CASE NO.:
Appeal (crl.) 1059 of 2001

PETITIONER:
KAMALADEVIAGARWAL

RESPONDENT:
STATE OF WEST BENGAL AND ORS.

DATE OF JUDGMENT: 17/10/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 284

The Judgment of the Court was delivered by SETHI, J. Leave granted.

Aggrieved by the impugned order of the High Court quashing her com-plaint and the order of the Magistrate issuing the process against the respond-ents for the offences under Sections 465,467,468,471 and 120-B of the Indian Penal Code, the appellant has approached this Court by way of this appeal for setting aside the order of the High Court with direction to the Magistrate for proceeding with the complaint in accordance with law. It is submitted that the High Court of Calcutta has passed the impugned order in exercise of its power under Section 482 of the Code of Criminal Procedure completely ignoring the mandate of law as settled by various pronouncements of this Court and other High Courts in the country.

The complainant claims to be a partner of M/s. Chandmal Gangabishan, a firm registered under the Partnership Act and carrying on business of Bhujia and other allied products with the trade mark HALDIRAM BHUJIAWALA. According to the averments made in the complaint, the partnership business was initially commenced in the year 1956 with four partners, namely, Ganga Bishan Agarwal, Moolchand Agarwal, Rameshwarlal Agarwal and Satidas Agarwal. Rameshwar Agarwal retired from the firm in the year 1958. The firm was reconstituted by admitting Shri Shivkishan Aggarwal as partner in place of the retiring partner. They started using the brand name HALDIRAM BHUJIAWALA in the year 1965. The appellant was admitted as a partner of the said firm on 31st October, 1969. An application for registration of trade-mark of HALDIRAM BHUJIAWALA and Logo HRB was filed with the appropriate authority by all the partners on 29th December, 1972. The said application was advertised inviting objections. Opposition proceedings were commenced at the instance of one Madanlal on 12th January, 1976 which was rejected on 16.4.1980 and the trademark was registered on 27th January, 1981 in the name of the firm, of which the appellant was a partner. The appellant alleged that when in the first week of June, 1999 she went to Delhi to attend her ailing son Ashok Kumar Aggarwal, found him to be suffering from serious mental depression on account of serious nervous breakdown. After inquiries and persuasions her son told the appellant in July, 1999 that he had suffered mental shock upon closure of his opened shop in the year 1991 at Delhi by reason of the order of injunction passed by the court of law. He disclosed that the said injunction had been granted against him on the ground that the partnership of which the appellant was also a partner stood dissolved on 16.11.1974. She informed her son of not having signed any deed of dissolution of the partnership. When Ashok Kumar Aggarwal handed over to the appellant a xerox copy of the deed of dissolution, she was shocked to know that her signatures had been forged. Upon scrutiny it appeared that the signatures, purporting to be of Gangabishan Aggarwal and Moolchand Aggarwal were also not genuine and had been forged besides her signatures. She alleged that Accused Nos. 1 to 4 have brought into existence the self-

forged deed of dissolution for their personal gains and to the detriment of the partners of the firm of M/s. Chandmal Gangabishan. She referred to number of circumstances in her complaint to show that the forgery had been committed by the respondent-accused. In para 22 of the complaint, the appellant catalogued a number of instances allegedly showing the forgery by the respondents.

The Trial Magistrate received the complaint on 21st January, 2000 and fixed the next date on 7th February, 2000 for examination of the complainant and her witnesses in terms of Section 200 of the Code of Criminal Procedure. On request of the appellant, the case was adjourned to 10th March, 2000 when she appeared before Magistrate along with her three witnesses out of whom one was hand-writing expert. After recording their statements, the case was ad-journed and ultimately the Trial Magistrate, vide his order dated 5.4.2000, found that the appellant had made out a prima facie case under Sections 465, 467, 468, 471 and 120-B of the Indian Penal Code against all the accused persons and, therefore, issued summons for their presence on the next date fixed for 19th June, 2000. Instead of appearing before the Trial Magistrate and contesting the case, the respondents chose to approach the High Court by Way of a petition under Section 482 of the Code of Criminal Procedure praying for quashing of the proceedings initiated and process issued against them. Their application was allowed vide the order impugned, hence the present appeal.

