

MOSIRUDDIN MUNSHI

v.

MD. SIRAJ AND ANOTHER  
(Criminal Appeal No. 1168 of 2014)

MAY 9, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

*Code of Criminal Procedure, 1973 – Section 482 – Jurisdiction of High Court – Exercise of, for quashing FIR/ criminal proceedings – On facts, Magistrate treating complaint u/s.420 r/w s 120B as FIR, forwarded it for investigation u/s. 156 Cr.P.C. – Application u/s.482 – High Court quashed the complaint proceedings including FIR – Justification of – Held: High Court should not have quashed FIR – High Court adopted a strictly hyper technical approach – Investigation should have been allowed to proceed, when the averments in the complaint would prima facie make out a case for investigation by the authority – Penal Code, 1860 – s.420 r/w s.120B.*

The appellant-complainant on believing the representation made by accused No.2, entered into an agreement for sale with respondent No.1 and paid huge amount. Respondent No.1 did not hand over the title documents to the appellant. The appellant then sent a legal notice to respondent No.1 and thereafter, filed a criminal complaint before the Additional Chief Metropolitan Magistrate against respondent No.1 and accused No.2 u/s. 420 read with s. 120B of the Penal Code. The ACMM forwarded the complaint for investigation u/s. 156(3) Cr.P.C. by treating the complaint as FIR. Respondent No.1 filed an application u/s. 482 Cr.P.C. for quashing the proceedings including the FIR. The appellant was impleaded as a party but was not

A served any notice. The High Court quashed the complaint proceedings declaring it to be a civil transaction. On remittance of the matter, the High Court again quashed the complaint proceedings. Hence, the instant appeal.

B Allowing the appeal, the Court

HELD: 1.1. The First Information Report should not have been quashed and the investigation should have been allowed to proceed. [Para 10] [503-B]

C 1.2. The complaint does make averments so as to infer fraudulent or dishonest inducement having been made by respondent No.1 and accused No.2 pursuant to which the appellant parted with money. The averments in the complaint would prima facie make out a case for investigation by the authority. [Para 7] [502-D-F]

D 1.3. The High Court adopted a strictly hyper technical approach and such an endeavour may be justified during a trial, but certainly not during the stage of investigation. At any rate it is too pre-mature a stage for the High Court to step in and stall the investigation by declaring that it is a civil transaction wherein no semblance of criminal offence is involved. [Para 9] [502-H; 503-A]

F *Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another (2000) 4 SCC 168, Murari Lal Gupta vs. Gopi Singh (2005) 13 SCC 699; Ram Biraji Devi and another vs. Umesh Kumar Singh and another (2006) 6 SCC 669 – distinguished.*

G *R. Kalyani vs. Janak C. Mehta (2009) 1 SCC 516; Mahesh Chaudhary vs. State of Rajasthan (2009) 4 SCC 443 – referred to.*

Case Law Reference :

H (2000) 4 SCC 168 Distinguished Para 4

(2005) 13 SCC 699	Distinguished	Para 4	A
(2006) 6 SCC 669	Distinguished	Para 4	
(2009) 1 SCC 516	Referred to	Para 5	
(2009) 4 SCC 443	Referred to	Para 6	B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1168 of 2014.

From the Judgment and Order dated 29.06.2010 in CRR  
No. 1978/2006 of the High Court of Calcutta.

Sumanta Chakraborty, Chandan Kumar Rai for the  
Appellant.

Pijush K. Roy, Kakali Roy, Mithilesh Kumar Singh for the  
Respondents.

The Judgment of the Court was delivered by

**C. NAGAPPAN, J.** 1. Leave granted. CRMP No.12896 of  
2011 seeking impleadment as a party is dismissed.

2. This appeal is preferred against order dated June 29,  
2010, passed by the High Court of Calcutta in CRR No.1978  
of 2006 in FIR No.251 dated 10.11.2005 on the file of Amherst  
Street Police Station registered for the alleged offences under  
Section 420/120B IPC including the order dated 28.10.2005 in  
case No.C/949 of 2005 passed by the Additional Metropolitan  
Magistrate, Calcutta.

