

M/S. Medchl Chemicals & Pharma P. Ltd vs M/S. Biological E. Ltd. & Ors. ... on 25 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1869, 2000 AIR SCW 682, (2000) 2 JT 426 (SC), 2000 (2) JT 426, 2000 CALCRILR 488, 2000 CRILR(SC MAH GUJ) 301, 2000 CRIAPPR(SC) 250, 2000 SCC(CRI) 615, 2000 CORLA(BL SUPP) 46 SC, 2000 (2) LRI 713, 2000 (2) SCALE 88, 2000 ALL MR(CRI) 999, 2000 (3) SCC 269, 2000 (4) SRJ 214, (2000) 2 ANDH LT 49, (2000) 2 KER LJ 34, 2000 CRILR(SC&MP) 301, (2000) 1 CURCRIR 288, (2000) 2 EASTCRIC 524, (2000) 3 PAT LJR 56, (2000) 1 RAJ LW 165, (2000) 2 RECCRIR 122, (2000) 1 SCJ 603, (2000) 2 SUPREME 261, (2000) 27 ALLCRIR 729, (2000) 2 SCALE 88, (2000) 40 ALLCRIC 680, (2000) 3 BLJ 335, (2000) 2 ALLCRILR 119, (2000) 2 CRIMES 11, (2000) 1 CHANDCRIC 167, (2000) 1 RECCRIR 562, (1999) CRILT 479, 2000 (1) ANDHLT(CRI) 279 SC, (2000) 1 ANDHLT(CRI) 279, 2000 (2) KLT SN 64 (SC)

Author: U.C.Banerjee

Bench: U.C.Banerjee

CASE NO.:

Special Leave Petition (crl.) 1971 of 1999

PETITIONER:

M/S. MEDCHL CHEMICALS & PHARMA P. LTD.

Vs.

RESPONDENT:

M/S. BIOLOGICAL E. LTD. & ORS. RESPONDENTS

DATE OF JUDGMENT: 25/02/2000

BENCH:

G.B.Pattanaik, U.C.Banerjee

JUDGMENT:

BANERJEE,J.

L.....I.....T.....T.....T.....T.....T.....T..J Leave granted.

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise upto the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount. Factual matrix therefore would thus be relevant in the matter of assessment of the situation as to whether civic profile would outweigh the criminal outfit. It appears that as against the initiation of proceeding on the file of 17th Metropolitan Magistrate, Hyderabad against the appellant under Sections 120B, 418, 415 and 420 read with Section 34 Indian Penal Code, the respondents moved the High Court for quashing of complaint and the Learned Single Judge on 15th February, 1999 in Criminal Petition No.5386 of 1998 did quash the complaint and hence the petitioner is in appeal before this Court. The Learned Single Judge while dealing with the matter came to a definite conclusion that the complaint does not disclose any offence having been committed by the accused petitioner and as such allowed the petition for quashing of the complaint. The factual score depict that the respondents approached the petitioner for the purpose of securing Ethambutol Hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent Company. It is at this juncture that the Petitioner has come out with a definite case that by reason of a promise of maintaining continuous supply of raw materials to the petitioners herein for the purpose of manufacturing Ethambutol Hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the Complainants factory, the Complainant-petitioner entered into an agreement dated 31st August, 1997 which inter alia records as below: It is the responsibility of the party of the 2nd part to maintain sufficient inventory of the Raw Materials as described in the Annexure I in order to maintain consistent supplies to the manufacturer and not to cause any interruption/hindrance with the manufacturing activity by the manufacturer.

