

G. SAGAR SURI AND, ANR.

v.

STATE OF U.P. AND ORS.

JANUARY, 28, 2000

[S. SAGHIR AHMAD AND D. P. WADHWA, JJ.]

Criminal Procedure Code, 1973—Section 482—Jurisdiction of High Court to quash criminal proceedings—Criminal proceeding under Section 406/420 I.P.C. instituted while complaint under Section 138 Negotiable Instruments Act pending—Application for discharge moved—High Court dismissed petition to quash proceedings—On appeal Held, power of High Court to be exercised with great care to see that civil proceedings not given cloak of criminal offence—Criminal proceedings are no short cut to other proceedings in law.

Petition filed during pendency of application for discharge—Held, High Court can exercise jurisdiction to quash the proceedings.

Appellants along with five others were alleged to have approached the Complainant Finance Company and obtained a loan for an automobile company. The cheques issued in repayment of the said loan were dishonoured and proceedings under Section 138, Negotiable Instruments Act were instituted against the Automobile Company and its directors including the appellants. Meanwhile the complainant lodged F.I.R. Criminal proceedings under Sections 406/420 I.P.C. were also instituted against the directors including the appellants.

The appellants applied for their discharge in the criminal proceedings instituted under Sections 406/420 I.P.C. They also moved the High Court under Section 482 Cr. P.C. for quashing of those proceedings. The High Court dismissed the petition. Hence this appeal.

Allowing the appeal, this Court

HELD : 1.1. Jurisdiction under Section 482 Cr. P.C. has to be exercised with great care. High Court is not to examine the matter superficially, it is to be seen if a matter, which is essentially of civil

A nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut to other remedies available in law. Certain principles have been laid down on the basis of which High Court is to exercise its jurisdiction under this section to prevent abuse of the process of any Court or otherwise to secure the ends of justice. [424-G-H]

B 1.2. High Court can exercise its jurisdiction under Section 482 Cr. P.C. even if an application for discharge has been filed. [424-D]

C *Papsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.*, [1998] 5 SCC 749; *Ashok Chaturvedi & Ors. v. Shitul H. Chanchani & Anr.*, [1998] 7 SCC 698; *State of Karnataka v. L. Muniswamy & Ors.*, A.I.R. (1977) SC 1489 = [1977] 3 SCR 113; *Kurukshetra University & Anr. v. State of Haryana*, AIR [1977] SCC 2229 = [1977] 4 SCC 451 and *Chandrapal Singh v. Maharaj Singh*, AIR (1982) SC 1238, relied on.

D 2. There is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and doing so is clearly an abuse of the

1. 482. *Saving of inherent powers of High Court* - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

E 2. 405. *Criminal breach of trust*. - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

F 406. *Punishment for criminal breach of trust*. - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

G 415. *Cheating*. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".

H 420. *Cheating and dishonestly inducing delivery of property*. - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

process of law. Criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused and they would suffer the consequences if offence is proved. The prosecution of the appellants under Sections 406/420 I.P.C. is quashed.

[427-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 91 of 2000.

From the Judgment and Order dated 6.5.99 of the Allahabad High Court in Crl. M.A. No. 1312 of 1999.

Rakesh Dwivedi, Rao Ranjit and R.S. Hedge for the Appellants.

U.R. Lalit, Arjun Bhandari, Arun K. Sinha, T.N. Singh, A.S. Pundir, Rakesh Singh and B.K. Singh for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted.

This appeal is directed against the judgment dated May 6, 1999 of Allahabad High Court dismissing the application of the appellants filed under Section 482¹ of the Code of Criminal Procedure (for short, the 'Code'). By this application the appellants had sought quashing of the criminal proceedings pending against them under Section 406/420² of the Indian Penal Code (for short the 'IPC') in the Court of Chief Judicial Magistrate, Ghaziabad and arising out of Case No. 674 of 1997 of Police Station Noida, District Gautam Budh Nagar.

