

(2001) 11 P&amp;H CK 0149

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. 17612-M of 1997

G.C. Rohilla

APPELLANT

Vs

M/s Gian Rice and General Mills

RESPONDENT

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**Date of Decision:** Nov. 2, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482

**Citation:** (2001) 2 CriminalCC 133 : (2002) 1 RCR(Criminal) 234**Hon'ble Judges:** M.M. Kumar, J**Bench:** Single Bench**Advocate:** Gurminder Kaur, for the Appellant; Gorakh Nath, for the Respondent**Final Decision:** Dismissed

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**Judgement**

M.M. Kumar, J.

The question raised in this petition filed by the plaintiffs u/s 482 of the Code of Criminal Procedure, 1973 is as to whether the High Court in its inherent jurisdiction could quash the criminal proceedings initiated by way of criminal complaint and what is the scope of its power u/s 482, Code of Criminal Procedure.

2. The law on the aforementioned question is well settled and various judgments of the Supreme Court would elaborate the eventualities whether such a complaint or criminal proceedings could be quashed. It is, however, appropriate to mention that such eventualities are limited and the Supreme Court had furnished guide-lines in various judgments whether the Court can intervene for quashing the criminal proceedings initiated by first information report on complaint, [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), presented before the Supreme Court an illustration whether the first information report lodged by the Commercial Tax Officer, Bureau of Investigation against Swapan Kumar Guha and others disclosed as offence u/s 3 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. The Act had come into force on 13.12.1978 and 2 years period

was given for binding up every kind of business relating to Prize Chits and Money Circulation Scheme which expired on 12.12.1980. A first information report was lodged on 13.12.1980, the very next day. The Calcutta High Court quashed the first information report on the ground that the contents of the first information report did not disclose any material constituting a cognizable offence. Against the judgment of the High Court, an appeal was filed in the Supreme Court. Rejecting the appeal of the State, their Lordships of the Supreme Court examined in detail numerous cases and concluded as under :-

"The position which emerges from these decisions and the other decisions which are discussed by Brother A.N.Sen is that the condition precedent to the commencement of investigation u/s 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received."

Their Lordships of the Supreme Court also considered as to whether there is unfettered discretion in the realm of power defined by Statute where the police can undertake investigation in every case and observed as under :-

"There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power of investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. I may, in this behalf, usefully draw attention to the warning uttered by Mathew, J. in his majority judgment in [Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others](#), , to the following effect:

We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

2. The Supreme Court has cautioned that the power u/s 482 of the Code of Criminal Procedure should be exercised in a limited type of cases and not in a routine and mechanical fashion. In the case of [L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others](#), their Lordships of the Supreme Court condemned the use of inherent power u/s 482 Code of Criminal Procedure for quashing the proceedings at the threshold and observed as under :-

"The High Court, we cannot refrain from observing, might well have refused to invoke its inherent powers at the very threshold in order to quash the proceedings, for these powers are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen."

3. Another illustration has been provided where the Supreme Court refused to agree with the view taken by a Full Bench of this Court in the case of [Vinod Kumar Sethi and Others Vs. State of Punjab and Another](#), and also refused to quash the criminal complaint lodged by the wife for misappropriation of "Streedhan" by the husband. The Full Bench of this Court had taken the view that the question of misappropriation would not arise because the 'Streedhan' property of a married woman would become a joint property with her husband as soon as she enters her matrimonial home. In [Pratibha Rani Vs. Suraj Kumar and Another](#), one Pratibha Rani had lodged a complaint against her husband Suraj Kumar alleging that the dowry articles given by her parents including gold ornaments and clothes were entrusted to Suraj Kumar and his near relations and they took possession of those articles. When the relations between the wife and the husband got estranged, the dowry articles given to the wife were not returned. She filed a complaint claiming that the "Streedhan" is the property of the bride and was entrusted to the accused-husband and his relatives for safe custody. The High Court has quashed the complaint on the ground that the "Streedhan" property of a marriage woman becomes joint property as soon as she enters her matrimonial home, following the Full Bench Judgment in Vinod Kumar's case (supra). However, the Supreme Court not only overruled the view taken by the Full Bench, it also held that the quashing of complaint by the High Court at the threshold amounted to substituting its own opinion in preference to the allegations made in the complaint. Their Lordships of the Supreme Court setting aside the view taken by the Full Bench in Vinod Kumar's case (supra) observed as under :-

