

RAVINDRA KUMAR MADHANLAL GOENKA & ANR. A

v.

M/S. RUGMINI RAM RAGHAV SPINNERS P. LTD.
(Criminal Appeal No. 706 of 2009)

APRIL 13, 2009 B

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

*Code of Criminal Procedure, 1973 – s. 482 – Scope of
– Complaint u/s. 120-B, 406, 420 and 384 IPC – Petition for
quashing the proceedings – Dismissed by High Court – On C
appeal, held: On facts, criminal proceeding not liable to be
quashed – Defence of the accused can be entertained only
at trial stage – It cannot be looked into in a petition u/s. 482 –
Investigation of the case should not be permitted to be pre-
empted unless there are extreme cases – Present case is not D
an extreme case – Penal Code, 1860 – ss. 120-B, 406, 420
and 384.*

**Appellant No. 1 was dealing in cotton as Commission
Agent. Appellant No. 2 was his business partner. E
Respondent approached appellant No. 1 and ordered for
cotton bales. Over a period, dispute arose between them.
Respondent asked the appellant to release the bales
agreed upon and appellant told him that the bales would
be released only on payment of balance amount. F
Respondent filed complaints before Magistrate against
appellant No. 1 u/ss. 406, 420 and 384 IPC and against
appellant No. 2 u/ss. 120-B, 406, 420 and 384 IPC.
Appellant's application u/s. 482 Cr.PC for quashing the
criminal proceedings was dismissed. Hence, the present
appeal. G**

Dismissing the appeal, the Court

HELD: In the instant case, there is no denial of the

A fact that though 900 bales of cotton was already dispatched, 100 bales of cotton are yet to be dispatched. The defence raised by the appellant can be urged and proved only during the course of trial. While entertaining a petition u/s. 482 CrPC, the materials furnished by the
 B defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are *prima facie* materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating
 C agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases. Considering the facts of the present case, it is not one of those extreme cases where
 D criminal prosecution can be quashed by the court at the very threshold. [Paras 14 and 15] [37-E-H; 38-A-B]

Nagawwa v. Veeranna Shivalingappa Konjalgi 1976 (3) SCC 736; *State of Haryana v. Bhajan Lal* 1992 Supp. (1) SCC 335; *Indian Oil Corpn. v. NEPC India Ltd.* 2006 (6) SCC
 E 736 and *Uma Shankar Gopalika v. State of Bihar* 2005 (10) SCC 336, distinguished.

Rupan Deol Bajaj v. Kanwar Pal Singh Gill 1995 (6) SCC 194; *Pratibha Rani v. Suraj Kumar* 1985 (2) SCC 370,
 F referred to.

Case Law Reference:

	1976 (3) SCC 736	Distinguished. Para 9
	1992 Supp. (1) SCC 335	Distinguished. Para 10
G	1995 (6) SCC 194	Referred to. Para 10
	1985 (2) SCC 370	Referred to. Para 10
	2006 (6) SCC 736	Distinguished. Para 12

H

RAVINDRA KUMAR MADHANLAL GOENKA v. 29
RUGMINI RAM RAGHAV SPIN. P. LTD.

2005 (10) SCC 336 Distinguished. Para 13 A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 706 of 2009.

From the Judgment & Order dated 30.8.2006 of the High
Court of Judicature at Madras in Criminal Original Petition No. B
4556 of 2006.

H.L. Agarwal, Dr. R.N. Upadhy (for P.V. Yogeswaran) for
the Appellants.

M.N. Krishnamani, Mary Mitzy, Deepak Jain, G.S. C
Chauhan and (for Shiv Prakash Pandey) for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted. D

2. This appeal arises out of the judgment and order dated
30.08.2006 passed by the Madras High Court in Criminal
Original Petition No. 4556 of 2006 whereby the learned Single
Judge of the High Court dismissed the petition filed under
Section 482 of the Code of Criminal Procedure (in short E
'CrPC') by the appellants for quashing criminal complaint filed
against them by the respondents before the Judicial Magistrate,
Coimbatore, Tamil Nadu.

