



2025 INSC 571

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No(s) . **OF 2025**
(@ Special leave to Appeal (Crl.) No(s). 10744 -10745/2023)

DINESH SHARMA **APPELLANT (S)**

VERSUS

**EMGEE CABLES AND COMMUNICATION
LTD. & ANR.** **RESPONDENT(S)**

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted.
2. The appellant (Original Complainant) by way of these appeals
has challenged the common judgment and order dated 31.01.2023
passed by the High Court of Judicature for Rajasthan, Bench at

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ARJUN BISHT
Date: 2024
15:23:32 IST
Reason:

Jaipur, in SB Criminal Miscellaneous (Petition) No. 6995/2018 connected with S.B. Criminal Miscellaneous (Petition) No. 7689/2018, whereby the High Court quashed and set aside the First Information Report No. 218/2018 dated 04.04.2018 under Section 420, 406 and 120B of Indian Penal Code, 1860 (hereinafter 'IPC') filed by the appellant seeking investigation against alleged dishonest and fraudulent acts of Respondent No. 1/Company and its concerned Directors/Decision makers including Respondent No. 2.

FACTS:

3. One Dinesh Sharma (hereinafter referred as 'Appellant') was the authorised representative of the Company M/s BLS Polymers Ltd. According to the case of the appellant, the abovementioned company was engaged in the business of manufacturing and supplying plastic compounds such as PE, PVC, XLPE, HFFR etc used in making of wires and cables. EMGEE Cables and Communications limited (hereinafter referred as 'Respondent No. 1') was the Company engaged in the business of manufacturing Copper alloys, wires, conductors, etc. It is stated that one Arun Maheshwari (hereinafter referred as 'Respondent No. 3') was the technical director of Respondent No. 1 and in 2012, Respondent

No. 1 through its representatives which also included the Respondent No. 2 approached the Appellant's Company for supply of PVC.

4. It was averred that the respondents showed a rosy picture that they have a substantial turnover which led the appellant to supply the goods on credit basis and hence the parties into transactions from 2012 to 2017. It is the case of the appellant that from 01.04.2017 to 31.07.2018, the appellant supplied goods worth Rs. 2,20,82,000/- (Two crore twenty lakh and eighty-two thousand Rupees) against the purchase order signed by Respondent no 3.

5. It was averred that the payment for the goods was not cleared timely by the Respondent Company. As the appellant was facing financial loss due to the non-payment of overdue payments, he was required to constantly remind the accused directors of the company to clear the dues failing which he will be left with no other alternative than to file a police complaint which led one Shirpal Chowdhary, Director of Respondent No. 1 to issue three cheques against the due payment. The appellant stated that the first cheque which was presented in the bank was returned as dishonoured. The appellant was required to repeatedly contact

accused persons for clearing the due payment, but he was given false and vague promises about the clearance of the same.

6. The appellant stated that on 02.04.2018, the appellant reached the office of Respondent No. 1 which was found to be closed. When the appellant tried to contact one Mr. Abhinav and Mr. Shripal, his calls were unanswered in the beginning and once again he was given false promises about the clearance of his due payment.

7. Due to the abovementioned acts, appellant was constrained to file FIR before the Police Station Chomu, district Jaipur (West) bearing FIR No. 218/2020 for offences punishable under Section 420, 406, 120B of the IPC. Subsequently, the appellant also sent legal notice under Section 138 of Negotiable Instruments Act and Form 4 Notices under Rule 5 of Insolvency and Bankruptcy Rules demanding the repayment of the due amount.

8. On 02.05.2018, Dena Bank filed FIR No. 135/2018 against Respondent No. 1 and its directors for offences under Section 420, 406, 467, 468, 471 and 120B of the IPC. It was alleged in the FIR that the company was involved in actions such as excess use of limit, siphoning off and embezzlement of funds, unilaterally

changing the board of directors without the bank's consent and disposing off the property which was under pledge to the bank.

9. On 10.07.2018, the Appellant filed a Petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred as 'CrPC') before the High Court seeking fair and impartial investigation in the FIR No. 218/2018 which was disposed of and direction was given to the state machinery to conduct investigation within a period of two months. The Respondent No. 2 invoked the inherent jurisdiction of the High Court by filing a Petition under Section 482 of the CrPC for quashing of the FIR No. 218/2018.

