IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.288 of 2023
Reserved on: 29.11.2023
Date of Decision: 02.01.2024

Paramjeet Singh ...Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] . No

For the Petitioner	:	Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate.
For Respondent No.1	:	Mr. Jitender Sharma, Additional Advocate General.
For Respondent No.2 & 3	:	Mr Abhishek Verma, Advocate.

Rakesh Kainthla, Judge

The informant made a complaint to the police stating that he was engaged in the crusher mining business in the name and style of M/s Soma Stone Crusher. He was purchasing the crusher parts from Saini Engineering. He had trust in Paramjeet Saini, the present petitioner and Saini Engineering work. M/s

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Soma Stone Crusher purchased the Rulla Set fittings from M/s Saini Engineering. Paramjeet Saini sent the quotation and quality specification of Rulla Set fittings by E-mail on 02.11.2017. Petitioner also assured that he would provide the authenticity certificate that Rulla Set fittings are branded equipment. Soma Stone Crusher purchased the Rulla Set fittings relying upon the quality specifications provided by the petitioner. The petitioner also agreed that in case, the fittings were not found to be of the quality specification, he would replace them. He would also replace the Rulla Set Fittings if the replaced parts were also not found to be as per the quality specification. The informant issued a cheque of ₹5,00,000/- as an advance payment. The petitioner assured that he would present the cheque after the satisfaction of M/s Soma Stone Crusher regarding the quality of the fittings and output of 1000 feet to 1200 feet per hour. The informant found that the weight of the fitting was 12 tons instead of the promised 14 tons. The output was only 500 feet instead of the promised 1000 ft. to 1200 ft. per hour. It was also found that the Hopper was also 6 inches less. These facts establish that Rulla Set fittings are not genuine and branded. The petitioner also failed to provide an

authenticity certificate despite repeated demands. The police registered the FIR.

2. The petitioner filed the present petition quashing of the FIR. It was asserted that the petitioner is running the business in the name and style of M/s Sardara Singh and Sons at Bharatgarh, District Ropar (Punjab). Sarabjeet Singh, brother of the petitioner is running a business in the name and style of M/s Saini Engineering Works at Bharatgarh. Present respondents no.2 and 3 had dealings with the petitioner and his brother. There was a default in the payment of the money for the material supplied; hence, the petitioner filed a petition against respondents no.2 and 3 before Micro and Small Enterprises Facilitation Centre, Roopnagar, which is at the final stage. Respondents No.2 and 3 did not contest the petition filed by the present petitioner and they were proceeded ex parte. The petitioner is not involved in the transaction between respondent no.2 and 3 and his brother. The petitioner's brother had told him(the petitioner) that respondents no.2 and 3 had purchased Rulla Body 20-40, vide Bill dated 12.12.2017. The complaint was filed after one year. Part payments were made for the set. Any complaint regarding the machine could have been made initially and not after one year. The complaint

made by the informant is false. The cheque issued by respondents no. 2 and 3 towards the part payments was dishonoured and the proceedings under Section 138 of the Negotiable Instruments Act are pending against respondents no.2 and 3. FIR has been lodged against the petitioner to prevent him from prosecuting the complaint. There was a compromise between the parties and the petitioner's brother had agreed to end all litigation with respondent no.3, on the payment of ₹9,77,000/-. Respondent No.3 got a draft prepared in the sum of ₹9,77,000/- in the name of M/s Saini Engineering Works. The allegations in the FIR do not fulfil the ingredients of the offences punishable under Section 420 of IPC. The continuation of the proceedings will amount to the abuse of the process of the Court; hence, the present petition for quashing of the FIR.

3. Respondent No.1/State filed a reply reproducing the contents of the FIR. It was asserted that the petitioner and his brother hatched a criminal conspiracy to cheat the informant. They induced him to purchase a Rulla Set at a cost of ₹30,55,000/- They received an advance cheque of ₹5,00,000/-however, they supplied Rulla Set Fittings of less productive capacity and contrary to the satisfaction shown in the quotation. The investigation is

continuing; therefore, it was prayed that the present petition be dismissed.

4. A separate reply was filed by respondents no.2 and 3 reproducing the contents of the FIR. It was asserted that various requests and reminders were made for the replacement of the fittings; however, no action was taken. The complaint cannot be quashed on the grounds of the delay. The cheque was dishonoured due to stop payment instructions. Since the petitioner had not supplied the fittings of the quality mentioned by him; therefore, respondents no.2 and 3 are not liable to pay any amount to the petitioner. A false complaint was filed by him; therefore, it was prayed that the present petition be dismissed.

5. A rejoinder denying the contents and affirming those of the petition was filed.

6. The police also filed a status report submitting that the police presented a challan against the petitioner and his brother for the commission of offences punishable under Section 420 and 120B of IPC, which was listed for service on 09.11.2023.

