

[2014] 10 S.C.R. 982

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RAJIB RANJAN & ORS.

v.

R. VIJAYKUMAR

(Criminal Appeal Nos. 729-732 of 2010)

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OCTOBER 14, 2014

[J. CHELAMESWAR AND A.K. SIKRI, JJ.]

Code of Criminal Procedure, 1973: ss.197, 482 – Quashing of proceedings – Tender invited by Electricity Board – Tender application of respondent rejected after obtaining performance report/certificate issued by appellant no.2, the Chief Engineer – Suit filed against the Electricity Board challenging rejection of his application – Suit withdrawn – Respondent filed writ petition which was also dismissed and SLP thereagainst also dismissed Respondent filed complaint u/ss.120B, 468, 420 and 500 against appellants that certificate was false and forged – Issuance of summons – High Court refusing to quash the proceedings on the ground that though the appellants are public servants, the alleged offences committed by them were not in discharge of their normal duties and hence s.197 was not attracted – Held: Rejection of tender was in furtherance of and in discharge of the official duties by the appellant – Action of the respondent in filing the criminal complaint was not bonafide and amounted to misuse and abuse of the process of law – The allegations of fabricating the records were mischievously made as an afterthought just to give colour of criminality to a civil case – High Court ought to have quashed the proceedings in exercise of its inherent powers u/s.482.

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Allowing the appeal, the Court

HELD: 1. Section 197, Cr.P.C. states that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except

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by or with the sanction of the Government, the Court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision. The sanction is necessary if the offence alleged against public servant is committed by him "while acting or purporting to act in the discharge of his official duties". In the instant case, the Tender Committee had rejected the tender on the ground that the respondent did not fulfill the pre-qualifying conditions. Before doing so, the respondent was asked time and again to send the performance report but he failed to comply even when he had assured to do the needful. Still, in order to verify the claim of the respondent and to consider his bid on merits, though not strictly required, the appellant was deputed to get the desired information from JSEB. He met the officials of JSEB and submitted his report to the effect that the works carried out by the respondent was not satisfactory. Even, the General Manager of the said Power Station furnished his report wherein it was summed up that due to the defects in the scanning system, supplied by the respondent, generation was adversely effected and the said Electricity Board was not satisfied with the equipment supplied by the respondent. Even the report of the technical experts went against the respondent as it opined that the respondent was not technically suitable on the technical vetting and comparative data. On the basis of that, the respondent's tender document was not opened and returned and he was informed accordingly. All this clearly happened in furtherance of and in discharge of the official duties by the appellant. [Paras 10, 11, 15] [993-G-H; 994-A; 996-F-H; 997-A-E]

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2. The respondent filed a civil suit. However, withdrew the suit. Once the suit is withdrawn, that acts as constructive *res judicata* having regard to the provision of Order XXIII Rule 1, CPC. Also, when suit is

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- A dismissed under Order IX Rule 8 CPC, fresh suit under Order IX Rule 9 is barred. Even when the respondent himself invited order of dismissal in the civil suit, he filed a writ petition against the order passed in the civil court dismissing his suit for non-prosecution, but the same was
- B also dismissed by the High Court. SLP preferred by the respondent was also dismissed. When he did not succeed in the said attempt, he came out with the allegations of forgery. Thus, the action of the respondent in filing the criminal complaint was not bonafide and
- C amounted to misuse and abuse of the process of law. The attempt was made by the respondent to convert a case with civil nature into criminal prosecution. The High Court erred in not quashing the proceedings in exercise of its inherent powers under Section 482, Cr.P.C. [Paras 16, 18, 19] [997-H; 998-A-F; 1000-C-D]
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- Shambhoo Nath Misra v. State of U.P.* (1997) 5 SCC 326; 1997 (2) SCR 1139; *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335; 1991 (1) Suppl. SCR 387; *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736; 2006 (3) Suppl. SCR 704; *Inder Mohan Goswami and another v. State of Uttaranchal and Ors.* (2007) 12 SCC 1; 2007 (10) SCR 847 – relied on.
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- Naresh Kumar Madan v. State of M.P.* (2007) 4 SCC 766 : 2007(4) SCR 1040; *State of Maharashtra v. Dr. Budhikota Subbarao* (1993) 2 SCC 567; 1993 (2) SCR 329 – referred to.
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Case Law Reference:

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|---|-------------------------|-------------|---------|
| G | 2007(4) SCR 1040 | referred to | Para 4 |
| | 1993 (2) SCR 329 | referred to | Para 5 |
| | 1997 (2) SCR 1139 | relied on | Para 13 |
| H | 1991 (1) Suppl. SCR 387 | relied on | Para 17 |

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2006 (3) Suppl. SCR 704 relied on Para 18 A

2007 (10) SCR 847 relied on Para 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 729-732 of 2010.

