

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32095 of 2023**

Arising Out of PS. Case No.-7271 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. JASWINDER SINGH @ JASWINDER SINGH SETHI Son of Joginder Singh Managing Director of the Comed Chemicals Limited, 359, Rania, Savli, P.S.- Bhandarva, District - Vadodara, Gujrat - 391780.
 2. Satvinder Pal Kaur Wife of Jaswinder Singh Sethi Director, the Comed Chemicals Limited, 359, Rania, Savli, P.S. - Bhandarva District - Vadodara, Gujrat - 391780.
 3. Jashanjit Sethi @ Jashanjit Singh Son of Jaswinder Singh @ Jaswinder Singh Sethi Director, the Comed Chemicals Limited, 359, Rania, Savli, P.S.- Bhandarva, District - Vadodara, Gujrat - 391780.

... .. Petitioners

Versus

1. The State of Bihar
2. The Afirst Lifescience Pvt. Ltd. Registered office located at Sheresthan, Exhibition Road, South Gandhi Maidan, District - Patna, Through its authorized representative Sri Ramesh Kumar, Son of Late Ram Sagar Singh, Resident of village and Annua, P.S.- Sonbhadra, Banshi Suryapura, District - Arwal, Bihar.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rajesh Kumar Sharma, Advocate Mr. Yash Anand, Advocate
For the State	:	Mr. Binod Kumar, APP
For the Opp. Party No.2	:	Mr. Sunil Kumar, Advocate Mr. Pankaj Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 25-11-2024**

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the opposite party no.2.

2. This application has been filed for quashing the order dated 01.11.2022 passed by the learned A.C.J.M.-X,



Patna in connection with Complaint Case No.7271 of 2021, by which the learned Magistrate has taken cognizance against the petitioners for the offence under sections 417 and 418 of the Indian Penal Code.

3. As per the complaint, the petitioners are the Directors of M/s. Comed Chemicals Limited, Vadodara (Gujarat), hereinafter to be referred as the “petitioner-company”, which is engaged in the business of manufacturing of medicines. A trademark license agreement dated 06.03.2013 was duly executed between the petitioner - company and the complainant (opposite party no.2) for manufacturing the medicines as per the order given by the complainant. It has been alleged in the complaint petition that after the agreement, the transactions were going on smoothly and the quality of the medicines prepared by the petitioner-company was to the satisfaction of the complainant. In the year 2015, the complainant supplied the medicines prepared by the petitioner-company to Gujarat and Nigeria and other places but the said medicines were returned from many places as the quality of the medicine was bad. In the agreement, it was agreed between the parties that the petitioner-company will not share or save the formula which has been given by the complainant. It has also been alleged that thereafter



the complainant returned the said medicines to the petitioner-company and asked them to make good quality of medicines but despite repeated requests, the petitioners company did not make the good quality of medicines. Thereafter, the complainant sent legal notice to the petitioner- company, but the petitioner-company did not respond the same and thereby, the complainant has suffered a loss of Rs.25,00,000/-. Accordingly, the complaint case has been lodged.

4. Learned counsel for the petitioners submits that the allegation against the petitioners in the complaint petition are false and concocted and based on the manufactured fact and from perusal of solemn affirmation (S.A) and deposition of enquiry witnesses, no case under sections 417 and 418 of the Indian Penal Code is made out against the petitioners.

5. Learned counsel for the petitioners further submits that the opposite party no.2 (complainant) has several trade mark rights with respect to manufacture of pharmaceutical drugs, and has consulted the petitioner-company for manufacturing of pharmaceutical drugs and in pursuance therefore, an agreement dated 06.03.2013 was executed between the parties and clause- 22 of the said agreement provides that during the subsistence of the agreement or after its termination



if any dispute arose, the same shall be settled by Arbitration under the provisions of the Arbitration and Conciliation Act, 1996.

6. Learned counsel for the petitioners also submits that the opposite party no.2 claimed a business loss of Rs. 25,00,000/- without any substantial ground and for recovery of said business loss arising from said agreement, the present complaint case has falsely been instituted before the Magistrate, who on the basis of the solemn affirmation of the complainant and the statement of enquiry witnesses, passed the impugned cognizance order in a mechanical manner without considering the fact that there is an arbitration clause in the agreement.