7. I have heard Mr Ajay Sharma, learned Senior counsel assisted by Mr Atharv Sharma, learned counsel for the petitioner

and Mr. Jitender Sharma, learned Additional Advocate General, for respondent no.1/State& Mr. Abhishek Verma, learned counsel for respondents no.2 and 3.

8. Mr. Ajay Sharma, learned Senior Counsel for the petitioner submitted that the informant filed a false complaint. The contents of the FIR do not disclose the commission of the cognizable offence. A civil dispute between the parties has been converted into a criminal dispute. The complaint was made after one year, which shows the falsity of the same. Therefore, he prayed that the present petition be allowed and the FIR be quashed.

9. Mr. Jitender Sharma, learned Additional Advocate General for respondent No.1/State submitted that challan has been filed and presented before the Court. The remedy of the petitioner lies before the learned Trial Court to seek his discharge. The allegations in the FIR make out a case of a misrepresentation made by the petitioner regarding the quality and the output of the various parts. This Court is not to see the truthfulness or otherwise of the contents of the FIR; therefore, he prayed that the present petition be dismissed.

10. Mr. Abhishek Verma, learned counsel for respondents no. 2 and 3 adopted these submissions and submitted that the power of quashing the FIR is extraordinary and should be exercised sparingly. Hence, he prayed that the present petition be dismissed.

11. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

12. The principles of exercising the jurisdiction under Section 482 Cr.P.C. were laid down by the Hon'ble Supreme Court in ***Supriya Jain v. State of Haryana*, *(2023) 7 SCC 711: 2023 SCC OnLine SC 765*** wherein it was observed at page 716:-

> **"17.** The principles to be borne in mind with regard to the quashing of a charge/proceedings either in the exercise of jurisdiction under Section 397CrPC or Section 482CrPC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarised by this Court succinctly. In ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986]***, this Court laid down the following guiding principles : (SCC pp. 482-84, para 27)
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> > "27. ...27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of

quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in the exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith predominantly give rise to and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon thecritical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In the exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was the possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit a continuation of prosecution rather than its quashing at that initial stage. The Court is not expected

to marshal the records with a view to deciding the admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the chargesheet, reported under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to an abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debitojustitiae*i.e. to do real and substantial justice for the administration of which alone, the courts exist.

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27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

13. Similar is the judgment in ***Gulam Mustafa v. State of Karnataka, 2023 SCC OnLine SC 603*** wherein it was observed:-

"**26.** Although we are not for verbosity in our judgments, a slightly detailed survey of the judicial precedents is in order. In ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, this Court held:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the

principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

(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 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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

(emphasis supplied)

14. It was laid down in ***CBI v. Aryan Singh, 2023 SCC OnLine SC 379,*** that the High Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of Cr.P.C. The allegations are required to be proved during the trial based on evidence led before the Court. It was observed:

> "**10.** From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court

was conducting a mini-trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of the trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini-trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going into detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

11. One other reason pointed out by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been charge-sheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of

the investigation, which warranted the accused to be tried."

15. This position was reiterated in ***Abhishek v. State of M.P.*** ***2023 SCC OnLine SC 1083*** wherein it was observed:

> **12.** The contours of the power to quash criminal proceedings under Section 482 Cr. P.C. are well defined. In ***V. Ravi Kumar*** **v.** ***State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568]***, this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In ***Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021]***, a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr. P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in ***R.P. Kapur v. State of Punjab (AIR 1960 SC 866)*** and ***State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335]***, the Court would have jurisdiction to quash the FIR/complaint.

16. It is apparent from these judgments that power under Section 482 of Cr.P.C. can be exercised to prevent the abuse of process or secure the ends of justice. The Court can quash the F.I.R.

if the allegations do not constitute an offence or make out a case against the accused. However, it is not permissible for it to conduct a mini-trial to arrive at such findings.

17. It was submitted that the police had conducted the investigations and presented the challan. Hence, this Court should not exercise its jurisdiction under Section 482 of Cr.P.C. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***Abhishek v. State of M.P., 2023 SCC OnLine SC 1083*** that the High Court will continue to exercise the power even if the charge sheet has been filed. It was observed:

> "**11.** This being the factual backdrop, we may note at the very outset that the contention that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr. P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See ***Joseph Salvaraj A. v. State of Gujarat ((2011) 7 SCC 59)***]. This principle was reiterated in ***Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home [(2019) 11 SCC 706]***. This issue, therefore, needs no further elucidation on our part."

18. Thus, the submission that the power under Section 482 of Cr.P.C. cannot be exercised after filing of the charge sheet is not acceptable.

