



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

**Criminal Appeal No. of 2025
(@ Special Leave Petition (Crl.) No.15413 of 2023)**

Aaditya Khaitan @ Aditya Khaitan & Ors.

Appellant(s)

Versus

The State of Jharkhand & Ors.

Respondent(s)

JUDGEMENT

K. VINOD CHANDRAN, J.

1. Leave granted.
2. The appeal is against the judgment of the High Court, refusing to invoke the power under Section 482 of the Code of Criminal Procedure, 1973¹ to quash the FIR registered against the appellants, a company, whose officers are the appellants. The Deputy General Manager² of M/s. National Building Construction Corporation Limited³ also filed a similar application, in which the

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Reason:

¹ the Cr.PC

² the DGM

³ the NBCCL

FIR against him was quashed. The appellants are aggrieved with the refusal of the High Court to quash the FIR against them too, which registration of crime according to the appellants is a strong arm tactic to obtain recovery of money allegedly payable under a contract, for which arbitration proceedings are initiated, which has been stayed due to the pendency of the insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 in which a moratorium has been ordered by the National Company Law Tribunal, Kolkata Bench by order dated 29.04.2022 in **Bank of India v. McNally Bharat Engineering Company Limited**⁴.

3. We heard Mr. Gopal Sankarnarayanan, learned Senior Counsel appearing for the appellants, Mr. Rajiv Shankar Dwivedi, learned Standing Counsel for the respondent-State and Mr. Deepak Dhingra, learned Counsel for the respondents. The crux of the allegations is that the first accused-company having obtained a contract from the NBCCL, sublet a portion of the work to the second respondent herein; which ran into trouble, was stalled, then revived, and again came to a standstill. Since payments were due for the work carried out, the second

⁴ C.P (IB) No. 891/KB/2020

respondent had sought an intervention in a proceeding before the High Court, pending between the first accused company and NBCCL, which was declined on the ground there is no back-to-back contract, the contract between NBCCL and the first accused clearly having provided a restrictive covenant against subletting the contract without the consent of NBCCL. The second respondent herein who was the complainant alleged that this fact was suppressed and, hence, the accused were liable to be proceeded against for the offences punishable under Section 406, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860.

4. The High Court having considered the matter also referred to certain relevant decisions with respect to quashing of an FIR under Section 482, Cr. PC and while allowing it against the DGM of NBCCL, refused to grant such relief to the appellants herein, finding that it cannot be *prima facie* said that no offence punishable under law is made out against the appellants herein.

5. The High Court has extracted from the judgment in **Prof. R.K.Vijayasarathy and Anr. v. Sudha Seetharam and Anr.**⁵,

⁵ (2019) 16 SCC 739

wherein the power under Section 482, Cr. PC was dealt with relying on the judgment in ***Indian Oil Corporation v. NEPC (India) Ltd.***⁶. Going by the binding precedents, it is trite that a complaint can be quashed when the allegation made in the complaint, even when taken on its face value and accepted in its entirety, do not *prima facie* constitute any offence or make out the case alleged against the accused. What is required is the examination of the complaint as a whole, without examining the merits of the allegations; desisting from a detailed inquiry or meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint.

6. The above exercise, obviously, has not been carried out by the High Court and after merely relying upon the negative covenant in the contract between NBCCL and the first accused, it was held that there is suppression of material facts which amounts to dishonest and fraudulent action.

7. We have examined the complaint made, as available in the FIR produced as Annexure P II. The complaint alleges that the first accused-company expressed its intention to enter into a contract

⁶ (2006) 6 SCC 736

to carry out a portion of the project for which a contract was entered into with NBCCL. There was a contract entered into between the first respondent accused and the complainant, based on which the work was also commenced. The allegations as laid down in the FIR mostly constitute a narration of the bills submitted by the complainant and the part payments made by the accused, as also the balance remaining. It is then submitted that for reason of non-completion of the work within the stipulated time, as agreed with NBCCL, the work was directed to be stopped by NBCCL. A proceeding was initiated by the first accused before the High Court against the NBCCL in which the complainant sought intervention, which was denied by the High Court finding that there is no back to back contract for the reason of the restrictive covenant in the contract of the first accused with the NBCCL. The complainant submits that only then, they realised that there was a stipulation in the contract that subletting will be permissible only on consent of the principal.

8. However, it is also stated in the complaint that later, on the directions of the High Court, the contract was resumed, when even the complainant resumed their work as per the contract

entered into with the first accused. This was after the restrictive covenant came to the knowledge of the complainant. Again, bills were submitted, and part payments were made, wherein also, there are amounts still remaining due to the complainant. An application filed before the NCLT by the complainant was rejected, as is seen from Annexure P12. The complainant has now invoked the arbitration clause, but there is a stay of arbitration, as admitted by both parties due to the moratorium ordered by the NCLT.

9. A reading of the complaint, hence, would indicate a contract having been entered into pursuant to which there were financial transactions and allegedly amounts are due to the complainant. We would assume for the moment that the restrictive covenant not available in the contract with the NBCCL was not disclosed by the first accused, when they entered into the contract with the complainant. A reading of the complaint but would clearly indicate that the complainant was aware of the fact, at the inception itself, that they were entering into a contract to do a portion of the work, as per the contract awarded by NBCCL to the accused company. While the complainant alleges suppression,

obviously, the complainant also did not make any effort to look into the contract entered with the NBCCL by the first accused.

10. In any event, even if we assume that the sub-contract was without a consent from the principal and that the restrictive covenant was suppressed from them, it would only entail an action by NBCCL as against the first accused-company. The NBCCL cannot take any action against the complainant since it has no privity of contract with the complainant.

11. Further, even if, there is a restrictive covenant and the contract of the NBCCL was terminated for reason of the sub-lease, that alone cannot absolve the first accused company from satisfying the bills raised by the complainant, if it is in accordance with the contract they entered into. The complainant has taken steps for recovery of the amounts due, which unfortunately has been stalled by reason of the moratorium ordered by the NCLT. The complainant would have to take proper recourse and avail its legal remedies for recovery of money, which is the crux and essence of the allegations as we discern from the complaint, read in its entirety. We do not find any criminality arising from the

allegations and *prima facie*, the allegations do not constitute any offence or make out any case against the accused persons.

12. We are, hence, of the opinion that the High Court erred in not invoking the power under Section 482, Cr. PC in the present case. The High Court having failed to invoke its power under Section 482, Cr. PC in the appeal, we invoke the same and quash the FIR on which no further proceedings will be taken. The appeal stands allowed.

13. Pending application, if any, shall stand disposed of.

..... J.
(SUDHANSU DHULIA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
APRIL 28, 2025.