From the Judgment & Order dated 03.06.2009 of the High
Court of Madras at Madurai in Criminal Original Petitions (MD)
Nos. 9890, 10017, 10027 and 10028 of 2008.

Rahul Srivastava, Ram Swarup Sharma for the Appellants.

R. Vijaykumar (Respondent-in-person).

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. These appeals are filed by four appellants, who were arrayed as accused persons in the complaint case No.183/2007 filed by the respondent herein before the Court of Judicial Magistrate No.II, Tiruchirapalli, Tamil Nadu. The complaint has been filed under Sections 120-B, 468, 420 and 500 of the Indian Penal Code (for short 'the IPC'). The learned Judicial Magistrate took cognizance of the said complaint and summoned the appellants. The appellants (who were arrayed as accused Nos.3, 4, 5 and 6) challenged the said summoning orders and sought quashment of the complaint by filing petition under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.) inasmuch as according to them the allegations in the complaint did not make out any offence under the aforesaid provisions of the IPC; the complainant had neither any locus standi nor any legal status to prefer any such complaint; the appellants being public servants and Gazetted officers of the State Government of Chhattisgarh, no such criminal proceedings could be initiated against them without prior sanction from the appointing authority as per Section 197 of the Cr.P.C.; and the complaint was blatant misuse and abuse of the process of Court which was filed by the complainant after exhausting the civil remedies

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A in which he had failed. The High Court, after examination of the matter, has not found any merit in any of the aforesaid contentions raised by the appellants and, consequently, dismissed their petitions.

B 2. Before we advert to the submissions of the appellants, which are mirror image of what was argued before the High Court, it would be appropriate to traverse through the relevant facts and events leading to the filing of the said complaint by the complainant. These are as under:

C The Chhattisgarh State Electricity Board (for short 'the
D CSEB') issued an advertisement inviting tender (NIT) bearing
E No. T-136/2004 dated 02.06.2004 for its work at Hasedeo
F Thermal Power Station (Korba West) towards Designing,
G Engineering, Testing, Supply, Erection & Commission of HEA
H Ignition system. The applications received there under were
required to be processed in three stages successively namely;
Part-I (EMD); Part-II (Techno-Commercial Criteria) and Part III
(Price Bid). The respondent herein submitted an application on
26.08.2004 as Chief Executive Officer of M/s Control
Electronics India (CEI) requesting for Tender Document. The
application was rejected on the ground that it was accompanied
by incomplete documents i.e. non-submission of documentary
evidence of past performance and experience of the
respondent. The respondent made a complaint dated
06.09.2004 against appellant No. 3 herein alleging that the
Tender Documents were not issued to the respondent. It was
followed by several letters requesting for issuance of Tender
Documents. He was informed that rather than pressurising the
appellants here or other officials, he should furnish documents
as per pre-qualifying condition of the Tender. In response
thereto, vide his letter dated 05.11.2004, the respondent filed
a copy of purchase order dated 28.01.2002 placed by
Jharkhand State Electricity Board (for short 'the JSEB') and
assured to supply other documentary evidence (performance
report) subsequently. On such assurance, the Tender

