[2025] 4 S.C.R. 2473 : 2025 INSC 636

Suresh Kumar Agarwal
v.
M/s Haldia Steels Limited & Anr.

(Criminal Appeal No. 1952 of 2025)

15 April 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the High Court erred in directing further investigation into the highly belated complaint filed by the complainant-Company after unexplained delay of six years by twisting and manipulating the facts to give a colour of criminal offence to a purely civil dispute.

Headnotes†

Abuse of process of law – Criminal color imparted to a civil dispute – Further investigation directed – Impermissibility – Complainant-Company filed complaint alleging non-supply of manganese ore against the advance payment of Rs.50 lakhs, FIR registered u/ss.120B, 406 and 420, IPC – Closure report filed by IO concluding that the dispute was of civil nature arising out of the breach of contract and that no offence was made out against the accused-appellant – Complainant filed Protest Petition praying for thorough further investigation – Rejected by CMM, closure report accepted – Revision filed by complainant, allowed by High Court – Interference with:

Held: 1.1 Alleged acts of fraud and criminal misappropriation, emanating from the breach of the MOU between the parties took place between the years 2007-2008 – However, the complaint was filed in 2014 – No plausible explanation was offered by the complainant for this gross and undue delay of almost six years in filing of the complaint. [Para 19]

1.2 Complainant had twisted and manipulated the facts in the highly belated complaint just in order to give a colour of criminal offence to a dispute which was purely civil in nature emanating from the breach of agreement – The conclusions drawn by the investigating officer in the final report are unimpeachable. [Para 24]

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* Author

1.3 Complainant tried to project that the sum of Rs.50,00,000/- was paid to the appellant as advance towards supply of manganese ore whereas, the written document executed between the parties, in unequivocal terms, indicates that the amount was paid in terms of the MOU which mandated the complainant to transfer a total sum of Rs.3,20,00,000/- to the appellant whereafter, the appellant would be required to get his proprietorship concern incorporated into a company and then, transfer the shares thereof to the complainant – Hence, the incorporation of the proprietorship concern into a company and the transfer of shares thereof was contingent upon the complainant performing its obligations under the MOU, which it admittedly failed to do – Complainant twisted the facts by claiming that the advance amount of Rs. 50,00,000/- was paid to the appellant for supply of manganese ore – This allegation was totally false and concocted and could not be substantiated by any purchase order, etc. [Paras 23, 24]

1.4 Once the investigation was completed, the complainant tried to take a new stance claiming that the order whereby, the State Government had approved the transfer of the mining lease in favour of the appellant, was forged – Complainant is well-established in the field of mining – Thus, the omission of the basic facts in the highly belated complaint, that the appellant had allegedly provided the complainant with some fabricated Government order, renders the entire case set up in the FIR doubtful and unworthy of credence. [Para 24]

1.5 High Court was unduly swayed by this totally new and conjectural stance taken by the complainant in the protest petition and directed further investigation into the matter without assigning a justifiable and sustainable reason – Directing further investigation into such a frivolous complaint, filed after gross, undue and unexplained delay of six years, is nothing but a sheer abuse of the process of law – [Paras 25, 27]

1.6 Impugned order passed by the High Court quashed and set aside – Order of the CMM accepting the final report and rejecting the protest petition filed by the complainant is restored. [Para 28]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

Suresh Kumar Agarwal v. M/s Haldia Steels Limited & Anr.

List of Keywords

Highly belated complaint; Colour of criminal offence; Dispute purely civil in nature; Purely civil dispute; Facts twisted and manipulated; Breach of agreement; FIR highly belated; Belated FIR; Breach of terms and conditions of the MOU/contract; Transfer of shares; Transfer of mining lease; Manganese ore.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1952 of 2025

From the Judgment and Order dated 17.10.2023 of the High Court at Calcutta in CRR No. 425 of 2016

With

Criminal Appeal No. 1953 of 2025

Appearances for Parties

Advs. for the Appellant:
Sudhanshu S. Choudhari, Sr. Adv., Yash Maheshwari, Rohit Anil Rathi, Ms. Niharika Singh, Shakul R. Ghatole, Shyam Dewani, Saahiil Dewani, Vatsalya Vigya, Ms. Pranjal Chapalgaonkar.