3. Briefly the facts are as follows : The appellant herein/  
complainant was looking for a plot of land for construction of  
residential house in January 2005 and accused No.2, Masud  
Alam, a public servant represented that he could arrange for the  
said plot and introduced the appellant to respondent No.1/  
accused No.1 who stated that he had a plot of land and the  
appellant believing the representation made by the accused

A No.2 entered into an agreement for sale with respondent No.1 herein/accused No.1 and also paid a sum of Rs.5,00,001/- in cash. The respondent No.1 herein refused to hand over the necessary title documents to the appellant which led to issuance of legal notice by the appellant. All other methods to  
B compel respondent No.1 to complete the sale having failed the appellant filed a complaint on 28.10.2005 in the Court of Additional Chief Metropolitan Magistrate, Calcutta against respondent No.1 herein/accused No.1 and accused No.2 for the offences punishable under Section 420, read with Section  
C 120B of the IPC. The Additional Chief Metropolitan Magistrate forwarded the complaint to the officer in-charge of the Amherst Street Police Station for causing investigation under Section 156(3) of Criminal Procedure Code by treating the complaint as First Information Report. Respondent No.1 herein/accused  
D No.1 filed application under Section 482 of Cr.PC for quashing the said proceedings including the FIR. Though the appellant herein/complainant was impleaded as a party no attempt was made to serve notice on him with the result that the learned single Judge of the High Court quashed the complaint proceedings in the absence of the appellant herein. Challenging  
E the said order the appellant herein preferred appeal to this Court in Criminal Appeal No.852 of 2008 and this Court by judgment dated May 09, 2008 allowed the appeal and remitted the case to the High Court for a fresh decision in accordance with law. Thereafter the High Court heard both the parties and by  
F impugned order dated June, 29, 2010 allowed the application under Section 482 Cr.P.C and quashed the complaint proceedings. Aggrieved by the same the complainant has preferred the present appeal.

G 4. The learned counsel for the appellant contended that the contents of the complaint would disclose the commission of the cognizable offences alleged and the High Court at the preliminary stage would not be justified in embarking upon an inquiry and quashing the proceedings and hence the impugned  
H order is liable to be set aside. Per contra the learned counsel

for the Respondent No.1/accused No.1 -contended that the dispute involved in the complaint is of civil nature and none of the acts allegedly committed by the Respondent No.1 gave rise to any criminal liability as rightly held by the High Court. In support of the submission he relied on the following decisions of this Court in *Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another* (2000) 4 SCC 168, *Murari Lal Gupta Vs. Gopi Singh* (2005) 13 SCC 699 and *Ram Biraji Devi and another Vs. Umesh Kumar Singh and another* (2006) 6 SCC 669.

5. The legal position with regard to exercise of jurisdiction by the High Court for quashing the First Information Report is now well settled. It is not necessary for us to delve deep therein as the propositions of law have been stated by this Court in *R. Kalyani Vs. Janak C. Mehta* (2009) 1 SCC 516 in the following terms :

“15. Propositions of law which emerge from the said decisions are :

- (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
- (2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
- (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or act reus.

A (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

B 6. Yet again in *Mahesh Chaudhary Vs. State of Rajasthan* (2009) 4 SCC 443) this Court stated the law thus :

C "11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."

D 7. In the present case the complaint does make averments so as to infer fraudulent or dishonest inducement having been made by Respondent No.1 herein and accused No.2 pursuant to which the appellant parted with money. It is the case of the appellant that Respondent No.2 does not have title over the property since the settlement deed was not a registered one and Respondent No.1 herein and accused No.2 had entered into criminal conspiracy and they fraudulently induced the appellant to deliver a sum of Rs.5,00,001/- with no intention to complete the sale deal. The averments in the complaint would prima facie make out a case for investigation by the authority.

E 8. In the decisions relied on by the learned counsel for the respondent No.1, cited supra, this Court on the facts therein held that the allegations in the complaint read as a whole prima facie did not disclose commission of offences alleged and quashed the criminal proceedings. Those decisions do not apply to the fact situation of the present case.

F 9. The High Court has adopted a strictly hypertechnical approach and such an endeavour may be justified during a trial,

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but certainly not during the stage of investigation. At any rate it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a civil transaction wherein no semblance of criminal offence is involved.

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10. The appellant, is therefore right in contending that the First Information Report should not have been quashed in this case and the investigation should have been allowed to proceed.

B

11. We, therefore, allow this appeal and set aside the impugned order.

C

Nidhi Jain

Appeal allowed.