

ORISSA HIGH COURT : CUTTACK

CRLMC NO. 1779 OF 2005

In the matter of an application under section 482 of the Code of Criminal Procedure.

Devindar Singh Sabharwal and others ... Petitioners

-Versus-

State and another ... Opp. Parties

For Petitioners : M/s. R.K.Rath, Sr.counsel &
N.R. Rout.

For Opp. Parties : Addl. Standing Counsel
(for O.P. No.1)
M/s. S.Ratho, M.K. Das,
M.K.Das & R.K.Mohapatra
(for O.P.No.2)

Decided on 24 .02.2011.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

This application under section 482 of the Code of Criminal procedure has been filed by the petitioners, who are accused persons in C.T. Case No. 1064 of 2004 pending before the learned S.D.J.M., Angul seeking quashing of the said criminal case.

2. The relationship between the parties is that the opp. party no. 2 – complainant is the son of the petitioner nos. 1 and 2 and the brother of petitioner no.3. He filed a complaint before the learned S.D.J.M., Angul under section 200 Cr.P.C., inter alia,

alleging that he and the accused persons formed a partnership firm by a deed of partnership dated 31.3.1997 and carried on business in coal, coal rejects transportation of coke, iron and steel and other item and to carry on such other business which may be determined by and between the parties from time to time. The said partnership firm was named as "Manorath Mercantile Company" and the share of the complainant in the profit of the said firm was fixed at 20%. The capital contribution of the complainant was 12% amounting to Rs. 1.00 lakh in cash and another Rs. 1.00 lakh by cheque paid in favour of the said firm. He further alleged that he was the registered owner of two Tippers bearing Registration No. OR-06-B-4369 and OR-06-B-4378 which were purchased by the complainant on hire purchase for a total consideration of Rs. 14, 73, 402/- for which the partnership firm stood as guarantor. The complainant entrusted the said Tippers to the accused no.1 (petitioner no.1) on monthly rent of Rs. 20,000/- per Tipper with effect from 1.4.1999. The accused persons in collusion with each other formed a new partnership firm by a deed dated 1.4.1999 by dissolving the earlier partnership firm without the consent of the complainant and without settling the accounts of the firm relating to its assets, liabilities and interest of each of the partners. The complainant when demanded for his share in the profit was informed by the accused no. 1 that the instalments of the aforesaid vehicles have

been paid from his account. The accused no. 1 told the complainant that the balance-sheet and profit and loss account will be sent to him later on. As the complainant did not receive the copy of such balance-sheet and profit and loss account as well as the money towards the monthly rent of Rs. 20,000/- per Tipper from the date of entrustment, the complainant sent a notice dated 2.4.2002 to the accused no.1 demanding his due share of the property in the partnership and also the monthly rent of the said vehicle. As the accused no. 1 did not respond to the said letter, the complainant proceeded to take back his vehicles in October, 2002 and was surprised to know that the accused persons in collusion with each other have transferred the ownership of the vehicles to their names and sold the said vehicles to one Kanheiya Choudhury and Rabindranath Choudhury by forging his signature in the transfer application, no objection certificate as well as other documents and dishonestly misappropriated the amount after selling the Tippers. The complainant further alleged that on good faith he handed over the two Tippers with all connected registration certificates to the accused no.1 and on verbal undertaking by accused no.1 that he will pay monthly rent of Rs. 20,000/- per Tipper to the Complainant and besides the said rent, he will pay the monthly instalment of the said vehicles and will bear all necessary expenses out of the income from the vehicles. But the

accused no. 1 conspiring with other accused persons dishonestly transferred the ownership of the said vehicles to their names. He alleged that by such action, the accused persons have committed offences under section 182/406/420/468 IPC.

3. The learned S.D.J.M. on receiving the said complaint petition, as per the provisions of section 202 Cr.P.C. sent the complaint petition for investigation to the concerned Police Station. After investigation, the police submitted a charge sheet against the petitioners for alleged commission of offence under sections 406/420/468/34 IPC. Upon submission of the said charge sheet, the learned S.D.J.M. took cognizance of the offence under sections 406/34 IPC against the accused persons by his order dated 4.4.2005 and issued the process to the petitioners 1 and 2 , who were on bail and N.B.W. against the petitioner no.3 showing him as absconder.

4. Mr. R.K. Rath, learned senior counsel appearing for the petitioners submits that the Tippers were financed by TELCO and as the opp. party no. 2 Complainant could not clear up the dues as per the loan/hire purchase agreement, sent a FAX message to the financier on 18.1.2001 that the balance money would be paid by Manorath Services Pvt. Ltd. and the vehicles should be transferred to their names for which he has no objection. Subsequently, the financier took over the Tippers on

20.7.2000 and informed the matter to the R.T.O. Dhenkanal that Manorath Services Pvt. Ltd. agreed to clear up the outstanding dues and accordingly cleared the said dues. The TELCO gave possession of the Tippers to the said Company which is a company registered under the Companies Act since 1994 in which the complainant himself is a share holder. On information given by the TELCO, the R.T.O., Dhenkanal allowed registration of the said vehicles in the name of the said Company. Subsequently, the vehicles have been sold by the said company to Rabindranath Choudhury and Kanheiya Choudhury and have been registered in their names.

