

14.05.2024

Sl. No.: 18

Court No.30
BM

CRR 1908 of 2022

Dipak Paral & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Siddhartha Sarkar
Mr. Prasad Bhattacharyya

... for the petitioner

Ms. Puspita Saha

... for the State

- 1.** The State has placed a report showing that the opposite party no.2 has been duly served.
- 2.** In spite of due service there is no representation on behalf of the opposite party no.2.
- 3.** The present revision has been preferred praying for quashing of entire proceeding of Debra Police Station Case No.136 of 2021 dated 13.03.2021 corresponding to G.R. No.735 of 2021 under Sections 447/448/323/325/354/379/427/506/34 of the Indian Penal Code, 1860 now pending before the learned Chief Judicial Magistrate at Paschim Medinipur.
- 4.** The petitioner's case is that there is a land dispute between the petitioners and the defacto complainant. The petitioners being the plaintiffs filed a suit for declaration and permanent injunction being Title Suit No.249 of 2021 before the learned Civil Judge (Junior Division) 1st Court at Midnapore. By an order dated 27.04.2021, learned

Civil Judge (Junior Division) at Midnapore was pleased to allow the prayer for ad-interim injunction, thereby restraining the defendant therein and the opposite party no.2 herein from disturbing the peaceful possession of the plaintiffs. The said order was duly communicated to the opposite party no.2. The opposite party no.2 on 15.11.2021 duly appeared in the suit and filed his vokalatnama.

5. It is the case of the petitioners that after the civil suit was filed, the petitioners were assaulted by the opposite party no.2 and his associates. The said incident was duly informed to the local Police Station by submitting a written complaint which was recorded as General Diary entry No.427 of 2021 dated 12.03.2021. After getting the information of the General Diary being registered, the opposite party no.2 became furious and on 13.03.2021, the opposite party no.2 came to the property of the petitioners with an intention to grab the same. As the petitioners protested, he became more furious and brutally assaulted the petitioners. As a result thereof the petitioners received grievous injuries all over their persons. The said incident was duly informed to the local Police Station by submitting a written complaint and on the basis of the said written complaint, Debra Police Station Case No.133 of 2021 dated 13.03.2021 under Sections 447/323/354/506/34 of the Indian Penal Code, 1860 has been initiated against the opposite party no.2.

6. It is the case of the petitioners that the opposite party no.2 has initiated the present case, on the self same incident on getting information about the case being filed by the petitioners.
7. Learned counsel for the State has placed the case diary.
8. On perusal of the materials in the case diary, it appears that the present case has been initiated for offence punishable under Sections 447 /448 /323 /325 /354 /379 /427 /506 /34 of the Indian Penal Code.
9. **It appears that though the case has ended in a charge sheet for the offences alleged there is no material in the case diary to substantiate the said allegation. There is neither any seizure list nor any medical papers in the case diary to even prima facie substantiate the allegations against the petitioners herein.**
10. **The opposite party no.2/complainant in spite of being served by the petitioners and the State has chosen not to appear.**
11. The Supreme Court in *Inder Mohan Goswami & Anr. Vs State of Uttaranchal & Ors., Appeal (Crl.) 1392 of 2007, on 09.10.2007*, held:-

“The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by

the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of courts powers under section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of court powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (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 powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Discussion of decided cases Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. DPP [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in DPP v. Humphrys [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved.

In R.P. Kapur v. State of Punjab AIR 1960 SC 866, this court summarized some categories of

cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

*This court in **State of Karnataka v. L. Muniswamy & Others** (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.*

*In **Chandrapal Singh & Others v. Maharaj Singh & Another** (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at page 467 as under:-*

A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

*This court in **Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others** (1988) 1 SCC 692 observed in **para 7** as under:*

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 is 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. In **State of Haryana & Others v. Bhajan Lal & Others** 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to*

secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

This court in **Janata Dal v. H. S. Chowdhary & Others** (1992) 4 SCC 305 observed thus:

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. In **G. Sagar Suri & Another v. State of UP & Others** (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

This court in **Roy V.D. v. State of Kerala** (2000) 8 SCC 590 observed thus:-

18. It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, *inter alia*, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are *per se* illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. This court in **Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another** (2005) 1 SCC 122 observed thus:-

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the

complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. In *Indian Oil Corporation v. NEPC India Ltd. & Others* (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that 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. The question before us is - whether the case of the appellants comes under any of the categories enumerated in *Bhajan Lal* (supra)? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.”

12. 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.”

- 13. 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. Johnny (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.”*

14. In the present case, the essential ingredients of a criminal offence as alleged are not present. The complaint and the materials on record are in substance a dispute of civil nature and there is a civil suit pending between the parties and as such the proceeding is liable to be quashed, in the interest of justice. Permitting such a case to continue shall clearly be an abuse of the process of law.

15. The revisional application being CRR 1908 of 2022 accordingly disposed of.

16. All applications connected thereto stand disposed of.

17. Interim order, if any, stands vacated.

18. Let a copy of the order be sent to the learned trial court for compliance.

19. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)