

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 237 of 2022

with

CRAN 2 of 2023

Kusum Kumari Gupta & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners

: Mr. Sourav Ganguly,
Mr. Debasish Mukhopadhyay,
Mr. T. Kumai.

For the State

: Mr. Aditi Shankar Chakraborty,
Mr. Arjun Chowdhury.

For the Opposite Party No. 2

: Mr. Nabankur Paul,
Mr. Abhishek Sarkar.

Hearing concluded on

: 12.10.2023

Judgment on

: 19.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being G.R. No. 5903 of 2021 pending before the Learned Additional Chief Judicial Magistrate, Siliguri arising out of Bagdogra Police Station Case No. 602 of 2021 dated 24.12.2021 under Sections 341/323/354/506/34 of the Indian Penal Code and all orders passed therein in connection with the above mentioned case.
2. The petitioners case is that the petitioner no. 1 is the aged mother-in-law, the petitioner no. 2 is the sister-in-law and the petitioner no. 3 happens to be the brother-in-law of the Opposite Party No. 2 herein.
3. In the year 2016, the husband of the Opposite Party No. 2, being also the brother of petitioner no. 3 approached the petitioner no. 3 and persuaded him to purchase a property jointly in Loknath Nagar, Darjeeling (under the jurisdiction of Bagdogra Police Station), since he was not in a position to purchase the said property all by himself and also tried to impress upon the Petitioner No. 3 by stating that it would be easier to obtain a housing loan without much hassle if the Petitioner no. 3, who happened to be an officer of the Bank of Baroda, came on board with him.
4. The husband of the opposite party no. 2, and the petitioner no. 3 also being the brother of petitioner no. 3 then jointly purchased a property which is now the matter of dispute.

5. As a result of the torture and atrocities inflicted by the opposite party no. 2 and her husband, the petitioner no. 1 being the mother in law of the opposite party no. 2 and thus also the mother of her husband filed a written complaint with Bagdogra P.S. on 10.02.2021 and also lodged a complaint with the superior authorities (in Air Force) against the husband of the opposite party no. 2 and her son, on 17.12.2021 as the torture continued.
6. That due to default in payment of loan in respect of the joint property, it was handed over to the bank for auction. As the opposite party no. 2 and her husband took away the household goods of the petitioner no. 3 kept under lock and key, the petitioner no. 3 filed a case being Bagdogra P.S. Case No. 600 of 2021 dated 22.12.2021 under Sections 448/341/323/319/506/34 of IPC against the husband of opposite party no. 2 and his brother. The petitioner no. 1 also filed a case being Bagdogra P.S. Case No. 603 of 2021 under Sections 341/509/506/34 of IPC against her son, who is also the husband of the opposite party no. 2 and two others.
7. **In retaliation, subsequently the opposite party no. 2 has filed a case being Bagdogra P.S. Case No. 602 of 2021, on 24.12.2021, under Sections 341/323/354/506/34 of IPC against the petitioners herein.**
8. The said cases were filed on the same date (case and counter case).

9. On perusal of the written complaint, and the materials in the case diary, it appears that prima facie, **the dispute in the case is a family property dispute and thus purely civil in nature.**
10. 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:

(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 Pharmaceutical 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 through 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.

11. The Supreme Court in ***R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022***, held:-

“17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.”

12. The Supreme Court in ***Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023***, held:-

“21. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations

pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold.** To avoid prolixity, we would only like to refer to the judgment of this Court in **Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412**, as it refers to earlier case laws in copious detail. In **Thermax Limited and Others** (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal

provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. *We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”*

- 13.** Now in the lines of the judgments under reference let us see if the allegations in the complaint in the present case, if accepted on face value, constitute any offence as alleged.
- 14.** There is no material on record including the case diary to prove that the petitioners had acted in the manner as alleged in the written complaint.
- 15.** Thus there being no ingredient required to prima facie make out a case as alleged against the petitioners and the dispute being clearly a civil/family property dispute the present case is liable to be quashed.
- 16. CRR 237 of 2022 is allowed.**

17. The proceedings being G.R. No. 5903 of 2021 pending before the Learned Additional Chief Judicial Magistrate, Siliguri arising out of Bagdogra Police Station Case No. 602 of 2021 dated 24.12.2021 under Sections 341/323/354/506/34 of the Indian Penal Code and all orders passed therein in connection with the above mentioned case, **is hereby quashed in respect of the petitioners herein.**
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)