



2024:DHC:3902



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 10.05.2024***+ **CRL.M.C. 1877/2022 & CRL.M.A. 7977/2022****SANJAY BAJAJ**

..... Petitioner

Through: Mr.Utkarsh Singh, Mr.Amit
Kaushik, Mr.Tauheed Arshi,
Mohd. Humaid and
Mr.Bhushan, Advs.

versus

STATE OF NCT AND ANR.

..... Respondents

Through: Mr. Shoaib Haider, APP with
SI Vijay
Mr.Shikhar Srivastava and
Ms.Perna Singh, Advs. for R-2**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the Complaint Case No.55383/2016, titled *M/s Audo Viso Pvt. Ltd. v. Sanjay Bajaj*, filed by the respondent no.2 herein for offence under Sections 418/420/504/506 of the Indian Penal Code, 1860 (in short, 'IPC') and all the proceedings arising therefrom.

2. The petitioner further seeks the quashing of the Notices dated 07.03.2022 and 22.03.2022 issued to the petitioner under Section 41(A) of the Cr.P.C. by the Investigating Officer (IO), Police Station: Connaught Place, New Delhi.

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Factual Background

3. The above complaint has been filed by the respondent no.2 alleging therein that the respondent no. 2 carries on the business of supplying optical goods. The petitioner introduced himself to the respondent no.2 as a person of high repute having several offices all over India. It is stated that the petitioner induced the complainant/respondent no.2 to make supplies to the petitioner, by making assurance regarding the payment of the invoices to be remitted by him either in cash or through cheque immediately on receipt of the invoices. The respondent no.2 claims that believing the representations of the petitioner, the respondent no.2 started supplying goods, that is, optical goods, vide several invoices raised from time to time on the petitioner. These goods were duly received by the petitioner. The respondent no.2 gives details of the invoices in the paragraph no.5 of the complaint, as under:

“5. That believing & considering the assurances and representations given by the accused in respect of the credibility and the payment of invoices to be remitted on receipt of the invoices, the complainant had started supplying goods i.e. optical goods vide several invoices raised from time to time which were duly received by the accused. The delivery of the said goods with respective invoices were duly obtained by the accused well in order and thus the accused was succeeded to receive the goods from the complainant. The details of invoices are as under :-

<i>Bill no.</i>	<i>Dated</i>	<i>Amount</i>
<i>3217</i>	<i>06.04.2010</i>	<i>5,34,705/-</i>
<i>3248</i>	<i>20.11.2010</i>	<i>14,791/-</i>



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3312	31.12.2010	1,54,077/-
3333	17.01.2011	90,565/-
3406	01.03.2011	2,37,565/-
3419	08.03.2011	16,573/-

4. The respondent no.2 further goes on to say that on 20.03.2011, the petitioner assured the respondent no.2 that he had transferred an amount of Rs.2 lakhs through a draft which was likely to be received by the respondent no.2 in short time and had asked the respondent no.2 to supply further goods. The respondent no.2 claims that on basis of these assurances, the respondent no.2 supplied further goods to the petitioner vide invoices dated 23.03.2011 and 11.05.2011, but surprisingly, the respondent no.2 never received any draft that was alleged to have been sent by the petitioner, and as a result thereof, a sum of Rs.2,63,779/- remained unpaid.

5. Paragraph no.6 of the complaint is relevant and is reproduced hereinbelow:

“6. That accused thereafter on 20.03.2011 induced the complainant by making assurance that he had already transferred an amount of Rs. 2,00,000/- through draft which was likely to be received by the complainant in a short time and asked the complainant to supply further more goods, on these words the complainant had further supplied the material vide bill no. 3461 dated 23.03.2011 for Rs. 3,06,337/- and vide bill no. 3554 dated 11.05.2011 for Rs. 9,166/-, but surprisingly the complainant had never received any draft said to be sent by the accused and as a result thereof a sum of Rs. 2,63,779/- remained unpaid.”



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6. The respondent no.2 further alleges that though the goods were received by the petitioner, the payment thereof was not made. The respondent no.2, therefore, issued a legal notice of demand dated 10.02.2016 to the petitioner, which was duly served, however, again no payment was made. The respondent no.2 alleges that the petitioner refused to make the payment and disclosed his intention by saying as under:

“tum jaise bahut maal dene wale hai jinka humne maal hajam kiya hai, tumse bhi maal hajam karne ko liya tha, payment ki baat bhul jao”

7. The respondent no.2 claims that this itself shows that the petitioner had a dishonest intention of not making the payment right from the beginning. The respondent no.2 states that it has now come to know that the petitioner does not have any offices throughout the country and, infact, the petitioner is a habitual defaulter in making payments to others as well.

8. The respondent no.2, therefore, filed the above complaint alleging commission of offence under Sections 418/420 of the IPC by the petitioner herein.

