Vijay Kumar Ghai vs The State Of West Bengal on 22 March, 2022

Author: Krishna Murari

Bench: Krishna Murari, S. Abdul Nazeer

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 463 OF 2022
(arising out of S.L.P (Crl.) No. 10951 OF 2019)

VIJAY KUMAR GHAI & ORS. … APPELLANT(S)

VERSUS

THE STATE OF WEST BENGAL & ORS. … RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. This appeal is directed against the judgment and order dated 01.10.2019 passed by the High Court of Calcutta (hereinafter referred to as "High Court") in C.R.R No. 731 of 2017 filed by the appellants praying for quashing of proceedings being G.R. Case No. 1221 of 2013 pending before the Court of Learned Chief Metropolitan Magistrate, Kolkata and arising out of Bowbazar Police Station Case No. 168 dated 28.03.2013 under Sections 420, 406 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

By the said judgment, the High Court dismissed the prayer for 17:11:34 IST Reason:

> quashing of the proceedings and held that continuance of criminal proceedings against the present appellant/accused would not be an abuse of the process of the court.

3. Brief facts necessary for the disposal of this appeal are as under:

3.1 M/s. Priknit Retails Limited a public limited company having its registered office at BXXV, 539A, 10, Jalandhar, Bye Pass Road, Ludhiana, Punjab was incorporated in the year 2002 and subsequently changed its name to Priknit Apparels in 2007. The company is engaged in the manufacture and trade of apparels through chain of retail stores under the brand name and style of Priknit. Appellant No. 1 is the Managing Director of the Company and Appellant Nos. 2 and 3 are the Directors of the said Company. The company has been arrayed as proforma Respondent No. 3. 3.2 In January 2008, Respondent No. 2 an authorized representative of SMC Global Securities Ltd, Delhi desired to make an investment on its behalf with the appellants. It was mutually decided between the parties that Respondent No. 2 will invest an amount of Rs. 2.5 crore with the company in lieu of which they will be issued 2,50,000 equity shares of Priknit Apparel Pvt.

Ltd. Subsequently, Respondent No. 2 filed their share application form along with the cheque of Rs. 2.5 crore.

3.3 Subsequently, an allotment letter dated 29.03.2008 was issued in favour of Respondent No. 2 whereby 2,50,000 shares were issued in lieu of the investment made by him. The proforma respondent no. 3 company and Respondent No. 2 arrived at an understanding, regarding the investment made by Respondent No. 2.

3.4 Having failed to bring the I.P.O as per memorandum of understanding dated 20.08.2009, Respondent No. 2 issued a legal notice dated 06.12.2011 to the Appellants, who duly replied to the legal notice denying all the allegations contained in the legal notice.

3.5 That on 06.01.2012, Respondent No. 2 filed a police complaint with PS Rajender Nagar, New Delhi and the concerned officer of PS Rajender Nagar apprised Respondent No. 2 that the complaint does not pertain to their jurisdiction and therefore the same ought to be transferred. On 11.04.2012, Respondent No. 2 filed a complaint with the Economic Offences Wing (hereinafter referred to as “EOW”) and the said complaint was transferred to PS Darya Ganj, New Delhi.

3.6 That on 06.06.2012, Respondent No. 2 filed a complaint being CC No. 306/1/12 under Section 156(3) of Cr.P.C before the Tiz Hazari Court, New Delhi for registration of FIR against the Appellants and their company. On 01.09.2012, Respondent No. 2 also filed another Complaint No. 190 of 12 before Tis Hazari Court, New Delhi under Section 68 of the Companies Act read with Section 200 of Cr.P.C which is pending adjudication. 3.7 That the Metropolitan Magistrate (hereinafter referred to as “MM”), Tis Hazari vide order dated 28.02.2013 observed that the entire dispute raised by Respondent No. 2 was civil in nature and there was no criminality involved, thereby turning down the prayer of Respondent No. 2 for registration of an FIR and posted the case for pre-summoning evidence with regard to the application under Section 156(3) Cr.P.C filed by Respondent No.2. It is pertinent to mention here that the order of the MM, Tis Hazari Court, New Delhi attained finality as it was not put to further challenge. 3.8 That on 28.03.2013, Respondent No. 2 filed a second complaint under Section 406, 409, 420, 468,120B and 34 IPC on the basis of the same cause of action with the PS Bowbazar at Kolkata, West Bengal and the same was converted

