IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1059 of 2019

Abhoy Pada Laha

Vs.

The State of West Bengal & Anr.

For the petitioner	: Mr. Debasis Roy.
For the State	: Mr. Suman De.
For the Union of India/O.P No.2	: Ms. Amrita Pandey.
Heard on	: 12.07.2023
Judgment on	: 28.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings of G.R case No.1098/1991 now pending before the Court of the learned Judicial Magistrate, 4th Court, Burdwan having arisen out of Burdwan Police Station Case No.373/1991 dated 31.08.1991 under Section 420 of the Indian Penal Code.

2. The petitioner's case is that G.R. Case No.1098 of 1991 now pending before the Court of the learned Judicial Magistrate, 4th Court, Burdwan arose out of Burdwan Police Station case No.373/1991 dated 31.08.1991 which in turn had been registered for investigation on the basis of a complaint lodged by the respondent no.2 with the Officer-in-Charge of Burdwan Sadar Police Station.

3. The allegations leveled in the said complaint are, to the effect, that the complainant's company is engaged in the business of fertilizers and they had hired M/s. Associated Transport Company as their storing, handling and transportation agent. The petitioner who is the Managing Partner of M/s. Associated Transport Company had issued six cheques amounting Rs.1,60,00,000/- in favour of the complainant's company as security deposit for the fertilizers worth about Rs.2.60 crores kept with them in the godowns maintained by M/s. Associated Transport Company.

4. It is alleged that on 19.08.1991 the representative of the complainant's company/opposite party no. 2 herein informed that the petitioner was unauthorisedly removing/shifting the fertilizers of the complainant's company from the said godown at Alamganj, Burdwan. Feeling it necessary to present the aforesaid cheques for collection and credit to the complainant's company, the said cheques were presented for encashment with their banker, State Bank of India, Park Circus Branch, Calcutta. However, the aforesaid cheques were dishonoured. It is thus the allegation of the complainant that the petitioner had cheated his company to the tune of Rs.1.60 crores.

5. The petitioner's case is that over the dishonour of the aforesaid six cheques which are the subject matter of the present proceeding, at the behest of P.P.C.L., a case under Sections 138/141 and 142 of the Negotiable

Instruments Act was initiated before the Court of the learned Additional Chief Judicial Magistrate, Sealdah.

6. Being aggrieved, an application under Section 482 of the Code of Criminal Procedure being Criminal Revision No.2618 of 1991 was filed and disposed of on 26.06.1992. **The court was not inclined to quash the proceedings of the aforesaid case,** but transferred the case to the Court of the learned Sub Divisional Judicial Magistrate, Burdwan for disposal from the court of the learned Judicial Magistrate, 5th Court, Sealdah.

7. The Investigating Agency submitted its report in final form vide Charge Sheet No.118 dated 25.05.1993 under Section 420 of the Indian Penal Code.

8. That for realization of the aforesaid amount of Rs.1,20,00,000/- along with some other sum of money, P.P.C.L initiated a money suit being Money Suit No.51 of 1992 before the court of the learned Subordinate Judge, IVth Court, Patna who vide order dated 31.05.2003 was pleased to dismiss the aforesaid suit.

9. Mr. Debasis Roy, learned counsel for the petitioner has submitted that admittedly over the dishonour of the cheques in question, P.P.C.L has initiated a proceeding under Section 138 of the Negotiable Instrument Act. But in such backdrop continuance of the present proceeding is a sheer abuse of the process of court.

10. It is further submitted that it is an admitted position that the claim regarding the amount due and payable by the petitioner to P.P.C.L, has been found to be not maintainable by a proper Civil Court which has dismissed the Money Suit preferred by P.P.C.L. No appeal in any higher forum has been preferred by P.P.C.L against the order of dismissal of the suit.

11. It is also submitted that the continuance of both the proceedings under Section 420 of the Indian Penal Code as also under Section 138 of the Negotiable Instruments Act is not maintainable in the eye of law.

12. It is expedient in the interest of justice, to uphold the dignity of law that the impugned proceeding is quashed.

13. Mr. Roy has relied upon the judgment is as follows:-

(a) ***M/s. Karam Chand Ganga Prasad and Anr. vs. Union of India & Ors. reported** in **1970 (3) SCC 694.***

> *"It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true. The High Court after entertaining the writ petitions and hearing arguments on the merits of the case should not have dismissed the petitions merely because certain consequential proceedings had been taken on the basis that the exports in question were illegal."*

(b) ***M/s. Jhunjhunwala Vanaspati Ltd. vs. M/s. Pyrites Phosphate & Chemicals Ltd. & Ors. reported in 2008 SCC OnLine Pat 1345 : (2009) 4 PLJR 729,*** wherein the High Court of Patna held that once a company is in liquidation all acts on behalf of company is to be taken up by the official liquidator as the total assets and property including all documents etc. goes into the hands of the official liquidator.

14. As the opposite party no.2/complainant could not be served, the Union of India was directed to be made a party.

15. Ms. Amrita Pandey has appeared for the Union of India and has filed the status of the complainant company, from which it appears

that P.P.C.L is now under liquidation and the date of last AGM is 30.11.2006.

16. Mr. Suman De, learned counsel appearing for the State has placed the case diary and submits that the ingredients required to constitute the offence alleged is on record and the petitioner should be directed to face trial. The revision is thus, liable to be dismissed.