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Documents were issued to the respondent. The respondent A
vide his letter dated 08.12.2004, mentioned that the
Performance Report was enclosed in Part-II. However, the said
report was not found enclosed and even after repeated requests
from the CSEB to furnish documents, respondent did not fulfill
the necessary requirement. As the respondent did not submit B
the necessary documents, the CSEB sought the information
from the Chief Engineer of JSEB (arrayed in the complaint as
accused No.2) vide letter dated 10.12.2004 about the
performance of the respondent. Appellant No.2 herein was also
deputed to get the desired information from JSEB. After C
meeting the officials of JSEB, appellant No.2 submitted his
report stating that the works carried out by the respondent were
not satisfactory as many defects were found therein. As per the
appellants, even technical expertise was sought from SE (ET&I)
KW (CSEB) and found that the respondent was not technically D
suitable as per the technical vetting and comparative data of
SE (ET&I) KW letter dated 04.02.2005. On that basis, tender
of the respondent was rejected. The appellants submit that as
an outburst, in not getting the Tender in his favour, the
respondent made complaints alleging irregularities to various E
fora including the State Government, which ordered the CSEB
to conduct an enquiry. The CSEB submitted its report on
21.02.2006 stating that there were no such irregularities and
that the respondent had not furnished the necessary documents
despite repeated requests. At this stage, the respondent filed F
the Civil Suit (26-A/06) before the Civil Judge Class-II, Korba
against the CSEB. However, the respondent moved an
application seeking to withdraw the said suit. In any case he
did not appear on the date fixed and accordingly the suit was
dismissed for non-prosecution on 12.09.2006. The respondent G
herein then filed a Writ Petition No.2951 of 2006 before the
Chhattisgarh High Court which was dismissed on 25.06.2007.
Even costs of Rs.25,000/- was imposed while dismissing the
writ petition with the observations that it was abuse of the
process of Court. Thereafter, SLP No.15897 of 2007 was H
preferred by the respondent which also came to be dismissed

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A vide order dated 14.09.2007. After the exhaustion of these
remedies, albeit unsuccessfully, the respondent filed a
complaint before K.K. Nagar P.S., Thirucharapalli, Tamil Nadu.
The police authorities refused to register the same on the
ground that it is a civil dispute. It is, thereafter, that the
B respondent filed the said Criminal Complaint under Sections
120-B, 468, 420 & 500 IPC before the trial Court, which was
registered as C.C. No. 183/07 and the trial Court issued
summons to the appellants herein and accused No.1
(Successful Bidder) & accused No. 2 (then Chief Engineer,
C JSEB). Petitions of the appellants seeking quashing of the said
complaint have been dismissed by the order of the High Court,
which is impugned before us.

3. A reading of the said complaint reveals the following
broad allegations levelled by the respondent:

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(a) The respondent/complainant alleges that the
appellants and accused No.1 (Successful Bidder)
& accused No. 2 (then Chief Engineer, JSEB) had
conspired secretly to disentitle the complainant's
company by creating a discredit and for the said
purpose, they were in constant touch so as to create
the said Performance Report Cum Certificate,
E which was issued by accused No.2.

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(b) The respondent/complainant alleges that the said
conspiracy started with an agreement entered into
by the 1st accused and the appellants herein and
they planned to fabricate the said certificate dated
28.12.2004. For this purpose, accused No. 2 was
approached so as to tailor the certificate totally
discrediting the CEI (Company of the Complainant)
with reference to supply and service relationship
with Patratu Thermal Power Station (for short 'the
G PTPS') and JSEB.

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(c) The respondent/complainant alleges that the said

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Certificate cum Report is false, fabricated, motivated and malafide and the same was contrary to the minutes of meeting that the complainant and his officials had with the officials of PTPS and JSEB. He further alleges that for the said reasons, the accused No. 2 was demoted from his post. A
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(d) The respondent/complainant alleges that on suspicion of such Certificate Cum Report, the complainant visited the CSEB and on verifying about the same, he found that the said tender was being given to Company of the 1st accused against the Complainant's Company and so he wrote a letter to the Chief Secretary and Chairman of JSEB for verifying and cancelling such certificate. He also wrote to many officials of the CSEB. C
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(e) The respondent/complainant alleges that the said Certificate is perse defamatory as against the complainant's company and is a crude attempt to favour accused No.1 by spoiling the image of the Complainants company. He further alleges that this caused a wrongful loss to the complainant's company by robbing its due chance to get a contract for the Boiler Plant Units at Korba. E