It is on the basis of the agreement as noticed above and failure to comply therewith, it is stated that the petitioner herein has lost a substantial amount of money and to the extent of about one crore and the sufferance of loss has been by reason of specific assurance and representation which obviously turned out to be false. Misrepresentation on the part of the respondent accused persons to the Complainant, has been the major grievance and a definite and specific case has been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies are not effected, as per the agreement, the Complainant is likely to suffer a wrongful loss which as the complaint proceeds, in the interest of the transaction between the parties, the accused persons were bound to protect. It is on this score that relevant

extracts of the complaint ought to be noticed at this juncture. The complaint inter alia provides as below: (i) ...Clause 9 of the Agreement dated 31.8.1997 states that the schedule of supply of raw materials by the party of the 2nd Part (A1 Company) and the delivery of the finished product by the party of the 1st Part (Complainant) shall be as in Annexure III (to the Agreement)

(ii) Annexure III to the Agreement dated 31.8.1997 would show that the supply of raw material DL2 Amino Butanol by A1 to the Complainant must be 15,210 Kgs or 15.21 Mts per month to facilitate and sustain a monthly production of 8500 Kgs. or 8.5 Mts. of the finished product Ethambutol Hydrochloride per month.

(iii) Another main factor being that the Complainant should not suffer any loss on account of the execution of the agreement with A1. The Complainant states that it entered into the Agreement dated 31.8.1997 with A1 under which the Complainant has been converting the raw materials supplied by A1 into the bulk drug Ethambutol Hydrochloride and supplying it back to A1 on prescribed conversion charges.

(iv) ..The Complainant states that the supply of raw materials, particularly the principal imported raw material DL2 Amino Butanol, by A1 was far from regular almost from the beginning of the agreement. This was often being informed to A1 through A2, A3, A4 and A5. Based on the representations made by A1 through A2 to A5, the Complainant had planned its production according to the agreement i.e. on the basis of supply of 15,210 kgs. DL2 Amino Butanol by A1 for conversion every month, but the Complainants production plans were totally dislocated and disrupted on account of A1s willful failure to supply the raw materials as represented by them through A2, A3, A4 and A5.

(v) ..The Complainant states that it had to incur a loss of over Rs. One crore due to the willful defaults committed by the Accused. These defaults on part of A1 were repeatedly brought to the notice of the Accused through telephonic calls by the Complainant, more particularly in the fax message of 15.12.97 and 10.2.98 to A1 and A3.

(vi) The Complainant had a meeting with A2 on 4.4.1998 which was also attended by A3. At this meeting held on 4.4.98, A2 and A3 agreed with the position stated by the Complainant and made representations that the supply of raw material by A1, particularly the critical raw material DL2 Amino Butanol, would be kept up regularly to enable production of 8 MTs of the finished product. The Complainant reduced these representations by A1 through A2 and A3 into writing on the same day and wrote the letter dated 4.4.98 to A1 through A3. The contents of this letter have not been rebutted by A1. The Complainant states that inspite of this, the Accused deliberately failed to act on their representations made to the Complainant on 4.4.98 and thus continued to inflict huge losses on the Complainant

(vii) ..The Complainant states that in its talks and discussions with the Accused, it had been indicating to A2, A3, A4, A5 and A6 that in case A1 could not keep up to its representations which put the Complainant to huge losses, this clause 15 could be invoked and the agreement terminated by the Complainant giving 2 months notice to A1. But the Accused would, on these occasions,

persuade the Complainant not to invoke this provision and make further representations to the Complainant that the supply of raw materials would henceforth be kept at the agreed level. However, these representations were not acted upon by the Accused while, on the other hand, believing these representations, the Complainant made schedules of production, but was left without materials, holding on to an idle plant carrying idle labour and thus incurring huge monetary losses.

(viii) ..The Complainant now understands that the above false representations were made by the Accused solely with the purpose of putting the Complainant to huge losses and crippling them since the Accused themselves were planning to manufacture in their own facilities the bulk drug Ethambutol Hydrochloride and wanted to put the Complainant out of competition by ruining them by keeping them out of production which was achieved by the Accused by making false representations of supply of raw material at the agreed levels and then willfully failing and omitting to act as per these representations.

(ix) The Complainant was also persuaded by the representations of the Accused to desist from invoking Clause 15 of the Agreement and revoke it which would have reduced its losses to some extent. The above acts of the Accused clearly attract the ingredients of the offence punishable U/Sec.415 I.P.C..