Mr. V.A. Mohta, Sr. Advocate appearing for the appellant submitted that the impugned judgment is in conflict with the various judgments of this Court. It is submitted that merely because a civil action is pending between the parties can be no ground to quash the proceedings as between the civil and criminal proceedings, the criminal matters should be given precedence and that only because the genuineness of the documents is required to be determined in both the proceedings, the High Court was not justified in quashing the proceedings. It is submitted that the nature of criminal proceedings and the onus of proof required in such proceedings being different than the proceedings in the civil suit, the High Court committed a mistake by quashing the proceedings. Per contra Shri U.R. Lalit, Sr. Advocate supported the judgment of the High Court and submitted that besides law, propriety demanded that when a higher court was seized of the matter, though in civil proceedings, Magistrate should have not proceeded with the matter by issuance of process against the respondents. Relying upon some judgments of this Court, the learned counsel has contended that the pendency of the proceedings before the Trial Magistrate would amount to abuse of the process of the court. The impugned order is stated to have been passed to secure the ends of justice. Referring to some judgments, the attending circumstances and the evidence led in the case, the learned counsel has tried to impress upon us that the order impugned is just and reasonable which does not require interference by this Court in exercise of its power under Article 136 of the Constitution of India.

This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken it at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. In R.P. Kapur v. State of Punjab, AIR (1960) SC 866 this Court held :

"It is well established that 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 ac-cused 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. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the

inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases were it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceed-ings in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceed-ing the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise 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 appreciat-ing evidence arises; it is a matter of merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against me accused person. A third category of the cases in which the inherent jurisdiction of High Court can be successfully invoked may also arise. In cases falling under this category 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 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 accu-sation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an inquiry 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 part 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. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In re: Shripad G. Chandavarkar, AIR (1928) Bom 184; Jagat Chandra Majumdar v. Queen Empress, ILR 26 Cal. 786, Dr. Shankar Singh v. State of Punjab, 56 Pun. LR 54: AIR (1954) Punj. 193, Nripendra Bhusan Roy v. Gobinda Bandhu Majumdar, AIR (1924) Cal. 1018 and Ramanathan Chettiyar v. Sivarama Subramania, ILR 47 Mad. 722 : AIR (1925 Mad. 39)."

This judgment was reiterated and following in Hazari Lal Gupta v. Rameshwar Prasad & Anr., AIR (1972) SC 484, State of Karnataka v. L Muniswamy & Ors., AIR (1977) SC 1489, State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR (1992) SC 604 and various other pronoucements.

Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in State of Haryana v. Bhajan Lal, [1992] Suppl. 1 SCC 335, Rajesh Bajaj v. State NCT of Delhi, [1999] 3 SCC 259 this Court in Trisuns Chemical Industry v. Rajesh Agarwal & Ors., [1999] 8 SCC 686 held :

"Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal, [1992] Supp. 1 SCC 335 and Rajesh Bajaj v. State NCT of Delhi, [1999] 3 SCC 259.

In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations : (SCC p.263, para 10)

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transac-tion. But that is hardly a reason for holding that the offence of cheating were committed in the course of commercial and also money transactions."

In Medchi Chemical & Pharma (P) Ltd. v. Biological E. Ltd. & Ors., [2000] 3 SCC 269 this Court again reiterated the position and held :

"Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law.....

Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The observations in Nagawwa v. Veeranna Shivalingappa Konjalgi, [1976] 3 SCC 736 lend support to the above statement of law : (SCC p.741, para 5).

"(1) Where the allegations made in the complaint or the state-ments 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 ab-surd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for pro-ceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inad-missible; 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."

The cases mentioned by us are purely illustrative and provide suffi-cient guidelines to indicate contingencies where the High Court can quash proceeding."

In Lalmuni Devi (Smt.) v. State of Bihar & Ors., [2001] 2 SCC 17 this Court held :

"There could be no dispute to the proposition that if the complaint does not make out and offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated at this prima facie stage, that this is a frivolous

complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed." Again in M. Krishnan v. Vijay Singh & Anr., (Criminal Appeal No. 1028 of 2001 decided on 11.10.2001) this Court held that while exercising powers under Section 482 of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature. In a case where the accused alleged that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the civil court, the court observed :

- "Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complaint failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, appre-hending criminal action against them, would be encouraged to frus-trate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distin-guished from the criminal action, have to be adjudicated and con-cluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not appliable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

Referring to the judgments of this Court in Smt. Manju Gupta v. Lt. Col. M.S. Paintal, [1982] 2 SCC 412, Sardool Singh & Anr. v. Smt. Nasib Kaur, [1987] Supp. SCC 146 and MA. Karamchand Ganga Pershad & Anr. v. Union of India & Ors., AIR (1971) SC 1244, the learned counsel appearing for the respondents submitted that the High Court was justified in quashing the com-plaint which does not require any interference by this Court in this appeal.