into an FIR bearing No. 168 under Section 406, 420, 120B IPC. A final closure report dated 04.03.2014 was filed by the concerned Police Station recommending closure of the case since the entire dispute was found to be civil in nature.

3.9 That Respondent No. 2 filed a protest petition being GR No. 1221/2013 with the Chief Metropolitan Magistrate (hereinafter referred to as "CMM"), Kolkata against closure report dated 04.03.2014 and vide order dated 08.03.2016, the CJM allowed the protest petition and directed for further investigation.

3.10 In the meantime, the authorized representative of Respondent No. 2 made a statement before the MM, Tish Hazari, New Delhi for withdrawing the complaint case.

3.11 Appellant No. 1 received a notice dated 14.11.2016 under Section 41(a) Cr.P.C for appearance before the Investigation Officer (hereinafter referred to as "IO") at PS Bowbazar, Kolkata. In his reply to the said notice, Appellant No. 1 stated that a complaint has already been filed with the same cause of action before the Tis Hazari Court and further sought time to produce the documents sought in the notice. Thereafter, Appellant No. 1 sent a letter with all the relevant documents required for investigation thereby extending full co- operation to the IO at PS Bowbazar, Kolkata in connection with Case No. 168. The IO PS Bowbazar, Kolkata sent another notice under Section 41(a) Cr.P.C dated 23.12.2016 to Appellant No. 1 and 2 to appear before him with the relevant documents.

3.12 That vide order dated 14.02.2017, the CMM, Calcutta took cognizance of the offence under Section 406, 420, 120B IPC in connection with Case No. 168 dated 28.03.2013 corresponding to GR Case No. 1221 of 2013 i.e., protest petition.

3.13 Being aggrieved, Appellants herein filed a quashing petition being CRR No. 731 of 2017 under Section 482 Cr.P.C seeking quashing of FIR No. 168 dated 28.03.2013 and also impugned the proceedings in GR Case No. 1221 of 2013 by invoking Sections 401 and 482 Cr.P.C.

3.14 That the High Court vide order dated 06.03.2017 issued notice to the Respondents and stayed further proceeding of criminal case. Respondent No. 2 filed an application for vacation of the stay order granted by the High Court but the same was dismissed vide order dated 24.03.2017 while observing that Respondent No. 2 had also filed a complaint at Delhi on the same allegations, thus the proceedings at Calcutta were intended to harass the Appellants. 3.15 However, the High Court vide impugned judgment and order dated 01.10.2019 dismissed the quashing as well as the revision petition filed by the Appellants and observed that in order to exercise the power under Section 482 Cr.P.C, the only requirement is to see whether continuance of the criminal proceedings would be a total abuse of the process of the court and the continuance of the criminal proceedings against the appellants is in no way an abuse of the process of the court. The operative portion of the aforesaid judgment reads as under: -

> "In the present case, the allegation in the FIR disclosed the offences alleged. Moreover, the allegations made in the FIR disclosed that the petitioner induced the complainant to purchase share or invest money by willful misrepresentation.

It is true that the complaint discloses that there was a commercial transaction between the parties but at the same time, it cannot be overlooked that the averments made in the complaint/FIR prima facie revel the commission of a cognizable offence.