The First Information Report (FIR No. 517 dated August 17, 1997) was filed against seven persons including the two appellants by Mr. P.K. Sen Gupta (respondent No. 2), General Manager, M/s. Phoenix International Finance Ltd., NOIDA (for short, the 'Finance Company'). He alleged that Ashwani Suri, G. Sagar Suri (the first appellant) and Sukhvinder Singh contacted his company on telephone in the first week of June, 1996 with intention to cheat and commit fraud on him. They had stated that they along with Shalini Suri, Shama Suri (the second appellant), Charanjit Singh and M.L. Kampani were the Directors of M/s. Ganga Automobiles Ltd. and that they would come later for a meeting personally. They had also

- A told that their company Ganga Automobiles Ltd. was doing good business and that if complainant's company could give a loan of Rs. 50,00,000 (Rupees fifty lakh only) to M/s. Ganga Automobiles Ltd. the loan would be repaid with interest by September 13, 1996. The complainant then alleged that the "above said accused persons turn by turn continued visiting the applicant's office" for making request for grant of loan. Relying on their persuasion but without realising their *malafide* and fraudulent intentions, the Finance Company gave Rs. 50,00,000 by means of cheque No. 375453 dated June 19, 1996 drawn on the Punjab & Sind Bank, New Delhi. Complainant then said "the accused persons issued two cheques to the applicant company for repayment of above said money bearing No. 08-4049 and 84450 both dated 13.9.96 for rupees fifty lakhs towards payment of principal sum and Rs. 86625 towards payment of interest respectively and drawn on Corporation Bank". When these cheques were presented for payment, these were returned dishonoured with the remarks that sufficient funds were not available. The Finance Company again contacted the accused persons many times on telephone as well as by writing letters and asked them to make payment but they failed to do so and even started avoiding the complainant. However, the accused persons again came to the office of the Finance Company on January 2, 1997 and asked the Finance Company six months further time for the payment of the amount as they said "a mishappening took place with them as a result of which they are suffering financial constraint". The complainant said he believed their wordings and the accused again issued two cheques on July 2, 1997 for Rs. 50,86,625 towards principal and Rs. 9,40,008 towards interest. This time these cheques were drawn on the Grindleys Bank, Connaught Place, New Delhi and again when presented for payment were returned dishonoured with the endorsement "insufficient funds". Complainant thus said in his report that the aforesaid acts of the accused persons were fraudulent and committed with the common object to cheat the Finance Company. They did not want to refund the money in any way. He, therefore, requested for legal action against the accused persons. On the basis of the First information Report, the Police registered the case against seven persons, namely, Ashwani Suri, G. Sagar Suri (the first Appellant), Sukhvinder Singh, Shalini Suri, Shama Suri (the second appellant), Charanjit Singh and M.L. Kampani. After the investigation, the Police submitted charge sheet dated June 4, 1998 in the court of the Chief Judicial Magistrate against four persons, namely, G. Sagar Suri (the first petitioner) Shama Suri (the second

petitioner), Ashwani Suri and Shalini Suri describing all of them as Directors of M/s. Ganga Automobiles Ltd. It was stated in the charge sheet that investigation was still pending against charanjit Singh, M.L. Kampani and Mukender Singh. A

During the course of investigation, statement of the complainant was again recorded on march 25, 1998 by the Investigating Officer. Now his version was different. He said that in the first week of June 1996 Ashwani Kumar Suri and Mukender Singh contacted his company with the intention to cheat and play fraud. They told him that they and Shalini Suri, Shama Suri, Charanjit Singh and M.L. Kampani were the Directors and arranged conversation with them over the telephone. Ashwani Suri and Mukender Singh then said that they would come later. Complainant said they stated that they would refund the entire amount with interest by September 13, 1996 and thereafter they kept on visiting the Finance Company turn by turn and kept on requesting for the loan for their company M/s. Ganga Automobile Ltd. which they said was running a good business and that their company would earn more profit if a loan of Rs. 50,00,000 was given to their company. Relying on these fraudulent promises and without knowing their malafide intention, an amount of Rs. 50,00,000 by means of cheque was given to them after completing necessary formalities. For repayment of the loan, the accused issued two cheques towards principal and interest. These cheques when presented for payment were returned dishonoured. The Finance Company then contacted the accused persons of the Ganga Automobiles Ltd., telephoned them and also wrote letters asking to refund the money. The accused, however, failed to refund the money and started "hiding" themselves and avoided any contact. Again the accused came to the office of the Finance Company on January 2, 1997 and wanted six months further time for them to make repayment. Complainant then said that the money of the Finance Company had been blocked and since there were financial constraints he was again compelled to believe the accused who gave two cheques dated July 2, 1997. These cheques were also returned dishonoured when presented for payment. The complainant then stated that the accused persons had committed this fraudulent act with common consent with the intent to cheat and grab the money of the Finance Company. Again he confirmed the contents of the First information Report lodged by him. B
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Before lodging of the First Information Report for offences under H

- A Section 406/420 IPC, the complainant, P.K. Sengupta, had already instituted a complaint under Section 138³ of the Negotiable Instruments Act in the Court of the Additional Chief Judicial Magistrate, Ghaziabad. He had named eight accused, namely, (1) M/s. Ganga Automobiles Ltd., (2) Ashwani Suri, Managing Director, (3) Shalini Suri, w/o Ashwani Suri, (4) G. Sagar Suri, Director, (5) Shama Suri w/o G. Sagar Suri, (6) Mukender Singh, (7) Charanjit Singh and (8) M.L. Kampani, the accused 4 to 8 also being shown as Directors of M/s. Ganga Automobiles Ltd. In this complaint the case set out is that accused 2 to 8 came to the office of the Finance Company in the month of June 1996 and wanted loan for M/s. Ganga Automobiles Ltd. for Rs. 50,00,000 which they promised to repay with interest. On their representations the Finance Company gave them a loan of Rs. 50,00,000 by means of a cheque after the accused executed promissory note and agreement to repay the principal amount with interest by September 13, 1996. By getting this loan M/s. Ganga Automobiles Ltd. started earning profits after investing the amount in its business. The accused issued two cheques for repayment of the principal amount and the interest. Both these cheques when presented for payment were returned dishonoured. After the return of the cheques unpaid, the Finance Company contacted the accused by telephone and also sent letters and wanted repayment of its money but the accused failed to pay the same and in fact

3. 138. *Dishonour of cheque for insufficiency, etc., of funds in the account* - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless --

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

started avoiding themselves. On January 2, 1997 the accused again came to the office of the Finance Company and said that some mishappening had occurred with them and six months more time might be given to them. The Finance Company was compelled to believe their statement and after mutual consideration, the accused gave two cheques dated July 2, 1997 for the principal amount and the interest. Again the cheques were returned dishonoured when presented for payment. The Finance Company sent a notice to the accused on July 17, 1997 for repayment of the amount within 15 days and in spite of that no payment was made. It was, thus, alleged that the accused committed an offence under Section 138 of the Negotiable instruments Act. While describing the accused 2 to 8 as Managing Director and Directors of M/s Ganga Automobiles Ltd., the complainant stated that they were "directly responsible and liable for all the activities and affairs of the company and carry out and execute all the affairs in normal course of business with mutual consultation and participate in each and every work of the company". Obviously, it was necessary to state to make all the accused 2 to 8 liable for offence under Section 138 of the Negotiable Instruments Act. After examining the complainant, learned Additional Chief Judicial Magistrate was of the opinion that there was *prima facie* case made out against the accused persons for an offence under Section 138 of the Negotiable Instruments Act and by his order dated August 27, 1997 ordered summoning them all.

In the Investigation of FIR No. 517 of 1997 it was found that both G. Sagar Suri and his wife Shama Suri were not the Directors of M/s. Ganga Automobiles Ltd. in the counter affidavit filed by L.V. Singh styling himself as authorised signatory on behalf of the second respondent P.K. Sengupta, the complainant, it is admitted that the appellants are not the Directors of Ganga Automobiles Ltd. It is, however, stated that G. Sagar Suri is not only the authorised signatory on behalf of Ganga Automobiles Ltd. but he is also authorised to sign cheques on behalf of that company and further that G. Sagar Suri is the major shareholder of the company. It was submitted that the cheques which bounced were signed by G. Sagar Suri as authorised signatory of Ganga Automobiles Ltd. in the counter affidavit filed by B.S. Chandel, Sub-inspector on behalf of the first respondent it is stated that both G. Sagar Suri and his wife Shama Suri are the parents of Ashwani Kumar Suri, Managing Director of Ganga Automobiles Ltd. and 'they have full control over the day to day affairs of the company'. As to how the later part of this statement has been made, nothing has been

A said. This counter-affidavit is also silent as to why charge sheet was filed only against 5 persons, namely, Ashwani Kumar Suri, Managing Director, his wife Shalini Suri and his partner G. Sagar Suri and Shama Suri and why other Directors were left out and why investigation against the left out Directors is still pending and at what stage and particularly when common role is assigned to all of them. From this it would appear that four persons
B have been roped in, in order to coerce on them to refund the money to the Finance Company. Charge Sheet also does not show if the investigating agency looked into the complaint filed under Section 138 of the Negotiable instruments Act.

C It was submitted by Mr. Lalit, learned counsel for the second respondent, that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, High Court
D cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.*, [1998] 5 SCC 749 and *Ashok Chaturvedi & Ors. v. Shitul H. Chanchani & Anr.*, [1998] 7 SCC 698, wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if
E he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

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Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law.
G 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 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
H or otherwise to secure the ends of justice.