17. CRR 1567 of 2003 pending before a Co-ordinate Bench of this court was disposed of on 30.01.2023 with the direction that the proceedings in the present case and the complaint case before the trial courts shall be heard simultaneously by the same court.

18. The Supreme Court in ***Sangeetaben Mahendrabhai Patel vs State of Gujarat & Anr., in Criminal Appeal No. 645 of 2012, on 23 April, 2012,*** considering all previous judgments of the Court held:-

> *"**24.** In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different.* ***The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue.*** *The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.*
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> ***25.*** *In Radheshyam Kejriwal v. State of West Bengal & Anr., (2011) 3 SCC 581, while dealing with the proceedings under the provisions of Foreign Exchange Regulation Act, 1973, this Court quashed the proceedings (by a majority of 2:1) under Section 56 of the said Act*

because adjudication under Section 51 stood finalised. The Court held :

"The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases." The ratio of the aforesaid judgment is not applicable in this case for the reason that proceedings under Section 138 of N.I. Act are still sub judice as the appeal is pending and the matter has not attained finality.

27. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section

> ***420 IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque.*** *Such a requirement is not there in the offences under IPC. In the case under N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.*
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> ***28. There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."***

19. In respect of the present dispute even though a proceeding under Section 138 of the N.I. Act is pending, the present case under Section 420 IPC on the same dispute is maintainable as, though the facts may overlap but the ingredients of offences in the two proceedings are entirely different ***(Sangeetaben Mahendrabhai Patel vs State of Gujarat & Anr. (Supra)).***

20. In ***M/s. Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006,*** the Court considered the following point among the two points decided.

> *"**8.** The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :*
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> ***(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?***

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?

Re : Point No. (i) :

9. *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 Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. 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.***

10. 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 break down 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 though criminal prosecution should be deprecated and discouraged. In G.***

Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"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."

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. Be that as it may."

21. Now in the lines of the judgment under reference let us see if the allegations in the complaint in the present case, if accepted on face value, prima facie constitute any offence under Section 420 of the Indian Penal Code, as alleged against the petitioner.

22. Section 420 of the Indian Penal Code, defines:-

*"**420. Cheating and dishonestly inducing delivery of property.**—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and*

which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— *The essential ingredients of the offence under Sec. 420 are as follows:-*

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property."

23. In ***Vijay Kumar Ghai vs The State of West Bengal, Criminal Appeal No. 463 of 2022 (arising out of SLP (Crl.) No. 10951 of 2019), on 22 March, 2022,*** held:-

*"**42.** …………. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC……………"*

24. From the copy of the judgment in money suit no. 51 of 1992 dated 31 May 2003 by the IVth Subordinate Judge, Patna in the case initiated by the complainant herein against the petitioners company herein claiming the dues which is also the subject matter of the present case, it appears that the **said civil suit was dismissed on contest**.

25. The amount due in the present case is for the period from March 1991 to August 1991 which is also the subject matter in a separate proceedings under Section 138 of the N.I. Act.

26. **In the present case,** admittedly there was a business transaction between the parties and there is no case against the petitioner that he dishonestly induced the complainant. There was neither any deceit nor any inducement to deceive the complainant. The transaction was admittedly for the benefit of both the parties. Cheating with knowledge to cause loss to the complainant herein would also cause loss to the petitioner, who had issued cheques in respect of the transaction and the said cheques were kept with the petitioners. Thus the ingredients required to constitute the offence under Section 420 IPC are clearly absent in the present case.

27. This Court also relies upon the judgment of the Supreme Court in ***Birla Corporation Ltd. vs. Adventz Investments and Holdings Limited & Ors., Criminal Appeal nos. 875, 876, 877 of 2019,*** wherein the Court held:-

> *"**86.** In Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business*

circles to convert powerful civil disputes in criminal cases held as under:-

"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 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

(Medmeme LLC & Ors. vs. M/s. Ihorse BPO Solutions Pvt. Ltd. (2018)13 SCC 374).

28. In the said judgment ***Birla Corporation Ltd. vs Adventz Investments and Holdings Limited & Ors. (supra)*** the Supreme Court also observed:-

*"**82.** Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:- (i) to give effect to an order under the Code;*

(ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

***83.** It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of* *process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-*

> *"5. …………. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:*
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> *(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
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> *(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused; (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from*

fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

84. *In State of Haryana and Others v. Bhajan Lal and Others 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that "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."*

87. *In Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others (1988) 1 SCC 692, it was held 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 was further held that "while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue."*

88. *The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused…………………"*

29. The *Supreme Court in State of Maharastra vs. Salman Salim Khan (2004) 1 SCC-525*, also held:-

> *"12...........In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial....."*

30. **In the Present case** there is no substance in the allegations and no material exists to prima facie make out the complicity of the petitioner in a cognizable offence as alleged. As such the proceedings in this case should be quashed by exercising this courts inherent powers for ends of justice and to prevent the abuse of process of the court.

31. The revisional application being CRR 1059 of 2019 is accordingly allowed.

32. The proceedings being G.R case No.1098/1991 now pending before the Court of the learned Judicial Magistrate, 4th Court, Burdwan having arisen out of Burdwan Police Station Case No.373/1991 dated 31.08.1991 under Section 420 of the Indian Penal Code, is hereby quashed.

33. All connected applications, if any, stands disposed of.

34. Interim order, if any, stands vacated.

35. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

36. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)