Learned Tribunal attempted to adjudicate the correctness and reliability of the documents produced by M/s JITPL, it found itself unable to rely on the same

given the fact that the documents failed on the twin parameters of reliability and trustworthiness. The manner in which the alterations were made did not inspire the confidence of the learned Tribunal and given the Complainant Company's allegation of forgery and fabrication, the Tribunal found itself pressed to discredit the documents so produced by M/s JITPL. It is pertinent to note here that in the criminal petitions filed henceforth by the Complainant Company which are under challenge here, it is these very documents which are alleged to be forged and fabricated thereby leading to the Complainant Company invoking criminal prosecution against the present Petitioners for the same.

17. It is pertinent to note here that any alteration made to the measurements of the Complainant Company's work done at the end on the site of the Derang Power Plant would also inescapably result in the alteration of the work level from which M/s SMMPL would begin its work. Therefore, it was submitted by the Learned Counsel for the Complainant Company that M/s SMMPL has actively connived and played an integral role in the cheating, misappropriating and causing wrongful loss to the Complainant Company as it stood to directly benefit from the perpetration of such illegal acts.

18. Also in this regard pertaining to the involvement of Mr. Shyam Sunder Jindal, this Court's attention is drawn to submissions made by the learned Counsel for the Complainant Company whereby he submits that Mr. Shyam Sunder Jindal in the Vakalatnama filed by him before the Learned SDJM, Talcher in ICC Case No.74 of 2017, ICC Case No.57 of 2018 and ICC Case No.44 of 2019 has referred to himself as "Chairman" of M/s JITPL. Furthermore, he has referred to himself as "Chairman" of the said Company even in the Application under Section 205 of Cr.P.C. filed before the learned SDJM, Talcher in ICC Case No.74 of 2017 seeking dispensation with his personal appearance during trial. Apart from this, it is also submitted that Mr. Shyam Sunder Jindal in an attempt to draw attention to himself and to remain in the shadows would consistently sign on documents of M/S JITPL as "No.1" when granting approvals or making decisions. The very fact that there has been a contradictory stand taken on behalf of Mr. Shyam Sunder Jindal before the Court below while filing the Vakalatnamas and application wherein he has clearly written the word "Chairman, M/s JITPL" next to his name, and the contradictory stand taken before this Court that he is not a Chairman, Director, employee or shareholder in M/s JITPL casts doubt about the truthfulness and veracity of his submissions as well as

casts a doubt on his role in the Company. The same requires proper determination. Even otherwise, the fact that such contradictory stands have been taken before the courts of law makes the same dubious and necessitates examination of the same.

19. It is trite in law as laid down by the Apex Court in ***Pankaj Kumar v. State of Maharashtra***¹⁴, that the scope and ambit of powers of the High Court under Section 482 of Cr.P.C. has been enunciated and reiterated by this Court in a series of decisions. Thus, it would suffice to state that though the powers possessed by the High Courts under the said provisions are wide but they should be exercised in appropriate cases, i.e., *ex debito justitiae*, to do real and substantial justice for the administration of which the courts alone exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim and caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, that allowing the proceeding to continue would be an affront on the process of the court or that the ends of the justice beseech that the proceedings be quashed.

20. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach to such a conclusion and where the basic

¹⁴AIR 2008 SC 3077

ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation for an offence has been laid down, the courts must be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied, if there is otherwise substantial compliance with the requirements of the offence. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave errors that might be committed by the sub-ordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. The Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, whether or not it is an abuse of the process of Court culminating in injustice. The power cannot be invoked to stifle or scuttle a legitimate prosecution.

21. The role, the complicity and the intention of the present Petitioners in allegedly committing the offences leveled against them in ICC Case No.33 of 2017, ICC Case No.74 of 2017 and ICC Case No.57 of 2018 are,

in the opinion of this Court, purely matters of trial due to the convoluted nature of the facts and the grave nature of the offences. The test at this point is to simply take the allegations of the complaint as they are, and without adding or subtracting anything, if absolutely no offence was made out then only will this Court be justified in quashing the FIR in exercise of its powers under Section 482 of the Code of Criminal Procedure.

22. I do not believe it is correct to adopt a hyper technical approach at this stage in the proceeding and such an endeavor may only be justified during a trial. At any rate, it is too premature a stage for this Court to step into stall the investigation, especially, since the criminal complaints do make out a *prima facie* case against the petitioners. Without a thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not.

23. However, as far as ICC Case No.44 of 2019 is concerned, the allegations contained in them are broadly based on the ground that the Opposite Parties have purposely stalled the Execution Case No.158 of 2017 filed by the Complainant Company by filing an application challenging the arbitral award under Section 34 of the Arbitration Act and subsequently moved an application under Section 37 of the

Arbitration Act, to prevent the attachment of immovable and movable properties of the Derang Power Plant towards fulfillment of the debt i.e. the award dated 21.02.2017 of the Learned Arbitration Tribunal which is alleged to be a *prima facie* abuse of the process of law. The Opposite Parties' right to exercise the remedies available to it under law can by no stretch of imagination be curtailed or said to be a dishonest exercise of the same. The Opposite Parties are free to pursue all legal remedies available to them to challenge the arbitral award dated 21.02.2017. Pursuing the same would not impute any criminal liability on them. Such an allegation is *ex facie* fallacious and doesn't disclose the commission of any offence whatsoever.

24. Thus, in view of the discussions and observations hereinabove, CRLMC No.3184 of 2019 and CRLMC No.3185 of 2019 are allowed and ICC Case No.44 of 2019 pending before the learned Sub-divisional Judicial Magistrate, Angul and all proceedings emanating therefrom are quashed.

25. However, I find no ground to interfere, at this stage, under Section 482 Cr.P.C., with CRLMC No.2039 of 2017, CRLMC No.343 of 2018, CRLMC No.3059 of 2018, CRLMC No.3285 of 2018, CRLMC No.2805 of 2019, CRLMC No.2806 of 2019 and CRLMC No.13 of 2021. Resultantly, CRLMC No.2039 of 2017,

CRLMC No.343 of 2018, CRLMC No.3059 of 2018, CRLMC No.3285 of 2018, CRLMC No.2805 of 2019, CRLMC No.2806 of 2019 and CRLMC No.13 of 2021 are dismissed.

26. It is made clear that any of the observations made hereinabove with respect to the fact of the case, shall not come in the way or prejudicially affect the fair trial of the present case.

27. Accordingly, all the CRLMCs are disposed of.

(S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 13th May, 2022/B. Jhankar*