



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO. 1341 OF 2023
WITH CRIMINAL APPLICATION NO.942/2024 IN CR.WP/1341/2023**

Deepesh S/o Dhirajlal Shah
Age : 50, Occupation : Business,
(in the capacity of Managing Director
DDS sales Pvt. Ltd.),
R/o : Office No. 3, Venkateshwara House,
Opp. Kalinga Restaurant, Near Sharada Centre,
Erandawana,
Pune 411 004, Tal. & Dist. Pune

.. Petitioner
(Orig. Accused)

Versus

- 1) Jain Irrigation System Ltd., Jalgaon
Through its Assistant Manager,
Parag Amrut Bharate,
Age : 45 years, Occu : Service,
R/o : Jain Energy Park, National Highway No. 6,
P.O. Box – 20, Jalgaon 425001 Jalgaon
Tq. and Dist. Jalgaon
- 2) Prashant Shivram Thakur
Age : 44 years, Occu : Engineer,
R/o : Plot No. 203, Sai Prasad Apartment,
Rukmininagar, Amravati,
Tq. & Dist. Amravati
(Deleted as per Court's Order Dated 14.02.2024)
- 3) Chetan Kishor Kale
(Died)
- 4) Dilip Sahebrao Borse,
Age : 44 years, Occu : Service,
R/o : Flat No. 204, Silver Dream Society,
Kolawadi Raod, Manjari Khurd, Pune
District Pune

.. Respondents
**(Resp.No.2 to 4 are
Orig. Accused)**

...
Advocate for petitioner : Mr. D.R. Kale i/by Mr Umesh Bodkhe Patil
Advocate for the respondent no. 1 : Mr. Ajinkya Reddy
Respondent no. 2 – Deleted.
Respondent no. 3 – Died.
Respondent no. 4 – served - absent.
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 6 OCTOBER 2025

JUDGMENT :

1. Rule. Rule made returnablee forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner has approached this Court invoking jurisdiction under Articles 226 and 227 of the Constitution of India, raising an exception to the complaint presented by the respondent bearing Criminal Miscellaneous Application No. 42 of 2016 for offences punishable under section 408, 420, 465, 468 read with 34 of the Indian Penal Code.

3. The petitioner put forth the following main prayers :-

“B] This Criminal Writ Petition may kindly be allowed and the proceeding in the nature of regular criminal case no. 83 of 2021 pending before the Ld. Court of Judicial Magistrate First Class at Dharangaon may kindly be quashed to the extent of petitioner.

C] The Writ Petition may kindly be allowed and the order dated 20/8/2021 passed by Ld. Judicial Magistrate First Class at Dharangaon in Criminal M.A. no. 42 of 2016 may kindly be quashed and set aside.

D] Pending hearing and final disposal of this Writ Petition, further proceeding in the nature of R.C.C. No. 83 of 2021 pending before the Ld. Court of Judicial Magistrate First Class, Dharangaon may kindly be stayed.”

4. The respondent no. 1 – Company operates in the Energy Sector and collaborates with the State of Maharashtra for installation of the Solar Energy System across the State. Respondent no. 1 – Company is authorized by Maharashtra Energy (MEDA) for the purpose of installation of the solar energy pumps.

5. Accordingly, it entered into a contract on the terms and conditions as an undertaking of the State of Maharashtra via a Memorandum of Understanding (MoU) has been executed by the respondent no. 1 – Company for marketing its products. In order to achieve the aforesaid object, the respondent no. 1 authorized the petitioner – Company to sell products and even collect the necessary amount. Resultantly, the employees were appointed for sale of the products and the work was discharged by the petitioner – Company strictly in adherence with the MoU.

6. In terms of the MoU, amounts were collected predominantly from various gram panchayats, where the solar pumps were installed. However, respondent no. 1 company alleges that the amounts collected by the petitioner's agents were never credited with the respondent. It is asserted that, the petitioner misappropriated these funds.

7. Resultantly, Criminal Miscellaneous Application No. 42 of 2016 under Sections 408, 420, 465, 468 read with 34 of the Indian Penal Code was presented.

8. It is submitted that the filing of the complaint is nothing but an abuse of process of law. The respondent no. 1 – company has already issued notice to the concerned gram panchayats for the purpose of recovery of the amount. Therefore, by presenting the Criminal Complaint, respondent is attempting to give a cloak of criminality to an issue of recovery, which is essentially and predominantly of civil nature.

9. Learned counsel for the petitioner submits that the filing of the Criminal Complaint is manifest attempt to convert a civil dispute into criminal one.

10. Learned counsel for the petitioner placed heavy reliance on the judgment of the Hon'ble Apex Court in the case of

- i) ***Binod Kumar V. State of Bihar and another; 2014 AIR SCW 6310,***
- ii) ***Commissioner of Police and others V. Devender Anand and others; AIR 2019 SC 3807***
- iii) ***Govind Prasad Kejriwal Vs. State of Bihar and another; AIR 2020 SC 1079,***
- iv) ***Sachin Garg V. State of UP and another 2024 SCC OnLine 82,*** and
- v) ***A.M. Mohan V. State through SHO and another; 2024 SCC OnLine SC 339.***

11. Per contra, learned counsel Mr. Reddy for the respondent no. 1 – complainant vehemently opposed the application. He submitted that the amount collected during the course of recovery was not

credited by the agents appointed by the petitioner – Company, which constitutes to misappropriation of the amount. As such, the learned Magistrate is justified in taking cognizance of the complaint presented by the respondent and same does not warrant any interference. Therefore, prayed for dismissal of the petition. In the process, placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Nupur Talwar V. Central Bureau of Investigation and another; (2012) 11 SCC 465.***

12. Having heard the learned counsel for respective sides, and upon perusal of the record, it is manifest that the complainant has undertaken the work of installation of the solar energy pumps in the State of Maharashtra. In the process, the installation of the solar energy pump was carried out as per the policy implemented by the State of Maharashtra. In the process of recovery of the amount, necessary notices are also served upon the respective gram panchayats.

