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SUPREME COURT: QUASHING PETITION MAINTAINABLE EVEN WHERE CHARGE SHEET HAS BEEN FILED

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INTRODUCTION

The Supreme Court in the recent case of *Anand Kumar Mohatta and Anr v State* (Government of NCT of Delhi) (Criminal Appeal No 1395 of 2018) decided on 15 November 2018 has held that there is no bar to the maintainability of a quashing petition under section 482 of Criminal Procedure Code, 1973 (CRPC) even where the chargesheet has been filed.

FACTS

The Appellants and the Complainant had entered into a development agreement and pursuant to the development agreement, the Appellants were in receipt of a deposit of INR 10 million. The agreement provided that the deposit was to be refunded on the Complainant handing over possession of the Appellants' share of the area. Due to change in law, the property for which the development agreement was entered into, could not be developed. The Appellants, however had not returned the deposit. This led to filing of the First Information Report (FIR) alleging criminal breach of trust under Section 406 of Indian Penal Code, 1860 (IPC).

The Appellants contended that, at best, it was a civil dispute and only to pressurise the Appellants, criminal proceedings were initiated. It was also contended that the Complainant had never called upon the Appellants to return the deposit and it was the Complainant's case that the development agreement was still valid.

The Delhi High Court dismissed the petition filed under Section 482 seeking quashing of the FIR. The Appellants challenged the final judgment and order of the Delhi High Court before the Supreme Court. Pending the appeal before the Supreme Court, the chargesheet was filed. The Appellants, therefore, also moved the Supreme Court to amend the appeal and prayed for quashing of the chargesheet as well.

JUDGMENT

The Supreme Court held that the offence under section 406 of the Indian Penal Code was not made out as it could not be said that the Appellants were entrusted with their own property. The other factor considered by the Supreme Court while quashing the FIR was that the contingencies arising under the contract, on the basis of which the deposit was to be returned to the Complainant, had not yet arisen. This was because the developer i.e. the Complainant was yet to handover the owners' share of the

developed property. Even otherwise, the complainant had not demanded the amount from the Appellants.

The Supreme court reiterated the principles governing the applicability of Section 406 of the IPC. In this regard Supreme Court stated that the essence of the offence lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has made during the discharge of such trust.

The Supreme Court quashed the FIR and the charge sheet and allowed the appeal. The Supreme Court held that while exercising the power under section 482 of the CRPC, the court can quash the FIR even if the charge sheet has been filed, as the power under section 482 is to be exercised to prevent the abuse of process and miscarriage of justice. The Supreme Court also emphasised that powers under section 482 of the CRPC can be exercised even if a discharge application before the Magistrate's Court is pending.

Comment

The manner in which the Supreme Court has interpreted the provisions of section 482 of CRPC, provides much needed clarity on the applicability of the said provision in situations where criminal prosecution progresses, in spite of fundamental challenge to its maintainability. The fact that the Supreme Court has deprecated the practice of initiating criminal complaints in civil offences, provides essential comfort against cantankerous criminal proceedings.

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