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SLP(Crl.)No. 1719 OF 2003  
ITEM No.28

Court No. 6

SECTION IIA  
A/N MATTER

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 (Crl.) No. 1719/2003

(From the judgement and order dated 09/01/2003 in CRLA 583/98  
of The HIGH COURT OF BOMBAY)

M/S. TELEKRIK ELECTRICALS PVT. LTD.

Petitioner (s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent (s)

( With Appln(s). for exemption from filing c/c of the impugned Judgment )  
( With Office Report )

Date : 09/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s)

Mr. S. Chandra Shekhar, Adv.

For Respondent (s)

Mr. Mukesh K. Giri, Adv.  
Mr. Ravindra Keshavrao Adsure, Adv.

Mr. Tara Chandra Sharma, Adv.

Ms. Neelam Sharma, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(N. Annapurna)  
Court Master

(V.P. Tyagi)  
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2004

(Arising out of S.L.P.(Crl.) No.1719/2003)

M/s. Telekrik Electricals Pvt.Ltd.  
...Appellants

Versus

State of Maharashtra & Ors.  
...Respondents

O R D E R

Leave granted.

The appellant filed a complaint under Section 200 of the Code of Criminal Procedure (Cr.P.C.) against respondent Nos.2, 3 and 4 for offence punishable under Sections 406, 420, 468 and 471 of the Indian Penal Code. It was, inter alia, alleged, against the respondents, in the complaint that an amount of Rs.12,87,607.60 was obtained by them from the Inspector General of Prisons, Lucknow, long back, i.e., some time on 30th April, 1993; the said demand draft drawn was in favour of the appellant; the accused purposely and fraudulently withheld from the knowledge of the complainant-appellant the fact of having obtained the said demand draft and this was done purely with a view to cheat the appellant and to dishonestly induce it to deliver to respondent No.2 herein the property and valuable security in the shape of demand draft of ...2/-

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Rupees five lakhs during the visit of the accused to Nagpur on 5th June, 1993 which amount the complainant would never have otherwise parted with. It has also been averred in the complaint that the dishonest intention of the accused was further clear when they started making false claims regarding alleged dues recoverable from the complainant for their company M/s. Sigma Search Lights Private Limited. It has further been averred that for obtaining the draft from the Inspector General of Prisons, the accused had also reported to have prepared a forged authority letter on the letter-head of the complainant and thus it is clear case of deception and criminal breach of trust.

The learned Magistrate directed an inquiry pursuant whereof an inquiry report dated 3rd February, 1997 was submitted by the Police Inspector of Police Station, Sitabuldi, Nagpur. The learned Magistrate took cognizance and issued process to respondents 2 to 4 herein.

At this stage, a petition under Section 482 Cr.P.C. was filed by respondents 2 to 4 before the High Court. The High Court by the impugned judgment has quashed the criminal proceedings in exercise of power under Section 482 Cr.P.C.

The principles for exercise of power under Section 482 Cr.P.C. are well settled. The complaint in its entirety is required to be examined on the basis of the allegations made therein.

In the present case, the High  
...3/-

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Court has gone into the merits in detail, including the defence of the accused respondent Nos. 2 to 4 and on the basis of the material produced by them, and has come to the conclusion that, prima facie, the evidence did not disclose any case against them. A substantial part of the material that was taken into consideration by the High Court was not before the learned Magistrate at the stage of exercise of jurisdiction under Section 482 Cr.P.C. The Magistrate, taking into consideration the complaint as a whole as also the inquiry report and the material filed therewith, had issued process. The High Court has not held that on the basis of the complaint or the material in the inquiry report, no case for issue of process was made out.

In Nagawwa vs. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736], this Court to provide sufficient guidelines to High Court held that in the following cases, an order of the Magistrate issuing process against the accused can be quashed or set aside:

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proc

eeding against the accused;

(3) where the discretion exercised by the

....4/-

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Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

It was clarified that the above cases were purely illustrative.

The present case falls neither in any of above categories of cases nor any other category warranting quashing of proceedings. Instead, the High Court has entered into the arena of the defence of the accused at the stage at which it was wholly impermissible. We do not wish to comment upon the merits of the case at this stage. It would, of course, be open to the accused to urge at the stage of framing of charge such submissions before the Magistrate, as permissible in law, and later, if charges is framed, to take such pleas and defences as law permits.

For the aforesaid reasons, we set aside the impugned judgment of the High Court. The appeal is, accordingly, allowed. The case will proceed before the learned Magistrate in accordance with law.

.....J.

(Y.K. SABHARWAL)

.....J.

(B.N. AGRAWAL)

New Delhi,  
February 09, 2004.