Advs. for the Respondents:
Ardhendumauli Kumar Prasad, Sr. Adv., Nitesh Ranjan, Parijat Chandan, Abhinav Gupta, Neelaksh, Ravi Kumar Singh, Pankaj Agarwal, Chanchal Kumar Ganguli, Raja Chatterjee.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

Criminal Appeal @ SLP(Criminal) No. 2713 of 2024

1. Heard.

2. Leave granted.

3. The appeal by special leave takes exception to the order dated 17th October, 2023 passed in Criminal Revision being C.R.R. No. 425 of

2016 whereby the learned Single Judge of the High Court of Calcutta[1] accepted the revision filed by the respondent No.1-Company[2] and directed the police to conduct further investigation in the terms indicated below: -

> "33. Before parting with, it comes to my notice that as per Rule 17 of the Mineral Concession Rules, 1960 any kind of transfer of the mining lease requires previous consent in writing of the State Government which is missing in our case.
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> 34. All the discussion hereinabove, in my opinion, justify further investigation of this case particularly for revealing the credibility of the transfer of mining lease. Therefore, I need to interfere with the order impugned in connection with both the revision applications which appears to have been made through copy-paste process.
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> 35. As a sequel, orders impugned passed in G.R. case no. 2121 of 2014 and G.R. case no. 2120 of 2014 stand set aside.
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> 36. Learned Chief Metropolitan Magistrate at Calcutta is directed to give direction to the Police to further investigate the case in terms of Provision of Section 173(8) of the Code of Criminal Procedure, accordingly."

4. The background facts essential for disposal of the instant appeal are noted hereinbelow.

5. The complainant alleges that the accused-appellant, namely, Suresh Kumar Agarwal[3] approached the officers of the complainant-Company at its registered office situated at 37, Shakespeare Sarani, Kolkata-700017 and introduced himself as the proprietor of a concern functioning in the name and style of M/s. Haryana Minerals, having its office at Gandhiganj, Chindwara, Nagpur-440010. The appellant represented that his concern is one of the premier business concerns of Madhya Pradesh, having profound reputation and significant expertise in mining of manganese mineral. He further represented

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1 Hereinafter, being referred to as the 'High Court'.

2 Hereinafter, being referred to as the 'complainant-Company' or 'complainant'.

3 Hereinafter, being referred to as the 'appellant'.

that his concern had been granted a mining lease for excavation of manganese ore by the Government of Madhya Pradesh over 18.68 hectares of land located in the village Ladhikheda, Tehsil Sausar, District Chindwada, Madhya Pradesh for a period of 20 years commencing from 6th October, 2006 to 5th October, 2026. The appellant portrayed that he was interested in transferring such mining lease in favour of the complainant-Company against valid consideration and that in the event such transaction fructified, the complainant-Company would be assured of uninterrupted supply of manganese mineral over a period of 20 years. He further assured the officers of the complainant-Company that he had considerable clout in the administrative machinery of the State of Madhya Pradesh, which was evidenced by the fact that the mining lease was granted in his favour. He also assured that he would obtain Environmental Clearance in respect of the said mine by using his approach.

6. Before getting the mining lease transferred, he would convert his proprietary business, namely, Haryana Mineral into a private limited company and incorporate the same under the Companies Act, 1956 and thereafter, all his shares and the shares of other Director/ Directors of the newly incorporated company would be transferred to the complainant-Company or its nominees against payment of consideration, as may be settled between the parties.

7. It is alleged that several meetings were held between the appellant and the officers of the complainant-Company wherein the modalities for transfer of the mining lease in favour of the complainant-Company were discussed. The accused appellant repeatedly assured the officers of the Complainant-Company that upon the consideration amount being paid, he would ensure incorporation of the proprietary concern into a private limited company and thereafter ensure transfer of all its shares to the complainant-Company. A further assurance was given that the requisite Environmental Clearance, for operating the mine, would be obtained by the appellant of his own accord.

   However, contrary to such assurances, the Environmental Clearance certificate was never procured.

8. It is further alleged that trusting the assurance that manganese ore would be supplied by the appellant, a total amount of Rs.96,20,350/- was transferred by the complainant-Company to the appellant in terms of the Memorandum of Understanding/agreement. Despite receiving

the advance consideration as agreed, the appellant did not supply manganese ore to the complainant-Company which was thereupon compelled to procure the same from other sources at higher prices. The complainant-Company further claims that the accused appellant informed that he had transformed his proprietary concern into a private limited company in the name of Haryana Mineral Manganese Ore (P) Ltd[4]. and had also transferred 14701 shares which were around 28% of the total shareholdings of the said company, in favour of the nominees of the complainant-Company.

9. As per complainant, the appellant was under an obligation to take steps to hand over the entire assets and shares of the newly incorporated company to the complainant-Company. However, only 28% shares were transferred and thus the complainant-Company never gained full administrative control over the affairs of the company incorporated by the appellant nor was it able to access the assets of the said Company.

10. The complainant also alleged that the appellant handed over a letter issued by the Mines & Minerals Department, Government of Madhya Pradesh dated 29th December, 2008, which reflected that the mining lease standing in the name of Haryana Mineral stood transferred in favour of HMMOPL.

