

(2011) 06 MAD CK 0473

Madras High Court

Case No: Criminal Original Petition No. 23113 of 2003 and Criminal M.P. No. 6595 of 2003

Pondicherry Industrial
Promotion, Development and
Investment Corporation Ltd.

APPELLANT

Vs

Shasun Leasing and Finance Pvt.
Ltd.

RESPONDENT

Date of Decision: June 21, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 485
- Penal Code, 1860 (IPC) - Section 500
- State Financial Corporations Act, 1951 - Section 29

Hon'ble Judges: V. Periya Karuppiyah, J

Bench: Single Bench

Advocate: T.P. Manoharan, for the Appellant; S. Deepika, Legal Aid Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Periya Karuppiyah, J.

This petition has been filed by the Petitioners, who are accused before the lower Court, seeking for quashment of the complaint filed by the Respondent/complainant against them u/s 482 Code of Criminal Procedure

2. The Respondent is the complainant before the lower Court and the Respondent presented complaint under Sections 190 and 200 Code of Criminal Procedure for taking cognizance of the offences under Sections 403, 406, 420 and 500 read with 120-B Indian Penal Code, 1860. The said complaint filed by the Respondent/complainant was taken cognizance and the lower Court viz., Judicial Magistrate No. I, Pondicherry had ordered issuance of summons to the Petitioners

who are ranked as Accused Nos. 1 to 3, A4 and A5, who are also stated to have participated in the offences. The Accused Nos. 1 to 3, who are the Petitioners herein, have applied to the Court u/s 482 Code of Criminal Procedure seeking for the quashment of the said complaint on various grounds.

3. Heard Mr. T.P. Manoharan, learned Counsel for the Petitioners/Accused Nos. 1 to 3 and Mrs. S.Deepika, learned Counsel appearing for the Respondent/complainant.

4. The learned Counsel for the Petitioners would submit in his arguments that the Petitioners 1 to 3 are none other than the Corporation constituted under the Statute and its Managing Director and General Manager (Finance) and they are sponsored by the Pondicherry Government and A1 to A3 (Petitioners 1 to 3) are the public servants within the meaning of Section 197 Code of Criminal Procedure. He would further submit in his arguments that the Petitioners have taken action against the Respondent/complainant under Pondicherry Revenue Recovery Act for the outstanding payable by him to the first Petitioner Corporation u/s 29 of the State Financial Corporation Act, 1951. In order to counterblast the said action, a private complaint has been drafted and framed in such a way to bring life to the alleged offences which were barred by limitation, by bringing another new offence u/s 500 I.P.C i.e., defamation. He would further submit in his arguments that taking cognizance of the complaint by the lower Court is not sustainable in law. In order to sustain his argument, he would bring various instances, transactions had in between the Petitioners and the Respondent. He would further submit that the fourth accused Company viz., Pondy Hydra Magne (P) Limited had applied for a term loan with the first Petitioner and on his application, a term loan of Rs. 24,52,000/- was sanctioned by the first Petitioner for establishing the SSI unit and in pursuance of the said term loan, various documents have been submitted as the Directors of the said company executed. He would further submit in his arguments that while the said loan was subsisting, the Respondent had purchased certain properties from the Pondy Hydra Magne (P) Limited and also mortgaged assets in favour of the Respondent and took possession of the said property even during the subsistence of the said mortgage. He would also submit in his arguments that the said Pondy Hydra Magne (P) Limited was trying to transfer the said loan to the account of the Respondent and the Respondent was paying interest accrued to the said term loan amounted to Rs. 18 lakhs borrowed by the said Pondy Hydra Magne (P) Limited to the said corporation. He would further submit that having paid so, payable to the corporation, the Respondent had accepted that it was liable to pay the said loan amount which was borrowed by the said Pondy Hydra Magne (P) Limited. He would further submit in his arguments that the contention of the Respondent was that it had been cheated by the Petitioners as well as the other accused viz., A4 and A5 by a conspiracy of cheating and deceiving a sum of Rs. 18 lakhs and also the properties, cannot be a ground for launching a criminal prosecution against the Petitioners. He would further submit in his arguments that the payment of loan as well as the purchase of the property are purely civil