"By way of post-script we might add that we are indeed amazed to find that so deeply drowned and inherently engrossed are some of the High Courts in the concept of matrimonial home qua the stridhan property of a married woman that they simply refuse to believe that such properties are meant for the exclusive use of the wife and could also be legally entrusted to the husband or his relations. Thus, if the husband or his relations misappropriate the same and refuse to hand it over to the wife and convert them to their own use and even though these facts are clearly

alleged in a complaint for an offence u/s 405/406 I.P.C. some Courts take the view that the complaint is not maintainable. Thus, even when clear and specific allegations are made in the complaint that such properties were entrusted to the husband, they refused to believe these hard facts and brush them aside on the ground that they are vague. The allegations of the complainant in this appeal and the appeals before Allahabad and the Punjab and Haryana High Courts show that it is not so but is a pure figment of the High Court's imagination as a result of which the High Courts completely shut their eyes to the fact that the husband could also be guilty under Sections 405/406, I.P.C. in view of the clear allegations made in the complaint. In other words, the High Courts simply refuse to believe that there can be any such entrustment and even if it so, no offence is committed. Such an approach amounts to a serious distortion of the criminal law, resulting in perpetrating grave and substantial miscarriage of justice to the wife at the hands of the High Courts. We cannot countenance such a wrong and perverse approach."

4. In [State of Bihar Vs. Murad Ali Khan and Others](#), the Supreme Court took the view that the High Court while exercising jurisdiction u/s 482, Code of Criminal Procedure would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. There a written complaint was filed by the Range Forest Officer alleging that the accused shot and killed an elephant in a particular Range Forest and removed the ivory tusks of the elephant. According to the provisions of Wild Life (Protection) Act, 1972, such an act constituted an offence. The High Court quashed the complaint on the ground that the first information report recorded on the basis of the complaint did not disclose any material which may constitute the offence alleged and the accused person was never named in the first information report nor there was any eye witness. Another ground given for quashing the first information report was that the accused was not identified in any manner whatsoever to sustain the allegations even prima facie. Relying upon the observations made in the earlier judgments of the Supreme Court in the case of [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), and [Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others](#), their Lordships of the Supreme Court laid down the following guide-lines :-

"The second ground takes into consideration the merits of the matter. It cannot be said that the complaint does not spell out the ingredients of the offence alleged. A complaint only means any allegation made orally or in writing to a Magistrate, with a view to his taking action, that some person, whether known or unknown, has committed an offence.

It is trite that jurisdiction u/s 482, Cr.P.C. which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be

established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the state of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

5. The case of State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SC 353 elaborately deals with the inherent power of the High Court for quashing the first information report or criminal proceedings or their continuation. In that case, on Dharam Pal a political adversary of Ch. Bhajan Lal had amassed huge property worth crores of rupees in the names of his family members, relations and persons close to him by misusing his power. It was also alleged that a palatial house was being constructed at Hissar at the estimated cost of Rs.50 lacs and expensive land at various places had been purchased in the name of his wife or the sons. There were other allegations also with regard to ownership of two petrol pumps and huge jewellery which according to the complaint was acquired after he became Chief Minister of Haryana. On the basis of these allegations, a first information report was registered and investigation was undertaken. The recording of first information report and initiation of investigation was challenged by Ch. Bhajan Lal in a writ petition filed under Articles 226 and 227 of the Constitution and an appropriate order was sought for quashing the first information report and the criminal proceedings. A Division Bench of the High Court quashed the first information report and subsequent criminal proceedings on various grounds. On appeal to the Supreme Court, their Lordships of the Supreme Court set aside the judgment of the High Court and illustrated the cases where inherent jurisdiction of the High Court u/s 482, Code of Criminal Procedure or extraordinary power under Article 226 of the Constitution could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The observations of their Lordships are as under :-

"In the backdrop of the interpretation of the various relevant provisions of the Code very Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the first information report of 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 u/s 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 any order of Magistrate as contemplated u/s 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 proceedings against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, 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."

