

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).217 OF 2020  
(Arising out of Special Leave Petition (CrI.) No(s).  
8483/2017)

AKHTAR SHAKEEL

APPELLANT(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(s)

O R D E R

Leave granted.

The appellant assails order dated 04.09.2017 dismissing his application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') declining to quash his criminal prosecution under Sections 406, 419, 420, 504, 506 & 409 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and the order of cognizance.

Mr. Rakesh Khanna, learned senior counsel appearing on behalf of the appellant submits that a bare reading of the First Information Report (FIR) alone, demonstrates that no criminal offence is made out against the

appellant. The allegations reveal a pure civil dispute for a money claim alleging that full payment for goods supplied had not been made. There is no assertion of any dishonest intention to cheat, much less any dishonest misappropriation in breach of trust. The allegations have been made nearly 9 years later, when the limitation for filing a civil suit is long past. The present proceedings are thus a complete abuse of the process of law.

On the contrary, Mr. Anukul Chandra Pradhan, learned senior counsel for respondent no. 4 submits that the defence appellant cannot be examined at this stage. The police after investigation has submitted charge sheet after being prima facie satisfied that the offences were made out. Cognizance has also been taken by the court. Merely because the allegations may also have a civil flavor cannot be sufficient to quash the prosecution as it can constitute both a civil and criminal offence. Reliance is placed on a judgment of this Court in "K.Jagadish versus Udaya Kumar G.S. and Another" passed in Criminal Appeal No. 56 of 2020 dated 10.01.2020 and in "State of Madhya Pradesh versus Yogendra Singh Jadon and Another" passed in Criminal

Appeal No. 175 of 2020 dated 31.01.2020, reported in JT 2020(1) SC 589. The allegations also relate to dishonest misappropriation and criminal breach of trust under Section 409 of the IPC. The appellant, as an agent of the buyer in the United States of America, despite having received full payment has misappropriated the dues of the respondent.

We have considered the submissions on behalf of the parties. The FIR lodged on 06.04.2017 states that the complainant was the proprietor of M/s. Glamour Corporate India. The appellant put forth a proposal to do the business of carpets which were to be supplied to Arizona Rugs & Lease Corner Company America. Believing the appellant, the complainant under trade invoices dated 27.06.2008, 21.11.2008, 28.04.2009, 01.06.2009 and 19.04.2009 supplied carpets worth US \$ 47,798.10 equivalent to Indian Currency in the sum of Rs.31,54,674/-. The payment was made only for US \$ 33,421.50 equivalent to Indian Currency in the sum of Rs.22,05,819/-. This was despite the fact that the entire payment had been received by the appellant from the American buyer. The balance amount of US \$ 14,376.60

equivalent to Indian Currency in the sum of Rs.9,48,855/- has not been paid till date due to mala fide and mischievous intention. The payment was being lingered on one pretext or the other because of which the complainant had suffered loss. The complainant due to lack of capital was declared as NPA by the bank. This act of receiving the money from the American buyer and not transmitting it to the complainant was a fraud mischievously played by the appellant. The complainant kept demanding the payment and lastly on 26.03.2017 at about 8.00 a.m. the complainant visited the house of the appellant to remind him for the balance payment in the presence of the witnesses. The appellant refused to make the payment, abused the complainant, threatened to kill the whole family and stated that he was ready for litigation. Thus, the offence.

Based on these allegations, charge sheet was submitted on 04.06.2017 under Sections 409, 419, 420, 504 & 506 of the IPC leading to cognizance.

The allegations on the face of it reveals a contractual relationship between the parties in pursuance

of which the respondent made supplies of carpets on credit. The respondent then received payment which was short and incomplete. The FIR was then lodged nearly nine years later in 2017. The complaint does not allege that the appellant had any dishonest intention from the inception of the business relationship to cheat the respondent by not making full payment for the goods supplied or misappropriate any payment received from the American purchaser by breach of trust by dishonest misappropriation. The mere use of words "mala fide" and "mischievous intention" cannot constitute a criminal offence in absence of any imputation of mens rea. Merely stating that the appellant had acted fraudulently and mischievously by retaining the amount stated to have been paid by the American Company and not transferring it to the complainant at best makes out a case for failure to make full payment of the goods supplied and which constitutes a purely civil money claim.

We also cannot loose sight of the fact that the FIR has been lodged nearly 9 years later, long after the limitation to file a suit for recovery of money dues had long expired. It therefore very legitimately leads to the

inference that the institution of the criminal prosecution was basically to overcome the bar of limitation in preferring any money claim for payment due under a contract for supply of goods. The assertion for breach of trust by failing to pass on the entire payment received from the American Company to the respondent is completely unsustainable from the allegations in the complaint itself. The complaint states that the payments were received from the American company directly into the account of the complainant. We fail to understand that if the payments were being made by the American buyer directly into the account of the complainant, how Section 409 of the IPC has any application against the appellant. The appellant merely facilitated the deal and the financial transactions were directly between the buyer and the respondent.

There can be no dispute with the proposition that on the same facts, civil and criminal liabilities may both arise. The mere pendency of a civil proceedings also cannot preclude the institution of a criminal prosecution. But in the facts of the present case no criminal offence is disclosed from the allegations made

in the complaint reading them as it is. The proposition in K.Jagadish (supra) though unexceptional has no application to the facts of the present case. Similarly, Yogendra Singh Jadon (supra) is distinguishable on its own facts as the allegations there related to conspiracy also under section 120-B of the IPC and in which background it was held that the prosecution ought not to have been quashed by examination of the defence.

Resultantly, the prosecution of the appellant including the order of cognizance are held to be unsustainable and are accordingly set aside. The appeal is allowed.

.....J.  
[NAVIN SINHA]

.....J.  
[KRISHNA MURARI]

NEW DELHI;  
FEBRUARY 3, 2020.

ITEM NO.27

COURT NO.12

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 8483/2017  
(Arising out of impugned final judgment and order dated 04-09-2017  
in APP No. 22591/2017 passed by the High Court Of Judicature At  
Allahabad)

AKHTAR SHAKEEL

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH &amp; ORS.

Respondent(s)

IA No. 113819/2017 - EXEMPTION FROM FILING O.T.  
IA No. 6305/2018 - STAY APPLICATION)

Date : 03-02-2020 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. Rakesh Khanna, Sr. Adv.  
Mr. Snehasish Mukherjee, Adv.  
Mr. Dinesh Kumar Tiwary, Adv.  
Mr. Chandan Kumar  
Mr. Santosh Kumar Tripathi, AOR

For Respondent(s) Mrs. Rachna Gupta, AOR  
Mr. Ajay Kumar Pandey, Adv.  
Mr. Anil Kumar Sinha, Adv.  
  
Mr. Anukul Chandra Pradhan, Sr. Adv.  
Mr. Haraprasad Sahu, Adv.  
Mr. Pranaya Kumar Mohapatra, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of  
accordingly.

(ASHWANI THAKUR)  
COURT MASTER (SH)

(DIPTI KHURANA)  
COURT MASTER (NSH)

(Signed order is placed on the file)