transactions and there is No. iota of any criminal intention of deceiving or cheating the Respondent/complainant. He would also submit in his arguments that the Respondent/complainant had stated that the Petitioners had acted against the interest of the Respondent by making book entries as if the complainant borrowed the said loan of Rs. 18 lakhs, cannot be sustained because the complainant itself mentioned that it was done only as per the agreement reached in between them. He would further submit in his arguments that the Respondent itself had mentioned that everything was done in accordance with the agreement reached in between the Petitioners and the Respondent/complainant and therefore, there is No. question of cheating the Respondent/complainant. He would further submit in his arguments that the causes of action stated for constituting the offences under Sections 403, 406 and 420 Indian Penal Code, 1860 do not disclose any intention to commit any offence and the alleged criminal breach of trust in order to make wrongful gains or criminal misappropriation, would not be attracted by alleged causes of action. He would also submit that all those causes of action would depict only civil dispute and that could be sorted out before appropriate Forum and not before the Criminal Court. He would further submit that the Petitioners being public body and public servants would not be held liable for such offences committed in the course of duty. He would also submit that the allegations made in the complaint would go to show that the first Petitioner as well as Petitioners 2 and 3 acting on behalf of first Petitioner had committed such offences in the course of their duty and it cannot be considered as private affairs of the parties herein because the first Petitioner itself is a Corporation which cannot be a private body. He would further submit in his arguments that criminal prosecution against a public body and public servants which are said to have done in the course of executing their duty cannot be initiated without obtaining prior sanction u/s 197 Code of Criminal Procedure He would also submit that the exemption put forth in para 16 of the complaint is exfacie false and the complaint filed by the Respondent/complaint against the Petitioners without obtaining any previous sanction is not sustainable. He would rely upon a judgment of the Honourable Apex Court, reported in [N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja](#), in support of his argument. He would further submit in his arguments that the Courts should exercise much caution while passing orders u/s 482 Code of Criminal Procedure, which is an inherent jurisdiction vested with High Courts to avoid abuse of process of law and thereby to sustain substantial justice. He would further submit that at the same time the Courts should not permit the vexatious proceedings to continue, under which accused was brought before the Court in order to quench the personal vendetta. He would also bring it to the notice of the Court a judgment of Honourable Apex Court, reported in [Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. and Ors](#), in support of his arguments. He would also cite two more Judgments of the Honourable Apex Court for the said principle as follows:

(1) [G. Sagar Suri and Another Vs. State of U.P. and Others](#),

(2) [Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another,](#)