Moreover, when the complaint discloses that the commercial transaction between involve criminal offences, then the question of quashing the complaint cannot be allowed." Contentions on behalf of Appellants

4. Ms. Menaka Guruswamy, learned senior advocate appearing on behalf of the appellants has vehemently submitted that Respondent No.2 indulged in the practice of forum shopping by filing 2 complaints i.e., a complaint u/s 156(3) Cr.P.C before the Tis Hazari Court, New Delhi on 06.06.2012 and a complaint which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC before PS Bowbazar, Calcutta on 28.03.2013. FIR in connection with PS Bowbazar, Calcutta was lodged during the pendency of the complaint case at Tis Hazari Court, New Delhi and the said fact was cleverly supressed by Respondent No. 2.

4.1 It was further submitted that initially police submitted a closure report.

However, Respondent No. 2 filed an application under Section 173(8) of Cr.P.C for further investigation which was allowed and after further investigation, charge sheet was filed against the Appellants herein. 4.2 It was vehemently submitted that the complaint filed in PS Bowbazar was the exact reproduction of the complaint filed in New Delhi with the only difference being the place of occurrence. In the complaint lodged at Delhi, the place of occurrence was shown to be the office at New Delhi and in subsequent complaint at Calcutta, the place of occurrence was changed to its office at Calcutta.

4.3 It was further submitted that the allegations contained in the FIR are purely contractual disputes of civil nature but Respondent No. 2 has given a criminal colour to it and that breach of contract does not come within the purview of cheating as defined in IPC. In addition to it, it was submitted that the transaction in question between the parties as revealed from the F.I.R was purely a sale transaction or what may be called as a commercial transaction, therefore the question of cheating does not arise at all. 4.4 It was further submitted that there are no allegations in the complaint filed by the Respondent No. 2 about the Appellants having fraudulent or dishonest intentions at the time of making the representation. 4.5 It was also further submitted that the High Court failed to appreciate that the two allegations recorded in the complaint against the Appellants being belated allotment of shares to the complainant company and the Appellant No. 1's failure to bring out an IPO are clearly commercial disputes with no element of criminality.

4.6 It was further submitted that the High Court failed to appreciate that a mere failure to keep a promise does not create any presumption of a dishonest intention amounting to a criminal breach of trust under Section 409 IPC or cheating under Section 420 IPC.

4.7 Heavy reliance was placed on the decisions of this Court in V.Y.Jose & Anr. Vs. State of Gujarat & Anr.1, Murari Lal Gupta Vs. Gopi Singh2; K. Jayaram and Ors. Vs. Bangalore Development Authority & Ors. 3; Union of India and Ors. Vs. Shantiranjan Sarkar4.

Contentions on behalf of Respondents

5. Mrs. Anjana Prakash, learned senior advocate appearing on behalf of the Respondents has vehemently submitted that the allegations contained in the complaint disclosed all the ingredients of the alleged offences and moreover, the criminal proceedings have not been initiated with mala fide intention and that the complaint case filed before the magistrate of Tis Hazari Court was not decided on merit and as such the complainant cannot be barred from making a fresh complaint.

1 (2009) 3 SCC 78 2 (2005) 13 SCC 699 3 2021 SCC OnLine SC 1194 4 (2009) 3 SCC 90 5.1 It was further submitted that the complaint at Kolkata had been filed only after the prayer u/s 156(3) Cr.P.C was rejected by the Delhi Court on 28.02.2013 in order to avail legal remedies available and when the Calcutta Court on 08.03.2016 allowed further investigation, the Respondent in order to avoid multiplicity of proceedings, withdrew the complaint in Delhi on 09.09.2016.

