

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1352 of 2015

Raman Saha & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

:Mr. Debapratim Guha, Adv.

Mr. P.Sarkar, Adv.

Ms. Anchita Sarkar, Adv.

For the State

:Mr. Prasun Kumar Dutta, Ld. A.P.P.

Mr. Kutubuddin, Adv.

Mr. Santanu Deb Roy, Adv.

Opposite party no.1 & 3

Mr. Somopriyo Roy Choudhury.

Mr. Siddharth Gupta, Adv.

Mr. Ankita Agrahari, Adv

Hearing concluded on

:8.6.2023,19.7.2023,

20.7.2023,10.08.2023,

18.08.2023, 29.08.2023

Judgment on

: September 05, 2023

Bibhas Ranjan De, J.

1. This revision application preferred with a prayer for quashing the proceeding pending before Additional Chief Judicial Magistrate, South 24 Parganas, at Alipore in connection with Patuli PS Case No. 139 of 13 dated 09.03.2013 under Section 406/420/120B of the Indian Penal Code.
2. Directors of Prakh Realtors Private Limited put the law in motion by lodging one written complaint before the officer in charge of Patuli Police Station alleging, *inter alia*, that premises no. 158, N.S.C Bose Road, having single entrance, divided into LOT-A, LOT-B, LOT-C & LOT-D. The complainant Company is the owner of 50% share in the land measuring 10 Cottah, 1 Chittak, 25 sq.ft together with Dwelling House in LOT-A and also land measuring 7 Cottah, 13 chittak and 8 sq.ft in LOT-C in respect of premises mentioned above. Remaining 50% of LOT-A together with first floor Dwelling House and also a piece of land of LOT-B are owned by Shyam Sundar Goenka i.e. opposite party no. 4.

- 3.** In the year 1993 both Prakh Realtors Private Limited and Shyam Sundar Goenka entered into a Development Agreement along with Directors of Swastic Aawas and Developers Private Limited, which was cancelled subsequently and several litigations and arbitral proceedings are pending between the parties.
- 4.** On 31.08.2006 one memorandum of understanding (MOU) was signed by Shyam Sundar Goenka and Jatan Lal Parakh (opposite parties) being directors of Prakh Realtors Private Limited for arranging funds to repayment of bank loan and private borrowings. Said Shyam Sundar Goenka finally decided to sell his 50% ownership of LOT-A & LOT-C to Prakh Realtors Private Limited and signed an agreement for sell on 19.02.2009. But, deed of conveyance could not be executed in spite of part payment due to order of injunction pending arbitration proceeding. Shyam Sundar Goenka promised to execute the deed of conveyance immediately after the property becomes free from all encumbrances. Pending execution, Shyam Sundar Goenka was in physical possession of that property.

- 5.** All on a sudden, on 16.01.2013, Shyam Sundar Goenka and his son Sanjeev Gonenka, directors of Prakh Realtors Private Limited sent a letter cancelling the deal and ultimately at the time of hearing of arbitration proceeding on 11.02.2013 it came to the knowledge of Prakh Realtors Private Limited that Shyam Sundar Goenka already sold his share to Swastic Aawas and Developers Private Limited in spite of pendency of civil litigations and arbitration proceeding where all the parties including Swastic Aawas and Developers Private Limited were party to those litigations. It has been further alleged that directors of Prakh Realtors Private Limited namely Sanjeev Kumar Goenka and Smt. Chandra kala Goenka were the witnesses to the deed of conveyance executed in favour of Swastic Aawas and Developers Private Limited.
- 6.** Mr. Sanjeev Kumar Goenka, jointly with Shyam Sundar Goenka declared that earlier development agreement with Swastic Aawas and Developers Private Limited was revived and handed over possession.
- 7.** Both Shyam Sundar Goenka and Swastic Aawas and Developers Private Limited was in the knowledge that litigations were pending and one agreement for sale was

signed in between Shyam Sundar Goenka and Prakh Realtors Private Limited who already paid Rs. 80,0000/- for that purpose.

8. Thereby, all the petitioners along with Sanjeev Kumar Goenka committed the criminal conspiracy for cheating and criminal breach of trust.