After recording the illustrative cases, their Lordships also observed that the criminal proceedings could be quashed only in the rarest of the rare cases and it is not within the domain of the High Court to undertake an enquiry as to the truthfulness of the allegations made in the complaint or the first information report. In this regard, the observations of their Lordships are as under :-

"We also give a notice of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

6. Similar view has been expressed by the Supreme Court in numerous other judgments which are as under :-

1. State of West Bengal v. Narayan K. Patodia, 2000(2) RCR (Crl.) 516 (SC);
2. Satvinder Kaur v. State Government of NCT of Delhi, 1999(4) RCR (Crl.) 503 (SC);
3. State of Kerala v. O.C.Kuttan, 1999(1) RCR (Crl.) 831 (SC);
4. State of Himachal Pradesh v. Prithi Chand, 1996(2) RCR (Crl.) 759 (SC);
5. State of Jammu and Kashmir v. Sham Lal, 1996 SC (Cri) 737;.
6. Rupan Deol Bajaj v. Kanwar Pal Singh Gill, 1995(3) RCR (Crl.) 700 (SC);
7. Union of India v. B.R.Bajaj, 1994(1) RCR (Crl.) 592(SC);
8. [M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others,](#)
9. G.Sagar Suri v. State of Uttar Pradesh, 2000(1) RCR (Crl.) 707 (SC);
10. State of Haryana v. Unique Farmaid (P) Ltd., 1999(4) RCR (Crl.) 540 (SC);

7. Another ground for exercising inherent jurisdiction u/s Cr.P.c. could also be that the facts disclosed in the first information report or the complaint predominantly disclose a dispute of civil nature. If the dispute involved is of civil nature, then the process of criminal law cannot be misused by giving it a cloak of criminal offence. In the case of G.Sagar Suri (supra), their Lordships of the Supreme Court dealt with misuse of the process of the criminal law in such like cases and have laid down that the High Court would be precluded from exercising jurisdiction u/s 482 of the Code of Criminal Procedure, if in a given case, it reaches the conclusion that a necessary civil dispute is being given the shape of criminal proceedings. Their Lordships observed as under :-

"Jurisdiction u/s 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal Proceedings are not a short cut other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. The supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the High Court cannot be exercise its jurisdiction u/s 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial."

8. From the above survey of various judgments, it becomes clear that the High Court would not be competent to exercise jurisdiction u/s 482 of the Code of Criminal Procedure, if the complaint or the first information report disclose the commission of a cognizable offence. It is also clear that the jurisdiction of the High Court u/s 482 Cr.P.C. or extraordinary power to issue writs under Articles 226 of the Constitution has to be exercised in rarest of rare cases. In view of these principles, what remains to be examined is as to whether the complaint filed in this case discloses the material which may constitute a cognizable offence.

9. The facts of the present case in brief are that respondent No. 1-M/s Gian Rice and General Mills, Kurukshetra filed a complaint against petitioners 1 to 4 under Sections 420, 406 and 120-B of the Indian Penal Code. On the basis of the complaint the Chief Judicial Magistrate passed a summoning order on 19.4.1997 and proceeded against the accused. The accused are employees of the Food Corporation of India. The allegations levelled against them in the complaint are there was an agreement between the complainants and of the accused who acted on behalf of the Food Corporation of India that the complainants would be shelling the paddy of the Food Corporation of India and would charge for the same the milling charges subject to various terms and conditions of the agreement. The accused made representation that 354 quintal common paddy be released and delivered to the complainant from the godown against the proposed delivery of 250 bags of common rice by the complainant to the Food Corporation of India. On the basis of the representation made by the accused, the complainant delivered 250 bags of common rice containing 237 quintal 45 kg. of common rice to them on 19.2.1996. The samples of the delivered rice were taken and were tested by one Shiv Raj Singh, Technical Assistant of Food Corporation of India. The test showed the sample to be of prescribed quality and the delivery of the said rice was accepted by the accused. Thereafter a direction was issued to release 354 quintal of paddy to the complainants with the illegal object and a criminal conspiracy. The instructions were issued not to release the paddy to the complainant against the release order dated 20.2.1996 and misappropriated the same without complying with its commitment in the agreement that they would deliver 354 quintals paddy to them. The obtaining of 237.45 Kg. of common rice from the complainants on the basis of false representation that 354 quintals paddy shall be released to them, is alleged to be an offence of cheating as delivery of the rice was taken from the accused by making false representation. It is in these circumstances that a complaint was instituted alleging the commission of offences punishable under Sections 420, 406 and 120-B of the Indian Penal Code.