3. Facts in brief, as alleged by the appellants, are as F
follows:

Ravindera Kumar Madhanlal Goenka – Accused No. 1 (G
1st appellant herein) is the proprietor of M/s. Ravindera Kumar
Madhanlal having its office at Shri Ganesh Complex, Kothadi
Bazar, Akola – 444001, Maharashtra and is a General
Merchant and Commission Agent for various food items like
sugar, jaggery, oil seeds, oil, grains, pulses and cotton etc. It
was dealing in cotton as commission agent for various persons
belonging to different places in different states including H

- A Coimbatore in Tamil Nadu. The proprietorship of the 1st appellant is registered with the Sales Tax Department of Maharashtra. Srimathi Ravindra Kumar Madhanlal Goenka –
B his wife, a partner and Accused-4 is his sub-broker/agent. The present appeal has been filed by Accused-1 (1st appellant) and Accused-2 (2nd appellant).

C 4. The respondent through his agents approached the 1st appellant by personally visiting Akola and ordered cotton bales to manufacture yarn. The agents had stayed for about 45 days at Akola and after examining the quality of cotton and after their approval the cotton was transported to the respondent for which the respondent offered 1% commission to the 1st appellant. The
D 1st appellant by raising bank loan gave the same to the cotton manufacturers and dealers and bought from them and thereafter, as requested by the respondent, transported the same to Coimbatore. It was a practice that entire advance amount was to be paid at the time of ordering cotton. The
E respondent after gaining confidence of the 1st appellant some time used to send even lesser amount than the actual value of the cotton but even then the 1st appellant used to send cotton bales over and above the advance amount paid by the respondent. The advance amount used to be sent by the
F respondent by telegraph transfer and every transfer was accounted by both the respondent as well as 1st appellant.

G 5. During the course of their business transaction the respondent had developed some problem with their two commission agents belonging to Coimbatore with regard to the payment of compensation and other expenses. The appellant had sent a fax message on 12.2.2004 to the respondent giving
H statement of accounts by showing that the amount lying with him is Rs. 4,74,521/- and requested him to send balance money for sending 100 bales and also requested to send the 'C' Form. In response to the above fax, on 15.02.2004, the respondent

sent a fax stating that the closing balance with the 1st appellant is Rs. 4,76,521/-. Thereafter, the respondent through his agents requested the 1st appellant to send totaling 145 bales of cotton and it was confirmed by the fax messages dated 18.2.2004 of his agent Mr. Srinivas R. Lele wherein he made specific request to send the 145 bales after receiving the entire amount and also by deducting $\frac{1}{2}$ % commission payable to him. The 1st appellant, vide his fax message dated 20.2.004 requested the respondent to send the remaining amount for lifting of 145 bales, which was weighed by his new controller and also requested him to settle all the amount by sending the statement of account along with the fax. However, the respondent by return fax disputed the 1st appellant's claim and allegedly made some false statement. Again, the 1st appellant by another fax requested the respondent to send the remaining balance including the late fee in accordance with the terms and conditions. The second condition in the invoice was that 24% interest would be levied upon accounts remaining unpaid 30 days from the date of dispatched goods. The 1st appellant claimed late fee interest in accordance with the above terms. However, the respondent did not make such payment. Some further dispute arose between the parties.

6. Subsequently, the 1st appellant approached the Akola Police for filing a complaint. However, the same was not entertained and registered stating that the transaction was purely commercial and civil in nature and the business disputes cannot be resolved by criminal prosecution. In the meanwhile, the respondent filed a complaint under Section 200 CrPC before the Judicial Magistrate No. 1 at Coimbatore for offences u/s 406, 420 and 384 of the Indian Penal Code (in short 'IPC'. The court vide order dated 2.8.2004 issued an order directing the Thudiyalur Police to register a case under Section 406, 420 and 384 IPC and submit their final report within 3 months. The case was registered on 21.8.2004 after receipt of the court order on 9.8.2004. Subsequently, the respondent also filed a private complaint under Section 190 and 200 Cr.PC for

A offences punishable under Sections 120-B, 406, 420 and 384
IPC by implicating the 2nd appellant, who is the wife of the 1st
appellant and one Srinivasa Lele who is the agent of the
respondent. The Judicial Magistrate No. 1 at Coimbatore on
the basis of such complaint issued summons to the appellants
B to appear before the court on 17.2.2006.

