

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
CRM(M) no.77/2021
CrlM no.220/2021

Reserved on: 04.08.2021

Pronounced on: 25.08.2021

Rajeev Malhotra

.....Petitioner(s)

Through: Mr Arjun Sharma, Advocate

Versus

Mohammad Ishaq Chowdhary

.....Respondent(s)

Through: Mr Showkat Ali Khan, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

03.08.2021

1. Quashment and setting aside of complaint bearing Registration no.5 of 2021, filed under Section 406, 409, 418, 420, 506 IPC, before the court of Chief Judicial Magistrate, Srinagar (for brevity "*Trial Court*"); as also Order dated 31st December 2020, passed by learned Judicial Magistrate 1st Class, Srinagar, summoning petitioner and all other proceeding arising therefrom
2. As is discernible from the file, a complaint under Section 406, 409, 418, 420, 506 IPC has been filed by respondent herein before the Trial Court, in which he alleges that he intended to put up a CA cold storage at industrial estate Zainakote under the name and style of Chowdhary Cold Storage after approval was given by the Government. It is also alleged that complainant/respondent entrusted the said work to accused

person – petitioner herein, and purchase PEB Pre Engineered Building from one ATS buildings and for this purpose certain amount was sent to petitioner, but he did not make full payment to the seller, thereby committing offences punishable under Section 409 and 106 IPC. Accordingly, a complaint was filed, in which Judicial Magistrate 1st Class, Srinagar, issued an Order dated 31st December 2020, taking cognizance of the matter and issuing process against accused-petitioner to appear before the Trial Court and answer the allegation. It is this order, of which petitioner is aggrieved and has come up before this Court with instant petition.

3. I have heard learned counsel for parties and considered the matter.
4. Learned counsel for petitioner, while dilating the factual backdrop contained in petition on hand, has stated that complaint filed by respondent is bereft of even basic facts, which are necessary for making out any of offences as alleged against petitioner. According to him, petitioner is an independent director of the company, functioning at the highest ethical standards and has been implicated in criminal complaint only to create fear of loss of reputation of business in the mind of petitioner and to exploit the situation with mala fide intentions to coerce the company yielding to its illegal and unjustified demands. It is contended that petitioner only dealt with respondent in the capacity of a representative of the company and setting up of the cold store was a turnkey project undertaken by company on behalf of respondent and, therefore, question of entrusting the said project to petitioner as an

agent does not arise. Learned counsel also states that impugned order does not reflect that while passing the said order, Trial Court has applied his mind to the facts of the case and the law applicable inasmuch as Trial Court was not only to examine the nature of allegations made in the complaint and evidence, both oral and documentary in support thereof, but was to carefully scrutinize the evidence brought on record and put questions to the complainant and his witness to elicit answers to find out truthfulness of allegations and pass a detailed order. In support of his submissions, learned counsel for petitioner has placed reliance on *M/s Pepsi Foods Ltd & anr v. Special Judicial Magistrate (1998) 5 SCC 475*; *Medmeme, LLC and others v. M/s Ihorse BPO Solutions Pvt. Ltd, 2017 AIR (SC) 3656*; *International Advanced Research Centre for Powder Metallurgy and New Materials (ARC) and ors v. Nirma Cerglass Technics (P) Ltd and another, 2015 (4) PCR (Criminal) 883*; *Satishchandra Ratanlal Shah v. State of Gujarat and another, 2019 (2) RCR (Criminal) 145*; *Vindod Natesan v. State of Kerala and ors, 2019(1) RCR (Criminal) 348*.