5. Stressing his argument, the learned Counsel for the Petitioners would submit that the act of cheating should have been "prima facie" established through the allegations in the complaint as well as the evidence from the statement of the witnesses, but necessary ingredients of cheating have not been established from them. He would further submit that even the allegations made in the complaint are taken as true, it will result only a civil dispute on money transaction and the Civil Court would be having jurisdiction and competent to try the suit and the alleged non-fulfilment of the promise will not result in the definition of cheating or fraud. He would also refer to a judgment of this Court, reported in [Pasumai Irrigation Limited Vs. Mansi Finance \(Chennai\) Limited,](#) for the said principle. He would also cite a judgment of the Honourable Apex Court reported in [S.W. Palanitkar and others Vs. State of Bihar and another,](#) for the same principle. He would therefore submit that the alleged act of cheating or misappropriation or criminal breach of trust have not been prima facie established on the allegations made in the complaint and from the evidence and therefore, there cannot be any cognizance of those offences by the learned Chief Judicial Magistrate. Moreover, he would further submit in his arguments that the first Petitioner/first accused is the Corporation and it has to act in accordance with the State Financial Corporation Act, 1951 and in the course of performing its duties contemplated under the Act, it had taken steps to recover the money payable from the promisor viz. the Respondent/complainant and such act would not be an offence. Further, he would submit that the publication as stated in the complaint against the Respondent was made in accordance with the provisions of the State Financial Corporation Act and therefore, it would not be a defamation at all. He would also submit that the complaint lodged by the Respondent for defamation said to have been committed by the Petitioners 1 to 3 have been clubbed with the other offences said to have been committed by the accused 4 and 5, cannot be sustained. He would further submit that except the offences u/s 420 Indian Penal Code, 1860, the punishments stated in the provisions are for a period of maximum two years and the limitation would be three years from the said date of commission of offence or from the date of knowledge. He would also bring it to the notice of the Court that the complaint was filed on 8.2.2001, which was taken cognizance on 9.3.2001 and the alleged offences stated to have been committed by the Petitioners/A1 to A3 and A4 and A5 was on 27.8.1992 when the loan was disbursed. Therefore, he would submit that the limitation as contemplated u/s 468 Code of Criminal Procedure would be applicable to the present case even if we take the date of knowledge of the alleged cheating was only on 21.3.1997. He would therefore request the Court to quash the complaint on the point of limitation. He would further submit in his arguments that the Respondent/complainant had also filed a writ petition seeking for quashment of the impugned notice dated 20.12.2001 issued by the first Petitioner herein under the State Financial Corporation Act. He would also submit that the Judgments of the Honourable Apex Court have laid down

the principle that whenever the disputes of civil nature are distinguishable from taking criminal action against an erring person, it should have been firstly decided by the Civil Forums or any other appropriate Forum and only on that basis the cognizance of criminal offence could be possible. Therefore, he would submit that the writ petition filed by the Respondent should have been decided first and thereafter if any ground available for launching a prosecution, it should be proceeded accordingly. Hence he would further submit that the present attempt taken by the Respondent/complainant is only for the purpose of stalling the proceedings under the Revenue Recovery Act launched by the first Petitioner against the Respondent for the recovery of money payable under the loan transaction which would clearly amount to an abuse of process of law. He would also submit that this could be evidenced by noting that the complaint was filed even without obtaining prior sanction of the Government to be obtained u/s 197 Code of Criminal Procedure. He would further submit that all these flaws should have been taken note of by the learned Judicial Magistrate No. I, Pondicherry at the time of taking cognizance, but he had not applied his mind but took the case on file even without any speaking order. The order would simply state that the case was taken on file under Sections 403, 406, 420, 500 Indian Penal Code, 1860 read with Section 120-B Indian Penal Code, 1860 and the case be posted to 9.12.2001 and such non-speaking order itself would vitiate the complaint and the further proceedings on the complaint. He would therefore request the Court to quash the complaint as against the Petitioners as abuse of process of law and thereby render substantial justice to the Petitioners.

6. The learned Counsel for the Respondent/complainant would submit in her arguments that the complaint was filed within time and there was No. time limit as argued by the learned Counsel for the Petitioner, since the punishment u/s 420 Indian Penal Code, 1860 is more than three years and therefore there is No. limitation for filing the complaint and the combining of offences under various other Sections would not be a bar even though they are punishable below two years by virtue of Sections 469 and 470 Code of Criminal Procedure. She would further submit that the learned Judicial Magistrate No. I, Pondicherry applied his mind by going through the allegations made in the complaint and the evidence produced through the statements and documents, had come to a conclusion of taking the case on file and ordered issuance of process. She would therefore, request the Court not to find fault with the learned Judicial Magistrate. She would also submit in her arguments that the offences committed by the Petitioners/A1 to A3 along with A4 have been elaborately explained in the complaint and their act of conspiracy in hatching a plan to cheat the Respondent/complainant could be gathered from their activities and No. specific evidence is necessary for establishing a prima facie case of such offences. She would also submit that it is not only a civil dispute but also containing the ingredients, required for constituting the offences under Sections 403, 406 and 420 Indian Penal Code, 1860 along with Section 500 Indian Penal Code, 1860. She