7. It has been submitted by learned counsel for the petitioners that the petitioners are the Directors of the Company and have no concern with the business loss of the opposite party no.2. It has also been submitted that while passing the impugned order the learned Magistrate has not considered the fact that the civil right and liability arising from an agreement cannot be enforced by way of criminal proceeding.

8. Learned counsel for the petitioners has relied upon a decision of the Hon'ble Supreme Court rendered in the



case of *A.M Mohan vs. the State represented by SHO and Anr.* reported as *2024 SCC OnLine 339*.

9. It has also been submitted by learned counsel for the petitioners that the Supreme Court in catena of decisions has held that a complaint can be quashed where the allegations made in 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 the case alleged against the accused. A complaint may also be quashed where it is a clear abuse of the process of the court; when the criminal proceeding is found to have been initiated with *mala fides* / malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

10. In support of his submissions, learned counsel for the petitioners has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of *Madhavrao Jiwaji Rao Scindia & Anr. vs. Sambhajirao Chandrojirao Angre & Ors.* reported as *1988 (1) SCC 692* and *Indian Oil Corpn. v. NEPC India Ltd.* reported as *2006 (6) SCC 736*.

11. By making the aforesaid submissions, learned counsel for the petitioners has submitted that the present complaint case is fit to be quashed in light of the aforesaid



submissions and legal precedents.

12. In this case, the opposite party no.2 has filed the counter affidavit and supplementary counter affidavit wherein it has been stated that the opposite party no.2 is a private limited company registered under the Indian Companies Act, 1956 and engaged in the business of exporting medicinal and pharmaceutical preparations, having its registered office at Exhibition Road, Patna, Bihar. The opposite party no.2 contacted the petitioner-company for manufacturing the medicines and accordingly, a trademark license agreement dated 06.03.2013 was duly executed between the petitioner - company and the the opposite party no.2 for manufacturing the medicines as per the order given from time to time by the opposite party no.2. As per the agreement, the petitioner-company shall manufacture medicinal and pharmaceutical preparations bearing the trademark of the opposite party no.2. The petitioner-company also agreed that it shall not sell the medicinal and pharmaceuticals preparations or any other goods bearing the trademark of the opposite party no.2 to any person or persons or company or firm. As per the trademark license agreement, the opposite party no.2 shall use only the such labels, cartons packing materials and other printed materials as per the design,



color, scheme as requested by the opposite party no.2. All these medicines are manufactured for human consumption and are for export to other countries which directly involves reputation of the country.

13. It has also been stated in the counter affidavit and supplementary counter affidavit that according to the trademark license agreement, the petitioner-company had to manufacture one of the products namely, Teklofenac 50 Tablets but the petitioner-company with oblique motive started manufacturing the said preparation of inferior quality. Due to sub-standard manufacturing of Teklofenac 50 tablet, the buyer of Nigerian market rejected the product, as a result of which, the opposite party no.2 suffered huge loss in the business. The entire lot of 169 shippers of Teklofenac 50 tablets could not be called back from another country because huge expenses were involved to recall the consignment from another country and hence the opposite party no.2 had no other alternative remedy than to destroy the entire lot of the said medicines. Therefore, due to sub-standard manufacturing of medicines by the petitioner-company the opposite party no.2 has suffered huge financial loss. Not only financial loss, the opposite party no.2 has hampered their goodwill and its image and reputation in the



national / international market. The agreement was to manufacture the medicine with trademark of the opposite party no.2 with standard specification as per international standards but the petitioner-company has manufactured sub-standard medicine knowingly and deliberately only with a view to tarnish the image and reputation of the opposite party no.2 and thus the petitioner-company intended to damage the opposite party no.2 financially and also to tarnish its goodwill and image in the market and hence the petitioners have committed criminal offence with the opposite party no.2 and thus the cognizance taken by the learned court below vide order dated 1.11.2022 is just, legal and proper.

14. It has also been stated in the counter affidavit that the drug is treated to be spurious if the physical appearance of the said drug changes even if the assay of the product is found to be genuine. The petitioner-company purposely damaged the goodwill in order to oust the opposite party no.2 from the market of Nigeria.