5. It is pertinent to mention here that law is now settled. Existence of civil remedies, *per se*, is not a ground to quash criminal proceedings. A person litigating over a civil matter can file a criminal complaint also and, in such matters, High Courts should be extremely cautious in quashing such complaint. Civil proceedings, as distinguished from criminal action, has to be adjudicated and concluded by adopting separate yardsticks. The onus of proving allegations beyond reasonable

doubt, in a criminal case, is not applicable in civil proceedings, which can be decided merely on the basis of probabilities with respect of the acts complained of. Where factual foundation for the offence has been laid down in a complaint, the High Court should not hasten to quash criminal proceedings merely on the premises that one or two ingredients have not been stated with the details or that facts narrated reveal the existence of civil dispute between parties. After observing and saying this, the Supreme Court in *M. Krishnan v. Vijay Singh and another, 2001 (8) SCC 645*, concluded that it could not be said that complaint filed by complainant did not disclose commission of an offence or there existed any other circumstance which could be made basis for quashing proceedings and in fact allegations made in the complaint required adjudication and complaint could not have been aborted in the manner it had been done by the High Court and accordingly held judgement of the High Court contrary to settled position of law and set aside the same, by upholding the order of the Trial Magistrate.

6. The above has also been reiterated by the Supreme Court in *Priti Saraf & anr v. State of NCT of Delhi & anr, 2021 SCC Online SC 206*, and it has been said that inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint/ FIR / charge-sheet in deciding whether the case is the rarest of rare cases, to scuttle the prosecution at its inception. It is settled that whether the

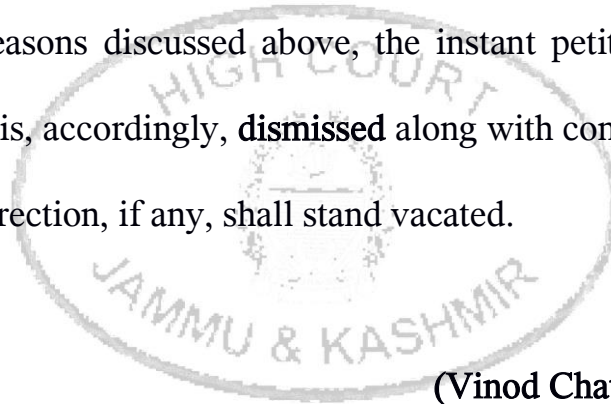
allegations in the complaint were true, is to be decided on the basis of evidence to be at the trial. In the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court.

[See: *R.P. Kapur v. State of Punjab, 1960 (3) SCR 388; State of Haryana & ors v. Bhajan Lal and others 1992 Suppl (1) SCC 335; Trisuns Chemical Industry v. Rajesh Agarwal & ors, 1999 (8) SCC 686; Joseph Salvaraj A v. State of Gujarat and ors, 2011 (7) SCC 59; Arun Bhandari v. State of Uttar Pradesh and ors, 2013 (2) SCC 801; Anand Kumar Mohatta and anr v. State (NCT of Delhi) Department of Home and anr., 2019(11) SCC 706]. Judgements relied upon by learned counsel for petitioner, in view of above discourse, do not render any aid or assistance to the case of petitioner.*

7. In the above backdrop it may be added here that Section 482 of the Code of Criminal Procedure, preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court. The High Court, while forming an opinion whether a criminal proceeding or complaint or FIR should be quashed in exercise of its jurisdiction under Section 482 Cr.P.C., must evaluate whether the ends of justice would justify the exercise of the inherent power. While inherent power of the High Court has a wide ambit and plenitude, it has to be exercised to secure ends of justice or to prevent an abuse of the process of any

court. Petition on hand, when looked from all angles, requires and demands meticulous analyzation of facts by this Court as if it is in appeal and acting as an appellate court and to draw its own conclusion vis-à-vis impugned order, complaint and proceedings emanating therefrom. This is not the aim and objective of provisions of Section 482 Cr. P.C. more particularly when petition on hand does not unveil any ground muchless cogent or material one, to portray that inherent powers are to be exercised to prevent abuse of process of court and to secure ends of justice. In that view of matter petition on hand is liable to be dismissed.

8. For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** along with connected CM(s).
9. Interim direction, if any, shall stand vacated.



(Vinod Chatterji Koul)
Judge

Srinagar

25.08.2021

Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.