S. No.

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM(M) No. 20/2022

Reserved On:04.09.2024
Pronounced On:24.09.2024

Mohd Hassan aged 40 years …Petitioner/Appellant(s)
S/o Ali Hussain
R/o Archu Choskore, Kargil UT of Ladakh

Through: Mr. Shuja ul Haq, Advocate.

Vs.

1. Mohd Ilyas ...Respondent(s)
S/o Abdul Hameed
R/o Bhimbhat, Drass, Kargil U.T of Ladakh.

2. Zakariya
S/O Ghulam Hussain
R/o Tingdo, Kargil U.T of Ladakh

3. Mudassir Alam Mir
S/o Nissar Ahmad
R/o Krutiyal, Drass, Kargil U.T of Ladakh

Through: Mr. Mohammad Ismail, Advocate *(Through Virtual Mode)*

CORAM:
HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

O R D E R

1. The petitioner has filed this petition for quashing of the proceedings of the complaint titled as "Mohd Ilyas and Ors., Vs Mohd Hassan" pending before the court of learned Chief Judicial Magistrate, Kargil (for short 'the trial court') and also the order dated 20.11.2021 passed by the learned trial court, whereby the process for commission of offences under sections 409,420 IPC has been issued against the petitioner.

2. It is stated that in the year 2019, a civil suit for declaration and mandatory injunction was filed by the respondents and one Mohd Bakir against the petitioner before the court of learned Principal District Judge, Kargil, which was transferred to the court of learned Chief Judicial Magistrate, Kargil. In the suit, it was pleaded by the

respondents and one Mohd. Bakir that they had entered into partnership with the defendant i.e. the petitioner herein vide partnership deed dated 23.07.2016 attested by the Notary, Kargil and pursuant to the said partnership deed, the parties executed a contract for laying of Optical Fiber Cable from Khalsi to Nimo. After the completion of work, the payment was credited in the account of the petitioner, but the petitioner did not give the accounts of the payments received by him. The main grievance projected in the suit by the respondents was that after completion of work, the profit earned by the partners was not distributed amongst the partners in equal proportion and the petitioner had retained whole of the profits with him. In the said suit, the following reliefs were claimed by the respondents:-

> *"…….It is therefore prayed that a decree for declaration declaring therein that the non-providing of accounts by the defendant is illegal and further directing the defendant to hand over the profit of the business of the partnership firm to the partners i.e. the petitioner.*
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> *Any other order as the Hon'ble court may deem fit after analyzing the prevailing circumstances may kindly be passed in favour of the petitioner and against the respondents along with cost of the suit……*

3. The petitioner claims to have filed detailed written statement, wherein he denied that any contract or any part of contract was executed by the petitioner in collaboration with the respondents and it was stated by him that the bank account of firm M/s Mohd Hassan, belonged to him and the respondents had no right or interest either in his firm or in his bank account. It was also pleaded in the written statement that so called partnership deed relied upon for the purpose of filing of suit was forged document as the signatures of the petitioner were forged by the respondents in connivance with each other. After contesting the civil suit for more than two years, in the month of February 2021, the respondents withdrew the said suit with liberty to file fresh suit.

4. It is pleaded by the petitioner that the respondents after withdrawal of the said suit remained silent for considerable period of time and

thereafter instead of filing the civil suit against the petitioner, chose to harass the petitioner and filed a criminal complaint against him under Section 415, 420, 409 and 405 IPC in the month of April 2021 and the learned trial court vide order dated 20.11.2021 issued the process against the petitioner for commission of offences under sections 420,409 IPC.

5. The petitioner has sought the quashing of the proceedings of the complaint and also the order dated 20.11.2021 inter-alia on the grounds that the dispute, if any, as alleged by the respondents in the complaint was essentially a civil dispute and under such circumstances, the learned trial court ought not to have taken the cognizance of the offences under Sections 420 and 409 IPC. It is also asserted by the petitioner that while filing the complaint before the learned trial court, the respondents have suppressed the material fact in respect of suit mentioned above. It is also urged by the petitioner that the learned Magistrate has not followed the mandate of law while issuing the process against the petitioner for commission of offences under Sections 420 and 409 IPC.

6. Mr. Shuja ul Haq Tantray, learned counsel for the petitioner has vehemently argued that the respondents are guilty of concealing the material facts from the learned trial court, as they concealed the factum of filing of the suit on the same facts and they are misusing the criminal process for the purpose of settling the civil dispute if any, between the parties. He has submitted that the criminal proceedings have been initiated by the respondents with ulterior motive.

7. Per contra, Mr. Mohd Ismail, learned counsel for the respondents appearing through Virtual Mode has submitted that respondents had invested their hard-earned money and time for execution of the work and the refusal on the part of the petitioner to acknowledge their share of profit after the execution of work amounts to commission of offences under Sections 420 and 409 IPC. He has further submitted that the intention of the petitioner was dishonest from the very beginning. He has also argued that the dismissal of the suit can have no bearing on the maintainability of the complaint and the criminal proceedings and civil proceedings both can be resorted to,

simultaneously. He has placed reliance upon the judgments of the Hon'ble Apex Court in "**Vishnu Dutt Sharma vs. Smt. Daya Sapra**", (2009)13 SCC 729 and "**Anil Sharma vs. State of Bihar**", (1995)6SCC142.