15. In reply to the submission of the petitioners that there is an arbitration clause in the trademark license agreement, it is submitted by the opposite party no.2 that the arbitration clause is there in the agreement to cater to the civil



wrongs not for the criminal acts that was committed by the petitioner-company. The learned Magistrate took cognizance of the offences under sections 417 and 418 of the Indian Penal Code in light of the facts mentioned in the complaint petition, solemn affirmation and the materials produced during enquiry.

16. It has also been submitted that the petitioner-company has cheated the opposite party no.2 as the petitioner-company have betrayed the terms and conditions of the agreement, in deliberate attempt to oust the opposite party no.2 from market and to grab the same for their own benefits and this intention prevailed since the beginning of the transaction and they had oblique motive and *mala fide* intention.

17. It is submitted that the clause of arbitration in the agreement has to be read and applied as it stands and therefore, the petitioners are liable under civil law separately apart from the criminal act or omission which they committed and this criminal act or omission shall not be guided and covered by the arbitration clause. So far as other liabilities and the matter of dispute incidental to agreement are concerned, the same shall separately be pursued and the petitioner-company liability cannot be absolved merely because there is civil liability.



18. Learned counsel for the opposite party no.2 has relied upon a decision of the Hon'ble Supreme Court rendered in the case of ***K. Jagadish vs. Udaya Kumar G.S. & Anr.*** reported as ***(2020) 14 SCC 552*** and has submitted that in the aforesaid decision, it has been held that it is a well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

19. Learned counsel for the opposite party no.2 has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Pratibha Rani vs. Suraj Kumar and Anr.*** reported as ***(1985) 2 SCC 370***. Relevant part of paragraph no.21 of the aforesaid decision, reads as under:-

“21. ... There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property of the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrong deer in cases like arson, accidents, etc. It is an anathema to



suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under s. 406 I.P.C. Or render the ingredients of section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

20. He also placed reliance on another decision of the Hon’ble Supreme Court rendered in the case of ***Rajesh Bajaj vs. State of NCT of Delhi and Ors. (1999) 3 SCC 258.*** Paragraph nos.10, 11 and 12 of the aforesaid decisions read as under:-

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under [Section 415](#) of the Indian Penal Code (illustrations f) is worthy of notice now:

(f) A intentionally deceives Z into a belief



that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 , IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved.”

21. Learned counsel for the opposite party no.2



has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Kamladevi Agarwal vs. State of West Bengal and Ors.*** reported as ***(2002) 1 SCC 555***. Paragraph nos.9 and 17 of the aforesaid decision reads as under:-

"9. 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 , Rajesh Bajaj v. State NCT of Delhi this Court in Trisuns Chemical Industry v. Rajesh Agarwal & Ors. [1999 (8) SC 687] held:

"7. 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 and Rajesh Bajaj v. State NCT of Delhi).

8.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:

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



17. 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 respondents. 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 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.”

22. Learned counsel for the opposite party no.2 has also relied upon the decision of the Hon’ble Supreme Court rendered in the case of ***R. Kalyani vs. Janak C. Mehta and Ors.*** reported as ***(2009) 1 SCC 516***. Paragraph no.15 of the aforesaid decision reads as under:-

“15. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.



(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

23. Lastly, learned counsel for the opposite party no.2 has placed reliance on a decision of the Hon’ble Supreme Court rendered in the case of ***Sau. Kamal Shivaji Pokernekar vs. The State of Maharashtra*** reported as **2019 (14) SCC 350**. Relevant paragraph of the aforesaid decision reads as under:-

“9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The



correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.”

24. The petitioners have filed their rejoinder to the counter affidavits filed by the opposite party no.2 wherein they have stated that the product was manufactured under the supervision of the authorized person of opposite party no.2 namely, Vijay Kumar as per Clause 4 of trademark license agreement. The said authorized person used to visit the manufacturing plant regularly in order to check and inspect the making process and he used to provide low costing formula for the low costing production. It has also been stated that the stock manufactured by the petitioner-company was duly approved by its quality control and WHO approved lab. Subsequently, product QCS checking was done by the laboratory and product was passed and cleared at the time of finalization of the manufacturing.



