



REPORTABLE

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

CRIMINAL APPEAL NO. _____ OF 2024
**(Arising out of Petition for Special Leave to Appeal
(Criminal) No.4415 OF 2023)**

SACHIN GARG **...APPELLANT**

VERSUS

STATE OF U.P & ANR. **...RESPONDENTS**

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted.

2. The appellant, at the material point of time, stood posted as the Head of factory of Exide Industries Limited (“EIL”), a corporate entity, situated at Bawal, District Rewari, Haryana. The respondent no.2, ran a proprietary concern, Ambika Gases. He was the supplier of Dissolved Acetylene Gas (“DA Gas”), which is used for manufacturing battery in the said factory. So far as the present appeal is concerned, the dispute is over a purchase order issued for the supply of the said item. The original purchase order dated 01.04.2019 was amended twice on the basis of representations made by the respondent no.2. The first

amendment was made on 18.07.2019 by which the rate was increased from Rs.1.55 per unit to Rs.1.65 per unit and the second amendment was made on 20.12.2019 through which the rate per unit was brought down to Rs.1.48 from Rs.1.65. An invoice was raised by the respondent no.2 with the aforesaid rates for a total sum of Rs.9,36,693.18/-. The dispute revolves around non-payment of the said sum. However, it has been contended by the appellant that EIL, after ascertaining the market price of DA Gas from other vendors, by a letter dated 29.06.2020, reconciled the accounts by informing respondent no.2 of what it claimed was foul play with respect to revision of rates and appropriated the alleged illegal amounts claimed by the vendor (respondent no.2) from the invoice.

3. The respondent no.2 instituted a complaint case in the Court of the Chief Judicial Magistrate, Ghaziabad and the substance of the complaint would be revealed from the following passages of the petition of complaint (registered as Misc. Application No.317/2020):-

“...The Applicant through his aboenamed work do the job work of D.A. Gas. Opposite Party Sachin Garg is posted as Material Head of Exide Industries Ltd. situated at Plot No. 179, Sector-3, Bawal, District- Rewari, Haryana and Opposite Party Sachin Garg also used to issue Purchase Order to the Applicant’s company on behalf of the Exide Company and only the Opposite Party Sachin Garg used to

make payment of Job Work to the Applicant. Previously, the Transaction of Opposite Party was normal with the Applicant's company and no problem was ever persisted in the payment, due to which, the Applicant started trusting on the Opposite Party and Company. Sachin Garg through the aforesaid company in the capacity of Purchase Head, issued Purchase Order to the Applicant's Company, in which, it was agreed between the Opposite Party and Applicant to do job work @ Rs.1.65/- per piece w.e.f. 18.02.2019, which remained continued on the same rates till December, 2019 and the Opposite Party was regularly making the payment of job work to the Applicant on the same rates. In the month of December, in pursuance of the Purchase Order of Opposite Party, According to Purchase No. 4800253593 dated 01.04.2019, done the job work of Filled DA Gases HSN Code 290129910 quantity 3,07,114/- pieces @ Rs.165 to the tune of Rs.5,06,738.10/-, and Filled DA Gases HSN Code 29012910 quantity 1,93,966/- pieces @ Rs.1.48 per piece to the tune of Rs. 2,87,069.68/- and 18% GST to the tune of Rs.1,42,885.40/-0, in this manner did the job work of total amount Rs.9,36,693.18/-. The material Head of Opposite Company namely Sachin Garg by admitting the job work done by the Applicant vide Purchaser Order No. 4800253593 dated 01.04.2019, and got done the job work according to the piece rate quoted by the Applicant. On 03.07.2020, Applicant sent Bill/Invoice No. AG.SR/20-21/01 dated 02.07.2020 of Rs.9,36,693.18/- to the Material Head of Opposite Party Company namely Sachin Garg through registered post and also sent the aforesaid invoice through email on 14.07.2020, which were received by Opposite Party Sachin Garg. Applicant repeatedly requested the Opposite Party for payment through email, but, the Opposite Party did not make payment of Rs.9,36,693.18/- of job work done by the Applicant Company in the month of December, 2019 and he by keeping the Applicant in dark, kept giving assurances of making full payment. When, the Applicant put more pressure on the Opposite Party for payment, then, Opposite Party stopped to get done the job work from the Applicant Company, and on 29.06.2020, sent a letter with quotation to the Applicant Company, in which, the Opposite Party has fixed the rate of job work done by the Applicant company @ Rs.1.40/- per piece w.e.f. April, 2019, whereas, the job work of Opposite Party was completed by the Applicant Company in the month of December, 2019, in which, Opposite Party on 20.12.2019, requested to change the rate of job work at the rate of Rs.1.48/- per piece, which was accepted by the Applicant w.e.f. 20.12.2019. In this manner, after 20.12.2019, Rs.1.48/- per piece and prior to