would further submit that the payment of interest for about 5 years towards the said amount of Rs. 18 lakhs was only during the period of request for transferring the loan account from the name of the complainant to the fourth accused and since it was not transferred, the Respondent had promptly stopped the payment of interest and therefore the payment of interest will not de-stabilise the case of the complainant. She would further submit in her argument that the Petitioners 1 to 3/A1 to A3 had harped on the agreement had in between the Respondent and had demanded money as if the Respondent was the real borrower. The letter written by A1 to A4 on 27.8.1992 would go to show that they have hatched a conspiracy against Respondent/complainant. She would also submit in her argument that the allegation made in the complaint would go to show that the Respondent/complainant entered into an agreement with A4 at the instance of the Petitioner only and that would alone be sufficient to establish the conspiracy in between the Petitioners/A1 to A3 and A4 and A5. She would also submit in her arguments that the Respondent/complainant is having an annual turnover of Rs. 160 crores and the public notice issued by the Petitioners as if the property of the Respondent was brought for sale would certainly defame the name of the Respondent/complainant and a prima facie case has been made out u/s 499 Indian Penal Code, 1860 punishable u/s 500 Indian Penal Code, 1860. She would further submit that the Petitioners 1 to 3/A1 to A3 had acted mala fide against the Respondent/complainant even though there was an agreement also entered for parting the money from the first Petitioner to A4, since the first Petitioner demanded the money from the Respondent/complainant. She would also cite a judgment of the Honourable Supreme Court, reported in AIR 2009 SC 428, in between Nikhil Merchant v. C.B.I for the principle that in every criminal dispute, civil liability would be attached and merely because civil liability is mixed with the dispute, it cannot be said that the complaint cannot be maintained in a criminal Court. She would cite yet another judgment of the Honourable Supreme Court, reported in [M. Krishnan Vs. Vijay Singh and Another](#), for the principle that mere filing of the civil suit will not be a bar for the criminal cases being finally decided. She would also submit in her arguments that the allegations made in the complaint would amply show a "prima facie" case and the evidence adduced through documents and statements of witnesses would support the contents of the complaint and therefore, the prayer for quashing the complaint is not sustainable at this stage. She would further submit that all these ingredients are to be tested before the Court for the purpose of coming to the conclusion whether the Petitioners/A to A3 have not committed any guilt. She would also submit in her arguments that even though the Petitioners have acted in the course of their duties, they have indulged in making the Respondent/complainant and A4 and A5 to enter into agreement for getting a loan of Rs. 18 lakhs from the first Petitioner Corporation and therefore, such act of the Petitioners would not be amounting to public duty and therefore Section 197 Code of Criminal Procedure would not apply. Therefore, she would request the Court to dismiss the petition.

7. I have given anxious consideration to the arguments advanced on either side.

8. The Petitioners are ranked as accused Nos. 1 to 3 in a private complaint filed by the Respondent/complainant before the learned Judicial Magistrate No. I, Pondicherry, which was taken on file by the said Court on 9.3.2001 and process was also ordered to be issued. The first Petitioner is the Corporation, represented by its Managing Director. It is an admitted fact that it is a Financial Corporation constituted one governed by the provisions of State Financial Corporation Act, 1951 which was enacted by the Central Government. No. doubt, it is a public sector undertaking. The Petitioners 2 and 3 are its Managing Director and its General Manager (Finance) who are undoubtedly public servants.