9. Ld. Advocate, Mr. Debapratim Guha, appearing on behalf of the petitioners have submitted that petitioners Company is a bona fide purchaser having no knowledge of agreement for sale between Shyam Sundar Goenka and Prakh Realtors Private Limited. Mr. Guha, in support of his contention he relied on the following cases:-

Hridaya Ranjan Prasad Verma Vs. State of Bihar and another reported in ***(2004) 4 Supreme Court Cases 168***

Indian Oil Corpn Vs. Npc India Ltd. and others reported in ***(2006) 6 Supreme Court Cases 736***

Uma Shankar Gopalika Vs. State of Bihar and another reported in ***(2005) 10 Supreme Court Cases 336***

Vir Prakash Sharma Vs. Anil Kumar Agarwal & Anr. reported in ***(2008) 1 C Cr LR (SC) 28***

Anil Mahajan Vs. Bhor Industries Ltd. and another reported in ***(2005) 10 Supreme Court Cases 228.***

- 10.** Per contra, Ld. Advocate, Mr. Somopriyo Roy Choudhury, appearing on behalf of the opposite party contended that Shyam Sundar Goenka, Sanjeev Goenka as well as Swastic Aawas and Developers Private Limited being the parties to civil litigations and arbitration proceeding were in the knowledge of the dispute over the property in question and therefore Swastic Aawas and Developers Private Limited cannot take a plea of bona fide purchaser of the property in question. It is further submitted that petitioners were parties to criminal conspiracy for committing an offence under Section 420 & 406 of the Indian Penal Code. In support of his submission, Mr. Chowdhury relied on the following cases:-

Soumajit Bag and another Vs. State of West Bengal and another reported in ***2023 SCC OnLine Cal 1577***

Dineshbhai Chandubhai Patel Vs. State of Gujrat and others reported in ***(2018) 3 Supreme Court Cases 104***

Kamlesh Kumari and others Vs. State of Uttar Pradesh and another reported in ***(2015) 13 Supreme Court Cases 689***

Vijayander Kumar and others Vs. State of Rajasthan and another reported in ***(2014) 3 Supreme Court Cases 389***

Amit Kapoor Vs. Ramesh Chander and another reported in ***(2012) 9 Supreme Court Cases 460***

R. Venkatkrshan Vs. Central Bureau of Investigation reported in ***(2009) 11 Supreme Court Cases 737***

11. Mr. Dutta appearing on behalf of the State has produced the case diary and submitted that there are sufficient materials in the case dairy to proceed with the trial.

Decisions with reasons:-

12. I have gone through the cases relied on behalf of the petitioner and I find the facts dealt with in ***Hridaya Ranjan Prasad Verma*** (supra), ***Indian Oil Corpn*** (supra), ***Uma Shankar Gopalika*** (supra) & ***Vir Prakash Sharma*** (supra) are not identical with that of ours where the petitioner being party to all civil litigations as well as arbitration proceeding was fully aware of the dispute regarding property in question and at this stage this Court is not in a position to go into the knowledge of the petitioner regarding agreement of sale between Shyam Sundar Goenka and Prakh Realtors Private Limited. wherein Shyam Sundar Goenka promised to execute

the deed of conveyance with regard to disputed property being free from all encumbrances i.e. disposal of civil litigation and arbitral proceeding, without evaluation of evidence in course of trial pending before the Additional Chief Judicial Magistrate, 24 Parganas, South.

13. In ***Indian Corporation*** (supra) Hon'ble Court in back ground of that case held in paragraphs 12 & 13 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 Jiwarelrao Scindia v. Sambhajirao Chandrolrao 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] , *Central Bureau of Investigation 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. Sharaful Haque* [(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.

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 U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“It is to be seen if a matter, which is essentially of a 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 the 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. But, in our case there is nothing about business dispute among the parties.

15. In ***Hriday Ranjan Prasad*** (supra) Hon’ble Apex Court laid down the principle in paragraphs 14,15 & 16 As follows:-

“ **14.** On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the

promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the

court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.”

