

BINOD KUMAR & ORS.

v.

STATE OF BIHAR & ANR.  
(Criminal Appeal No. 2327 of 2014)

OCTOBER 30, 2014

[T.S. THAKUR AND R. BANUMATHI, JJ.]

*Code of Criminal Procedure, 1973 – s. 482 – Criminal proceedings u/s. 406 IPC – Quashing of – Denial by High Court – Held: Exercise of inherent powers to quash the proceedings is called for, only where the complaint does not disclose any offence or is frivolous – The complaint in the present case does make out a case of dishonest misappropriation or cheating – Proceedings liable to be quashed.*

**Allowing the appeal, the Court**

**HELD: 1. In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. The power u/s. 482 Cr.P.C. should be sparingly invoked with circumspection, it should be exercised to see that the process of law is not abused or misused. At the stage of quashing the complaint/FIR, the High Court is not to embark upon an inquiry as to the probability, reliability or the genuineness of the allegations made therein. [Para 9] [89-C-D]**

*Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736: 1976 Suppl. SCR 123; Indian Oil Corporation vs. NEPC India Ltd. And Ors. (2006) 6 SCC 736: 2006 (3) Suppl. SCR 704 – relied on.*

A 2.1. In the present case, in the complaint, on the face  
of it, no allegations are made attracting the ingredients  
of s. 405 IPC. There is no iota of allegation as to the  
dishonest intention in misappropriating the property. To  
make out a case of criminal breach of trust, it is not  
B sufficient to show that money has been retained. It must  
also be shown that the appellants dishonestly disposed  
of the same in some way or dishonestly retained the  
same. The mere fact that the appellants did not pay the  
money to the complainant does not amount to criminal  
breach of trust. [Para 18] [96-D-F]

C 2.2. Criminal proceedings are not a short cut for other  
remedies. Since no case of criminal breach of trust or  
dishonest intention of inducement is made out and the  
essential ingredients of ss. 405/420 IPC are missing, the  
D prosecution of the appellants u/ss. 406/120B IPC, is liable  
to be quashed. [Para 19] [96-H; 97-A]

Case Law Reference:

E 1976 (0) Suppl. SCR 123 Relied on Para 9  
2006 (3) Suppl. SCR 704 Relied on Para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 2327 of 2014.

F From the Judgment & Order dated 18.02.2011 of the High  
Court of Patna In Crl. Misc. Application No. 10656/2003.

Dr. Manish Singhvi, Atul Jha, Sandeep Jha, Dharmendra  
Kumar Sinha for the Appellants.

G Prerna Singh, Gopal Singh, Rajiv Kumar, Kusum  
Chaudhary for the Respondents.

The Judgment of the Court was delivered by

H R. BANUMATHI, J. 1. Leave granted.

2. Whether the charges under Section 406 IPC and the criminal complaint for criminal breach of trust for allegedly retaining the bill amount payable to respondent No.2 is liable to be quashed is the point falling for consideration in this appeal.

3. Payment of bill pertaining to the contract executed by the second respondent in Tilka Manjhi Bhagalpur University had a chequered history. Case of second respondent is that contract was entered into between him and K.S.S. College on 4.9.1990 for the construction of building of K.S.S. College, Lakhisarai, a constituent unit of Tilka Manjhi Bhagalpur University. According to second respondent, since money and requisite materials were not given to him in time, the work was not completed within stipulated period. The university vide letter dated 9.5.1995, informed the respondent No.2 that his contract is terminated and all his dues including final bill, earnest money and security deposit etc. will be released after consultation with the College Development Committee. The University Engineer vide letter dated 4.6.1996, addressed to the Principal of the college, informed that a payment of Rs.48,505/- is payable to the contractor; but the respondent No.2 was not paid the aforesaid bill amount. Finally, the respondent was paid Rs.14,000/- vide cheque No. EMGCO-OP.Z No. 0127627, as per the direction of the College Development Committee and balance amount of Rs.34,505/- was not paid to him. Aggrieved by the said non-payment of entire amount, respondent No.2 filed a criminal complaint case No.196-C/1997 in the Court of Sub Divisional Judicial Magistrate, Lakhisarai for criminal breach of trust, alleging that the amount of Rs.34,505/- was not paid to him and that the amount was utilized by the appellants in some other work.