10. While passing the impugned order the High Court observed as follows:

"It has been alleged by the complainant that the accused company and its directors have cheated by receiving raw material from the complainant from time to time stating that their company reputation and turnover is good, but later they have not paid. According to the ledger accounts. It is clear that there has been a business transaction between two parties since the year 2012, and the accused company has also failed for the goods supplied from time to time, but the payment for the good supplied was made around the year 2016-2017. The accused company did not pay the amount to the complainant company and at present rupees 1,21,51,840 is said to be pending. There have been conflicting allegations and counter allegations from both the sides regarding the payment due to some of the good supply and being substandard and other reasons. It has been alleged against the accused company that they have illegally transferred funds by dealing with dummy companies in relation to which action has been taken by the enforcement

director on the basis of subsequent incident, the business transaction which was going on for the last five years. It cannot be called deceptive. Bankruptcy proceedings are pending before the competent authority in respect of the accused company in which also the claim has been presented by the complainant company in respect of the dues.

In the above circumstances, there is no fraudulent intention of the accused company at the time of commencement of business transaction or at the time of receipt of loan goods by the accused Company at the later stage, but this case is completely and purely related to payment of dues and business transaction, it is purely civil in nature and has been given a criminal colour just to pressurise for payment which is not permissible and appropriate as per law

Since the element of any cognizable offences are not appearing in this case, it seems appropriate to set aside the handheld first information report in exercise of the inherent powers under section 482 of the code of criminal procedure

Therefore, both the petitions are accepted and first information report number 218/2018 crime registered against the petitioner accused in police station, Chomu district Jaipur under section 420, 406 and 120 B of IPC and its ancillary proceedings are set aside.”

(Emphasis supplied)

SUBMISSIONS

11. The Ld. Counsel for the Appellant submitted that the High Court erred in quashing the FIR as this is an established case of fraud by all the directors whereby they have duped the appellant for Rs. 1.21 Crore under the guise of business transactions. The Ld. Counsel for the appellant submits that none of the accused

persons who are the directors in the Respondent Company had filed a petition to quash the subject FIR.

12. He further submitted that the attachment order of the Enforcement Directorate showcased the modus operandi of the Respondent company as to how they hatched the conspiracy to siphoning off the funds. The learned Counsel stated that the Respondent No. 3 direct role in fraud is apparent as he continued to represent as the technical director and signed the purchase orders despite his purported pre resignation. The learned counsel also stated that the chargesheet filed in Dena Bank's FIR showcased that the appellant and other creditors were cheated and the directors of the Respondent Company personally gained from the money transactions and issued cheques to the creditors from accounts with insufficient funds. The learned counsel submitted that it is a settled law of this Court that economic offenders should not be given any leniency and that offences of such nature should not be quashed.

13. Learned AAG for Respondent No. 2/State of Rajasthan supporting the case of the appellant submitted that the high Court ought not have exercised its extraordinary jurisdiction to quash the proceedings merely because the transaction involved

contractual obligation and it is a settled position of law that the availability of remedy under civil law and criminal law are distinct.

14. Ld. Counsel for Respondent No. 3 submitted that the High Court observed that there were business transactions going on between the parties for 7 years and concluded that the dispute is predominantly civil in nature which has been given a criminal colour only to harass the accused.

15. The Counsel further stated that Respondent No. 3 was merely an employee of Respondent No. 1 and he resigned from the post of technical director on 06.05.2016 and even after that the Appellant Company engaged in the business transaction with the Respondent No. 1. The Counsel further submitted that the appellant is relying on allegations and material which is arising out of the FIR which was filed by Dena bank and hence the present FIR is not sustainable in the eyes of law.

ANALYSIS

16. We have heard the arguments and perused other relevant documents as also the judgment passed by the High Court.

17. No discussion is complete on the use of inherent powers of the High Court under Section 482 of CrPC without referring to the

decision of this court in **State of Haryana v. Bhajan Lal**¹ wherein this Court had enumerated certain circumstances where the powers under Section 482 of the CrPC can be exercised to prevent abuse of the process of the court or to secure the ends of justice.

- “ (a) 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;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*
- (c) where the uncontested 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;*
- (d) 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;*
- (e) 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;*
- (f) 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;*

¹(1992) SCC (Cri) 426

(g) 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.”