25. It has also been stated in the rejoinder that the the product was rejected due to the negligence of opposite party no.2. The pharma products should be maintained under the specific storage when petitioner-company sent product to export. It has also been stated that the petitioner - company used to follow the standard operating procedure and the products were checked and analyzed by QCS lab. It is not within the knowledge of the petitioner - company that whether the products were kept under the specific storage, in proper condition or under proper temperature by the opposite party no.2 for their export.

26. It has also been stated that the “change part” comes from another company and petitioner company used the same for 4 years and manufactured many products for the opposite party no.2 during this period. The petitioner-company supplied multiple products from September, 2017 by using the same “change part” and it was to the satisfaction of the opposite party no.2 as the opposite party have never raised any issue about the product and however, once the petitioner-company returned the “change part” to one Kesar Pharma in 2018, the opposite party no.2 blamed the petitioner-company that the “change part” is damaged.



27. The petitioner - company submits that they had received order but when the petitioner-company asked the opposite party no.2 for form-C and form-H for costing approval, raw material and packaging material etc. the opposite party no.2 failed to provide the same and therefore, the manufacturing process never begun. Thereafter, the opposite party no.2 gave orders for manufacture to the petitioner-company on behalf of two companies and assured the petitioner-company for payment after compliance and dispatch of the order. However, despite compliance and dispatch of the orders, the opposite party no.2 refused to make the payments and therefore, the petitioner-company filed two cases vide Money Suit No. 92 of 2019 (Comed Chemical Ltd. vs. Maxwell Life Science Pvt. Ltd.) and Money Suit No. 93 of 2019 (Comed Chemical Ltd. vs. Harsha Vaibhav Chem Pharma Pvt. Ltd.) against said companies before the Vadodara Court for the recovery of the billing amount. The aforesaid two companies are connected with the opposite party no.2 and thus, the present complaint has been filed by the opposite party no.2 with wrong and malicious intention to pressurize the petitioners.

28. The opposite party no.2 has filed a reply to the rejoinder filed by the petitioner-company wherein it has



been stated that the allegation with regard to conducting the manufacturing work under the supervision of the representative of the opposite party no.2 namely, Vijay Kumar is wrong and false since said Vijay Kumar was not a qualified chemist or a pharmacist. According to the drug laws, a chemist has been approved and allowed by the concerned department who can produce pharmaceutical items. The allegation that formula for the product was provided by the opposite party no. 2 is also incorrect as nobody can create or make a pharmaceutical product on their own without the approval by the FDA and drug authorities. The representative of the opposite party no. 2 would only visit the office of the petitioner-company to coordinate and ask them to begin the process of the production as soon as possible. The drug has to pass all the parameters till the expiry date of the product. No unauthorized or unqualified person is allowed to enter the production area. The only person who can visit the factory is authorized lab representative with prior information. Thus, the allegation regarding Vijay Kumar being supervisor is thereby false and wrong.

29. It has also been stated that the allegation regarding non storage of the product under proper condition is also false and wrong and as such strict storage dispatched



conditions are always maintained. In case the storage condition had been in bad condition every product would have developed same problem thereof but the same never happened. It has also been stated that the allegation with regard to withholding Form- C and Form- H is false and wrong. The moment when the petitioner - company requested the opposite party no. 2 for making available the aforesaid Forms, the Opposite Party No 2 without any delay or hindrance had sent the aforesaid Forms through speed post and some of them were handed over to Mr. Jashn Singh when he visited the office of the opposite party No. 2. Moreover, the money suit being alleged to have been filed before the Vadodara Court is a separate civil suit which has been filed unnecessarily by the petitioner- company on the face of the wrong facts and allegations and by concealing the real facts thereto and is liable to be adjudicated in the respective case.

30. A reply to the rejoinder has also been filed by the opposite party no.2 wherein essentially reiterating the earlier submissions, the opposite party no.2 submits that QCS test are conducted only on minuscule percentage of finished products and not the raw materials. Moreover, the amount of Rs.27,00,000/- which the petitioner-company is disputing is of



pending orders which they have not completed. The opposite party no.2 also refuted the value of bill no.501.

