IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1922 of 2019

Zee Entertainment Enterprises Ltd. & Ors.

Vs.
The State of West Bengal & Anr.

For the Petitioners : Mr. Sandipan Ganguly,
Mr. L. Vishal Kumar.

For the State : Mr. Ranabir Roychowdhury,
Mr. Mainak Gupta.

For the Opposite Party No. 2 : None.

Heard on : 28.06.2023

Judgment on : 17.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the investigation/proceeding in Bhawanipore Police Station case No.151 dated 31.05.2019 under Sections 385/120B of the Indian Penal Code, 1860,as also corresponding proceedings of C.G.R No.1806 of 2019 pending before the learned Chief Judicial Magistrate, Alipore, South 24 Parganas.

2. The petitioner's case is that the petitioner no.1 is a company incorporated under the Companies Act and is the owner of various channels and engaged in the business of broadcasting of its channels. The petitioner

nos. 2 to 7 are the employees/officers of the petitioner no.1. The said petitioner no.1 (Broadcaster) for distributing its abovenamed channels entered into a contractual arrangement by way of an interconnect Agreement with various Multi-System Operators (MSO's)/Distribution Platform Owners (DPO's) for distributing the channels to end subscribers. The said MSO/DPO is liable to pay to the Broadcasters the subscription charges collected from its end subscribers by way of a true ad correct declaration of the actual number of subscribers serviced by such MSO/DPO reflecting in its Conditional Access System (CAS) and Subscriber Management System (SMS).

3. In the instant petition, ZEE Entertainment Enterprises Ltd. (ZEEL) the Broadcaster is petitioner no.1 and opposite party no.2 is the MSO/DPO, while petitioner nos. 2 to 7 are employees of petitioner no.1.

4. The application filed by the opposite party no.2 under Section 156(3) of Cr.P.C was a counterblast to the disconnection notice dated 18.04.2019 issued by the petitioner no.1 to the opposite party no.2 to stall the legitimate recovery process undertaken in accordance with law. The opposite party no.2 himself has admittedly approached the learned TDSAT, challenging the legality and validity of the Disconnection Notice dated 18.04.2019. In such circumstances, the application filed under Section 156(3) of Cr.P.C and the subsequent First Information Report is misconceived, malafide and vexatious one.

5. That the instant petition is a fit case wherein the impugned First Information Report is liable to be quashed.

6. The petitioner no.1 and the opposite party no.2 had entered into an interconnection agreement dated 02.07.2018 for the period 01.04.2018 to 31.03.2019. The subscription fees payable under the said Agreement was Rs.16,00,000/- per month and this was a fixed fee deal.

7. While the aforesaid agreement was in force, the Telecom Regulatory Authority of India (TRAI) issued a Press Release re-notifying the Telecommunication (Broadcasting and Cable) Services (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (QOS) (hereinafter referred to as "MRP Regime").

8. The said Regulation contemplates that true and correct Subscribers are to be reported by all DPO's (like in the instant case being opposite party no.2). The said Regulation stipulates that the number which are captured in the CAS/SMS are in turn reported to the Broadcasters (herein to the petitioner no.1, ZEEL), in a true and transparent manner by way of Monthly Subscriber Report (MSR). The true and correct declaration of subscriber report by DPO/MSO to Broadcaster in the present regime is one of the significant components and the revenue payable by the DPO depends upon such subscriber reports. In the present case, the opposite party no.2 while not declaring the true and correct subscriber base has not only caused loss to the Broadcaster/ZEEL but also to the state exchequer by not paying tax to the government on the actual number of subscribers catered by opposite party no.2.

9. Pursuant to the implementation of the MRP Regime, the petitioner no.1 and the opposite party no.2 executed a Reference Interconnect Offer based Subscription Agreement dated 30.01.2019, valid for the period 01.02.2019 to 31.01.2020 for the territories of DAS Notified areas of West Bengal & Orissa.

10. Since the opposite party no.2 was not discharging its contractual obligations to furnish the Subscriber reports as contemplated under the Subscription Agreement dated 30.01.2019,the petitioner no.3 on behalf of the petitioner no.1 was constrained to send various E-mails including reminders mails, dated 03.03.2019, 06.03.2019, 09.03.2019, 12.03.2019, 14.03.2019, 16.03.2019, 19.03.2019, 23.03.2019, 27.03.2019, 28.03.2019, 29.03.2019 and 4 (four) mails on 30.03.2019, calling upon the opposite party no.2 to furnish the monthly subscriber reports for the month of February and March, 2019, as mandated by the Regulation prescribed by TRAI.

