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HIGH COURT OF ORISSA

CRLMC No.200 of 2021

(In the matter of an application under Section 482 of the Criminal Procedure Code, 1973)

Prasanta Kumar Patra and another ... **Petitioners**

Versus

State of Odisha and another ... **Opposite Parties**

For Petitioners : M/s. Devashis Panda,
S. Panda and D. K. Mohapatra

For Opposite Parties : M/s. Manoj Kumar Mohanty
Additional Standing Counsel

M/s. B. P. Pradhan, B. R. Sahu,
S. Rath and R. Satapathy

(For Informant)

PRESENT :

THE HON'BLE SHRI JUSTICE S. K. PANIGRAHI

Date of Hearing – 06.04.2021 Date of Judgment – 07.05.2021

S. K. Panigrahi, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed with a prayer to quash the proceedings of C.T. Case No.4110 of 2020 pending before the learned SDJM, Bhubaneswar, which arises out of Badagada P.S. Case No.272 of 2020 under Sections 420, 406, 465, 468/34 IPC and all proceedings consequent thereto.
2. The allegations in the FIR are summarised herein below:

- a.** The complainant/opposite party No.2, lodged a complaint on 26.09.2020 at Badagada P.S. The contents of the complaint as set out implicates petitioner No.1 and petitioner No.2 for committing offences punishable under Sections 420, 406, 465, 468/34 of the IPC.
- b.** According to the complainant/opposite party No.2, she was induced by petitioner No.1 to jointly purchase a plot situated at Khata No.450/92, Chaka No.221, Plot No.486, area Ac.1.790 decs. in Mouza-Brahman Jharilo from one Subash Chandra Patra, for a total consideration of Rupees 1,35,00,000/- (One Crore Thirty Five Lakhs Only). An agreement to the effect was entered into on 30.11.2015 between the land owner, one Subash Chandra Patra of one part and the opposite party No.2 and petitioner No.2 of the other part to which petitioner no.1 was a witness. Opposite party No.2 paid a sum of Rs.26,00,000/- through cheque and partly through cash to the land owner and petitioner No.2 paid a sum of Rs.18,00,000/- to the land owner, after which it was stipulated that the balance amount of Rs.91,00,000/- would be paid to the land owner within a period of four months, i.e., by 30.03.2016. The agreement and mutual understanding between the opposite party No.2 and petitioner No.2 further stipulated that they would eventually sell the plot

themselves and the sale proceeds would be shared by them in the ratio of 59:41.

- c.** However, they failed to pay the land owner the balance amount within the stipulated time, which led the land owner to file C.S. No.1831 of 2016 in the Court of learned Civil Judge (Jr. Division), Bhubaneswar. A compromise was arrived at by the parties wherein the agreement dated 30.11.2015 stood nullified and it was agreed that the present opposite party No.2 and petitioner No.2 would pay the land owner a sum of Rs.95,00,000/-, out of which a sum of Rs.64,00,000/- was to be remitted on the date of drawing up of the compromise and the remaining Rs.31,00,000/- was undertaken to be paid within a period of two and half months. It was also agreed that the outstanding amount of Rs.31,00,000/- payable to the land owner would be raised by sub-dividing the plot and selling the sub-plots to various other buyers. The suit was disposed of on the terms of the aforesaid compromise on 22.10.2016.
- d.** The complainant has claimed that the petitioners, thereafter, put her off every time she inquired about the execution of the Sale Deed and sale proceeds. Subsequently, after passage of some time, the complainant learnt that the land owner had died and before his death, the petitioners had jointly purchased the plot in their names along with others without her knowledge.

Furthermore, they had re-sold the property to multiple parties without her consent and had retained all the sale proceeds themselves, thereby cheating the complainant and deriving unlawful gains. The complainant also alleges that the petitioners have criminally intimidated her.