5.2 It was further submitted that it is an established proposition of law that two complaints can co-exist simultaneously if the scope of two complaints are different. Reliance in support of the contention was placed on the judgment of this Court in K. Jagadish Vs. Udaya Kumar G.S. & Anr. 5, wherein it was reiterated that two remedies ie. civil and criminal are not mutually exclusive but can co-exist since they essentially differ in their context and consequence. 5.3 It was also submitted that the established principle of quashing is that at the stage of cognizance all that a Court is required to see if prima facie an offence is made out and courts should restrain itself from throttling legitimate prosecutions at the threshold and the law should be allowed to take its course. Substantiating the same, it was submitted that the complainant has made a specific allegation that on inducement of the accused persons, he had parted with 2.50 crore on a false promise that they would be allotted shares in the company. On 29.02.2008, a false statement was made by the accused persons that the complainant had been allotted the shares, whereas it 5 (2020) 14 SCC 552 transpired that the resolution about the allotment of shares was taken only on 23.03.2009 that is one year later.

5.4 Strong reliance was placed on the decisions of this Court in V. Ravi Kumar Vs. State and Ors.6; Indian Oil Corporation Vs. NEPC India Ltd. & Ors.7; A.V. Mohan Rao & Anr. Vs. M Kishan Rao & Anr. 8; K. Jagadish (Supra).

6. We have carefully considered the submissions made at the Bar and perused the materials placed on record.

7. Predominantly, the Indian Judiciary has time and again reiterated that forum shopping take several hues and shades but the concept of ‘forum shopping’ has not been rendered an exclusive definition in any Indian statute. Forum shopping as per Merriam Webster dictionary is:-

> "The practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on determination of which court is likely to provide the most favourable outcome"

8. The Indian judiciary's observation and obiter dicta has aided in streamlining the concept of forum shopping in the Indian legal system. This Court has condemned the practice of forum shopping by litigants and termed it 6 (2019) 14 SCC 568 7 (2006) 6 SCC 736 8 (2002) 6 SCC 174 as an abuse of law and also deciphered different categories of forum shopping.

9. A two-Judge bench of this Court in Union of India & Ors. Vs. Cipla Ltd. & Anr.9 has laid down factors which lead to the practice of forum shopping or choice of forum by the litigants which are as follows:-

> "148. A classic example of forum shopping is when litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief. This occurred in Rajiv Bhatia Vs. Govt. of NCT of Delhi and Others10. The respondent-mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of the child granted by the Delhi High Court to the respondent- mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping.
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> 149. In Arathi Bandi v. Bandi Jagadrakshaka Rao & Ors.11this Court noted that jurisdiction in a Court is not attracted by the operation or creation of fortuitous circumstances. In that case, circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping.
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> 150. Another case of creating circumstances for the purposes of forum shopping was World Tanker Carrier 9 (2017) 5 SCC 262 10 (1999) 8 SCC 525 11 (2013) 15 SCC 790 Corporation v. SNP Shipping Services Pvt. Ltd. and others12 wherein it was observed that the respondent/plaintiff had made a deliberate attempt to bring the cause of action namely a collision between two vessels on the high seas within the jurisdiction of the Bombay High Court. Bringing one of the vessels to Bombay in order to confer jurisdiction on the Bombay High Court had the character of forum shopping rather than anything else.
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> 151. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. In

> Ambica Industries v. Commissioner of Central Excise (2007) 6 SCC 769 the assesse was from Lucknow. It challenged an order passed by the Customs, Excise and Service Tax Appellate Tribunal (the CESTAT) located in Delhi before the Delhi High Court. The CESTAT had jurisdiction over the States of Uttar Pradesh, NCT of Delhi and Maharashtra. The Delhi High Court did not entertain the proceedings initiated by the assessee for want of territorial jurisdiction. Dismissing the assessee's appeal this Court gave the example of an assessee affected by an assessment order in Bombay invoking the jurisdiction of the Delhi High Court to take advantage of the law laid down by the Delhi High Court or an assessee affected by an order of assessment made at Bombay invoking the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and consequently evade the law laid down by the Bombay High Court. It was said that this could not be allowed and circumstances such as this would lead to some sort of judicial anarchy.
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> 155. The decisions referred to clearly lay down the principle that the court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not." 12 (1998) 5 SCC 310

10. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent No. 2 filed two complaints i.e., a complaint u/s 156(3) Cr.P.C before the Tis Hazari Court, New Delhi on 06.06.2012 and a complaint which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC before PS Bowbazar, Calcutta on 28.03.2013. ie., one in Delhi and one complaint in Kolkata. The Complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place occurrence in order to create a jurisdiction.