(x) the Accused were having dishonest intention and it was with such intention that the Complainant Company was fraudulently and dishonestly induced to enter into the Agreement dt. 31.8.97. The dishonest intention of the Accused is further seen from the complaint lodged by A6 on behalf of A1 against three officers of the Complainant.

(xi) The Accused were fully aware that the Complainant is a reputed manufacturer of Ethambutol Hydrochloride and they are having good reputation in Indian and Overseas markets. The Accused were themselves contemplating entering into production of Ethambutol Hydrochloride and wanted to eliminate the competition from the Complainant who had established their name in the market. Keeping this in mind, the Accused, in order to earn wrongful gain and cause wrongful loss to the Complainant, acted in the aforesaid manner, inducing the Complainant through representations (by the Accused) to commit to conversion work and consequently schedule its production accordingly and then willfully failing to act as per the representations thus putting the Complainant to huge losses.

(xii) The Complainant further states that but for the false representations made by the Accused at the time of entering into the Agreement dt. 31.8.97, it (Complainant) would not have entered into this Contract. The aforesaid acts of the Accused have ruined the finances of the Complainant and it had to incur huge loss due to these acts of the Accused. The Complainant states that the above said acts of the Accused clearly attract the ingredients of Section 420 I.P.C..

(xiii) The preceding paragraphs in this Complaint would clearly reveal that the Accused who are bound to protect the interests of the Complainant in the transactions under the Agreement dt.31.8.97 have not only cheated the Complainant by causing wrongful loss to it, but have also failed

to protect the interests of the Complainants in the transactions. Hence, the Accused are liable to be punished U/Sec.418 I.P.C.

(xiv) .The Complainant states that from whatever has been stated and set out herein above, it is absolutely clear that A1 to A6 had, in criminal conspiracy with each other and in furtherance of the common intention of all have committed the above offences under Section 415 I.P.C. and 420 I.P.C. Letter correspondence, the Complaint and the documents relating to the Agreement dt. 31.8.97 would prove that A2 to A6 have very much participated in the affairs of A1 and in particular, those relating to the transactions under the Agreement dt. 31.8.97.

This longish narration could have probably been avoided, but it cannot be so done by reason of the fact that the Learned Single Judge has only recorded : It appears that under an agreement the accused were obliged to supply raw materials for production to the Complainant which they failed to do. I do not find any allegation whatsoever in the complaint which would disclose a criminal offence.

Before proceeding further in the matter, let us now deal with the offences alleged in the First Information Report. The first offence alleged is that of cheating within the meaning of Section 415 IPC . For convenience sake Section 415 reads as below: 415. Cheating Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat . Explanation A dishonest concealment of facts is a deception within the meaning of this section.

The Complaint is also said to be under Section 418 I.P.C. which reads as below: 418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound , either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The Complaint also alleges an offence said to have been committed under Section 420 I.P.C. which reads as below: 420. Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The ingredients require to constitute an offence under Section 415 has been lucidly dealt with by this Court in the Case of Ram Jas v. State of U.P. (1970 (2) SCC 740) wherein this Court observed as below: The ingredients required to constitute the offence of cheating are-

- (i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (ii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Learned Single Judge. But can the factual situation as narrated above in the longish reproduction of the complaint lend support to the observations of the Learned Judge, the answer is pivotal one but before so doing one other aspect as regards the powers under Section 482 Cr.P.C. ought to be noticed. As noted herein before this power is to be exercised with care and caution and rather sparingly and has been so held on more occasions than one. In the case of *Pratibha Rani v. Suraj Kumar* 1985 SCC (Cri.) 180 this Court pointed out that the High Court should very sparingly exercise its discretion under Section 482 Cr.P.C. In *L.V.Jadhav v. Shankarrao Abasaheb Pawar* [AIR 1983 SC 1219; (1983) 4 SCC 231; 1983 SCC (Cri) 813] this Court observed: The High Court, we cannot refrain from observing, might well have refused to invoke its inherent powers at the very threshold in order to quash the proceedings, for these powers are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen.

Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear *ex facie* on the complaint. The observation in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* [1976 (3) SCC 736] lend support to the above statement of law. (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 complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

58. The same principles would apply *mutatis mutandis* to a criminal complaint.

59. We now come to the question as to whether or not a clear allegation of entrustment and misappropriation of properties was made by the appellant in her complaint and, if so, was the High Court justified in quashing the complaint at that stage. It is well settled by a long course of decisions that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same *per se*. It has no jurisdiction to examine the correctness or otherwise of the allegations. In case no offence is committed on the allegation and the ingredients of Sections 405 and 406, IPC are not made out, the High Court would be justified in quashing the proceedings.

In the matter under consideration, if we try to analyse the guidelines as specified in *Shivalingappas* case (*supra*) can it be said that the allegations in the complaint do not make out any case against the accused nor it discloses the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused. In the present case, the complaint as noticed above does not, however, lend credence to the questions posed. It is now well settled and one need not dilate on this score, neither we intend to do so presently that the allegations in the complaint will have to be accepted on the face of it and truth or falsity of which would not be gone into by the Court at this earliest stage as noticed above: whether or not allegations in the complaint were true is to be decided on the basis of the evidence led at the trial and the observations on this score in the case of *Nagpur Steel & Alloys Pvt. Ltd. v. P. Radhakrishna* [1997 SCC (Cr.) 1073] ought to be noticed. In paragraph 3 of the report this Court observed: 3. We have perused the complaint carefully. In our opinion it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously.

Be it noted that in the matter of exercise of High Courts inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction. Recently, this Court in *Trisuns Chemical Industry v. Rajesh Agarwal and others* (1999 (5) SCALE 609) observed: 5. Respondents counsel in the High Court put forward mainly two contentions. First was that the dispute is purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned Single Judge has approved both the contentions and quashed the complaint and the order passed by the magistrate thereon.

6. On the first count learned Single Judge pointed out that there was a specific clause in the Memorandum of Understanding arrived between the parties that disputes, if any, arising between them in respect of any transaction be resolved through arbitration. High Court made the following observations:

Besides supplies of processed soyabean were received by the complainant company without any objection and the same have been exported by the complainant-company. The question whether the complainant-company did suffer the loss as alleged by it are the matters to be adjudicated by the Civil Court and cannot be the subject matter of criminal prosecution.

7. Time and again this Court has been pointing out that the quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions (vide *State of Haryana v. Bhajan Lal* (1992 Suppl.(1) SCC 335 and *Rajesh Bajaj v. State NCT of Delhi* (1999 (3) SCC 259)].

8. In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. 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 cases as indicated in *State of Haryana v. Bhajan Lal* (Supra).

On careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in divers situations. As a matter of fact they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of 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 civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is 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 impact [vide *Pratibha Rani v. Suraj Kumar* (supra)]. Mr. Mishra, the learned Senior Advocate for the respondents herein being the accused persons, strongly relied upon the decisions of this Court in the case of *Dr. Sharma Nursing Home v. Delhi Administration* 1998 (8) SCC 745 wherein this Court observed:

that findings of Section 420 IPC has been rested only on the reception and did not go into the question whether the complainant and its accompanymen disclosed the essential ingredient of the offence under Section 420 IPC namely, disclosed inducement. Mr. Mishra upon reliance in *Dr. Sharmas case* (supra) also contended that Section 24 of the I.P.C has defined the word dishonesty to mean a deliberate intent to cause wrongful gain or wrongful loss. It has been the specific case of the complainant that from the beginning of the transaction there was a definite intent on the part of the accused persons to cause wrongful loss to the complainant. This aspect of the matter, however, has not been taken note of by the learned Single Judge. The decision of this Court in *Dr. Sharmas case* (supra) thus does not lend any assistance to Mr. Mishra in support of quashing of the criminal complaint. Some other decisions have also been cited but we do not feel it inclined to refer to the same except one noted above since they do not advance the case of the respondents in any way whatsoever. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short circuited. We, thus, without expressing any opinion on the merits of the case allow the Appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expectation. Be it clarified however that observations as above in this judgment be not taken as an expression of opinion of ours.