3. The learned counsel for the petitioners earnestly contended that the allegations in the FIR are false and have been lodged with an ulterior motive to harass and humiliate the petitioners. It was submitted that the opposite party No.2 had failed to pay the land owner, in the first instance, thereby necessitating the filing of C.S. No.1831 of 2016 by the land owner. In the compromise arrived at, as a result of the Civil Suit above-mentioned, it is alleged that the opposite party No.2 had requested that the amount invested by her be refunded back by the said owner. Further, the learned counsel for the petitioners submits that the opposite party No.2 filed C.S. No.1097 of 2020 on 17.07.2020 which is pending for adjudication before the Civil Judge (Senior Division), Bhubaneswar, claiming her share of the net profit earned by the present petitioners. It is after the institution of that suit, did the opposite party No.2 file the impugned F.I.R. as a tool of harassment which is nothing but an attempt to clothe a civil dispute as a criminal dispute.

4. Per contra, the learned counsel for the opposite party No.2 vehemently opposed the submissions made by the learned counsel

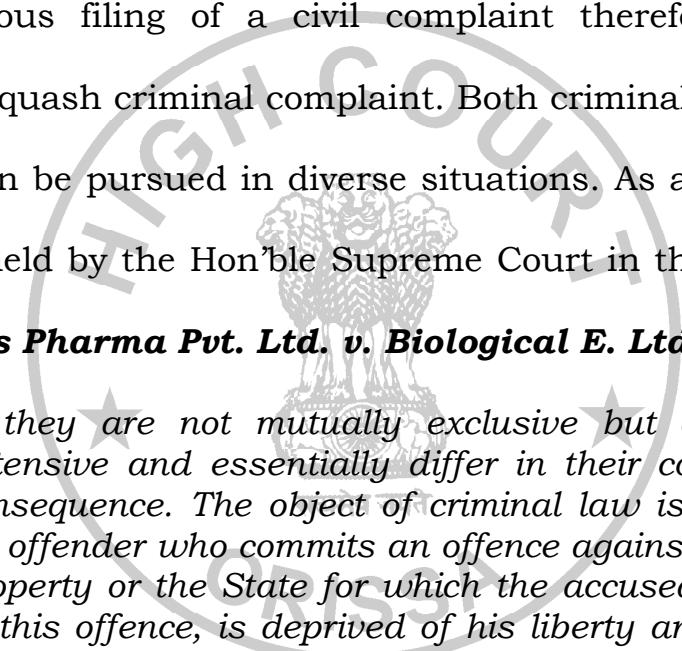
for the petitioners. He further contended that the case in hand is hungry for a proper trial and nipping the same at the bud, at this stage, will lead to gross miscarriage of justice. The learned counsel for the opposite party No.2 further submitted that, a *prima facie* case is made out against the petitioners and it is in the interest of justice that proper investigation be allowed in the present matter failing which opposite party No.2 shall suffer grave and irreparable loss.

- 5.** Heard the learned counsel for the rival parties of the case and perused the case diary to delve deeper into the case. Before advertiring to the facts of the case at hand, it is to be borne in mind that, it becomes imperative while dealing with a case with respect to Section 482 of the Cr.P.C. which is the plenary power and makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and amplitude of the power demands that its exercise is sparing in nature and is resorted to only in cases where the Court is of the unambiguous view that continuance of the prosecution would be nothing but an abuse of the process of law. It cannot be countenanced that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court would not embark upon a roving enquiry whether the allegations in the complaint are likely to be established by the evidence or not. That is the function of the trial court when such evidence is presented before it.