11. A two-Judge bench of this Court in Krishna Lal Chawla & Ors. Vs. State of U.P. & Anr.13 observed that multiple complaints by the same party against the same accused in respect of the same incident is impermissible. It held that Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case.

12. The legality of the second FIR was extensively discussed by this Court in T.T. Antony Vs. State of Kerala & Ors.14. It was held that there can be no second FIR where the information concerns the same cognisable offence 13 (2021) 5 SCC 435 14 (2001) 6 SCC 181 alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognizable offences. It was further held that once an FIR postulated by the provisions of Section 154 of Cr.P.C has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the Cr.P.C. The Court further held that

barring situations in which a counter- case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of Cr.P.C or Articles 226/227 of the Constitution of India

13. A two-Judge bench of this Court in K. Jayaram and Ors. Vs. Bangalore Development Authority & Ors.15 observed:

> "16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law." 15 2021 SCC OnLine SC 1194

14. The genesis of the present appeal originates from the impugned order pronounced by the High Court whereby the High Court dismissed the application filed under Section 482 as well as 401 Cr.P.C. Taking that into concern, it is necessary to advert to the principles settled by judicial pronouncements laying down the circumstances under which High Court can exercise its inherent powers under Section 482 Cr.P.C.

15. This Court in the widely celebrated judgment of State of Haryana & Ors. Vs. Bhajan Lal & Ors.16 considered in detail the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

> "102. (1) Where the allegations made in the first information report or 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 a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the

16 1992 Supp (1) SCC 335 same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. This Court in R.P. Kapur Vs. State of Punjab17 summarized categories of cases where inherent power can and should be exercised to quash the proceedings:-

> (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

17 (1960) 3 SCR 388

(ii) Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

17. This Court in Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.18 observed:-

> "27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie

> decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage"

18. In Indian Oil Corpn. v NEPC India Ltd. & Ors. 19, a two-judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under 18 (2007) 12 SCC 1 19 (2006) 6 SCC 736 Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:

> "12. ... (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. 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 warranted while examining prayer for quashing of a complaint.
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> (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 fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
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> (iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.
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> (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 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) .."

> 19. A two-Judge Bench of this Court in State of Madhya Pradesh Vs. Awadh Kishore Gupta & Ors.20 made the following observation :-
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> "11. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate

> prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code."

20. This Court in G. Sagar Suri & Anr. Vs. State of UP & Ors. 21 observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

20 (2004) 1 SCC 691 21 (2000) 2 SCC 636

21. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corporation (Supra) noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that:-

> "13. ...any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

22. At the outset, Respondent No. 2/Complainant alleged that the Appellants were responsible for the offence punishable under Section 420, 405, 406, 120B IPC. Therefore, it is also imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

23. Section 405 of IPC defines Criminal Breach of Trust which reads as under: -

> "405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

The essential ingredients of the offense of criminal breach of trust are:-

(1) The accused must be entrusted with the property or with dominion over it, (2) The person so entrusted must use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

24. "Entrustment" of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, 'in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

25. The definition in the section does not restrict the property to movables or immoveable alone. This Court in R K Dalmia vs Delhi Administration22 held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the 22 (1963) 1 SCR 253 meaning of the word 'property' to moveable property only when it is used without any qualification in Section 405.