4. After recording preliminary evidence, the Magistrate took cognizance of the complaint which order was challenged in the High Court. Before the High Court, the appellants, *inter alia*, contended that the allegations made by the respondent under Sections 120-B, 468, 420 & 500 of IPC pertained to the award of tender in favour of accused No.1 in which the respondent was also a competing party. It was also pleaded that the said complaint has been lodged as an afterthought, having failed in the civil suit for injunction which was dismissed and likewise, after unsuccessful attempt to challenge the award of contract in favour of accused No.1 as the writ petition of the F
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A respondent was dismissed by the High Court. Thus, the lodging of complaint before Judicial Magistrate-II, Tiruchirapalli was nothing but abuse of process of law. The appellants also contended that the respondents herein had no locus standi nor any legal status to prefer the said complaint, as CEI is not a registered company, having a legal entity. The appellants further relied on *Naresh Kumar Madan v. State of M.P.*, (2007) 4 SCC 766 wherein it has been held that an employee working in the Electricity Board is covered under the definition of 'Public Servant' and *State of Maharashtra v. Dr. Budhikota Subbarao*, (1993) 2 SCC 567 for the proposition that the absence of sanction order from the appropriate authority under Section 197 Cr.P.C for prosecuting a public servant, vitiates the proceedings.

D 5. The respondent refuted the aforesaid submissions by arguing that the appellants herein had deliberately conspired and had committed the offences against the complainant and therefore he has a right to lodge a complaint for the offences committed by the appellants along with accused No. 2 (Chief Engineer, JSEB) in rejecting the tender submitted by the complainant with a view to accept the tender of the 1st accused. It was argued that they conspired and created false document with an idea of rejecting the claim of the complainant. The respondent further submitted that complainant's locus standi as a company was not questioned in the earlier proceedings before the Chhattisgarh High Court and that the Judicial Magistrate had applied his mind and after satisfying himself that the complainant/respondent has got legal status to lodge the said complaint, had taken cognizance of the offences committed by the accused persons. It was also contended that the question of obtaining sanction under Section 197 Cr.P.C. will not arise in so far as the present complaint is concerned, as the accused are charged for conspiracy, cheating, criminal breach of trust and defamation. He further submitted that his allegation in the complaint pertained to the fabrication of the Certificate-cum-Report dated 28.12.2004 which was used

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against him in rejecting his tender and 1st accused was favoured with the award of work. Therefore, they had committed offences against the complainant and damaged the reputation of the respondent/ complainant. A

6. The High Court while dismissing the petition of the appellants recorded that: B

(a) As far as mandatory provisions of Section 197 Cr.P.C is concerned, the High Court accepted that the appellants are 'Public Servants'. It also observed that if the accusation against the appellants under Sections 120-B, 468, 420 & 500 IPC are connected with the discharge of their duty viz. if the said acts had reasonable connection with discharge of his duty then applicability of Section 197 cannot be disputed. However, on going through the allegations in the complaint, the High Court held that even though the appellants are "Public Servant", the alleged offences committed by them are cognizable offences are not in discharge of their normal duties, in which component of criminal breach of trust is found as one of the elements and hence the provisions of Section 197 Cr.P.C. are not attracted. C
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(b) It has also been observed that the evidence regarding the allegations made in the complaint have to be recorded and gone into by the trial court after the evidence have been adduced by the complainant. It is only thereafter the lower Court, can decide as to whether the allegations about the falsity of the Certificate with conspiracy of accused No. 2 and the appellants herein are correct or not. F
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7. It is clear from the above that primarily two questions arise for consideration namely:

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- A (a) Whether prior sanction of the competent authority to prosecute the appellants, who are admittedly public servants, is mandatory under Section 197 of the Code?
- B (b) Whether, on the facts of this case, the complaint filed by the respondent is motivated and afterthought, after losing the battle in civil litigation and amounts to misuse and abuse of law?

C We would like to remark that having regard to the facts of this case the two issues are interconnected and narratives would be overlapping, as would become apparent when we proceed with the discussion hereinafter.