6. It becomes imperative at this juncture to briefly examine the allegations contained in the F.I.R. vis-a-vis the contents of the joint compromise petition filed by the deceased land owner, opposite party No.2 and petitioner No.2 in C.S. No.1831 of 2016 in order to determine whether a prima facie case is made out against the petitioners in the impugned F.I.R. As submitted by the learned Counsel for the petitioners, it is nowhere mentioned or indicated that opposite party No.2 was desirous of exiting the agreement or had requested that her initial deposit of 26 Lakhs be returned to her. Furthermore, it is recorded in that very compromise petition that the then defendants (now petitioner No.2 and opposite party No.2) had jointly made provisions/ undertaken to make provisions to sell the sub-plots to other purchasers. It is contended that it emerges from the documents put on record that the petitioner No.2 had sold the sub-plots through various registered sale deeds for which he has received consideration. It is submitted that after multiple requests, only an amount of Rs.17,12,400/- was transferred to the opposite party No.2 which seems unlikely to be inclusive of her share of the net profit from the sale of the sub-plots. It is also noted that despite three notices being served on the petitioners, they failed to appear before the investigating officer to join the investigation. It is thus contended that, without going into

the merits of the case, that a *prima facie* case is made out against the petitioners.

7. As held in ***Lee Kun Hee v. State of U.P.***¹ by the Hon'ble Supreme Court of India that in cases involving cheating wherein a party has not performed its obligations, the complaint involves both civil and criminal liability. Deprivation caused by the complaint of cheating could not be solely recovered through only civil proceedings. Simultaneous filing of a civil complaint therefore cannot be a ground to quash criminal complaint. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact, it was also held by the Hon'ble Supreme Court in the case of ***Medchi Chemicals Pharma Pvt. Ltd. v. Biological E. Ltd.***²:



“...they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of this offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.”

In the present case, there cannot be any dispute that there is no legal bar against continuance of the complaint nor can it be said

¹AIR 2012 SC 1007

²AIR 2000 SC 1869

that the allegations in the complaint taken on its face value and accepted in their entirety do not constitute an offence.

8. Another argument advanced by the petitioners for quashing the complaint is that the complaint is *mala fide* and aimed at wreaking of vengeance with a view to spite the accused due to personal grudges. In ***Sheonandan Paswan v. State of Bihar***³, it was observed:

"It is well established proposition of law that a criminal prosecution if otherwise justifiable and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first information or the complaint."

Therefore, the issue of *mala fide* becomes relevant and applicable only when the complaint can be demonstrated to be patently false/untenable in the eye of law. In the present case, a bird's eye view of the FIR would show that the offences alleged are serious in nature and facts are elucidated in such a manner that the court cannot say that *mala fide* is conspicuously manifested in the complaint.

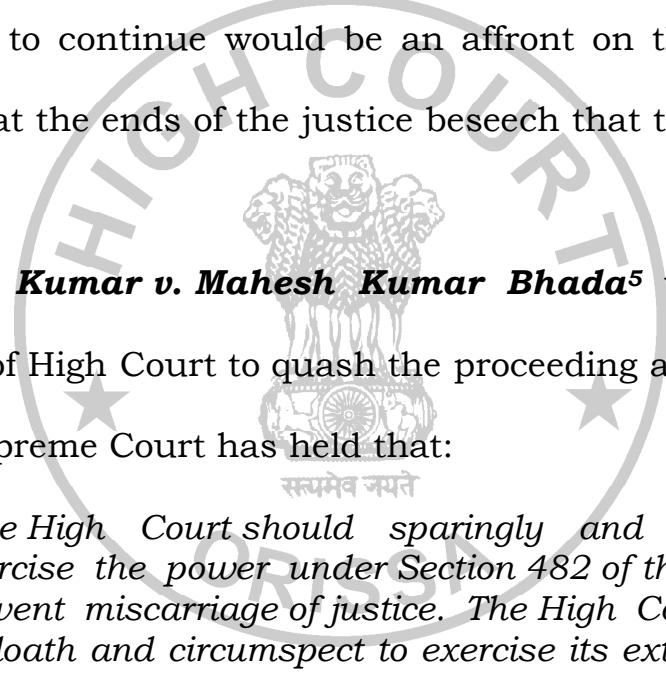
9. It is trite in law as laid down by the Apex Court in ***Pankaj Kumar v. State of Maharashtra***⁴, that the scope and ambit of powers of the High Court under Section 482 of Cr.P.C. has been enunciated and reiterated by this Court in a series of decisions. Thus, it would

³(1983) 1 SCC 438

⁴AIR 2008 SC 3077

suffice to state that though the powers possessed by the High Courts under the said provisions are wide but they should be exercised in appropriate cases, i.e., *ex debito justitiae*, to do real and substantial justice for the administration of which the courts alone exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim and caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, that allowing the proceeding to continue would be an affront on the process of the court or that the ends of the justice beseech that the proceedings be quashed.