19. Mr. Ajay Sharma, learned Senior Counsel for the petitioner heavily relied upon the documents filed with the petitioner to submit that Sarabjeet Singh and not the petitioner is the owner of M/s Saini Engineering Works. A false complaint was filed against the petitioner, which is liable to be quashed. First of all, the documents filed with the petition are photocopies, the authenticity of which is yet to be established. Reliance was also placed on copy of the petition filed before Micro, Small and Medium Enterprises by the learned counsel, however, the certified copy was not filed; therefore, it is not permissible to look into these documents to quash the FIR.

20. Secondly, the Court exercising the jurisdiction under Section 482 of Cr.P.C. can only look into the contents of the FIR and the result of the investigation, if any. It is not permissible for the Court to rely upon the documents annexed to the petition under Section 482 of Cr.P.C. It was laid down by the Hon'ble Supreme Court in ***MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983***

***SCC (Cri) 115*,** that the proceedings can be quashed if on the face of the complaint and the papers accompanying the same no offence is constituted. It is not permissible to add or subtract anything. It was observed:

> "10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

21. Madras High Court also held in ***Ganga Bai v. Shriram, 1990 SCC OnLine MP 213: ILR 1992 MP 964: 1991 Cri LJ 2018*,** that the fresh evidence is not permissible or desirable in the proceedings under Section 482 of Cr.P.C. It was observed:

> "Proceedings under Section 482, Cr.P.C. cannot be allowed to be converted into a full-dressed trial. Shri Maheshwari filed a photostate copy of an order dated 28.7.1983, passed in Criminal Case No. 1005 of 1977, to which the present petitioner was not a party. *Fresh evidence at this stage is neither permissible nor desirable. The respondent by filing this document is virtually introducing additional evidence, which is not the object of Section 482, Cr.P.C.*"

22. Andhra Pradesh High Court also took a similar view in ***Bharat Metal Box Company Limited, Hyderabad and Others vs. G. K. Strips Private Limited and another, 2004 STPL 43 AP***, and held:

> "9. This Court can only look into the complaint and the documents filed along with it and the sworn statements of the witnesses if any recorded. While judging the correctness of the proceedings, it cannot look into the documents, which are not filed before the lower Court. Section 482 Cr.PC debars the Court to look into fresh documents, in view of the principles laid down by the Supreme Court in ***State of Karnataka v. M. Devendrappa and another, 2002 (1) Supreme 192***. The relevant portion of the said judgment reads as follows:
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> "The complaint has to be read as a whole. If it appears that on consideration of the allegations, in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When information is lodged at the Police Station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court, which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings".

23. A similar view was taken in ***Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401*** wherein it was observed at page 142:

> "*16.* ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial."

24. This position was reiterated in ***Supriya Jain v. State of Haryana, (2023) 7 SCC 711: 2023 SCC OnLine SC 765***wherein it was held:

> **13.** All these documents which the petitioner seeks to rely on, if genuine, could be helpful for her defence at the trial but the same are not material at the stage of deciding whether quashing as prayed for by her before the High Court was warranted or not. We, therefore, see no reason to place any reliance on these three documents.

25. A similar view was taken in ***Iveco MagirusBrandschutztechnik GMBH v. Nirmal Kishore Bhartiya, 2023 SCC OnLine SC 1258***wherein it was observed:

> **55.** Adverting to the aspect of the exercise of jurisdiction by the High Courts under section 482, Cr. P.C., in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing, is made, the *law seems to be well settled that the High Courts can go no further and enlarge the scope of*

> *inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do.* We may not be understood to undermine the High Courts' powers saved by section 482, Cr. P.C.; such powers are always available to be exercised *ex debito justitiae*, i.e., to do real and substantial justice for the administration of which alone the High Courts exist. However, the tests laid down for quashing an F.I.R. or criminal proceedings arising from a police report by the High Courts in the exercise of jurisdiction under section 482, Cr. P.C. not being substantially different from the tests laid down for quashing of a process issued under section 204 read with section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible if the justice of a given case does not overwhelmingly so demand." (Emphasis supplied)

26. Therefore, it is not permissible to look into the material filed by the petitioner with the petition and the Court has to rely upon the contents of the F.I.R. and the material collected by the police during the investigation.

27. It was specifically mentioned in the FIR that the present petitioner had represented that the Rulla Set will be of a particular quality and will have a particular output. The Rulla Set which was supplied by the petitioner did not meet the quality specification or the output. These allegations clearly show that a

representation was made by the petitioner to the informant regarding the quality of the Rulla Body Set and the output. The informant had acted upon such a representation and had purchased the Rulla Body Set; however, the representation was not found to be true inasmuch as the weight of the Rulla Body Set was found to be 12 tons instead of the promised 14 tons which is a huge difference and the production was found to be 500 feet instead of promised 1000 ft. to 1200 ft. per hour. Thus, the representation made by the petitioner was false and it was made with intent to induce the petitioner to part with the money and to purchase the articles. These allegations prima facie establish the commission of an offence punishable under Section 420 of IPC.

