

HSA INSIGHTS

INVESTIGATIONS



Pushback against the practice of filing criminal complaints to settle civil and contractual disputes

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Last few years have witnessed a significant hike in number of frivolous criminal complaints being filed to settle civil disputes. In a majority of civil disputes which involve high stakes – such as family inheritance, partitions, property, will execution, fights between two companies or disputes resulting from a contract or an agreement between two parties – the most popular tendency is to lodge a criminal complaint against rivals in addition to filing of suits or initiation of arbitration proceedings and other civil remedies, primarily as a pressure tactic based on the notion that if a person is subjected to criminal prosecution, likelihood of a speedy settlement increases significantly.

A related trend is the increase in false criminal complaints filed against companies and its directors and founders for civil disputes arising out of the contracts entered into by the parties. This is often used as a ploy to compel a company and its directors abide by demands made by complainant or to suffer consequences of criminal proceedings initiated against them. This trend has been exacerbated by the lack of understanding on part of Police Authorities and Judiciary and has drawn flak from courts across India, including the Apex Court. On this note, a brief summary of key judgments passed by Supreme Court (SC) is set out below:

- In a recent judgement dated January 31, 2020 in matter of *Govind Prasad Kejriwal v. State of Bihar & Anr*¹, court observed that 'It cannot be disputed that while holding the inquiry under Section 202 Criminal Procedure Code (CrPC), Magistrate is required to take a broad view and make sure a prima facie case is present. However, even while conducting/holding an inquiry under Section 202 CrPC, Magistrate is required to consider whether even a prima facie case is made out or not and whether criminal proceedings initiated are an abuse of process of law or Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not.' Since, dispute between parties was purely of a civil nature, SC quashed the proceedings. Underlying principle observed by the court is that filing a criminal complaint to settle civil disputes is nothing but an abuse of process of law and Court.
- In another order August 08, 2019 in matter of *The Commissioner of Police & Ors v. Devender Anand & Ors*,² the Bench has observed that 'Even considering nature of allegations in complaint, we are of firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, criminal complaint has been filed, which is nothing but an abuse of the process of law.'

¹ Criminal Appeal No. 168 OF 2020

² Criminal Appeal No. 834 of 2017, Supreme Court of India

- It is the duty of the Criminal Courts to ensure that proceeding initiated before it is not filed for settling scores or to pressurize parties to settle civil disputes. In cases of breach of contract, the appropriate forum to approach is the civil court. It has been observed in case of *Anand Kumar Mohatta & Anr. v. State (Govt. of NCT of Delhi)*³ that 'Essence of offence lay in use of property entrusted to a person by that person, in violation of any direction of law or any legal contract which he had made regarding discharge of such trust. In present case, amount of INR 1 crore was to be refunded to complainant simultaneously upon handing over of possession of constructed area as per agreement entered into by parties. It was alleged that Appellants had misappropriated amount or dishonestly used amount contrary to terms of contract. Court has held that the dispute had contours of a dispute of a civil nature and did not constitute a criminal offence. Further, court observed that prosecution's intent behind filing complaint is mala fide, untenable and solely intended to harass the Appellants. Complainant/Respondent have not made any attempt to recover deposit of INR 1 crore through a civil action except filing a criminal complaint. This action of theirs clearly put forth mala fide intent of complainant behind filing criminal complaint."
- In case of *Hridaya Ranjan Prasad Verma & Ors v. State of Bihar & Anr*,⁴ SC has held that distinction between mere breach of contract and offence of cheating is a fine one. It depends upon intention of accused at time of inducement, which may be judged by his subsequent conduct. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Therefore, it is intention which is gist of offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise. From his mere failure to keep up promise such a culpable intention right at beginning cannot be presumed.
- *State of Haryana & ors v. Bhajan Lal & ors*⁵ established the fact that where a criminal proceeding is manifestly attended with mala fide intention and proceeding is maliciously instituted with object to serve oblique purpose of recovering amount, such proceeding needs to be quashed and set aside.
- In case of *Chandran Ratnaswami v. K.C. Palanisamy & ors*⁶ it was held that it would be unfair if applicants are to be tried in criminal proceeding arising out of alleged breach of a JV Agreement. It was further held that High Court has wholesome power under Section 482 of CrPC to quash a proceeding when it comes to conclusion that allowing proceeding to continue would be abuse of process of Court or ends of justice require proceedings to be quashed".
- In matter of *M/s Indian Oil Corporation v. M/s NEPC India Ltd & Ors*⁷ Apex Court held that 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. Further, bench observed a growing tendency in business circles to convert purely civil disputes into criminal cases and the same need to be curbed.

Courts have time and again deprecated that the initiation of false criminal proceedings in cases having the elements of a civil dispute is an abuse of process of law and courts. The quick relief offered by a criminal prosecution as opposed to a civil dispute encourages litigant to initiate false and vexatious proceedings. Despite several warning and judgements passed by Apex Court against using criminal complaints as a weapon to settle civil disputes, little has changed on the ground. It is the duty of the counsels to help uphold the principles of natural justice and ensure that civil disputes given the color of criminal offence should be quashed and the guilty must be held accountable for abusing the process of law.

³ Criminal Appeal No.1395 OF 2018 (Arising out of SLP (Cr) No. 3730 of 2016)

⁴ (2000) 4 SCC 168

⁵ 1992 Supp (1) SCC 335

⁶ (2013) 6 SCC 740

⁷ 2006 (3) SCC Cri 736