In **Rashmi Kumar v. Mahesh Kumar Bhada⁵** while considering the power of High Court to quash the proceeding at initial stage, the Hon'ble Supreme Court has held that:


"The High Court should sparingly and cautiously exercise the power under Section 482 of the Code to prevent miscarriage of justice. The High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the Court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the Court."

It is, therefore, the settled position of law that this inherent power should be exercised by the High Court sparingly where parties are not left with any other remedy so as to prevent abuse of process of court or to give effect to any order under the Code or to secure the ends of justice. Such a power is not be invoked or exercised on mere asking.

Furthermore, in ***Amit Kapoor v. Ramesh Chander***⁶, the Hon'ble Supreme Court has laid down that 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 to such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation for an offence has been laid down, the courts must 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 otherwise substantial compliance with the requirements of the offence. 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. Where the

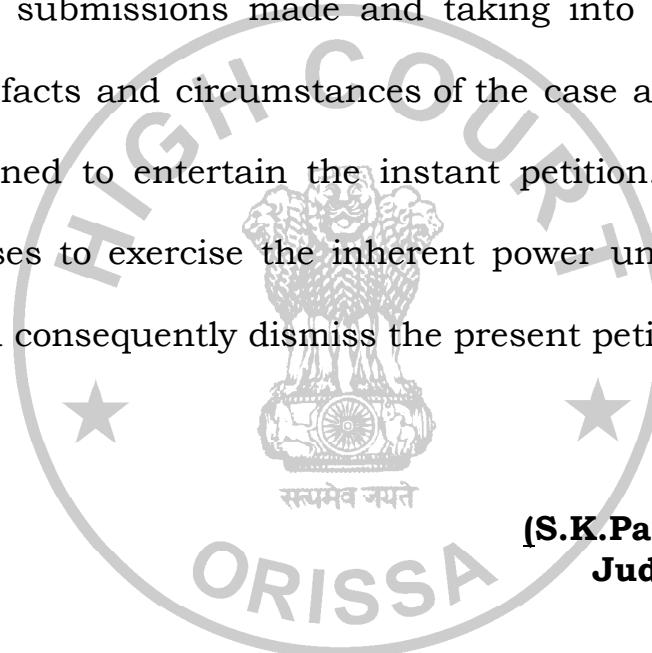
⁶(2012) 9 SCC 460

exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave errors that might be committed by the sub-ordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine where 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, whether or not it is an abuse of the process of Court culminating in injustice. If the records disclose commission of a criminal offence and the ingredients of the said offence are satisfied, then such criminal proceedings would not be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its original jurisdiction.

- 10.** In the present case upon a close reading of the FIR, it is not possible to come to the conclusion that they do not make out a *prima facie* case against the petitioners for the offences alleged therein.

11. Consequently, it becomes imperative that the matter be investigated further and the petitioners shall face the rigour of trial in respect of the alleged offences to meet the ends of justice.

12. The inherent jurisdiction of this Court does not warrant to be invoked. This Court finds no ground to interfere under Section 482 of Cr. PC at this stage. Considering the law laid down by the Apex Court in the cases cited above, the aforesaid discussion, submissions made and taking into account a holistic view of the facts and circumstances of the case at hand, this Court is not inclined to entertain the instant petition. Accordingly, this Court refuses to exercise the inherent power under Section 482 of Cr.P.C. and consequently dismiss the present petition.



Orissa High Court, Cuttack
The 7th day of May, 2021/AKK/LNB/AKP