5. Mr. Rath vehemently urges, admitting that the accounts were not settled with the complainant, the same would be a case of rendition of accounts in a civil suit and by no means, it can amount to a criminal offence and no criminal case would have been lodged against the petitioner. He further submits that the police being in possession of all the material documents including intimation from the TELCO could not have submitted the charge sheet. He also urges that the learned Magistrate without due application of judicial mind has mechanically passed the orders taking cognizance of the offence under sections 406/34 IPC against the petitioners.

6. In the case of ***Inder Mohan Goswami and another v. State of Uttaranchal and others***, AIR 2008 SC 251, the Supreme Court dealing with the power of the High Court under section 482 of the Cr.P.C. laid down that the said power is very wide and the very plentitude 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. The Supreme Court, however, observed that there can be no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

In the case of ***State of Karnataka v. L. Muniswamy and others***, (1977)2 SCC 699, the Supreme Court observed that the power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the

proceeding ought to be quashed. The Supreme Court further observed in the said case that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. Ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature.

In the case of **G. Sagar Suri and another v. State of U.P. and others**, (2000)2 SCC 636, the Supreme Court considering the fact of the said case and the nature of power to be exercised by the High Court under section 482 Cr.P.C. laid down that jurisdiction under section 482 of the Cr.P.C. has to be exercised with great care. In exercise of its jurisdiction, the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter. The Supreme Court further observed in the said case that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial, if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under section 482 Cr.P.C. or Article 227 of the Constitution to have the proceeding quashed

against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

(emphasis supplied)

In the case of **Chandrapal Singh and others v. Maharaj Singh and another** (1982)¹ SCC 466, the Supreme while dealing with a criminal prosecution lodged by a frustrated landlord against his tenant observed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Supreme Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

(emphasis supplied)

The leading decision of the Supreme Court in the case of **State of Haryana and others v. Bhajan Lal and others**, 1992 Supp.(1) SCC 335 clearly lays down that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised. However, it laid down that various types of cases are there, where power under section 482 Cr.P.C. should be exercised to quash the proceeding as a broad principle. One of such cases as enumerated in the said judgment was, where the FIR

or the complaint does not prima facie disclose commission of any offence or make out a case against the accused or where 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.

7. The Supreme Court, in the case of Inder Mohan Goswami and another (supra) dealing with the facts of the said case held that the nature of allegations made against the accused persons were civil in nature and ultimately set aside the order of the high Court, which declined to exercise its inherent power under section 482 Cr.P.C. Holding thus, the Supreme Court quashed the F.I.R.

8. It is clear from the above decisions of the Supreme Court that this Court if finds that accepting the entire allegations made in the complaint petition does not make out any criminal offence and the dispute raised is purely of civil nature, continuance of the criminal proceeding would amount to an abuse of the process of law and should be quashed for the ends of justice.

9. It also appears from the order passed by the learned S.D.J.M., Angul by which cognizance of the offence under sections 406/34 I.P.C. was taken by him against the accused petitioners that the learned S.D.J.M. has not referred to any of the materials

produced before him by the police along with the charge sheet and mechanically took cognizance of the aforesaid offence against the petitioners and issued process as well as N.B.W. without applying his judicial mind.

10. Section 406 of the I.P.C. provides the quantum of punishment to be imposed on a person convicted for commission of offence of criminal breach of trust. Criminal breach of trust has been defined under section 405 I.P.C. which reads thus:-

“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 willfully suffers any other person so to do, commits “criminal breach of trust”.

11. The documents produced before this Court which have been annexed to the application under section 482 Cr.P.C. read with the averments made in the complaint petition clearly show that the dispute arises out of a partnership business between the complainant and the petitioner nos. 1 and 2, who were related as son and his parents. There is absolutely no allegation made in the complaint petition with regard to commission of any offence against the petitioners 2 and 3. The allegation made against the petitioner no. 1 is with regard to non-settlement of the accounts and determination of the dues of the complainant in the partnership firm, rendition of accounts of the said firm and non-

payment of the alleged monthly rent for the Tippers as well as with regard to transfer of the Tippers. The said vehicles were admittedly purchased on obtaining loan from TELCO which were seized by the financier and thereupon were subsequently transferred to the company and then to the subsequent purchasers. No offence whatsoever of criminal breach of trust has been made out by the complainant in the complaint petition. The learned S.D.J.M. has also failed to apply his judicial mind before passing the order taking cognizance of the said offence against the petitioners. Thus, this Court finds that allowing the criminal proceeding to continue would amount to abuse of the process of court and the ends of justice require that the proceeding ought to be quashed.

12. In the result, the proceeding in C.T. Case No. 1064 of 2004 pending before the learned S.D.J.M., Angul is quashed and the CRLMC is allowed.

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M.M. Das, J.

Orissa High Court, Cuttack.
February 24th, 2011/Biswal.