4. The appellants filed an application under Section 227 Cr.P.C. before the Court of Sub Divisional Judicial Magistrate, Lakhisarai seeking their discharge from the criminal case. The Court of Sub Divisional Judicial Magistrate, Lakhisarai vide its

- A order dated 2.12.2002 dismissed the said petition and directed the appellants to remain present in the court on 8.1.2003 for framing of charges under Section 406/120B IPC. The appellants filed petition under Section 482 Cr.P.C. before the Patna High Court for quashing the said order and by the
- B impugned order dated 18.2.2011, the High Court dismissed the petition. Aggrieved by the same, the appellants are before us.

5. Dr. Manish Singhvi, learned counsel appearing for the appellants, contended that the act of withholding of payment to the second respondent was as per the direction issued by the
- C Vice-Chancellor and no case is made out for misappropriation of funds under Section 406 IPC. It was contended that the act of the appellants was done in the discharge of their public duties and there was no dishonest intention to misappropriate the amount and the essential ingredients of criminal breach of
- D trust are not made out and the High Court has not properly appreciated the matter.

6. Mr. Gopal Singh, learned counsel for respondent No.1 - State of Bihar, submitted that the instant petition does not
- E relate to any police case and the matter was never subjected to police investigation. It was, however, submitted that on examination of four witnesses, Magistrate found that a prima facie case was made out against the appellants and therefore, High Court rightly dismissed the petition filed under Section 482
- F Cr.P.C.

7. Ms. Kusum Chaudhary, learned counsel appearing for the second respondent contended that the application for discharge was rightly rejected by the Magistrate as the case
- G filed by the second respondent is a warrant case instituted other than on police report and since prima-facie case was made out, the discharge application was rightly dismissed by the trial court. It was also contended that as per the terms and conditions of the contract, the second respondent had executed the work and the same was also measured and verified by the University
- H Engineer and while so, the appellants with malafide intention

withheld the second respondent's dues and thus, committed criminal breach of trust and the High Court rightly dismissed the petition filed under Section 482 Cr.P.C. A

8. We have carefully considered the rival contentions and also perused the impugned order and the materials on record. B

9. In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection, it should be exercised to see that the process of law is not abused or misused. The settled principle of law is that at the stage of quashing the complaint/FIR, the High Court is not to embark upon an enquiry as to the probability, reliability or the genuineness of the allegations made therein. In *Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736, this Court enumerated the cases where an order of the Magistrate issuing process against the accused can be quashed or set aside as under: C D

"(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 complainant does not disclose the essential ingredients of an offence which is alleged against the accused; E F

(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 a sufficient ground for proceeding against the accused; G

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having H

- A                    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."
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The Supreme Court pointed out that the cases mentioned are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash the proceedings.

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10. In *Indian Oil Corporation vs. NEPC India Ltd. And Ors.*, (2006) 6 SCC 736, this Court has summarized the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings as under:-
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- "The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre* (1988) 1 SCC 692, *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194, *Central Bureau of Investigation v. Duncans Agro Industries Ltd* (1996) 5 SCC 591; *State of Bihar v. Rajendra Agrawalla* (1996) 8 SCC 164, *Rajesh Bajaj v. State NCT of Delhi*, (1999) 3 SCC 259; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd* (2000) 3 SCC 269 *Hridaya Ranjan Prasad Verma v. State of Bihar* (2000) 4 SCC 168, *M. Krishnan v. Vijay Singh* (2001) 8 SCC 645 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122. The principles, relevant to our purpose are:
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- (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. A