8. Heard and perused the record of the trial court.

9. A perusal of the complaint filed by the respondents reveal that the sole grievance projected by the respondents is with regard to non-sharing of the profits by the petitioner with them, which the respondents claim to have been earned by the partnership firm from the execution of the work of laying Optical Fiber Cable on behalf of the BSNL. It is alleged by them that after the execution of the works, the amount was credited in the account of the firm in Jammu and Kashmir Bank which belonged to the petitioner but he denied his liability and refused to give their due share of profit to them. It is also stated that the petitioner had dishonestly executed the document in the form of partnership deed and got it signed by them, thereby inducing them to invest hard earned money in the execution of contract, which was allotted in his name but after the payments were credited into his account, he did not share the profit earned out of the execution of allotted work. The petitioner has placed on record the copy of the suit filed by the respondents and one Mohd Bakir, and also the order dated 24.02.2021 by virtue of which the abovementioned suit was withdrawn by them.

10. In the suit the grievance of the respondents was in respect of the denial of the share of profit earned by them and the petitioners, out of execution of work of laying Optical Fiber Cable. The dispute between the parties is civil in nature, which has been given a criminal flavor by the respondents to force him to succumb to their demands and part away with the profits, which the respondents claim to have been earned as partnership business.

11. It is settled law that the process of criminal law cannot be used for the purposes of settling the civil disputes and time and again the Hon'ble Apex Court has deprecated the practice of filing of criminal cases for the purposes of settling the civil disputes. A reliance is placed on the decision of the Apex court passed in case titled as **"Naresh Kumar**

and Anr. Vs. The State of Karnataka & Anr.", 2024 INSC 196 wherein it has been held as under**:**

> ***6.*** *In the case of Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:*
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> > *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court.* ***A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court****."*
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> ***7.*** *Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P., (2021) 14 SCC 626, observed that* ***criminal proceedings cannot be taken recourse to as a weapon of harassment.*** *In Usha Chakraborty v. State of West Bengal, 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that* ***where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure****.*
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> ***8. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case****, as held by this Court in Sarabjit Kaur v. State of Punjab, (2023) 5 SCC 360. Similarly,* ***dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise****.*
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> **(emphasis added)**

12. In **'A.M. Mohan v. State', 2024 SCC OnLine SC 339**, the Hon'ble Supreme Court of India has held and observed as under:

> **10. The Court has also noted the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that 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. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.** The Court, relying on the law laid down by it in the case of *G. Sagar Suri* v. *State of U.P.* held 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 Court also observed that though 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.
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> (emphasis added)

13. Further, this court finds that the respondents have not mentioned the filing and withdrawal of the civil suit filed by them against the petitioner in the complaint, wherein they had raised the same grievance in respect of the denial of the share of profit out of the work of laying of Optical Fiber Cable on behalf of the BSNL. The respondents are also guilty of concealing the material facts from the learned trial court and had they brought to the notice of the learned trial court about the filing and withdrawal of the suit, the learned trial court would have thought umpteen times before issuing any process against the petitioner. Once a litigant conceals the material fact before the court, he is not entitled to any relief. A reference in this regard is made to the judgment of the Hon'ble Supreme Court of India in case titled **"Dalip Singh v. State of U.P., (2010) 2 SCC 114'.**

14. The judgment relied upon by the learned counsel for respondents are not applicable in the present facts and circumstances of the case and are distinguishable on facts. In "**Vishnu Dutt Sharma vs. Smt. Daya**

Sapra", (2009)13 SCC 729, the Hon'ble Supreme Court has held that principle of res-judicata was not applicable in the facts and circumstances of that case. So far as judgment of the Hon'ble Supreme Court of India "**Anil Sharma vs. State of Bihar**", (1995)6SCC142, is concerned, in the present case the petitioner has denied the execution of partnership deed in the written statement filed by him in the civil suit preferred against him by the respondents. The action of the respondents in filing the criminal complaint for cheating and breach of trust, without getting any adjudication in respect of the existence of partnership in civil suit, by withdrawing the suit clearly reflects the ulterior motive on the part of the respondents to settle the civil dispute, if any, by process of criminal law.

15. In view of above discussion, this court is of the considered view that the respondents have abused the process of law by filing of the complaint against the petitioner before the court of learned Chief Judicial Magistrate, Kargil, for commission of offences under Sections 420 and 409 IPC for the purposes of settling the civil dispute only and the continuance of such proceedings shall be nothing but an abuse of process of law. Accordingly, the proceedings of the complaint titled "Mohd Ilyas and Ors., Vs Mohd Hassan" pending before the court of learned Chief Judicial Magistrate, Kargil and also the order dated 20.11.2021 whereby the process for commission of offences under sections 409,420 IPC has been issued against the petitioner, are quashed.

16. Disposed of.

(RAJNESH OSWAL)
JUDGE

SRINAGAR
24.09.2024
Ishaq