9. The Respondent/complainant had filed the private complaint against the Petitioners ranking them as A1 to A3 and two other persons viz., A4 and A5 for the offences under Sections 403, 406, 420, 500 Indian Penal Code, 1860 r/w Section 120-B Indian Penal Code, 1860. Factual matrix in the complaint accusing the Petitioners was to the effect that they have conspired together for making the Respondent/complainant to believe that a sum of Rs. 18 lakhs would be advanced by the first accused in favour of the fourth accused on the adjustment of book entries and debited the account of the complainant as if it was borrowed by him and on the foot of such agreement, the complainant had cleared the mortgage in respect of the building of the accused No. 4 for a sum of Rs. 51,313.52 in favour of State Bank of India and the complainant was asked to take over part of assets of the sick unit of A4. According to the complainant, A1 to A3 had not transferred the loan amount of Rs. 18 lakhs from the name of the Respondent/complainant to the name of A4 and therefore he had stopped payment of interest towards Rs. 18 lakhs and thereafter he had preferred the complaint on the knowledge of cheating committed by the Petitioners 1 to 3 and A4 and A5 against the complainant. According to the complainant, all the accused are said to have approached the complainant; that A1 would provide financial assistance to the A4 if the complainant would pay a sum of Rs. 2 lakhs to the A4 by discharging the mortgage and meet out the incidental expenses towards the taking over the unit of A4. It has been claimed in the complaint that on that understanding only the outstanding amount standing to the credit of A4 and A5 were adjusted to the amount of the complainant. However, the Petitioners/A1 to A3 had proceeded against the Respondent as if the said amount has been borrowed by the Respondent/complainant.

10. The transactions had in between the parties have not been reduced by an agreement entered into between such parties. Admittedly, there was No. written agreement in between the parties to that effect. No. doubt, it is true that the Respondent/complainant had paid interest for the said sum of Rs. 18 lakhs with the Petitioners for about five years. There was No. murmur for paying such interest amount towards Rs. 18 lakhs standing in the name of the defacto complainant for such a lengthy period of five years.

11. It was referred by the learned Counsel for the Respondent that the letter written by the defacto complainant on 22.5.1999 would depict that he would stand as guarantor only and for the purpose of giving guarantee, the EGM of shareholders of M/S. Shasun Chemicals Madras Limited approved the furnishing of guarantee to the loan sanctioned. However, in the letter addressed by the first Petitioner to the Respondent on 13.10.1992, it has been clearly mentioned that the payment of interest at Rs. 3,19,315/- was only towards the interest on the term loan of Rs. 18 lakhs sanctioned to the Respondent and it was required to pay the balance interest amount of Rs. 51,088 immediately. This would go to show that there was an agreement in between the Respondent and A4 and A5 to have exchange with A4 and permission was granted by the first Petitioner to dispose of the land, building and other civil works and the portion of the machinery to the Respondent/complainants for a consideration of Rs. 20 lakhs. Prima facie, this would not mean that the first Petitioner, who is a public sector undertaking, had entered into conspiracy with A4 and A5 to cheat the Respondent/complainant. It is the Respondent/complainant who had entered into an agreement with A4, to which the first Petitioner had granted permission till the agreement in between the Respondent and A4 and A5 has been fulfilled. The first Petitioner is entitled to proceed only against the Respondent/complainant in respect of the outstanding amount. This could be prima facie seen from the payment of interest of Rs. 18 lakhs by the Respondent/complainant throughout for five years. This is purely a civil transaction and it could be evidenced from the documents and there cannot be any criminal intention for the Petitioners 2 and 3 in a transaction to perform in the public duty. According to the judgment of this Court reported in [Pasumai Irrigation Limited Vs. Mansi Finance \(Chennai\) Limited](#), it has been laid down as follows:

12. For any criminal complaint to be lodged, the subject matter must be purely criminal and so far as the case in hand is concerned, the element of intention either to cheat or defraud or to commit breach of trust are the essential ingredients which are prima facie to be proved at the time of entering into the agreement about which the complainant has not satisfactorily brought forth a prima facie case to exist on the face of the complainant.

15. The case in hand in spite of purely a case civil in nature, which is patent, without even a question raised either regarding initiating a civil proceeding or resorting to the police if at all any criminality is involved, which the police are bound to go into and register a case in a fitting manner, the Magistrate has seized rather usurped the civil jurisdiction and even the jurisdiction of the police without giving an option for them to register the case even in the event any criminality is made out prima facie, which could be done by a Magistrate, who is confined only regarding the criminal jurisdiction and unless for extraneous reasons and considerations, No. such complaint under any pretext could be entertained.

12. In the said Judgment, it has been dealt with by this Court that the civil dispute should not be taken cognizance by the Magistrate and only a criminal offence alone be proceeded before him.

13. In the judgment of the Honourable Apex Court, reported in [S.W. Palanitkar and others Vs. State of Bihar and another](#), the following principles have been laid down:

21..... The allegations made against the Appellants other than Appellant 7 are very vague and bald. From the material that was placed before the Magistrate, even prima facie, it cannot be said that there was conspiracy or connivance between the other Appellants and Appellant 7. If the Appellants have committed breach of agreement, it is open to Respondent 2 to seek redressal in a competent court or forum to recover damages, if permissible in law in case he had sustained any loss. 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.

14. On the foot of the judgment of the Honourable Apex Court and this Court, when we analyse the facts of the present case, the contents of the complaint and the sworn statements recorded therein would not disclose any criminal intention on the part of the Petitioners to deceive or cheat or misappropriate or commit the criminal breach of trust against the Respondent/complainant. Even if the agreement in between the Petitioners and the Respondent has been established, the non-compliance of which would result to only civil dispute and the remedies like recovery of damages would always been resorted to. It cannot convert a civil dispute into a criminal case for being filed before the Magistrate.

15. The Judgments of the Honourable Apex Court relied upon by the Respondent as reported in 2001 (4) Crimes 65 (SC) in between M.Krishnan v. Vijay Singh and in AIR 2009 SC 428, between Nikhil Merchant v. C.B.I would discuss upon the facts of forgery and fabrication of documents, in which, criminal elements of crime could be presumed. As far as this case is concerned, there is No. such prima facie case of criminality of cheating or conspiracy for taking the complaint on file.

16. Therefore, the taking cognizance of offences against the Petitioners 1 to 4 cannot be considered to be in order. But the learned Judicial Magistrate No. I, Pondicherry did not pass a speaking order for taking the case on file after satisfying himself that there was a prima facie case established as against the Petitioners 1 to 3/A1 to A3 also. He had also not looked into the exemption paragraph mentioned in the complaint and did not take note of the reasons for exemption from complying the provisions u/s 197 Code of Criminal Procedure Admittedly, the Petitioners 1 to 3 are public servants. They claimed the money advanced to the Respondent/complainant and was outstanding on book and are taking steps for

realise of the amount. For that purpose, was effected publication and it was taken as defamation of Respondent's reputation.

17. The Petitioners have taken steps for the recovery of money against the Respondent and those activities for recovering the money from the Respondent is nothing but a public duty. However, it was which was described as contrary to the agreement was amounting to criminal cheating of the Respondent/complainant. The claim of the Respondent/complainant cannot be upheld for the reasons stated already. In view of the admitted fact that as far as the Petitioners have acted in pursuance of their public duties, the alleged prosecution of the Petitioners 1 to 3 for the alleged offences said to have been committed by them shall be filed only after obtaining permission or sanction order from the appropriate Government or Authority u/s 197 Code of Criminal Procedure

18. In the judgment of the Honourable Apex Court, reported in [N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja](#), it has been categorically laid down as follows:

9. In Suresh Kumar case relying upon Matajog Dobey case and bearing in mind the legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with previous sanction of the Government concerned, this Court has held that the said provision is a prohibition imposed by the statute from taking cognizance and, as such, the jurisdiction of the court in the matter of taking cognizance and, therefore, a court will not be justified in taking cognizance of the offence without such sanction on a finding that the acts complained of are in excess of the discharge of the official duty of the government servant concerned.

10. In the aforesaid circumstances and in view of our earlier conclusions as to the circumstances under which the order of attachment was issued and the scooter was seized, we have No. hesitation to hold that the acts complained of by the Respondent against the Tahsildar had been committed in discharge of the official duty of such Tahsildar and, therefore, No. cognizance can be taken by any court without prior sanction of the competent authority. Admittedly, there has been No. such sanction of the competent authority.

19. The said principles would apply to the present facts of the case.

Therefore, we could very well see that the complaint taken on file against the Petitioners who are public servants and especially the first Petitioner as a public body, cannot be prosecuted without any previous sanction required u/s 197 Code of Criminal Procedure Section 197(1) of the Code of Criminal Procedure, 1973 would run as follows:

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been

committed by him while acting or purporting to act in the discharge of his official duty, No. Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under Clause (1) of article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

20. The provisions of Section 197 Code of Criminal Procedure have not been complied with and the order passed by the learned Judicial Magistrate No. I, Pondicherry in taking the complaint on file, is not in accordance with the principles of law and the provisions of the Code.

21. The judgment of the Honourable Apex Court, reported in [Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. and Ors,](#) , it has been laid down as follows:

4..... Responsibilities and duties on the magistracy lie in finding out whether the alleged accused would be legally responsible for the offence charged for. The court at that stage could be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration lest it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly.....

5..... The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of the process of court. We, therefore, see No. justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution.

22. The judgment of the Honourable Apex Court, reported in [G. Sagar Suri and Another Vs. State of U.P. and Others,](#) , would also show that jurisdiction u/s 482 Code of Criminal Procedure should be exercised to prevent abuse of process. The relevant passage would run as follows:

8. 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 cloak of criminal offence. Criminal proceedings are not a short cut of 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. This 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.

9. In *State of Karnataka v. L. Muniswamy* this Court said that in the exercise of the wholesome power u/s 482 of the Code the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.

23. Next, when we peruse the judgment of the Honourable Apex Court, reported in (2007) 12 SCC 1 in *Inder Mohan Goswami v. State of Uttaranchal*, we could see the following passages are applicable to the present case:

22. The veracity of the facts alleged by the Appellants and the Respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and Respondent 3 has already instituted a civil suit in the Court of the Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the Respondents against the Appellants is clearly an abuse of the process of the court. Scope and ambit of courts' powers u/s 482 Code of Criminal Procedure

23. This Court in a number of cases has laid down the scope and ambit of courts' powers u/s 482 Code of Criminal Procedure. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power u/s 482 Code of Criminal Procedure can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

24. Inherent powers u/s 482 Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.....

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the

exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts u/s 482 Code of Criminal Procedure though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

24. When we apply the principles of the Honourable Apex Court as enunciated herein before, we could understand that we have to be very much cautious in exercising the power u/s 482 Code of Criminal Procedure sparingly and carefully.

25. We could see that the Respondent/complainant had not stated in his complaint that he had pursued the matter through any civil forums for the remedy but it had straightaway approached the learned Judicial Magistrate seeking prosecution of the public bodies. In the earlier discussion, it is held that the Petitioners 1 to 3 are public servants who cannot be prosecuted without prior sanction of the appropriate Authority or Government. It is therefore, concluded that there can be No. cognizance against the Petitioners 1 to 3 without prior sanction.

26. The Petitioners should not be harassed by virtue of wrong preference of criminal action against the Petitioners by the Respondent for a civil dispute had in between them. It is certainly an abuse of process of law. If for any reason, the proceedings are permitted to be continued, it would certainly amounting to permission granted for continuing a wrong process of law, but also a permission to violate the provisions of Section 197 of the Code.

27. In order to secure the ends of justice, it is necessary to invoke the inherent jurisdiction u/s 482 Code of Criminal Procedure to quash the proceedings as against the Petitioners.

28. Therefore, I am of the considered view that the complaint filed by the Respondent/complainant against the Petitioners is liable to be quashed and accordingly quashed. The petition is ordered accordingly. Consequently, CrI.M.P. No. 6595 of 2003 is closed.