that the rate of Rs.1.65/- per piece was payable by the Opposite Party, but, the Opposite Party with intention to cheat the Applicant in deliberate manner, and with intention to cause financial loss to him and not to pay the money, has committed criminal breach of trust with the Applicant, which is a cognizable offence. On demanding money by the Applicant, the Opposite Party is abusing him with filthy language and threatening him to kill.....”

(quoted verbatim from the paperback)

4. The learned Magistrate upon recording initial deposition of Saurabh Sharma, the proprietor of the supplier firm and his father Padam Kant Sharma issued summons for trial under Sections 406, 504 and 506 of the Indian Penal Code, 1860 (“1860 Code”) on 18.08.2021.

5. The appellant had approached the High Court at Allahabad under Section 482 of Code of Criminal Procedure, 1973 (“the 1973 Code”) by filing, Criminal Miscellaneous Application No.18603/2021, for quashing the said summons and also the complaint case itself. The judgment of the High Court was delivered dismissing the application filed by the appellant on 23.03.2023 and it is this judgment which is under appeal before us. The main reason for dismissal of the appellant’s quashing plea was that the subject-complaint involved adjudication of disputed questions of fact. Referring to the judgments of this Court in the cases of **Neeharika Infrastructure Pvt. Ltd. -vs- State of Maharashtra and Ors.** [(2021) 19 SCC 401], **R.P. Kapur -vs- State**

of Punjab [AIR 1960 SC 866], **State of Haryana and Ors. -vs- Bhajan Lal and Ors.** [1992 SCC (Cr.) 426], **State of Bihar and Anr. -vs- P. P. Sharma, IAS and Anr.** [1992 SCC (Cr.) 192] and lastly **Zandu Pharmaceutical Works Ltd. and Ors. -vs- Mohd. Sharaful Haque and Another** [2005 SCC (Cr.) 283], the High Court refrained from considering the defence of the accused.

6. In the case of **Neeharika Infrastructure Ltd** (supra), a three-judge Bench of this Court examined the factors which were to be considered by the High Court for quashing an F.I.R. at the threshold, relating to factors which would apply to a proceeding which forms the subject-matter of the present case. Referring to the judgment in the case of **R.P. Kapur** (supra), principles for quashing were set down as:-

“10.1 The first case on the point which is required to be noticed is the decision of this Court in the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

7. In the same decision (i.e. **Neeharika Infrastructure Ltd.**)

(supra), the seven-point edict laid down in the case of **Bhajan Lal**

(supra) was also referred to. These are:-

“102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. It was observed in the judgment under appeal that the applicant has got the right of discharge which could be freely taken up by him before the Trial Court. Mr. Mukul Rohatgi, learned senior counsel has appeared in this matter on behalf of the appellant along with Mr. Guru Krishna Kumar, while the case of respondent no.2 has been argued by Ms. Divya Jyoti Singh. State

was represented before us by Mr. Sarvesh Singh Baghel. The main contentions urged by Mr. Rohatgi is that the complaint made against the appellant does not disclose any criminal offence and at best, it is a commercial dispute, which ought to be determined by a Civil Court. In so far as the allegations of commission of offence under Sections 405 and 406 are concerned, he has relied on a judgment of this Court in the case of **Deepak Gaba and Ors. -vs- State of Uttar Pradesh and Another** [(2023) 3 SCC 423]. This decision deals with the basic ingredients of a complaint under Sections 405 and 406 of the 1860 Code and it has been held in this judgment:-

“15. For Section 405 IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

9. The judgment in **Deepak Gaba** (supra) was delivered in a case in which there was subsisting commercial relationship between the parties and the complainant had made allegations of a forged

demand, for a sum of around rupees six and a half lakhs. On that basis a summoning order was issued for trial under Section 406 of the 1860 Code. A coordinate Bench of this Court held:-

“17. However, in the instant case, materials on record fail to satisfy the ingredients of Section 405 IPC. The complaint does not directly refer to the ingredients of Section 405IPC and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account. On these aspects, the summoning order is equally quiet, albeit, it states that “a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of statements by Shubhankar P. Tomar and Sakshi Tilak Chand”. A mere wrong demand or claim would not meet the conditions specified by Section 405IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405 IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405IPC, a mere dispute on monetary demand of Rs 6,37,252.16p, does not attract criminal prosecution under Section 406IPC.”

10. The same view was expressed by this Court in the cases of **Prof. R.K. Vijayasarathy and Anr. -vs- Sudha Seetharam and Anr.** [(2019) 16 SCC 739] and **Vijay Kumar Ghai and Ors. -vs- State of West Bengal and Ors.** [(2022) 7 SCC 124]. The judgment of this Court in the case of **Dalip Kaur and Ors. -vs- Jagnar Singh and Anr.** [(2009) 14 SCC 696] has also been cited in support of the appellant’s case and in this decision it has been, inter-alia, held:-

“10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code.”

This goes for allegations relating to Section 406 of the 1860 Code.

11. So far as the allegations of commission of offence under Sections 504 and 506 of the 1860 Code are concerned, we have gone through the petition of complaint as well as the initial depositions. The allegations pertaining to the aforesaid provisions of the 1860 Code surfaces in the last portion of the petition of complaint. The complainant, in his initial deposition has not made any statement relatable to criminal intimidation. But his father made the following statement at that stage under Section 202 of the 1973 Code:-

“...With effect from 18.07.2019, the Opposite Party had fixed rate of job work as Rs.1.65/- per piece with the company of my son, which remained continued till December, 2019 and Opposite Party used to make payment of job work to my son, also on this rate and an amount of Rs. 9,36,693.18/- of my son was due for payment on the Opposite Party, due to which, he demanded the Opposite Party to make payment, but, Opposite Party did not make payment and after doing calculation on less rates, he said that no amount is due for payment and on demanding money, the Opposite Party has abused my son with filthy language and has threatened him to kill. An amount of Rs. 9,36,693.18/- of my son is due for payment on the Opposite Party, which he clearly refused to pay the same.”

(quoted verbatim from paperbook)

12. On behalf of the complainant, it has been urged that a detailed description of the offending acts need not be disclosed at the stage at which the appellant wants invalidation of the complaint. He has drawn our attention to the judgment of this Court in the case of **Jagdish Ram -vs- State of Rajasthan and Another** [(2004) 4 SCC 432]. In this judgment it has been, inter-alia, held:-

“10.... It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

Similar views have been expressed by this Court in the case of **Birla Corporation Ltd. -vs- Adventz Investments and Holdings Ltd. and Ors.** [(2019) 16 SCC 610] as also **Smt Nagawwa -vs- Veeranna Shivalingappa Konjalgi and Others** [(1976) 3 SCC 736].

13. As far as the allegations of criminal intimidation are concerned, our attention has been drawn to the judgment of this

Court in the case of **Fiona Shrikhande -vs- State of Maharashtra and Another** [(2013) 14 SCC 44]. It has been held in this case that the petition of complaint need not repeat the actual words or language of insult word by word and the complaint has to be read as a whole. If the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence it should be sufficient to bring the complaint within the ambit of the aforesaid provision. It has also been argued on behalf of the respondent no.2 that the appellant in any event has got the right to apply for discharge and the petition of complaint does not suffer from the defect of not having made out any offence at all. This was the view taken by the High Court.