18. Though the High Court has unfettered powers conferred by the CrPC for exercising its inherent jurisdiction under Section 482., the same is expected to be used very sparingly and only in exceptional circumstances. There cannot be any straight jacket formula as to when the High Court would be justified to exercise jurisdiction under Section 482 of CrPC and each case is required to be dealt with on its own merits.

19. In the present case, the High Court quashed the proceedings on the premise that there were long business transactions between the parties and initiation of criminal proceedings was an arm-twisting tactic to extract the pending dues from Respondent Company. The Court further observed that there are allegations against the Directors of the company that they used to circulate the transactions through shell companies; however, separate proceedings under Prevention of Money Laundering Act, 2002 (hereinafter referred as ‘PMLA’) are initiated against them and

hence the prior transactions between the Appellant and Respondent company cannot be put into question.

20. In the present case, in our opinion, the High Court committed a serious error, in quashing the proceedings on a premise, that there were long business transactions between the parties, and initiation of criminal proceedings was an arm-twisting tactic to extract the pending dues from respondent company. It may not be out of place to state the High Court was apprised with a factum aspect that the directors of the company, established certain dummy/shell companies and the monetary transaction were circulated to these shell/dummy companies. It was also brought to the notice of the High Court, that the High Court records the fact proceedings under the PMLA and initiated against the director of companies and observed that even prior to these proceedings there were monetary transaction between the appellant and the respondent company. Now the High Court failed to appreciate the factum that the act of the company creating/establishing shell companies and circulating monetary transaction through these companies itself was an indicator of an intention of deceit. In this backdrop, the High Court erred in giving an undue weightage to the fact that there was an earlier transaction between the appellant

and respondent so as to quash the proceedings. A profitable reference can be made to the case of **Kurukshetra University and Anr. v. State of Haryana and Anr.**² wherein this Court observed that

“It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

21. Another factum which lost the sight of the High Court is that the directors of the company have connived with each other so as to form the shell/dummy companies. This is also an indicator of intention of deceit. It may not be out of place to state that the High Court has passed a vague and cryptic order. The High Court also failed to note that when certain basic material was brought to the notice of the High Court about the criminal conspiracy hatched by the accused persons, it was necessary for the investigating agency to investigate thoroughly, in the process of unearthing the truth before the Court. This aspect could have been tested only by

² (1977) 4 SCC 451

conducting a proper trial. The High Court thus should have refrain from quashing the FIR at the nascent stage of the investigation.

22. We are also deeply concerned by the averments made by Respondent No. 3 on whose instance the FIR filed by the Appellant was quashed by the High Court. It was submitted before the High Court that Respondent No. 3 had resigned from his post on 06.05.2016. The pursual of the material placed before this Court show that this statement was only partially true though the Respondent no. 3 had resigned as a director of the company on 06.05.2016. He was still attached to the company in the capacity of technical director. This fact is being supported by the perusal of the material namely a purchase order dated 21st March, 2017 signed by Respondent no. 3 as technical director. It may not be out of place to state here that in the provisional attachment order of the Enforcement Directorate under Section 50 of the PMLA, it is mentioned that when statement of Respondent no. 3 admitted that he was working as a technical director.

23. A profitable reference can be made to the case of **Parbatbhai Ahir v. State of Gujarat and Anr.**³ wherein it was observed that

³ 2017 (9) SCC 641

economic offences by their very nature lie beyond the domain of mere dispute between private parties and the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.

24. It is true that there is a growing tendency of parties to rope in their counterparts to harass and extract monetary transaction, it is the duty of the Court to consider the facts of each case, in its proper perspective and then to arrive at the conclusion as to whether the case warrants investigation or the proceedings are required to be quashed. The peculiar facts and circumstances of the present case warrants thorough investigation as there was a huge amount involved. As we have already stated that when the petitioner approached the High Court for quashing of the FIR, the

investigation was at its initial stage and subsequent to filing of the present Special Leave Petition in this Court it seems that the investigation was concluded by filing the chargesheet.

25. Be that as it may, for the reasons stated above, we are of the view that the High Court was not justified in exercising its jurisdiction under Section 482 of CrPC. The appeals are accordingly allowed. It is clarified that the above-mentioned observations are only *prima facie* in nature and the trial court shall proceed without being influenced by this judgement/order and strictly in accordance with law.

26. Pending application(s), if any, shall be disposed of accordingly.

.....J.
[BELA M. TRIVEDI]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
APRIL 23, 2025.