11. As the appellant resiled from his promise and assurances and failed to adhere to the terms and conditions of the MOU, the complainant-Company filed a complaint incorporating the above allegations, in the Court of the learned Chief Metropolitan Magistrate, Calcutta.

12. The said complaint was forwarded to the concerned police station for investigation under Section 156(3) of the Code of Criminal Procedure[5] where FIR Case No. 318 of 2014 was registered for the offences punishable under Sections 120B, 406 and 420 IPC.

13. The investigating officer conducted investigation and submitted a closure report dated 1st April, 2015 under Section 173(2) CrPC concluding that during the course of investigation, the complainant-Company was requested to submit documents in support of the complaint, including the purchase order against the proposed deal

4 Hereinafter, being referred to as the "HMMOPL".

5 Hereinafter, being referred to as the "CrPC".

for procurement of manganese ore, etc. However, apart from a bank statement reflecting a transaction of Rs.50 lakhs, the complainant-Company failed to furnish any substantive material or corroborative evidence in support of the allegations set out in the complaint.

14. The investigating officer also concluded that it was Mr. Vikas Bansal, Managing Director of the complainant-Company, who had approached the appellant upfront and had expressed his interest to procure the rights of the appellant in the name of his company (i.e., M/s. Haldia Steels Limited). The investigation also revealed that acting in compliance of the terms of the agreement/MOU, appellant incorporated a private limited company, namely, HMMOPL in which initially he and his son Vaibhav Agarwal were the Directors. The appellant made repeated requests to Mr. Vikas Bansal to transfer and pay the remaining amount of Rs.2.70 crores in terms of the agreement but the payment was not forthcoming except for the initial amount of Rs.50 lakhs paid at the time of signing of the MOU. In spite thereof, on 2nd April, 2004, Mr. Vikas Bansal and his father Mr. Ram Kishore Bansal were appointed as Directors of the Company, namely, HMMOPL. The acrimony between the parties was owing to the non-payment of the balance amount for transfer of the company's shares to the complainant-Company. The investigating officer concluded that while the complainant-Company had lodged the complaint alleging non-supply of manganese ore against the advance payment of Rs.50 lakhs, the investigation revealed that the actual dispute related to the breach of terms and conditions of the MOU/contract entered into between the complainant-Company and the accused appellant in respect of the transfer of the mining lease.

15. Finally, on 1st April, 2015, the closure report[6] was filed by the investigating officer before the concerned Court concluding that the dispute was of civil nature arising out of the breach of contract and that no offence was made out against the accused appellant from the material collected during investigation.

16. On receiving the notice of the final report, the complainant-Company on 21st April, 2015, filed a Protest Petition through its authorised representative, praying for thorough further investigation into the facts as narrated in the protest petition wherein for the first time a case

6 Final Closure Report No.79 of 2015.

was set up that the document provided by appellant evidencing the transfer of mining lease in the name of HMMOPL was fabricated.

17. The learned Chief Metropolitan Magistrate, by a detailed order dated 5th October, 2015 proceeded to reject the protest petition and accepted the closure report observing that the dispute between the parties primarily arose on account of breach of contract and that the complainant-Company did not pay the agreed amount to the appellant in terms of the MOU. The foundation of the complaint, that the advance amount of Rs.50 lakhs was paid by way of advance towards purchase of manganese ore, was found to be false and an after-thought. Consequently, the closure report dated 1st April, 2015 was accepted. The complainant-Company assailed the said order by filing a Criminal Revision (CRR No. 425 of 2016) in the High Court, which stands allowed *vide* order dated 17th October, 2023 which is subject matter of challenge in this appeal by special leave.

18. We have heard the submissions advanced by learned counsel representing the parties and have gone through the impugned order and the material placed on record.

19. At the outset, we may note a glaring feature of the case. The alleged acts of fraud and criminal misappropriation, emanating from the breach of the MOU between the parties took place between the years 2007-2008. However, the complaint came to be filed in the year 2014. No plausible explanation has been offered by the complainant-Company for this gross and undue delay of almost six years in filing of the complaint.

20. The complainant-Company founded its allegations on an alleged order for purchase of manganese ore placed to the accused appellant and claims to have paid an advance amount to the tune of Rs.50 lakhs for this purpose. However, the investigating officer, after conducting thorough investigation, concluded that the said allegation seems to be in a stark contrast to the MOU entered into between the parties which entirely focused on incorporation of the appellant's proprietary concern into a private limited company and thereafter transfer of the shares of the said company to the complainant-Company.