26. In Sudhir Shantilal Mehta Vs. CBI23 it was observed that the act of criminal breach of trust would, Interalia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

27. Section 415 of IPC define cheating which reads as under: -

"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"." The essential ingredients of the offense of cheating are:

1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person: or
(ii) to consent that any person shall retain any property; or

> (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no so deceived, and which act or 23 (2009) 8 SCC 1 omission causes or is likely to cause damage or harm to that person in body,mind,reputation or property.

28. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

29. Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under: -

> "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."

30. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

31. To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

> 1. The representation made by the person was false
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> 2. The accused had prior knowledge that the representation he made was false.
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> 3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
>
> 4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

32. As observed and held by this Court in the case of Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr. 24 , the ingredients to constitute an offence under Section 420 are as follows:-

> i) a person must commit the offence of cheating under Section 415;

and

ii) the person cheated must be dishonestly induced to;

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or 24 (2019) 16 SCC 739 sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

33. The following observation made by this Court in the case of Uma Shankar Gopalika Vs. State of Bihar & Anr. 25 with almost similar facts and circumstances may be relevant to note at this stage:-

> "6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Section 420/120-B IPC. The only allegation in the complaint petitioner against the accused person is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,000, they would pay a sum of Rs. 2,60,000 to the complainant out of that but the same has never been paid. It was pointed out that on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs. 4,20,0000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases of breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused person to cheat which is a condition precedent for an offence under 420 IPC.
>
> "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 25 (2005) 10 SCC 336 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 Cr.P.C which it has erroneously refused."

34. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.26, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent

intention of the appellants.

35. In Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors. 27, this Court made the following observation:-

> "13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be 26 (2000) 4 SCC 168 27 (2015) 8 SCC 293 encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."

36. Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that Appellants had any malafide intention against the Respondent which is clearly deductible from the MOU dated 20.08.2009 arrived between the parties.

37. The entire origin of the dispute emanates from an investment made by Respondent No. 2, amounting to Rs. 2.5 crores in lieu of which 2,50,000/- equity shares were issued in the year 25.03.2008, finally culminating into the MOU dated 20.08.2009. That based on this MOU respondent No. 2 filed three complaints, two at Delhi and one at Kolkata. Thus, two simultaneous proceedings, arising from the same cause of action i.e. MOU dated 20.08.2009 were initiated by Respondent No. 2 amounting to an abuse of the process of the law which is barred. The details of the complaints are as under:-

> 1. On 06.06.2012, Respondent No. 2 filed a private complaint u/s 156(3) Cr.P.C with CJM, Tis Hazari Court Delhi for registration of fir against the Appellants; which was withdrawn on 19.09.2016.
>
> 2. Complaint u/s 68 of the companies act r/w section 200 crpc filed before the CMM, Tis Hazari Courts at Delhi; which is pending.

3. On 28.03.2013, a complaint was made to the P.S Bowbazar, Central Division, Kolkata which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC, 1860.

38. Respondent No. 2 filed a complaint u/s 156(3) Cr.P.C on 06.06.2012, wherein his prayer for registration of an FIR was rejected vide order dated 28.02.2013 by the MM, Tis Hazari Court, immediately after which he filed his complaint on 28.03.2013 at P.S Bowbazar, Calcutta. The timeline of filing complaints clearly indicates the malafide intention of Respondent No. 2 which was to simply harass the petitioners so as to pressurise them into shelling out the investment made by Respondent No. 2.

Malafide intention of Respondent No. 2 is culled out from following facts:-

1. At the time of filing of complaint dated 31.03.2013 at PS Bowbazar, Respondent No. 2 did not disclose about the filing of two complaints at Delhi against the appellants.

2. After filing of closure report by the IO Bowbazar PS dated 04.03.2014, Respondent No. 2 filed a protest petition before the CMM, Kolkata where the material fact of two complaints was completely suppressed.