11. The opposite party no.2 in response to the aforementioned multiple reminders by the petitioner no.3, vide its Email dated 25.03.2019, stated that the delay in submission of Monthly Subscriber Reports was purportedly because its systems were required to be updated and aligned with the new regime and assured that the same will be provided on 26.03.2019.

12. Since no monthly subscriber reports were forthcoming as assured, the petitioner no.3 was once again constrained to seek monthly subscriber reports for the month of February, 2019 and March, 2019 vide its emails dated 27.03.2018 and 28.03.2019 and 30.03.2019.

13. In view of the continued and deliberate neglect on the part of the opposite party no.2 to act in terms of the agreement and the TRAI regulations, the petitioner no.1 filed a complaint dated 28.03.2019 addressed to TRAI, thereby informing the Authority about the illegal retransmission of two channels namely "Zee Bangla" and "Zing" on additional Logical Channel Numbers which is impermissible, illegal and in gross violation of the Interconnect Regulation, 2017).

14. The opposite party no.2 finally on 30.03.2019 and 13.04.2019 (furnished the Monthly Subscriber Reports to the petitioner no.3) for the month of February 2019 and March, 2019 respectively. It is stated that the opposite party no.2 was under a legal obligation to submit Monthly Subscriber Reports by 7th of the succeeding month i.e. for February, 2019 by 07.03.2019. The opposite party no.2 had failed to comply with the above deadlines prescribed by the Regulations. In fact, the opposite party no.2 submitted the MSR for February, 2019 only on 30.03.2019, when it was due on 07.03.2019 (that too after a rigorous follow up); while the MSR for the month of March, 2019 was submitted by the opposite party no.2 only 13.04.2019, when it was over due on 07.04.2019.

15. That as per the ground reports it was noted that the opposite party no.2 was running "Zee Bangla" channel by inserting it in a video slot available in its head end whereby the total number of subscribers for "Zee Bangla" channel were not being recorded in the SMS and CAS system of the opposite party no.2. Those customers who had subscribed to the locally inserted channel i.e. 'Zonak TV' but had not subscribed to 'Zee Bangla' were actually able to watch 'Zee Bangla' channel if they tuned into LCN No.56

which was actually meant for 'Zonak TV', a local video channel. This enabled the opposite party no.2 to under-declare its subscriber base.

16. The opposite party no.2 in its subscriber reports for the month of March, 2019 rather surprisingly declared a subscriber base of 5,33,634 subscriber thereby registering an unprecedented growth to an extent of 214% from February, 2019 to March,2019.

17. That all the thirteen (13) head-ends of the opposite party no.2 are covered under a common Interconnection Agreement signed by the opposite party no.2 with the petitioner no.1. Under the MRP Regulation, it is the DPO who is solely responsible for complying with the contractual obligation towards the broadcaster. Any inter-se contract between the MSO and the LCO has nothing to do with the broadcaster and the broadcaster is well within its legal rights to proceed against the DPO for any violation of the provisions of the Regulations. Therefore, it was imperative for ZEEL to invoice the opposite party no.2 for the number of subscribers declared by them for the month of March, 2019. Also, billing for February has been done on the total subscriber base of 5,33,634 as it is most unlikely that the subscriber base would increase by 214% in a month. In fact, from the data in hand, it can be concluded that the opposite party no.2 had a huge subscriber base which had not been declared till January, 2019.

18. The opposite party no.2 only in the first week of May, 2019 filed Broadcasting Petition No.103 of 2019 (Multi Reach Media Pvt. Ltd. vs. Zee Entertainment Enterprises Ltd.) before the learned TDSAT, challenging the Disconnection Notice dated 18.04.2019 on the ground that the said notice is illegal and bad in law. The Mobile TDSAT vide order dated 10.05.2019,

passed in the said petition, has appointed an independent auditor being KPMG, to conduct a holistic audit of the opposite party no.2's system and to submit it's report. The opposite party no.2 was also directed to extend full cooperation to the Auditors.

19. The Hon'ble TDSAT vide its Order dated 29.05.2019, was of the view that a comprehensive Audit of the aforesaid multiple entities needs to be conducted simultaneously by the independent Auditor KPMG while conducting the audit of opposite party no.2.

20. Mr. Sandipan Ganguly, learned senior counsel for the petitioners has submitted that from a perusal of the First Information Report of the proceeding impugned and the contents thereof, it is apparent that no offence whatsoever can be said to have been committed by the petitioner much less any offences under Sections 385/120B of the Indian Penal Code, 1860 as alleged or otherwise or at all. Hence, in such circumstances, it would be just and proper to quash such vexatious proceedings as continuance of the same will be a gross abuse of the processes of the criminal justice system and extremely prejudicial to already prejudiced basic and fundamental rights of the petitioner.

21. That the application filed by the opposite party no.2 under Section 156(3) Cr.P.C was nothing but a **counterblast to the disconnection notice** dated 18.04.2019 issued by the petitioner no.1 to the opposite party no.2. The dispute between the parties is purely of civil/contractual/commercial in nature and is already pending adjudication before the Telecom Dispute & Settlement Appellate Tribunal. New Delhi having exclusive jurisdiction to entertain disputes between DPO and a Broadcaster.

22. That no offence under Section 385 of the Indian Penal Code, 1860 is made out.

23. That the essential ingredient under Section 385 can be divided into two halves viz., (i) the accused puts the opposite party no.2 under fear or attempts to put under fear, (ii) the said fear is that some injury is going to be caused to the opposite party no.2. However, the Disconnection Notice dated 18.04.2019, which has been issued pursuant to the invocation of statutory right, cannot be said to have created fear in the mind of the opposite party no.2 in any manner whatsoever. The petitioner no.1 proceeded against the opposite party no.2 in accordance with law and hence the opposite party cannot cry foul upon being subjected to due process of law initiated for recovery of legally recoverable amount due and payable by the opposite party no.2 to the petitioner no.1.

24. That exercise of a punitive right provided under an Agreement by a party executants to such Agreement cannot be said to be an illegal act (the term illegal being defined under Section 43 of the Indian Penal Code) and thus any harm suffered due to exercise of such right cannot satisfy the legal requirements of the term “injury” nor can make out a basic ingredient of the offence “extortion”.

25. The petitioner no.1 company, being a party to the Agreement had a legal right to issue a disconnection notice, as per the terms of the said Agreement. The justifiability of issuance of such notice is already a subject matter of adjudication before the learned TDSAT. However, issuance of such notice by the petitioner no.1 in exercise of its rights provided under the

Agreement cannot be termed as illegal or form the ingredients of the offence of extortion. The impugned proceeding is thus liable to be quashed.

26. Mr. Ganguly, has relied upon the following judgments:-

i) Sunil Bharti Mittal vs. Central Bureau of Investigation reported in (2015) 4 Supreme Court Cases 609.

ii) State of Karnataka vs. M. Devendrappa & Anr.* reported in *(2002) 3 Supreme Court Cases 89.

27. Mr. Ranabir RoyChowdhury, learned counsel for the State placed the case diary and relied upon the following judgments:-

(i) Lalmuni Devi (SMT) vs. State of Bihar & Ors. reported in (2001) 2 Supreme Court Cases 17.

28. In spite of due service there is no representation on behalf of the Opposite Party No. 2.

29. In the petition of complaint, the relevant statements as to the offence alleged are:-

> (i) *That ZEEL is threatening the complainant company with dire consequences of deactivation of their bouquets of channels in case they don't fulfill their illegitimate demands. Since they have already issued us disconnection notice to that effect this clearly shows their mala fide intent.*
>
> (ii) *That since the complainant company is clear about its bonafide in the matter and no wrong doings from the complainant company, the above action by ZEEL is nothing but a deliberate attempt to intimidate the complainant company by putting the complainant company in fear of deactivation of their bouquets of channels and thereby compelling the complainant company to pay unreasonable and illegitimate amount of Rs. 1,96,04,813.00 (Rupees One Crore Ninety Six Lakh Four Thousand Eight Hundred and Thirteen Only) which is not payable by the complainant company as a matter of fact. The above act clearly signifies that ZEEL has some ulterior motives to finish off the business of the complainant company*

for reason best known to them or else they would not make such baseless demands.

(iii) *That the above noted accused persons in collusion with each other are adopting chicanery ploy with a view to extort money from the complainant company.*

30. It appears from the records that the disputed period is from February, 2019, with a disconnection notice effective from 10th May, 2019. The complaint in this case has been filed in May, 2019. Admittedly, the parties have an INTERCONNECTION AGREEMENT, being a Distribution Agreement dated 30th January, 2019, with the following clauses:-

5. Rights Granted

MSO shall have the non-exclusive right to carry the Zee Group Channels during the Term via the cable television network in the Territory in an encrypted mode only on the digital "addressable system" owned and operated by the MSO (the "platform") for distribution to Subscribers strictly in terms of and in accordance with the applicable laws and regulations. The parties agree that on signing of this Agreement, MSO shall have the non-exclusive right to distribute the channels from its Platform in the Authorised Area, simultaneously upon receipt of signal along with the multiple audio feed, if any, without interruption, editing, interference or alteration, to the MSO's authorized subscribers only, hereinafter referred to as "Subscriber", as defined in Clause 6 of this Agreement. All other rights and means of distribution not specifically and expressly granted to MSO are expressly excluded and reserved by ZEEL.

The MOS shall not be granted Time Shift, all kinds of Multiplexing, Pay Per View (PPV), Video on Demand (VoD) or Near Video on Demand (NVoD) rights and ZEEL reserves such rights. MSO shall not store any content of ZEEL, satellite television channels for any reason

whatsoever, including, but not limited for the purpose of providing to its Subscribers as part of any Free TV, Interactive TV, Online service, save and except for compliance recording.

Usage of Digital Video Recorder (DVR) and or Personnal Video Recorder(PVR) by the MSO shall not be permitted. Nevertheless, use of DVR and PVR by the end consumer shall be allowed provided there is no automatic advertisement skipping function nor there is any mechanism whereby DVR and or PVR have a store and forward function.

MSO shall carry each of the Channels in their entirety on an "as-is basis" and continuously on a 24x7x365(6) basis at the time transmitted by ZEEL and its licensors along with multiple audio feed, if any, without any editing, dubbing, voice over, sub title, delays, alterions, interuptions, picture squeezing or re-sizing, insertion of graphis overlays, pull-through or crawls, deletions or additions.

The MSO shall offer all contributory language feeds for a given channel to every subscriber entirely to access that channel provided that the MSO has opted for such contributory language feeds of the channel.

MSO shall, under no circumstances, sub license and/or assign and/or transfer the rights granted to it by ZEEL.

MSO shall not "push" content onto the Set Top Box ("STB") there shall not be automatic advertisement skipping function and/or the MSO shall not create a virtual Video on Demand (VoD) or other on demand service in respect of the Zee Group Channel(s).

Distribution is permitted only to STB's of MSO units "Platform". Distribution right on all other platforms including DTH, Moile, Broadband, PC, Internet, Wireless, IPTV, HITS, OTT or any other technology which may be introduced in future is not granted herein and the same are expressly withheld by ZEEL.

18. <u>Suspension of Rights:-</u>

Subject to any applicable laws, ZEEL shall have the right to suspend delivery of the Zee Group Channels to the MSO after giving 21 days' notice in terms of the applicable law, in the event of:-

i. a material breach related to payment of Subscription Fees if the same is not paid by the MSO by the Due Date;

ii. a material breach related to anti-piracy, if such breach is not cured within the initial notice period of two (2) days; or

iii. a material breach related to non-submission of Subscriber Report;

iv. a material breach not related to anti-piracy/non-payment of Monthly Subscription Fee/non-submission of subscriber report, if such breach is not cured within the initial ten (10) day notice period.

20. <u>Termination:-</u>

20.1 Either party has a right to terminate this Agreement by a written notice to the other Party, subject to applicable Law, in the event of:-

i. material breach of this Agreement by the other Party;

ii. The bankruptcy, insolvency or appointment of receiver over the assets of the other Party;

iii. the Digital addressable cable TV system license or any other material license/permission necessary for the MSO to operate its digital addressable cable TV system service being revoked at any time other than due to the fault of the MSO.

20.2 ZEEL shall have the right to terminate this Agreement:-

i. by a prior written notice of twenty-one (21) days to the MSO, if MSO breaches any of the Anti-Piracy Requirements; or

ii. by a prior written notice of thirty (30) days to the MSO, if ZEEL, discontinues the Zee Group Channels with respect to all distributors in the Territory.

20.3 .....

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20.8 .....

36. Jurisdiction:-

This Agreement shall be governed by the laws of the Republic of India. All disputes or differences arising between the parties as to the effect, validity or interpretation of this Agreement or to their Rights, duties or liabilities arising out of this Agreement, etc shall be subject to the exclusive jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). Further, in case of dishonour of cheque(s), the parties agree that the Delhi courts alone shall have the exclusive jurisdiction to try cases under Section 138 of the Negotiable Instruments Act, 1881.

31. The opposite party no.2 approached the TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL in Broadcasting Petition/103/2019, against the petitioners herein, which was finally disposed of on 9th August, 2021, with the direction as follows:-

"20. As a result of findings given above in respect of Audit Report of BECIL and its acceptance only from December, 2019 onwards and in the light of clarification given in respect of scope of order dated 24.01.2020 and the meaning of the words – "Existing arrangement", the parties are directed to ensure that the

payments are made by the petitioner, for the period upto November, 2019 as per invoices raises by the respondent in accordance with the directions contained in the order dated 24.01.2020."

32. Petitioner therein is the opposite party no. 2/complainant herein and the respondent is the petitioner herein.

33. The said order includes the disputed period in this case.

34. Thus, the dispute between the parties is admittedly a commercial/civil dispute. The distribution agreement covers the same. **The dispute has also been finally decided by the appropriate forum (TDSAT).**

35. In the instant case the opposite party no.2/complainant has alleged that the outstanding dues claimed by the petitioners is not on the basis of the distribution agreement, but amounts to extortion.

36. Section 385 of IPC, lays down:-

> *"**385. Putting person in fear of injury in order to commit extortion.**—Whoever, in order to the committing of extortion, puts any person in fear or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
> ***Ingredients of offence.**— The essential ingredients of the offence under Section 385 are as follows:-*
>
> *(1) Accused put or attempted to put any person in fear of injury.*
>
> *(2) He did so to commit extortion."*

37. Section 383 of IPC, lays down:-

> *"**383. Extortion.**—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or*

anything signed or sealed which may be converted into a valuable security, commits "extortion".

Ingredients of offence.— *The essential ingredients of the offence under Section 383 are as follows:-*

(1) The accused must put any person in fear of injury to that person or any other person;

(2) The putting of a person in such fear must be intentional;

(3) The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security and

(4) Such inducement must be done dishonestly."

38. Considering the nature of dispute between the parties based on a interconnection agreement in due course of business of the parties, the following judgments of the Supreme Court are relied upon:-

(a) In ***M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006,*** the Court considered the following point among the two points decided:-

> ***8.*** *The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :*
>
> ***(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?***
>
> ***(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?***

Re : Point No. (i) :

9. *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 Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. 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 vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :*

(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.

(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 malafides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(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.

(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) ***A given set of facts may make out : (a) purely a civil 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 proceedings 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.***

10. 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 break down 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 though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :***

"It is to be seen if a matter, which is essentially of 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. This Court has laid certain principles on the basis of which 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."

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 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

(b) The Supreme Court in ***R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022,*** held:-

*"**17.** While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have*

quashed the criminal proceeding to prevent abuse of process of court."

(c) The Supreme Court in ***Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023,*** held:-

> *"**21.** We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold.** To avoid prolixity, we would only like to refer to the judgment of this Court in **Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412**, as it refers to earlier case laws in copious detail. In **Thermax Limited and Others** (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when*

examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. *We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued."*

39. Now in the lines of the judgments under reference let us see if the allegations in the complaint in the present case, if accepted on face value, constitute any office under Section 385 IPC.

40. The allegation in this case is that a demand of outstanding dues as per an interconnection agreement had been made, failing which there would be disconnection.

41. To make out an offence of extortion punishable under Section 385 IPC, there has to be prima facie material to show that the accuseds/petitioners had put the opposite party no. 2 in fear of injury to that person or any other person.

42. There is no material on record to prove that the petitioners had intention to put the complainant in fear or any other person.

43. In the present case, the petitioners acted as per the agreement between the parties to demand their legitimate dues. There was also no dishonest intention on the part of the petitioners.

44. Thus there being no ingredient required to prima facie make out a case under Section 385 IPC against the petitioners, the present case is liable to be quashed.

45. Thus, the revisional application being CRR 1922 of 2019 is allowed.

46. The proceeding in Bhawanipore Police Station case No.151 dated 31.05.2019 under Sections 385/120B of the Indian Penal Code, 1860,as also corresponding proceedings of C.G.R No.1806 of 2019 pending before

the learned Chief Judicial Magistrate, Alipore, South 24 Parganas, is hereby quashed.

47. No order as to costs.

48. All connected applications, if any, stands disposed of.

49. Interim order, if any, stands vacated.

50. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

51. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)