D 8. For this purpose, we would first like to point out that the High Court has itself taken note of the judgment of this Court in the Case of *Naresh Kumar Madan* (*supra*) to hold that the appellants are covered by the description of public servants within the meaning of Section 21 of IPC. Following observations therefrom have been quoted:

E "The officers of the State Electricity Board are required to carry out public functions. They are public authorities. Their action in one way or the other may entail civil or evil consequences to the consumers of electrical energy. They may prosecute a person. They are empowered to enter into

F the house of the Board's consumers. It is only for proper and effective exercise of those powers, the statute provides that they would be public servants, wherefore a legal fiction has been created in favour of those employees, when acting or purported to act in pursuance of any of the

G provisions of the Act within the meaning of Section 21 of the Indian Penal Code. Indian Penal Code denotes various persons to the public servants. It is, however, not exhaustive. A person may be public servant in terms of

H another statute. However we may notice that a person, who, *inter alia*, is in the service or pay of the Government

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established by or under a Central, Provincial or State Act, would also come within the purview thereof. Section 2 (1) (c) of the 1988 Act also brings within its embrace a person in the service or pay of a corporation established by or under a Central Act.” A

9. The question is of the applicability of Section 197 of the Code. Said provision with which we are concerned is reproduced below: B

“Prosecution of Judges and public servant. (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- C D

(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; E

(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.” F

10. This provision makes it clear that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except by or with the sanction of the Government, the Court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision. G

11. The sanction, however, is necessary if the offence alleged against public servant is committed by him “while acting or purporting to act in the discharge of his official duties”. In H

A order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, following yardstick is provided by this Court in *Dr. Budhikota Subbarao* (supra) in the following words:

B “If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.”

C 12. This principle was explained in some more detail in the case of *Raghunath Anant Govilkar v. State of Maharashtra*, which was decided by this Court on 08.02.2008 in SLP (Crl.) No.5453 of 2007, in the following manner:

D “On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, *Shreekantiah Ramayya Munipalli v. State of Bombay* and *Amrik Singh v. State of Pepsu* was as follows:

E It is not every offence committed, by a public servant that requires sanction for prosecution under Section 197 (1) of Criminal Procedure Cod; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly
F concern d with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

G The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Sections 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned
H they cannot be said to be of the nature mentioned in Section

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197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.” A

13. Likewise, in *Shambhoo Nath Misra v. State of U.P. and others*, (1997) 5 SCC 326, the Court dealt with the subject in the following manner: B

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.” C D E

14. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated as part of the appellants normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the F G H

A facts of the present case, the same has been correctly applied. If one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified. However, a little deeper scrutiny into the circumstances under which the complaint came to be filed

B would demonstrate that allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature. As noted

C above, the respondent had in fact initiated civil action in the form of suit for injunction against the award of the contract in which he failed. Order of civil court was challenged by filing writ petition in the High Court. Plea of the respondent was that the action of the Department in rejecting his tender and awarding the contract to accused No.1 was illegal and motivated. Writ

D petition was also dismissed with cost. These orders attained finality. It is only thereafter criminal complaint is filed with the allegation that accused No.1 is favoured by creating a false certificate dated 28.12.2004. We would dilate this discussion with some elaboration, hereinafter.

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15. As already pointed above, tender was floated by the CSEB and the CEI herein was one of the parties who had submitted its bid through the respondent. However, tender conditions mentioned certain conditions and it was necessary

F to fulfill those conditions to become eligible to submit the bid and have it considered. As per the appellants, tender of the respondent was rejected on the ground that plant and equipment erected by the respondent at Patratu Thermal Power Station, Patratu, Jharkhand was not functioning well. This

G information was received by the Tender Committee from JSEB. When the report was sought by CSEB in December, 2004, the Tender Committee took the view that the respondent did not fulfill the pre-qualifying conditions and rejected his tender. Before doing so, the respondent was asked time and again to

H send the performance report which he had promised but he

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failed to comply even when he had assured to do the needful. A
In fact, that itself was sufficient to reject that bid of the
respondent as it was non compliant with the tender conditions.
Still, in order to verify the claim of the respondent and to
consider his bid on merits, though not strictly required, the
appellant R.C. Jain was deputed to get the desired information B
from JSEB. He met the officials of JSEB and submitted his
report to the effect that the works carried out by the respondent
at Patratu Thermal Power Station was not satisfactory. Even,
Shri B.M. Ram, General Manager of the said Power Station
furnished his report dated 28.12.2004 wherein it was summed C
up that due to the defects in the scanning system, supplied by
the respondent, generation had been adversely effected and
the said Electricity Board was not satisfied with the equipment
supplied by the respondent. In spite of the aforesaid material,
the tender Committee acted with caution and even the technical D
expertise was sought. Even the report of the technical experts
went against the respondent as it opined that the respondent
was not technically suitable on the technical vetting and
comparative data. On the basis of the aforesaid material, the
respondent's tender document was not opened and returned E
and he was informed accordingly. All this has clearly happened
in furtherance of and in discharge of the official duties by the
appellant. In the facts of the present case, we are of the view
that allegations of fabricating the records are mischievously
made as an afterthought, just to give colour of criminality to a
civil case. F