39. In the complaint no. 306/1/2012 dated 06.06.2012 registered before the MM, Tis Hazari Court, New Delhi, Respondent No. 2/complainant stated that:-

"(c) That, thereafter Mr. Vijay Kumar Ghai and Mr. Mohit Ghai started visiting the office of the complainant company every now and then in order to persuade the complainant company to invest in their company. It is pertinent to mention herein that they stated the complainant company that the retail business of the apparels under the PRIKNIT brand through a network of exclusive brank outlets was witnessing a growth.."

10. That it is submitted that this court has jurisdiction to try and entertain the matter as the complainant company is situated within the jurisdiction of this court. Moreover, all the business activities/transactions are being regulated and controlled at Delhi. Furthermore, the complaints filed by the complainant company are lying before the concerned police station, which also falls within the jurisdiction of this Hon'ble Court." This clearly demonstrates that the jurisdiction has been created in Delhi as the Appellants used to visit Respondent No. 2 in order to persuade them to invest in their company and special emphasis can be laid on the fact that Respondent No. 2 himself accepted/agreed to the fact that all the transactions took place in Delhi. Therefore, registering a complaint in Kolkata is way of harassing the appellant as a complaint has already been filed in Delhi with all the necessary facts, apart from the jurisdictional issue at Kolkata.

40. The MM, Tis Hazari while dismissing the application under Section 156(3) Cr.P.C categorically observed that:-

"....In case the complainant had suffered any loss on account of the same, the necessary civil remedy lied in the form of damages, compensation and recovery. In case of breach of any term or condition of the contract, the necessary proceedings for injunction or specific performance can be initiated. But that by itself would not mean that the accused had misappropriated the amount of complainant for a year. There is nothing to show any conversion or misappropriation of money as the shares had been allotted subsequently. The parties have themselves agreed on clauses as to failure to honor their commitments providing for levy of interest on delayed payments.

There is no prima facie element of deception or dishonest inducement or misappropriation or conversion or entrustment or forgery in this case.

There is no requirement of police interference in this case. Even otherwise, the evidence in the present case is well within the reach of the complainant itself and it is well aware of the identity of accused persons and no investigation of technical nature is required which could warrant police intervention. The necessary record is withing the possession of the complainant itself and the same can always be proved on record by examining the witnesses. There is no necessity of any custodial interrogation at this stage and nothing identifiable is to be recovered from anyone.

In these circumstances, I do not deem it appropriate to exercise my discretion and get the FIR registered against the accused persons, especially when there is no necessity for police interference. The present application under Section 156(3) Cr.P.C is thus dismissed."

41. It is pertinent to mention that Application under Section 156(3) Cr.P.C filed before the MM, Tis Hazari Court, Delhi was dismissed and there was no further challenge against the same. Instead, Respondent No. 2 chose to file a complaint with the same cause of action in Bowbazar PS, Calcutta and to further clarify, the Complaint filed in Bowbazar PS was the exact reproduction of the complaint filed before Tis Hazari Court, New Delhi with the only difference or what may be termed as 'Jurisdictional improvement' being in point (c) of the facts. It is reproduced in bold below:-

"(c) That, thereafter Mr. Vijay Kumar Ghai and Mr. Mohit Ghai started visiting the office and regional office of the complainant company every now and then in order to persuade the complainant company to invest in their company..."

10. That the facts mentioned above clearly disclose the commission of cognizable offences under Sections of the Indian Penal Code mentioned herein. That the accused persons approached the regional office too to persuade the head office for the

aforesaid purposes therefore the cause of action also arose the local jurisdiction."

42. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.

43. In view of the above facts and circumstances, the impugned order dated 01.10.2019 passed by the High Court is set aside. The impugned FIR No. 168 dated 28.03.2013 and proceedings in the file of CMM, Kolkata, West Bengal in pursuance of charge sheet dated 14.02.2017 against the appellants for the offences under Section 406, 420, 120B IPC stands quashed.

44. As a result, appeal stands allowed.

.....J. (S. ABDUL NAZEER) .....J. (KRISHNA MURARI) NEW DELHI;

22nd MARCH, 2022