28. Heavy reliance was placed upon Bill No.079, to submit a 'dummy' bill was given but the quality was reduced at the instance of the petitioner and this led to a difference. The authenticity of these bills is to be tested during the trial and it is not permissible for this Court to say anything about their correctness or otherwise. It was laid down by the Hon'ble Supreme Court in ***Iqbal v. State of U.P., (2023) 8 SCC 734: 2023 SCC OnLine SC 949,*** that when the charge sheet has been filed, learned Trial Court should be left to appreciate the same. It was observed:

> "At the same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the chargesheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the chargesheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any case for discharge is made out or not."

29. It was submitted that the allegations in the FIR constitute the civil dispute and the informant had tried to change the same into a criminal dispute.

30. Professor Glanville Williams explained in his celebrated book ***Learning the Law*(*Tenth Edition Steven and Sons)*** that the facts by themselves cannot determine civil or criminal liability. The same set of facts may give rise to criminal or civil liability. The distinction between the two is not the nature of the act but the nature of proceedings that are taken to seek the redressal. It was observed:

"The distinction between a crime and a civil wrong, thoughcapable of giving rise to some difficult legal problems, is in essencequite simple. The first thing to understand is that the distinctiondoes not reside in the nature of the wrongful act itself. This canquite simply be proved by pointing out that the same act may beboth a crime and a civil wrong. Occasionally at a bus station, thereis someone who makes a living by looking after people'simpedimenta while they are shopping. If I entrust my bag to sucha person, and he runs off with it, he commits the crime of theft andalso two civil wrongs—the tort of conversion and a breach of hiscontract with me to keep the bag safe. The result is that two sortsof legal proceedings can be taken against him; a prosecution forthe crime, and a civil action for the tort and the breach ofcontract. (Of course, the plaintiff in the latter action will not getdamages twice over merely because he has two causes of action; hewill get only one set of damages.)

To take another illustration, if a railway signalman, to dumbforgetfulness a prey, fails to pull the lever at the right moment,and a fatal accident occurs on the line, his carelessness may beregarded as sufficiently gross to amount to the crime ofmanslaughter, and it is also the tort of negligence towards thevictims of the accident and their dependents and a breach of hiscontract with the Railway Executive to take due care in his work.It will be noticed that this time, the right of action in tort and theright of action in a contract are vested in different persons.

These examples show that the distinction between a crime andcivil wrong cannot be stated as depending upon what is done,because what is done may be the same in each case. The truedistinction resides, therefore, not in the nature of the wrongful actbut in the legal consequences that may follow. If the wrongfulact is capable of being followed by what are called criminalproceedings, that means that it is regarded as a crime (otherwisecalled an offence). If it is capable of being followed by civilproceedings that means that it is regarded as a civil wrong. If it iscapable of being

> followed by both, it is both a crime and a civilwrong. Criminal and civil proceedings are (in the normal case) easily distinguishable: the procedure is different, the outcome isdifferent, and the terminology is different.

31. The Hon'ble Supreme Court also held in ***Randheer Singh v. State of U.P.*, *(2021) 14 SCC 626: 2021 SCC OnLine SC 942***, that a given set of facts may make out a civil wrong as well as the criminal offence and mere availability of civil remedy is no ground to quash the criminal proceedings. It was observed:

> "34. The given set of facts may make out a civil wrong as well as a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the chargesheet so far as this appellant is concerned. The other accused Rajan Kumar has died."

32. Therefore, it is not correct to say that the same facts may not give rise to civil and criminal liability and it is not permissible to quash the FIR on the ground that the facts mentioned therein give rise to civil liability.

33. It is submitted that there is an inordinate delay in reporting the matter to the police. Learned counsel for the respondents had rightly submitted that it is not permissible to quash the FIR on the grounds of the delay. The Hon'ble Supreme Court held in ***Chanchalpati Das v. State of W.B., 2023 SCC OnLine SC***

650, that ordinate delay may not be grounds for quashing the criminal complaint. It was observed:

> **16.** As regards inordinate delay in filing the complaint it has been recently observed by this Court in ***Hasmukhlal D. Vora v. State of Tamil Nadu 2022 SCC Online SC 1732*** that though inordinate delay in itself may not be a ground for quashing a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.

34. In the present case, the complainant has specifically stated in the reply that he took up the matter with the petitioner for the replacement of the parts, which led to the delay. This averment is to be accepted as correct at this stage. Hence, the FIR is not liable to be quashed on the grounds of delay alone.

35. No other point was urged.

36. Therefore, it is not permissible to quash the FIR. Consequently, the present petition fails and the same is dismissed.

37. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

2nd January, 2024
(Saurav Pathania)