13. Having taken recourse to the recovery of the amount, an attempt is to confer a cloak of criminality in order to recover the amount those are outstanding arising out of the commercial transaction. Admittedly, when the issue of recovery is purely of a civil nature, and the attempt, as is contended by the learned counsel for the petitioner, to confer the cloak of criminality to the dispute, which is essentially of civil and commercial nature, which is rather impermissible.

14. Hon'ble Apex Court in case of **Govind Prasad Kejriwal** (supra), has underscored the principle that when dispute is purely of a civil nature, attempt to give the color of criminality warrants exercise of extra-ordinary jurisdiction of this Court. Relevant paragraph no. 6.2 thereof, reads as under :-

“6.2.

It is also required to be noted that subsequently even one title suit was filed by the brother of the complainant-Ramesh Kumar against the partnership firm and its partners which came to be dismissed, against which an appeal was preferred which came to be withdrawn by the said Ramesh Kumar. Therefore, the impugned proceedings are nothing but an abuse of process of law and the Court. A purely civil dispute is given a colour of criminal proceedings. As observed above, none of the ingredients of Sections 341 and 379 of the Indian Penal Code, are satisfied.” (Emphasis supplied).

Equally, the Hon'ble Apex Court in case of **Commissioner of Police and others V. Devender Anand and others** (supra) has restated the said principle, holding that initiation of criminal proceeding is nothing but an abuse of process of law for settling a civil dispute. Paragraph Nos. 4.2 and 4.3 thereof, read as under :-

“4.2 It is required to be noted that after having come to know that the property was mortgaged with the Andhra Bank, the original complainant himself paid the mortgage money and got the mortgage redeemed. Not only that, thereafter, he got the sale deed executed in his name. Thereafter also, he filed the complaint with the learned Magistrate, being an application under Section 156(3) of the Cr.P.C., which came to be rejected by the learned Magistrate, vide order dated 27.03.2015. The said order was not assailed by the complainant. It appears that thereafter he filed a private complaint under Section 200 Cr.P.C. which was pending before the learned Magistrate. Despite the above, he filed a writ petition before the High Court, which is nothing but an abuse of the process of law. The criminal proceedings have been initiated by the original complainant to settle the civil dispute. Therefore, in the facts and circumstances of the case, the Investigating Officer and other police officers were justified in not registering the FIR and in coming to the conclusion that the complaint be filed. The earlier opinion on

preliminary inquiry was never placed before the DCP. Thereafter, on thorough investigation/inquiry and considering the facts and circumstances of the case narrated hereinabove, when it was opined that the dispute between the parties is of a civil nature, the High Court ought not to have issued further directions. The High Court ought to have closed the proceedings. Not only the High Court has issued further directions, but even has imposed costs and an action against the appellants 3 to 5 herein which, in the facts and circumstances of the case, is not sustainable. (Emphasis supplied).

4.3 In view of the above and for the reasons stated above and as observed hereinabove, the initiation of the criminal proceedings by the original complainant is nothing but an abuse of the process of law, we not only quash and set aside the impugned judgment and order, but also quash the criminal proceedings pending before the learned Magistrate in respect of the transaction in question. Consequently, the present appeal is allowed, the impugned judgment and order dated 13.01.2017 passed by the High Court is hereby quashed and set aside. Even the criminal proceedings initiated by the original complainant pending before the learned Magistrate in respect of the transaction in question are hereby quashed and set aside.”

Equally, in case of **Binod Kumar V. State of Bihar and another** (supra), and **Sachin Garg V. State of UP and another** (supra), lend support to the contentions that a commercial dispute which could have been resolved through the forum of civil Court has been given criminal colour by invoking the penal code certain words or phrases or implanting them in a criminal complaint, the learned Magistrate ought to have applied his mind in issuing summons.

Paragraph no. 19 of **Binod Kumar** (supra) read as under:-

“19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed.” (Emphasis supplied).

Paragraph No.21 of **Sachin Garg** (supra) reads as under:-

“21. It is true that the appellant could seek discharge in course of the proceeding itself before the concerned Court, but here we find that no case at all has been made out that would justify invoking the machinery of the Criminal Courts. The dispute, per se, is commercial nature having no element of criminality.”

15. Reliance placed by the learned counsel for the respondent on the judgment in the case of **Nupur Talwar** (supra), does not lend any support since the issue involved was in relation to commission of double murder, as such, does not support to the contentions put forth by the learned counsel for the respondent.

16. Thus, the attempt of the complainant to invoke criminal jurisdiction, while conscious of the fact that the transactions are of commercial nature, and notices in that regard are already been issued, having taken recourse to the civil remedy, the consequent attempt to confer the cloak of criminality to a commercial / civil transaction by invoking the criminal Court's machinery in absence of element of criminality, deserves to be deprecated.

17. Therefore, to avoid the abuse of power of criminal court, I am of the considered view that having issued notices for recovery of the amount towards the installation of the solar pumps, invoking machinery of the criminal court in relation to a commercial transaction would amount to abuse of process of law, as such, a case is made out

for exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India. .

18. Criminal Writ Petition is allowed.

19. Regular Criminal Case No. 83 of 2021 and consequential order pending before the learned Judicial Magistrate First Class at Dharangaon, is quashed and set aside to the extent of petitioner.

20. Pending criminal application also stands disposed of.

21. Rule is made absolute in terms of prayer clauses (B) and (C).

[SACHIN S. DESHMUKH]
JUDGE

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