In *State of Karnataka v. L. Muniswamy and Others*, AIR (1977) SC 1489 = [1977] 3 SCR 113, this Court said that in the exercise of the wholesome power under Section 482 of the Code High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed.

In *Kurukshatra University and Another v. State of Haryana*, AIR (1977) SC 2229 = [1977] 4 SCC 451 High Court in exercise of its powers under Section 482 of the Code quashed the First information Report when police had not even commenced investigation into the complaint. This Court said that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice and that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In the case First Information Report was lodged by Warden, Kurukshatra University. Acting on that report the police registered a case under Sections 443 and 452, IPC against one Vinay Kumar, who filed a petition in the High Court praying that FIR be quashed. High Court without issuing notice to the University quashed the FIR. Not only that High Court directed the State of Haryana to pay a sum of Rs. 300 by way of cost to Vinay Kumar. High Court even made observations concerning the University's power to enforce discipline in the Campus. This Court observed that the High Court seemed to fail that outsiders can with impunity flout the University rule that no outsider shall stay in a university hostel. It said that such a view is plainly calculated to subvert discipline in a sphere where it is most needed. This Court said that High Court ought not to have made these observations without, at least, giving a hearing to the University. This Court set aside the judgment of the High Court and allowed investigation to proceed.

In *Chandrapal Singh and Others v. Maharaj Singh and Another*, AIR (1982) SC 1238, the judgment started as under :-

"A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which *prima facie* appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."

This Court said :-

- A "We see some force in the submission but it is equally true that charged and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 Cr. P.C."
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This Court said that the Chief Judicial Magistrate, Secunderabad ought not to have taken cognizance of the proceedings. It said it considered it to be a fit case to involve jurisdiction under Section 482 of the Code.

- D In the circumstances of the case in hand conclusion is inescapable that invoking the jurisdiction of criminal court for allegedly having committed offences under Sections 406/420 IPC by the appellants is certainly an abuse of the process of law. In the counter affidavit filed on behalf of the complainant it is now admitted that none of the two appellants is a
- E Director of Ganga Automobiles Ltd. Only in respect of the first appellant it is stated that he is the authorised signatory of that company and that in fact he had signed the cheques which were returned dishonoured. Apart from making the omnibus statement that the first appellant with dishonest intentions and misrepresentations got loan of Rs. 50,00,000 from the complainant company for Ganga Automobiles Ltd. there is nothing said as to
- F what were those misrepresentations and how the complainant company was duped. The only part attributed to the second appellant is that the first appellant along with Ashwani Suri, Managing Director and Mukender Singh, Director approached the complainant in June, 1996 and had represented that they and Shalini Suri, Shama Suri (Appellant No. 2), Charanjit Singh and M.L. Kampani were the Directors of Ganga Automobiles Ltd.
- G There is nothing stated in the counter affidavit about the role, if any, played by the second appellant. A complaint under Section 138 of the Negotiable Instruments Act has already been filed by the complainant. There is no allegation of any corrupt practice by any of the accused as if they duped
- H the Finance Company in parting with the amount of Rs. 50,00,000. As

normally understood business of a finance company is to invite deposits, pay interest on that and also to give loans and earn interest. A finance company also advances short term loans. In that case it is essentially a commercial transaction. After first two cheques were dishonoured two cheques were again issued, which again were dishonoured resulting in filing of complaint under Section 138 of the Negotiable Instruments Act. None of the respondents has been able to explain as to why offences under Sections 406/420 IPC were not added in the complaint filed under Section 138 of the Negotiable Instruments Act and why resort was had to filing of a separate First Information Report. Certain motive has been attributed to the investigating officer but we think we need not go into that. There is also no answer as to why investigation against three other directors was still stated to be pending when same role is assigned to all the accused. In the FIR it is Sukhvender Singh, who first approached the complainant, but later it is Mukender Singh. There is no answer as to why there are two different names. as to who are the Directors of Ganga Automobiles Ltd. could have been easily found by the complainant after going through the records of Registrar of Companies and also about its status. As noted above, in the subsequent statement by the complainant he does not assign any role to the first appellant. The allegation that in the first instance three persons contacted the complainant company, who told the complainant of other Directors with whom the complainant conversed on telephone appears to be rather improbable.

We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director or Ganga Automobile Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under Section 138 of the Negotiable instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.

A The appeal is allowed and judgment of the High Court dated May 6, 1999 is set aside and prosecution of the appellants under Sections 406/420 IPC in Criminal Case No. 674/97 (now Criminal Case No. 6054/98) and pending the Court of Chief Judicial Magistrate, Ghaziabad is quashed.

A.Q.

Appeal allowed.

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