7. Aggrieved by the aforesaid order of the learned Judicial
Magistrate No. 1, the appellants approached the High Court
for quashing the criminal proceedings against them by filing
Criminal Original Petition No. 4556 of 2006 which was
dismissed by the High Court. The High Court held that a perusal
of allegations mentioned against the accused show that a
prima facie case is made out but only the trial court may have
to look into the defence materials produced by the appellants
and admittedly, there was business transaction wherein 900
D bales of cotton were already dispatched but 100 bales of cotton
were yet to be dispatched. Accordingly, the High Court refused
to quash the proceeding.

8. Aggrieved by the said order of the High Court, the
E present SLP has been preferred. It is the case of the appellant
the no criminal proceeding can be initiated as the matters are
essentially civil in nature and business disputes cannot be
resolved by criminal prosecution. It is the case of the appellant
that 1st appellant at the request of the respondent procured 145
F bales and kept for long time with the dealers place and as the
respondent failed to make payment waiting for despite long
duration, the 1st appellant had stored the 145 bales of cotton
in the Central Ware House at Akola on 18.03.2004 by paying
regular rent and it was being extended from time to time and
G still the bales procured for him is remain at Central Ware
House, Akola. It was contended that had the respondent paid
the entire amount for the 145 bales, the 1st appellant could have
dispatched the bales to the respondent. It is the case of the
appellant that the entire amount had already been invested in
H procuring bales for him by investing additional amount of

another Rs. 10 lakhs by raising bank loan by the 1st appellant. Hence, there was no cheating or fraud played by the 1st appellant. In view of the same it was contended that it was an alleged breach of contract that's also only at the last stage of the performance of the agreement which was due to dispute of payment of the entire advance amount. In view of this, the High Court ought to have quashed the criminal proceedings initiated by the respondents.

9. The scope of power under Section 482 CrPC has been explained in a series of decisions by this Court. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [1976 (3) SCC 736], it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a

A complaint by legally competent authority and the like.”

10. In *State of Haryana v. Bhajan Lal* [1992 Supp. (1) SCC 335], a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised 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. However, this Court in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [1995 (6) SCC 194] held (at SCC p. 209, para 23) that “at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegations made therein”.

11. In *Pratibha Rani v. Suraj Kumar* [1985 (2) SCC 370], the question arose that when the civil as well as the criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the stridhan property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her jewellery and other valuable articles entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the criminal proceedings and the High Court quashed the same. The accused contended that the dispute was of a civil nature and no criminal prosecution would lie. Under that circumstance, this Court held in para 21 at pp. 382-83 as under:

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import."

12. This Court in the case of *Indian Oil Corpn. v. NEPC India Ltd.* [2006 (6) SCC 736], at page 747 has observed as under :

"12. 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 Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.* 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.

A 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
B 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 mala
C fides/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
D 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
E 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
G offence. As the nature and scope of a civil proceeding 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
H

proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

13. The appellant has placed reliance on a decision of this Court in the case of *Uma Shankar Gopalika v. State of Bihar* [2005 (10) SCC 336], at page 338, wherein this Court has observed as follows:

“7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused.”

14. In the abovementioned case, this Court has taken the view that when the complaint does not disclose any criminal offence, the proceeding is liable to be quashed under Section 482 CrPC. However, the same is not the situation in the present case. There is no denial of the fact that though 900 bales of cotton was already dispatched, but 100 bales of cotton are yet to be dispatched. The defence raised by the appellant hereinabove can be urged and proved only during the course of trial. While entertaining a petition under Section 482 CrPC, the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme

A cases.

15. While considering the facts of the present case, we are of the considered opinion that the present case is not one of those extreme cases where criminal prosecution can be quashed by the court at the very threshold. A defence case is pleaded but such defence is required to be considered at a later stage and not at this stage. The appellants would have ample opportunity to raise all the issues urged in this appeal at an appropriate later stage, where such pleas would be and could be properly analysed and scrutinized.

16. In view of the aforesaid position, we decline to interfere with the criminal proceeding at this stage. The appeal is consequently dismissed.

D K.K.T.

Appeal dismissed.