21. Undisputed facts as per record reflect that in terms of the MOU/ agreement, the complainant-Company was obliged to transfer a total amount of Rs.3,20,00,000/- to the accused appellant, who upon

receipt of such amount, would be required to get his firm incorporated into a company and transfer the entire bulk of shares thereof to the complainant-Company. The evidence collected by the investigating officer is unequivocal to the effect that the accused appellant indeed transformed his proprietorship concern into a private limited company namely, HMMOPL and also transferred 28% shares of the newly incorporated company to the complainant-Company's authorised representative.

22. Indisputably, the complainant-Company failed to carry out its obligations under the MOU because the amount of Rs.3,20,00,000/-, which was to be transferred to the accused appellant, was not paid in full and a sum of Rs.2,70,00,000/- remained outstanding till the filing of the complaint, which itself was grossly delayed as observed above.

23. The complainant-Company tried to project that the sum of Rs.50,00,000/- was paid to the appellant as advance towards supply of manganese ore whereas, the written document executed between the parties paints an entirely different picture. The said document, in unequivocal terms, indicates that the amount was paid in terms of the MOU which mandated the complainant-Company to transfer a total sum of Rs.3,20,00,000/- to the accused appellant whereafter, the appellant would be required to get his proprietorship concern incorporated into a company and then, transfer the shares thereof to the complainant-Company. Hence, the incorporation of the proprietorship concern into a company and the transfer of shares thereof was contingent upon the complainant-Company performing its obligations under the MOU, which it admittedly failed to do. Apparently thus, the complainant-Company twisted the facts by claiming that the advance amount of Rs. 50,00,000/- was paid to the appellant for supply of manganese ore. This allegation was totally false and concocted and could not be substantiated by any purchase order, etc. The investigating officer made efforts to seek the procurement/ purchase order, but the complainant-Company failed to provide the same manifestly because no such order was ever placed.

24. Hence, we have no hesitation in holding that the complainant-Company had twisted and manipulated the facts in the highly belated complaint just in order to give a colour of criminal offence to a dispute which was purely civil in nature emanating from the breach of agreement. The conclusions drawn by the investigating officer in the final report

are unimpeachable. Once the investigation had been completed, the complainant-Company tried to take a new stance claiming that the order whereby, the State Government had approved the transfer of the mining lease in favour of the appellant, was forged. However, not even *prima facie* evidence was provided by the complainant-Company in support of such allegation and it seems to be nothing but a sheer flight of fancy of the complainant-Company to try and continue the lame prosecution and put the appellant under pressure. The complainant-Company is well-established in the field of mining. Thus, the omission of the basic facts in the highly belated complaint, that the appellant had allegedly provided the complainant-Company with some fabricated Government order, renders the entire case set up in the FIR doubtful and unworthy of credence.

25. The High Court seems to have been unduly swayed by this totally new and conjectural stance taken by the complainant-Company in the protest petition and directed further investigation into the matter without assigning a justifiable and sustainable reason.

26. The fact that the FIR was highly belated and that the complainant-Company tried to paint an entirely new picture by imputing that the advance payment of Rs. 50,00,000/- was made to the accused for procuring manganese ore in stark contradiction to the terms and conditions of the MOU were sufficient reasons for the High Court to have refrained from exercising its revisional jurisdiction and directing further investigation into the case. The order passed by the trial Court accepting the closure report and rejecting the protest petition is unassailable in view of the undisputed material available on record.

27. We have no hesitation in holding that the admitted allegations as set out in the complaint do not disclose the necessary ingredients of any offence whatsoever, what to say, of a cognizable offence. Directing further investigation into such a frivolous complaint, filed after gross, undue and unexplained delay of six years, is nothing but a sheer abuse of the process of law.

28. Consequently, the impugned order dated 17th October, 2023 passed by the High Court does not stand to scrutiny and is hereby quashed and set aside. The order dated 5th October, 2015 passed by the learned Chief Metropolitan Magistrate, Calcutta accepting the final report and rejecting the protest petition filed by the complainant-Company is restored.

29. The appeal is allowed accordingly.

30. Pending application(s), if any, shall stand disposed of.

Criminal Appeal @ SLP(Criminal) No. 5030 of 2024

1. Leave granted.

2. The facts and circumstances as involved in the present appeal are a verbatim same as in the connected Criminal Appeal @ SLP(Criminal) No. 2713 of 2024 which has been allowed by a separate order.

3. For the reasons mentioned in the Criminal Appeal @ SLP(Criminal) No. 2713 of 2024, the instant appeal is also allowed. The impugned judgment dated 17th October, 2023 passed by the High Court of Calcutta is set aside. The order dated 5th October, 2015 passed by the learned Chief Metropolitan Magistrate, Calcutta accepting the negative final report submitted by the police, is hereby restored.

4. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey