

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s).2593-2594 OF 2024
(Arising out of SLP(Crl.) No(s). 5303-5304 of 2021)

SANJAY AGARWAL

... APPELLANT

VERSUS

STATE OF ODISHA & ANR.ETC.

...RESPONDENTS

ORDER

Leave granted.

2. The present appeals are directed against the common order passed by the High Court of Orissa in Crl.M.C Nos. 961 and 931 of 2021 rejecting the appellant's prayer under Section 482 of the Code of Criminal Procedure, 1973¹ for quashing of criminal proceedings arising out of FIR No. 113 of 2020 registered at Police Station Khandagiri, Bhubaneswar and also the proceedings arising out of order dated 09.03.2021 passed

1 'Cr.P.C.'

by Sub-Divisional Judicial Magistrate, Bhubaneswar² under Section 156(3) Cr.P.C. directing registration of similar FIR.

3. The facts leading to FIR No. 113 of 2020 and the order passed by the SDJM under Section 156(3) are that the complainant/respondent no. 2 was entrusted by the appellant-accused to execute the work as per the work order dated 10.02.2017 for construction of G+5 Technical Research Centre Building of Indian Association for Cultivation of Science at Jadavpur, Kolkata. The complainant company spent more than Rs. 50 lakhs for purchase of assets, equipments and engaging of some staffs. As per work order, the appellant-Sanjay Agarwal was entitled to deduct 7% commission on each running bill from time to time as per the work done, which will be paid by C.P.W.D, Kolkata. However, the appellant without paying any single pie received Rs. 30 lakhs from very first running bill paid by the C.P.W.D. Similarly, the appellant received the amount from all the running bills and misappropriated the same causing loss to the complainant company which hampered the complainant company to execute the rest of the work entrusted by the

appellant. A communication for settlement of account was sent on 23.11.2017 by the complainant company to the appellant but the same was ignored and at the same time the appellant continued to execute the rest of the work. It is further alleged that the appellant did not take any interest for making payment of pending bills of the complainant company for settlement of account. After long gap the appellant called the complainant to his office and threatened and pressurized it not to demand any money for settlement of account of Rs. 1,00,00,000/-. The appellant refused to pay any amount and also retained the assets and equipments purchased by the complainant. Thus, he violated the terms and conditions of the contract. In the later part of the complaint, it is alleged that the appellant is required to pay Rs. 25 lakhs from the date of issuance of notice for settlement of account. However, this amount was not paid and instead the complainant was threatened.

4. It is the case of the appellant that the complainant failed to complete the work within the stipulated time due to which a show cause notice was issued to the complainant on 06.11.2017

seeking response for his failure to complete the work. In its letter dated 23.11.2017 the complainant/respondent no. 2 accepted its failure to perform the said projects work and withdrew itself from the contract. The complainant/respondent requested the appellant that the remaining work be allotted to its partner company M/s. PGL Estate Construction Private Limited³. This new company M/s. PGL agreed to pay the outstanding amount which is due towards the appellant from the complainant company. Therefore, the remaining work was allotted to M/s. PGL. However, M/s. PGL also failed to perform the contract causing huge loss to the appellant.

5. M/s. PGL in order to escape its liability towards the appellant and harass the appellant filed a complaint under Section 156(3) Cr.P.C. before the SDJM, Bhubaneswar who directed to register the FIR vide its order dated 17.12.2019. In pursuance thereof, FIR bearing No. 113 of 2020 dated 13.02.2020 was registered against the appellant.

6. The appellant was arrested on 24.02.2021 on the basis of the first FIR and was released on bail on 09.03.2021. In order to

³ 'M/s. PGL'

further harass the appellant another application under Section 156 (3) Cr.P.C. was preferred against the appellant concealing the earlier FIR and once again the SDJM, Bhubaneswar passed an order on 09.03.2021. The first FIR was registered on complaint under Section 156 (3) by Bimal Kumar Aggarwal, Director of M/s. PGL whereas the second order under Section 156 (3) Cr.P.C. was passed on the complaint preferred by M/s. Flozen Estate & Developers Pvt. Ltd./respondent no. 2.

7. The record also reveals that an arbitration proceeding has already commenced between the parties which is pending adjudication.

8. Learned counsel for the appellant submits that the entire dispute is of a civil nature which has been given colour of an offence of cheating and forgery without their being any fact constituting such offence. It is also argued that the second FIR on identical facts is impermissible in view of the law laid down in **T.T. Anthony vs. Sate of Kerela**⁴. It is also argued that M/s. PGL issued two cheques of Rs. 10 lakhs each in favour of the appellant to discharge its liability. However, both the cheques

⁴ (2001) 6 SCC 181

were dishonoured for which the appellant has preferred a complaint under Section 138 of Negotiable Instruments Act, 1881. It is strenuously urged that the entire issue concerns breach of contract and failure of the complainant to perform its part of the contract. However, in order to escape from its liability, the criminal cases have been filed. The present FIR is a counterblast to the proceedings under Section 138 of the Negotiable and Instruments Act, 1881 initiated by the appellant against M/s. PGL.

9. *Per contra*, the learned counsel for the State would submit that the matter is at the stage of investigation and the investigating authority should be allowed to investigate the cognizable offence. According to him, the petition is pre-mature and has rightly been dismissed by the High Court on that count.

10. Having heard learned counsel for the parties at length and on perusal of the material placed before us, we are satisfied that the impugned proceedings arising out of FIR No. 113 dated 13.02.2020 and the proceedings arising out of order dated 09.03.2021 passed by Sub-Divisional Judicial Magistrate,

Bhubaneswar under Section 156(3) Cr.P.C. directing registration of FIR on the same cause of action are an abuse of the process of court inasmuch as the matter is purely of civil nature arising out of an agreement between the parties for execution of a civil work.

11. Undeniably, the agreement contains an arbitration clause and the arbitration proceedings have already commenced between the parties. When the dispute started, the first letter alleging complainant's failure to perform the work was issued by the appellant. In response to this communication, the complainant sent his reply (Annexure P-3) admitting that the construction activities have stopped due to his financial condition on account of imposition of GST and other hindrances. It is also admitted therein that its financial position is not permitting to continue the work and requested to withdraw from the contract without any risk and cost and allow to complete the balance work through its financial partner M/s. PGL. The complainant also agreed in its letter that the account shall be settled by involving M/s PGL who has agreed to perform the

balance work. M/s. PGL also requested to return the security cheques which it has given to the appellant at the time of signing of the work order. Thus, the complainant having himself admitted its inability to perform the work and requesting to settle the account as early as on 23.11.2017, it is certainly a civil dispute arising out of contract.

12. FIR No. 113 dated 13.02.2020 and the order dated 09.03.2021 under Section 156(3) Cr.P.C. appear to have been made to coerce the appellant not to proceed against the complainant for breach of the contract. True it is, that the issue concerning the breach of the contract shall be decided by the Arbitrator, however, to allow the present criminal proceedings to continue would be an abuse of the process of the Court.

13. The legal position as to when an offence arising out of contract being of civil nature, can be quashed has been settled by this Court in catena of judgments. In **Paramjeet Batra v. State of Uttarakhand & Ors.**⁵, this Court held thus in para 12:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether

a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

14. In **Vesa Holdings (P) Ltd. v. State of Kerala & Ors.**⁶, it was held thus:

“**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 a 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 intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The 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 of the Criminal Procedure Code to quash the proceedings.”

15. In **Kapil Aggarwal & Ors. V. Sanjay Sharma & Ors.**⁷, Court observed in para 18.1 as under:

“**18.1.**inherent jurisdiction under Section 482 Cr.P.C and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the

6 (2015) 8 SCC 293

7 (2021) 5 SCC 524

Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of inherent powers, such proceedings can be quashed.”

16. In the light of the above referred judgments rendered by this Court in **Paramjeet Batra** (supra), **Vesa Holdings (P) Ltd.** (supra) and **Kapil Aggarwal** (supra), when the facts of the present case are examined, it would manifest that the complaints lodged by the private respondents are predominantly of civil nature without disclosing any element of cheating or deception or forgery of any valuable security. It is essentially a civil dispute which is given a cloak of criminal offence. A criminal proceeding of such nature should not be encouraged when it is accentuated with *mala fide* or otherwise an abuse of the process of the court. Hence, in the facts and circumstances of the case, 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.

17. For the foregoing, the appeals are allowed and the

impugned order(s) of the High Court is set aside and the petitions under Section 482 Cr.P.C. are allowed. Consequently, FIR No. 113 dated 13.02.2020 registered at Police Station Khandagiri, Bhubaneswar and the order dated 09.03.2021 passed in ICC No. 1032 of 2021 by Sub-Divisional Judicial Magistrate, Bhubaneswar under Section 156(3) Cr.P.C. are quashed and set aside.

.....J.
(VIKRAM NATH)

.....J.
(PRASHANT KUMAR MISHRA)

**NEW DELHI;
APRIL 16, 2024.**

ITEM NO.13

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (Crl.) Nos.5303-5304/2021

(Arising out of impugned final judgment and order dated 05-07-2021 in CRLMC No. 931/2021 05-07-2021 in CRLMC No. 961/2021 passed by the High Court Of Orissa At Cuttack)

SANJAY AGARWAL

Petitioner(s)

VERSUS

THE STATE OF ODISHA & ANR.ETC.

Respondent(s)

(IA No. 86243/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 167496/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 124693/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 112595/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 86242/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 46548/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 109156/2022 - STAY APPLICATION AND IA No. 205857/2022 - STAY APPLICATION)

Date:16-04-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Ms. V. Mohana, Sr. Adv.
Mr. Suvenu suvasis Dash, Adv.
Ms. Swati Vaibhav, Adv.
Ms. Shruti Vaibhav, Adv.
Ms. Sneha Botwe, Adv.
Ms. Bhavya Pande, Adv.
M/S. Vaibhav & Dash Law Associates, AOR

For Respondent(s) Mr. Yasobant Das, Sr. Adv.
Mr. Dhananjay Bhaskar Ray, AOR
Ms. Lopamudra Tandon, Adv.

Mr. Shovan Mishra, AOR
Ms. Bipasa Tripathy, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

Leave granted.

**The appeals are allowed in terms of the
signed order.**

**Pending application(s) shall stand disposed
of.**

**(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS**

**(RANJANA SHAILEY)
COURT MASTER**

(Signed order is placed on the file.)