31. The petitioner-company has also filed a rejoinder affidavit illustrating the details and facts associated with the Money Suit Nos.92 and 93 of 2019 to illustrate the bad and malice intention of opposite party no.2.

32. I have considered the submissions of the parties and perused the materials on record.

33. From the record, it appears that the parties had a working business relationship which originated from a trademark license agreement dated 06.03.2013 which was for a period of five years. In the aforesaid agreement, the opposite party no.2 was the licensor whereas, the petitioner-company was the licensee. As per the agreement, the petitioner-company was to manufacture medicinal and pharmaceutical preparation bearing the trademark of opposite party no.2. The terms and conditions of the trademark licensee have been provided in the aforesaid agreement, which the parties had been adhering to the satisfaction of each other. It has been stated in the complaint petition that after entering into the agreement in the year 2013, the transactions were going on smoothly and the quality of the medicines prepared by the petitioner-company were to the



satisfaction of the opposite party no.2.

34. As per the complaint petition, the dispute arose when in the year 2015, the opposite party no.2 had delivered the medicines to different places manufactured by the petitioner-company and the same were returned back on account of sub-standard quality. Thereafter, the opposite party no.2 had returned the said sub-standard medicines to the petitioner-company with a request to manufacture good quality of medicines but, according to the opposite party no.2, despite several attempts made by him the petitioner-company did not manufacture good quality medicines, thereby the opposite party no.2 has suffered a loss of Rs.25,00,000/-. Thereafter, on the basis of the aforesaid complaint, the learned Magistrate has taken cognizance against the petitioners vide impugned order dated 01.11.2022.

35. From the aforesaid facts, it appears that the parties were in a working business relationship which was cordial till the year 2015, therefore, in other words, initially both the parties were gainfully engaged in the business transaction originating from the trademark license agreement but the dispute arose after the alleged sub-standard manufacture of the medicine by the petitioner-company which in turn caused



huge loss to the opposite party no.2.

36. The Trademark license agreement executed by and between the parties i.e. the petitioner-company and the opposite party no.2, clearly stipulates that the licensor had agreed to the licensee for non-exclusive license to use the trademarks in respect of medicinal and pharmaceutical preparations to be manufactured by the licensee.

37. Clause-4 of the said agreement reads as under:-

“Clause 4 - The Licensee shall also strictly abide and follow the instructions relating to the packing of the said goods. For this purpose, the Licensor or its duly appointed agents or representatives or employees will be entitled to visit the Licensee's factory and to inspect the raw materials, semi finished and finished goods as also the process or processes or the machinery used in the manufacture of the said goods and also draw sample and test them in Govt. approved laboratories with a view to satisfy and insure that the said goods manufactured by the Licensee are in accordance with the formula and technical specifications and the standard prescribed by the prevalent Drug Act.”

38. Upon a close reading of the trademark license agreement in its entirety, it is patently clear that the dispute between that parties appears to be purely of a civil



nature. The Hon'ble Supreme Court in the case of ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) & Ors. vs. Nimra Cerglass Technics (P) Ltd. & Anr.*** reported as **2016 (1) SCC 348** has held in paragraph no.22 as follows :-

*“22. By an analysis of the terms and conditions of the agreement between the parties the dispute between the parties appear to be purely of civil nature. It is settled legal position that criminal liability should not be enforced 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 and 8)*

“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.

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.”

39. Further, in paragraph no.16 of the aforesaid decision, it has been held by the Hon’ble Supreme Court as under:-

“16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the



*accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In *S.W Palanitkar v. State of Bihar* (2002) 1 SCC 241, 2002 SCC (Cri) 129, this Court held as under:*

“21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

The above view in Palanitkar case (2002) 1 SCC 241, 2002 SCC (Cri) 12 was referred to and followed in Rashmi Jain v. State of U.P (2014) 13 SCC 553, (2014) 5 SCC (Cri) 751.”