In Manju Gupta’s case (supra) the criminal proceedings were quashed under the peculiar circumstances of the case. After referring to para 20 of the complaint and holding "such an averment in our view is clearly inadequate and insufficient to bring home criminality of the appellant in the matter of the alleged offences", the court found that simply because accused was the Secretary of the Society, the Magistrate was not justified in presuming her connection or complicity with the offence merely on that ground. The allega-tions in the complaint pertinent to forgery of rent receipts was held to be vague and indefinite. Sardool Singh’s case (supra) was also decided on its facts on the basis of law earlier settled by this Court. In Karamchand Ganga Pershad’s case (supra) an observation was made that "it is a well established principle of law that decisions of the civil courts are binding on the criminal courts. The converse is not true". In that case the appellants had filed a writ petition in the High Court for the issuance of appropriate directions requiring the Union of India to release and deliver to them some consignments of maize transported from the State of Haryana to Howrah. Alleging that the movement of maize had been controlled by the provisions of Essential Commodities Act read with Northern Inter-Zonal Maize (Movement Control) Order, 1967 promulgated by the State Government, the restriction on export imposed by the Order were removed by the State of

Haryana in October, 1967 which was duly published and advertised. The contention of the Union was that the State of Haryana had not lifted the ban on export and further that it had no power to lift the ban. The High Court dismissed the writ petition on the sole ground that in view of the pendency of the criminal proceedings before some court in the State of West Bengal it was inappropriate for the High Court to pronounce on the question arising for decision in the writ petition. In that context the court held :

"In our opinion the High Court seriously erred in coming to this conclusion. If the appellants are able to establish their case that the ban on export of maize from the State of Haryana had been validly lifted all the proceedings taken against those who exported the maize auto-matically fall to the ground. Their maintainability depends on the assumption that the exports were made without the authority of law. It is a well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true. The High Court after entertaining the writ petitions and hearing arguments on the merits of the case should not have dismissed the petitions merely because certain consequential proceedings had been taken on the basis that the exports in question were illegal." We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof require in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of "beyond reasonable doubt". A Constitution Bench of this Court, dealing with the similar circumstances, in M.S. Sheriff & Anr. v. State of Madras & Ors., AIR (1954) SC 397 held that where civil and criminal cases are pending, precedence shall be given to criminal proceedings. Detailing the reasons for the conclusions, the court held : "As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it expedient to stay it in order to give precedence to a prosecution ordered under s.476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished." In the present case we have noticed that before issuance of the process, the Trial Magistrate had recorded the statement of the witnesses for the com-plainant, perused the record including the opinion of the expert and his depo-sition and prima facie found that the respondents were guilty for the offences for which the process was issued against them. The High Court rightly did not refer to any of those circumstances but quashed the proceedings only on the ground :
"Consideration is and should be whether any criminal proceeding instituted before a court subordinate to this court should be allowed to continue when the very foundation of the criminal case, namely, forgery of document is under scrutiny by this court in a civil proceed-ing instituted by same person i.e., the complainant in the criminal case. In my considered view it would not be proper to allow the criminal proceeding to continue when the validity of the document (deed of dissolution is being tested in a civil

proceeding before this court. Judicial propriety demands that the course adopted by the Hon'ble Supreme Court in the case of Manju Gupta (supra) and Sardool Singh (supra) should be followed. If such course of action is adopted by this court, that would be in consonance with the expression used in Section 482 of the Code of Criminal Procedure - "or otherwise to secure the ends of justice". In both the case referred to above civil suits were pending, where the validity and genuineness of a document was challenged. It was held by the Hon'ble Supreme Court that when the question regarding validity of a document is subjudice in the civil courts, criminal prosecution, on the allegation of the document being forged, cannot be instituted." In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondent. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. In the result the appeal is allowed by setting aside the impugned order passed by the High Court and restoring the order of the Magistrate with direction to proceed with the trial of the case in accordance with the provision of law and decide the same on merits.