9. It appears that, in the said complaint, as the petitioner was stated to be a resident of Hyderabad, the learned Metropolitan Magistrate, vide its order dated 27.05.2019, directed an inquiry to be conducted under Section 202 of the Cr.P.C.. Pursuant thereto, a Report dated 16.11.2022 was filed through Police Station: Connaught Place, Delhi reporting as under:

“In view of above facts it is evident that the



complainant company issued material to alleged Sanyaj Bajaj and he did not pay Rs. 2.6 Lakhs to the complainant company for this material on the basis of defective material, but the alleged could not produce any documentary proof regarding informing the complainant company for defective material and could not produce any documentary that the material was defective. The enquiry report is submitted before the Hon'ble Court along with annexures. However, any direction passed by this Hon'ble court will be complied."

10. On the basis of the inquiry report, the petitioner has also been summoned as an accused by the Order dated 15.03.2023 passed by the learned Metropolitan Magistrate.

Submissions of the learned counsel for the petitioner

11. The learned counsel for the petitioner submits that the complaint is liable to be quashed inasmuch as the dispute between the petitioner and the respondent no.2 is civil in nature which has been given a criminal colour out of *mala fide*.

12. He submits that it is the case of the respondent no.2 that the petitioner has defaulted in making payments of the goods supplied. For the same, the respondent no.2 has a remedy of filing of a civil suit, which the respondent no.2 had chosen not to file, but has, in fact, resorted to criminal jurisprudence to somehow put pressure on the petitioner to accede to the demands of the respondent no.2.

Submissions of the learned counsel for the Respondent no.2

13. On the other hand, the learned counsel for the respondent no.2 submits that, in the present case, the petitioner never had the intention



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to make payment for the goods that were supplied to him by the respondent no.2. He submits that it was on the false assurances of a Demand Draft of Rs. 2 lakhs having been sent by the petitioner to the respondent no.2, that further goods were supplied by the respondent no.2 to the petitioner as per the Invoices dated 23.03.2011 and 11.05.2011. He submits that, therefore, the ingredients of offence under Sections 418/420 of the IPC have been made out against the petitioner.

14. He further submits that, in the inquiry that was conducted by the police, the petitioner stated that the goods were of defective quality, however, he could not produce any document to show any complaint having been made by the petitioner regarding the same. He submits that, therefore, the complaint is maintainable and the petitioner has been rightly summoned by the learned Metropolitan Magistrate as an accused in the same.

Analysis and Findings

15. I have considered the submissions made by the learned counsels for the parties.

16. To a pointed query of this Court that even as per the complaint, the last supply was made on 11.05.2011, while the complaint has been filed in the year 2016, and that would show that it was for a time-barred debt, the learned counsel for the respondent no.2 drew the attention of this Court to a ledger/statement of account maintained by the respondent no.2, which, in fact, shows that payments were made by the respondent no.2 of a sum of Rs.12,08,022/- from 14.07.2011 to 26.03.2012, that is, after the alleged last invoices which were stated to



be the cause of action for filing of the complaint. The respondent no.2 has admitted the following payments to have been received after the last invoices from the petitioner:

<i>Date</i>	<i>Amount</i>
14.07.2011	2,00,000
11.08.2011	2,00,000
21.01.2012	2,00,000
24.03.2012	3,50,000
26.03.2012	2,58,022

17. From the above itself, it is apparent that the petitioner had been making payments to the respondent no.2 and the factum of which has been concealed by the respondent no.2 in its complaint.

18. In any event, the complaint discloses that the petitioner and the respondent no.2 had business transactions, wherein the respondent no.2 has supplied certain goods and payments for some of the invoices have not been made by the petitioner. This is purely a civil/commercial dispute. The fact that the petitioner had been making payments to the respondent no.2 itself falsifies the case of the respondent no.2 that the petitioner had dishonest intention from the inception. In fact, as noted hereinabove, it is the respondent no. 2 who concealed in the complaint of having received payments from the petitioner. The criminal proceedings cannot be used to settle civil disputes and to make recoveries. In any case, the complaint, itself, is based on concealment of vital facts and that too, for a debt which appears to be barred by limitation as on the date of filing of the complaint.

19. Though I am cognizant of the principle that merely because a



dispute may also have civil consequences, the complaint cannot be quashed on that basis, in the present case, continuation of the complaint would, in fact, be an abuse of the criminal process of Court.

20. In ***R. Nagender Yadav v. State of Telangana***, (2023) 2 SCC 195, the Supreme Court has observed as under:-

“19. While exercising its jurisdiction under Section 482CrPC, 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.”

(Emphasis supplied)

21. Recently, in ***Sachin Garg v. State of U.P.***, 2024 SCC OnLine SC 82, the Supreme Court, in a complaint arising out of a civil/commercial disputes, has observed as under:-

“20. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the



case of Jagdish Ram (supra). The same proposition of law has been laid down in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court."

(Emphasis supplied)

22. For reasons stated hereinabove, the complaint and the consequent proceedings therein, including the order summoning the petitioner as an accused, are liable to be quashed. It is so directed.

23. The petition is allowed in the above terms. The pending application is also disposed of.

24. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 10, 2024/ns/ss

[Click here to check corrigendum, if any](#)