10. Learned Chief Judicial Magistrate had examined two witnesses of the complainant in support of the allegations while recording preliminary evidence u/s 200 of the Code of Criminal Procedure namely; PW-1 Shiv Raj Singh and PW-2 Gian Chand (who himself is the author of the complaint). On the basis of the preliminary evidence a summoning order was passed by the Chief Judicial Magistrate,



Kurukshetra on 19.4.1997. In the summoning order, learned Chief Judicial Magistrate recorded the reasons for issuing of the process. The same reads as under :-

"It is clear from the documents discussed above that the complainant firm delivered common rice and it was handed over to the accused and as per the agreement they are supposed to issue 354 quintals of paddy to the complainant. It is also evident from Ex. C3 placed on the file. There is no proof that this paddy was released to the complainant. Thus, it is clear that accused, in furtherance of their common intention, have cheated the complainant firm by not releasing the paddy in lieu of the rice delivered by complaint and duly received by the accused. Thus, there are sufficient grounds to proceed against all the accused u/s 420/34 I.P.C. Hence, all the five accused under (sic) Sections 420/34 I.P.C. on filing of process fee and copies of complaint etc. for 7.6.1997."

11. I have heard Ms.Gurminder Kaur, Learned Counsel for the accused-petitioners and none has put in appearance on behalf of the respondents. With the assistance of Learned Counsel for the accused-petitioners, I have perused the documents placed on record.

12. The only argument advanced by Ms.Gurminder Kaur, Learned Counsel for the petitioners is that the nature of the allegations levelled in the complaint is of civil liability and respondents 1 and 2 have already filed a civil suit for mandatory injunction seeking direction to the petitioners for removing and replacing the consignment of 237.45 quintals of rice which was pending. She argued that once the controversy between the parties is of civil nature, no criminal proceedings should be initiated because it would amount to misuse of the process of criminal law.

13. I have thoughtfully considered the submissions made by the Learned Counsel for the petitioners and do not feel impressed with the same. Although, it is true that complainant-respondents have already filed a civil suit, yet it cannot be concluded from the allegations levelled in the complaint that prima facie a cognizable offence triable u/s 420 read with Section 34, Indian Penal Code is not made out. If we examine the provisions of Section 415 of the Indian Penal Code which define the offence of cheating, it would be clear that if delivery of any property has been obtained by practising deception, fraud or dishonestly which is likely to cause damage to that person, then such a person is said to have committed the offence of cheating. Sections 415 of the Indian Penal Code reads as under :-

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

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section."

14. A perusal of the above definition of Section 415, Indian Penal Code requires that to constitute the offence of cheating, the following ingredients must be satisfied:-

(a) deception of any person;

(b) fraudulently or dishonestly inducing any person to deliver any property to any person; and

(c) intentionally adducing (inducing?) that person to do or omit to do anything which in the absence of deception and which act is likely to cause harm.

15. In the instant case, the allegation is that one of the accused dishonestly represented to the complainants that they would release them common paddy to the tune of 354 quintals on the understanding that they would first deliver the accused 237.45 quintals of common raw rice. But the accused firstly instructions on 20.12.1996 for the release of the rice but later on 22.3.1996 the instructions were withdrawn. It has been further pleaded by the complainants that the accused has replaced 237.45 quintals of common rice with inferior quality rice. In my view, the allegation as contained in the complaint and extracted by the Chief Judicial Magistrate would constitute an offence punishable under Sections 415 and 420, Indian Penal Code. The offence of cheating punishable u/s 420, Indian Penal Code is a cognizable offence as is clear from the First Schedule giving classification of offences.

16. In these circumstances, I do not find any substance in the arguments of the Learned Counsel that the controversy involved in the present case is purely of civil nature and the complaint and further proceedings are liable to be quashed on that score.

17. For the reasons mentioned above, this petition is dismissed. The trial Court is directed to proceed with the case. However, I deem it appropriate to give liberty to the petitioners to move an application u/s 245, Cr.P.C. before the learned Chief Judicial Magistrate praying for discharge at the stage of framing of charge which shall be considered by him in accordance with law.