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint. B  
C

- (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. D

- (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. E

- (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. F  
G

- (v) A given set of facts may make out: (a) purely a civil H

- A wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."
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- C

11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paragraphs (13) and (14) of the *Indian Oil Corporation's* case (supra), it was held as under:-
- D

- "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In *G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)
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- "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
- H



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. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

12. Coming to the facts of this case, it is no doubt true that the dispute relates to the non-payment of bill amount of Rs.34,505/- pertaining to the contract executed by respondent No.2. It is also pertinent to note that respondent No.2 preferred CWJC No.5803/1999 wherein an order dated 5.4.2000 was passed by Patna High Court directing the Vice-Chancellor of Bhagalpur University to release the balance amount of Rs.34,505/- with interest at the rate of 18% w.e.f. 1.10.1994 till the date of payment and pay the interest at the rate of 11% on the sum of Rs.14,000/- from 1.10.1994 till 9.12.1996. Aggrieved by the said order, Bhagalpur University preferred LPA No.716/2000 wherein it was directed that since it was not a statutory contract, no direction for payment of money could

A be issued and the respondent No.2 can pursue other remedies available in law for the recovery of money. Aggrieved by the said order, respondent No. 2 filed SLP(C) No. CC 4832/2001 which was dismissed as withdrawn by this Court by Order dated 30.7.2001 granting him liberty to approach the appropriate forum. Respondent No.2 thereafter filed Money Suit No. 2/2002 before the Court of Sub Judge 1st Court, Lakhisarai on 20.4.2002 for recovery of Rs. 69,010/- i.e. double the amount of Rs.34,505/- and the said suit is pending. Second appellant representing the university had also filed Money Suit No.2/2006 before the same Court on 4.2.2006 claiming a sum of Rs.1,44,437/- with interest against the second respondent-contractor. These acts of the parties show that the parties have already had recourse to the civil remedies that are available to them in law.

D 13. Appellant Nos.1 and 2 were then employed as Principal and Professor respectively in KSS College, Lakhisarai and appellant No.3 as Bursar of the said college. The appellants have stated that they had no intention to cheat or dishonestly misappropriate the amount of Rs. 34,505/-. The appellants E have stated that there were disputes regarding the quality of work done and also non-return of some cement bags by the second respondent. It is stated that in view of the dispute between the university and the contractor and stoppage of further construction by the second respondent and with the F direction and approval of the Vice-Chancellor, contract of the appellant was terminated and his bill was placed before the College Development Committee. In its meeting dated 8.12.1995, the Committee considered the claim of the second respondent and rejected his certain claims and the same was G informed to the Vice-Chancellor. The university vide letter No. E/243 dated 25.3.1998 directed to stop final payment to the second respondent and the university requested the Executive Engineer for verification of quality of work done. Appellants have stated that the amount of Rs. 34,505/- has been lying in the H account of the university and only on instruction from the Vice-

Chancellor, the amount was not paid to the second respondent and no dishonest intention could be attributed to the appellants. A

14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not. Let us now examine whether the allegations made in the complaint when taken on their face value, are true and constitute the offence as defined under Section 406. B

15. Section 405 IPC deals with criminal breach of trust. A careful reading of the Section 405 IPC shows that a criminal breach of trust involves the following ingredients: C

- (a) a person should have been entrusted with property, or entrusted with dominion over property;
- (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; D
- (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. E F

16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

- (i) that the accused was entrusted with property or with dominion over it and G
- (ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it. H

- A The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with
- B misappropriation which should be contrary to the terms of the obligation which is created.

17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:- (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any
- C valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) *mens rea* of the accused at the time of making the inducement.

18. In the present case, looking at the allegations in the
- D complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant.
- E Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal
- F breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to
- G criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies.
- H Since no case of criminal breach of trust or dishonest intention

of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed. A

20. The impugned order of the High Court is set aside and this appeal is allowed. Parties are at liberty to work out their remedy in the civil suits which they have already had recourse to. B

Kalpana K. Tripathy

Appeal allowed.