40. Therefore, it is inescapable that the manufacture of sub-standard medicines by the petitioner-company even if taken to be true then the same would be squarely covered under the aforesaid agreement and therefore was purely a civil dispute which could not be robed as a criminal one merely because the remedies therein are more



efficacious. It is a categorical submission that the actions or lack thereof, on the part of the petitioner-company has caused reputational damage suffered by the opposite party no.2 which again fails to meet the ingredients of the sections as charged against the petitioner-company. Even otherwise, the essential ingredients of the sections are lacking even if the entire complaint is taken to be true on its face value. On the contrary, the opposite party no.2 has stated that during the initial run of their business relationship under the trademark license agreement the relationship was cordial and working to the satisfaction of the opposite party no.2 and therefore, it is not permissible for the opposite party no.2 to turn around and allege an intention to cheat right from the beginning on the part of the petitioner-company, which only appears to be an afterthought in order to perfect the stand and vigorously pursue the complaint case. The opposite party no.2 has failed to establish that there was any fraudulent or dishonest intention on the part of the petitioner-company since the very inception of their business relationship.

41. The Hon'ble Supreme Court in the case of *A.M. Mohan vs. the State represented by S.H.O. and Ors.* (*supra*) has held in paragraph no.10 as under:-

"10. The Court has also noted the concern with



*regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that 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. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. The Court, relying on the law laid down by it in the case of **G. Sagar Suri and Another vs. State of U.P. and Others** reported as (2000) 2 SCC 636 held that 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. The Court also observed that though 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.”*

42. The Hon’ble Supreme Court in the case of **Madhavrao Jiwaji Rao Scindia and Anr. vs. Sambhajirao Chandrojirao Angre and Ors.** (supra) has held in paragraph nos. 7 and 8 read as under:-

“7. The legal position is well-settled that when a



prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

8. Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case



should not be continued.”

43. In *Indian Oil Corporation vs. NEPC India Limited* (supra), the Hon'ble Supreme Court in paragraph no.12 has held as under:-

“12.The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations.



Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as



also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

44. Upon careful consideration of entire facts and materials along with the records of the case and the discussion made hereinabove on law and facts, I am of the opinion that the present complaint has been filed with oblique motive by giving criminal colour to a civil dispute between the parties. Even the complaint petition does not disclose any criminal offence. The opposite party no.2 can claim the damages in accordance with law in an appropriate proceeding.

45. Further, the thrust of the submission of the opposite party no.2 is that from the same set of facts both criminal as well as civil liabilities could arise, which is true, however in the instant case, the dispute completely arises out of



a purely civil dispute owing to the breach of the trademark license agreement and thus, criminal liability could not be fastened on this score alone. Therefore, the judgments relied upon by learned counsel for the opposite party no.2 shall not apply to the facts of the present case.

46. The contention of the opposite party no.2 that the arbitration clause enunciated under clause-22 of the trademark license agreement is restrictive and therefore does not cover the present case is lacking of merit. The aforesaid clause is reproduced hereinbelow:-

“If at any time during the subsistence of this agreement or after its termination for any reason whatsoever, any doubt or question shall arise between the Licensor and Licensee of their respective executors or administrators either on the construction, meaning or effects of this agreement or in respect of several matters specified herein or with reference to any thing arising out of or incidental there to, including question relating to validity of termination of this agreement, such disputes and differences shall be settled by arbitration in Vadodara under the provision of the Arbitration & Reconciliation Act, 1996.”

47. It is abundantly clear from the aforesaid



clause-22 that the that the words and phrases 'or in respect of several matters specified herein or with reference to anything arising out of or incidental there to' clearly gives the arbitration clause a wide import which would cover the present case revolving around the alleged sub-standard manufacture of the medicine by the petitioner-company and the consequential loss suffered by the opposite party no.2.

48. In view of the aforesaid discussions, I am of the view that allowing continuation of the criminal prosecution against the petitioners shall amount to abuse of the process of law. Accordingly, this application is allowed and the Complaint Case No.7271 of 2021 and all consequential proceedings arising out of the aforesaid complaint including the order dated 01.11.2022 by which the learned Magistrate has taken cognizance against the petitioners are hereby quashed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	13.08.2024
Uploading Date	25.11.2024
Transmission Date	25.11.2024