16. Ratio of the aforesaid decision cannot be applied in the peculiar facts and circumstances of our case where all parties to the application were also parties to the civil litigations and arbitral proceedings having knowledge of dispute regarding property in question which was subsequently purchased by the petitioners in spite of previous agreement between the seller and the opposite no. 2 & 3 (Prakh Realtors Private Limited.) who paid considerable amount.

17. In ***Uma Shankar*** (supra) Hon’ble Apex Court dealt with a fact of non-payment in higher purchase scheme which is not at all identical of the fact I am dealing with.

18. In ***Vir prakash Sharma*** (supra) Hon’ble Apex Court dealt with a dispute regarding dishonor of cheque. In ***Anil Mahajan*** (supra) Hon’ble Apex Court also dealt with a dispute regarding non-payment against supply of steel grip tapes under a memorandum of understanding.

19. In ***Dineshbhai Chandubhai Patel*** (supra) Hon’ble Apex Court observed in paragraph 25 to 33 as follows:-

“ **25.** The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

26. This Court in *State of W.B. v. Swapan Kumar Guha* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for three-Judge Bench laid down the following principle: (SCC pp. 576-77 & 598, paras 21 & 66)

“21. ... the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. ... The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation

into the offence to be completed for collecting materials for proving the offence.”

27. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

28. In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realising that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

29 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.]

. The High Court, in our view, failed to see the extent of its jurisdiction, which it possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.]

. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

32. The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part led us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

33. The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.”

20. *Vijayander Kumar* (supra) laid down the following principles:-

“ **12.** The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in *Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd.* [(2009) 11 SCC 529 : (2010) 3 SCC (Cri) 1011]”

21. In our case Ld. Counsel appearing on behalf of the petitioners raised the issue of civil dispute. But, from the facts and circumstances, case at hand prima facie indicates that it is a case of criminal conspiracy to commit an offence under Section 420/406 of the Indian Penal Code which cannot be ruled out at the threshold of the proceedings while de facto complainant can make out a criminal offence along with civil remedy.

22. Jurisdiction of the High Court in exercising power under Section 482 of the Code of Criminal Procedure has been

discussed in **Amit Kapoor** (supra) and laid down the principle in paragraphs 27 is follows:-

“ 27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

***27.1.** Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*

***27.2.** The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

***27.3.** The High Court should not unduly interfere. 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.

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate 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.*

27.5. *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7. *The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.*

27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an*

offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.*

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

27.14. *Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15. *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito*

justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] ; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201].]

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should 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 substantial compliance with the requirements of the offence.”*

23. R. Venkatkrishnan (supra) Hon’ble Apex Court observed in paragraphs 73,74,76,77 as follows:-

“ 73. *The ingredients of the offence of criminal conspiracy are:*

- (i) an agreement between two or more persons;*
- (ii) the agreement must relate to doing or causing to be done either*
 - (a) an illegal act;*
 - (b) an act which is not illegal in itself but is done by illegal means.*

Condition precedent, therefore, for holding the accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution viz. meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

74. *The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible,*

to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. (See Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] .)

76. *Dr. Hari Singh Gour in his Commentary on Penal Law of India, (11th Edn., Vol. 2, p. 1138) elaborates:*

“In order to constitute a single general conspiracy there must be a common design. ... The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient.”

77. *In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This Court in State of Maharashtra v. Som Nath Thapa [State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 : 1996 SCC (Cri) 820] opined that it is not necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating: (SCC p. 668, para 24)*

“24. ... to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge

itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.”

(emphasis in original)

(See also K.R. Purushothaman v. State of Kerala [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] .)”

24. Keeping an eye to the above mentioned ratios of the Hon’ble Apex Court, I have gone through the FIR along with Materials on record wherefrom it cannot be said that there was no conspiracy to commit an offence under Section 420/406 of the Indian Penal Code without evidence.

25. In the aforesaid view of the matter, I am unable to quash the proceedings in connection with Patuli Police Station Case No. 139/13 dated 09.03.2013. As a sequel, the instant revision application stands dismissed.

26. Interim order, if there be any, stands vacated.

27. Case diary be returned.

- 28.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]