16. As pointed out above, the respondent had even filed
the civil suit challenging the decision of the Electricity Board in
returning his tender documents on the ground that the same
were not as per pre-qualifying conditions of the tender. He had G
thus resorted to the civil remedy. However, he failed therein as
for the reasons best known to him, he sought to withdraw the
same and accordingly the same was dismissed for non-
prosecution. It is trite that once the suit is withdrawn, that acts
as constructive *res judicata* having regard to the provision of H

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A Order XXIII Rule 1 of the Code of Civil Procedure. Also, when
 suit is dismissed under Order IX Rule 8 CPC, fresh suit under
 Order IX Rule 9 is barred. The legal implication would be of that
 the attempt of the respondent in challenging the decision of the
 Tender Committee in not considering his tender remained
 B unfaulted. Even when the respondent himself invited order of
 dismissal in the civil suit, curiously enough, he filed a writ
 petition against the order passed in the civil court dismissing
 his suit for non-prosecution, but the same was also dismissed
 by the High Court on 25.06.2007 and even a cost of Rs.25,000/
 C - was imposed on the respondent as the said writ petition was
 perceived by the High Court as 'abuse of process of the court'.
 SLP preferred by the respondent was also dismissed by this
 Court on 14.09.2007. It is only thereafter the respondent filed
 the criminal complaint out of which present proceedings
 D emanate. No doubt, the respondent in his complaint has right
 to colour his complaint by levelling the allegations that the
 appellants herein fabricated the records. However, on the facts
 of this case, it becomes difficult to eschew this allegation of the
 respondent and we get an uncanny feeling that the contents of
 E FIR with these allegations are a postscript of the respondent
 after losing the battle in civil proceedings which were taken out
 by him challenging the action of the Department in rejecting his
 tender. When he did not succeed in the said attempt, he came
 out with the allegations of forgery. It is thus becomes clear that
 the action of the respondent in filing the criminal complaint is
 F not bonafide and amounts to misuse and abuse of the process
 of law.

17. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC
 335, this Court has laid down principles on which Court can
 G quash the criminal proceedings under Section 482 of Cr.P.C.
 These are as follows:

"102.(1) Where the allegations made in the first
 information report or the complaint, even if they are
 H taken at their face value and accepted in their

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- entirety do not prima facie constitute any offence or make out a case against the accused. A
- (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 under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code. B
- (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. C
- (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 an order of a Magistrate as contemplated under Section 155 (2) of the Code. D
- (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 proceeding against the accused. E
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party. F

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- A (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.”
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Principle Nos.6 and 7 are clearly applicable in the present case.

- C 18. Having regard to the circumstances narrated and explained above, we are also of the view that attempt is made by the respondent to convert a case with civil nature into criminal prosecution. In a case like this, High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in the case of *Indian Oil Corpn. v. NEPC India Ltd. and others*, (2006) 6 SCC 736, wherein the Court adversely commented upon this very tendency of filing criminal complaints even in cases relating to commercial transaction for which civil remedy is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of:
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- F “13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. 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. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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
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discouraged. In *G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636, this Court observed: (SCC p. 643, para 8) A

“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 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 under Section 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.” B C

14. While 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. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.” D E F

19. In *Inder Mohan Goswami and another v. State of Uttaranchal and others*, (2007) 12 SCC 1, the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words: G

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the H

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A administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

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

B (ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

C 24. Inherent powers under Section 482 CrPC 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.

D ***Discussion of decided cases***

E 25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*, 1 1964 AC 1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys*, 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such

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abuse is of great constitutional importance and should be jealously preserved. A

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 under Section 482 CrPC 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." B
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20. As a result, these appeals are allowed. Order of the High Court is set aside. Consequently, cognizance taken by the learned Magistrate and orders summoning the appellants as accused is hereby set aside resulting into the dismissal of the said complaint. There shall however be no order as to costs. D
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Devika Gujral

Appeals allowed.