14. Past commercial relationship between the appellant's employer and the respondent no.2 is admitted. It would also be evident from the petition of complaint the dispute between the parties centred around the rate at which the assigned work was to be done. Neither in the petition of complainant nor in the initial deposition of the two witnesses (that includes the complainant) the ingredients of the offence under Section 405 of the 1860 Code surfaced. Such commercial disputes over variation of rate cannot

per se give rise to an offence under Section 405 of the 1860 Code without presence of any aggravating factor leading to the substantiation of its ingredients. We do not find any material to come to a prima facie finding that there was dishonest misappropriation or conversion of any material for the personal use of the appellant in relation to gas supplying work done by the respondent no.2. The said work was done in course of regular commercial transactions. It cannot be said that there was misappropriation or conversion of the subject property, being dissolved acetylene gas which was supplied to the factory for the purpose of battery manufacturing at EIL. The dispute pertains to the revision of rate per unit in an ongoing commercial transaction. What has emerged from the petition of complaint and the initial deposition made in support thereof that the accused-appellant wanted a rate variation and the entire dispute arose out of such stand of the appellant. On the basis of these materials, it cannot be said that there was evidence for commission of offence under Section 405/406. The High Court also did not apply the test formulated in the case of **Dalip Kaur** (supra). We have narrated the relevant passage from that decision earlier.

15. In the case of **Binod Kumar and Ors. -vs- State of Bihar and Another** [(2014) 10 SCC 663], a coordinate Bench of this Court dealt with a criminal complaint arising out of retention of bill amount in course of commercial transaction. The Court found essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint were missing. The High Court's judgment rejecting the plea for quashing the criminal proceeding was set aside by this Court. The reasoning for quashing the criminal proceeding would be revealed from paragraphs 18 and 19 of the Report, which reads:-

“18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or

dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed.”

16. So far as the criminal complaint and the initial depositions with which we are concerned in this case, the factual basis is broadly similar. We have reproduced these materials earlier in this judgment. We do not find they carry the ingredients of offence as specified in Section 405 of the 1860 Code.

17. The allegation of criminal intimidation against the accused is made in the complaint statements made by the appellant, no particulars thereof have been given. Both in the complaint petition and the initial deposition of one of the witnesses, there is only reproduction of part of the statutory provision giving rise to the offence of criminal intimidation. This would constitute a mere bald allegation, short of any particulars as regards to the manner in which threat was conveyed.

18. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of **Jagdish Ram** (supra). The same proposition of law has been laid down in the case of **Pepsi Foods Ltd. and Anr. -vs-**

Special Judicial Magistrate and Ors. [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial. A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court.

19. It is true that the appellant could seek discharge in course of the proceeding itself before the concerned Court, but here we find that no case at all has been made out that would justify invoking the machinery of the Criminal Courts. The dispute, per se, is commercial in nature having no element of criminality.

20. The appellant also wanted dismissal of the complaint and the orders passed in ensuing proceeding on another ground. The respondent no. 2's allegations were against EIL, for whom he did the job-work. The appellant's argument on this point is that the complaint should not have been entertained without arraigning the principal company as an accused. The judgment relied upon on this point is a decision of a Coordinate Bench in the case of **Sharad Kumar Sanghi -vs- Sangita Rane** [(2015) 12 SCC 781]. This was a case where complaint was made by a consumer for being sold a damaged vehicle under Section 420 of the 1860 Code. But arraigned as accused was the managing director of the dealer, the latter being a corporate entity. Cognizance was taken in that case and summons were issued. The accused failed to get relief after invoking the High Court's jurisdiction, but two-judge Bench of this Court quashed the proceeding primarily on the ground that the company was not made an accused. The Coordinate Bench found that the allegations were made against the company, which was not made a party. Allegations against the accused (managing director of that company) were vague. So far the present case is concerned, the ratio of the decision in the case of **Sharad Kumar Sanghi** (supra) would not be applicable for ousting the complaint

at the threshold on this ground alone. The perceived wrongdoing in this case has been attributed to the appellant, though the complaint petition acknowledges that the job-work was being done for EIL. Moreover, the allegation of criminal intimidation is against the appellant directly – whatever be the value or quality of such allegations. Thus, for that reason the complaint case cannot be rejected at the nascent stage on the sole ground of not implicating the company. But as otherwise we have given our reasons for quashing the complaint and the summons, we do not find any reason to dilate further on this point.

21. We accordingly set aside the impugned judgment and quash the Criminal Complaint Case No.7990 of 2020 as also the summoning order issued on 18.08.2021. The appeal stands allowed in the above terms. All consequential steps in connection with the said proceeding shall stand quashed.

..... **J.**
(ANIRUDDHA BOSE)

..... **J.**
(SANJAY KUMAR)

NEW DELHI;
30th JANUARY, 2024