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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.923 of 2017

Shantilata Mohanty @ Mohapatra & ***Petitioners***
Anr.

Mr. Pratik Nayak, Advocate

-versus-

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

Mr. Debakanta Mohanty, AGA and
Mr. B. S. Dasparida, Advocate for O.P. Nos.2 and 3

CORAM:
THE CHIEF JUSTICE

Order No.

ORDER
27.03.2023

Dr. S. Muralidhar, CJ

08. 1. The present petition under Section 482 Cr.P.C. seeks the quashing of Bhadrak Town P.S. Case No.202 of 2016 corresponding to G.R. Case No.1329 of 2016 pending in the Court of S.D.J.M., Bhadrak.
2. While directing notice to issue in the present petition on 7th September, 2017, the further proceeding in the aforementioned criminal case was stayed. That stay order is continuing since then.
3. The background facts are that the subject matter of the FIR in question was also the subject matter of Probate Misc. Case No.4 of 2014 seeking probate of the Will executed by the owner of the property in question in favour of the Petitioners' sons i.e. Alok Kumar Mohanty and Deepak Kumar Mohanty. The said Probate Case came to be registered as Civil Suit No. 639 of 2016 which was contested by Opposite parties 2 and 3 herein (the Informants in the criminal case). The said Suit 639 of 2016 was decreed in

favour of the Petitioners' sons. The appeal filed by the Informants against the said judgment i.e. FAO No.367 of 2018 is stated to be pending in this Court.

4. The informants then filed Civil Suit No.209/1/2014 in the Court of Civil Judge (Junior Division), Bhadrak against the Petitioner No.1 and her two sons with a prayer for mandatory injunction and recovery of possession. The copy of the said plaint has been enclosed with the additional affidavit filed by the present Petitioners on 13th January, 2023.

5. In the above affidavit the Petitioners have stated that the aforementioned suit i.e. Civil Suit No.209/1/2014 was dismissed on 18th September, 2019 for default. The said Plaintiffs are stated to have applied for restoration in 2021 but no orders to that effect appear to have been passed.

6. Admittedly, the criminal complaint by the said Informants/Plaintiffs against the present Petitioners was on the same subject matter alleging commission of offence under Section 341/323/294/506 read with Section 34 IPC. The allegation therein was that the present Petitioners had forcibly taking possession of the house in question. With Civil Suit No.209/1/2014 having been dismissed for default, the Petitioners seeking quashing of the criminal proceedings on the same set of facts.

7. In similar circumstances, the Supreme Court in ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) v. Nimra Cerglass Technics Private Limited (2016) 1 SCC 348*** has observed as under:

“22. By an analysis of the terms and conditions of the agreement between the parties, the dispute between the

parties appears to be purely of civil nature. It is a settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan vs. Bhor Industries Ltd. (2005) 10 SCC 228, this Court held as under:- (SCC p.231,paras 6-7)

“6.A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

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8. The substance of the complaint is to be seen. Mere use of the expression “cheating” in the complaint is of no consequence. Except mention of the words “deceive” and “cheat” in the complaint filed before the Magistrate and “cheating” in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay.... We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant’s own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.”

23. In Indian Oil Corporation v. NEPC India Ltd., (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:- (SCC pp.748-49,paras 13-14)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

“8...It is to be seen if a matter, which is essentially of a civil nature has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr PC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

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25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. The High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the proceedings in the interest of justice."

8. More recently in ***Usha Chakroborty v. State of West Bengal*** 2023 LiveLaw (SC) 67, the Supreme Court has reiterated as under:

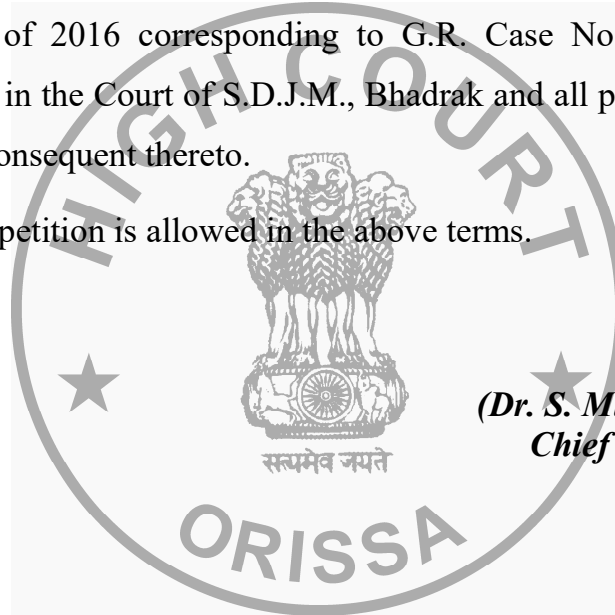
"10. xxxx As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of

criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjit Batra (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.”

9. In the present case, the Court is satisfied that what is essentially a civil dispute between the parties have been given the colour of a criminal matter and has then been sought to be pursued as such.

10. Consequently, following the aforementioned decisions of the Supreme Court, this Court quashes the Bhadrak Town P.S. Case No.202 of 2016 corresponding to G.R. Case No.1329 of 2016 pending in the Court of S.D.J.M., Bhadrak and all proceedings and orders consequent thereto.

11. The petition is allowed in the above terms.



(Dr. S. Muralidhar)
Chief Justice

M. Panda