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Case Comment on Indian Oil Corporation V. NPEC India Ltd. & Ors

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Abstract
It is often the case that the same subject matter gives rise to civil and criminal proceedings. There are several areas of law where remedy is provided under both the systems. They include civil wrongs such as defamation and breach of trust among others that constitute offences as well. These subject matters make for clear cases of overlap and the parties usually have the option to choose between civil and criminal proceedings based on the relief they intend to seek. However, there are some matters where there is a clearly made out civil case and yet the relevant parties opt for a criminal prosecution. There may be several reasons for the same ranging from a mere ignorance of law to mala fide intent to cause hardship to the defendant in question. It is important to analyze the specific facts and first assess if there is ample ground for overlapping civil and criminal proceedings before an attempt is made to decipher the intent behind criminalization of cases that bear the nature of a civil proceeding. It is also important to note that there may be several cases where the distinction is murky, and the parties should not be held liable in those situations. Indian Oil Corporation v. National Power Engineering Company (2006) is one such case that demonstrates that the criminalization of civil proceedings is not always the sole result of the conduct of the parties. The paper aims to critically analyze the judgment.

Keywords: *civil, criminal, IPC, CrPC, legal remedies, misuse.*

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INTRODUCTION
Criminal and civil proceedings often harmoniously go hand-in-hand, leaving the victim with dual remedy yet there is some uncertainty as to those cases where the availing civil recourse could affect remedies under criminal law. The interplay between civil and criminal legal recourse gains significance in situations where criminal remedies are willfully sought in civil matters. Empirically speaking, recent trends in criminal legal practice indicate that there is a major shift in people's perception of the functional aspect of the justice delivery system. This attitude is reflected in the growing number of criminal cases filed in civil disputes to ensure expedited results. The Apex Court has taken a harsh stand on such abuse of the criminal procedure, yet the enthusiasm exhibited by the common folk to misuse legal remedies, remains unhindered as they continue to file criminal charges in unequivocally civil cases. It should be noted that in most cases the issue is much more nuanced than a *prima facie* appearance of unreasonable criminalization of civil matters. The 2006 case of *Indian Oil Corporation v. NPEC India Ltd. & ors* [1] is a refined example of criminalization of a civil breach and the case is noteworthy in that it has precedential relevance and jurisprudential significance in several respects, making for an interesting analysis.

FACTUAL BACKGROUND
Briefly, the case involves a sale-purchase agreement between Indian Oil Corporation ["complainant"] and NPEC ["respondent"] for aviation turbine fuel and lubricants. To secure the payment, the respondent entered into a hypothecation deed with respect to a few of its aircrafts wherein it agreed to not encumber them or remove them from the Meenambakkam Airport in Chennai, without the previous written consent of the complainant. Further, it was agreed that upon default in payment, the complainant shall obtain the rights of a pledgee over the said aircrafts. The respondent failed to make the payments on time and also breached the terms of the hypothecation deed by removing the

aircrafts without prior permission from the complainant, who subsequently framed criminal charges against the respondent under sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust) and 415 (cheating) of the Indian Penal Code ["IPC"].

HOLDING

Madras High Court Decision

The Madras High Court declared that even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under sections 378, 403, 405, 415 or 425 IPC but it refused to accept that the complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees. Further, the High Court dismissed the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of the civil proceedings.

Supreme Court Ruling

The Apex Court discussed the limitations of the inherent powers of the High Court u/s.482 of the Code of Criminal Procedure ["CrPC"] and it found that the High Court was not justified in quashing the complaints/criminal proceedings in its entirety. The allegations in the complaint were deemed sufficient to constitute offences under sections 415 and 425 of IPC. Accordingly, these appeals were allowed in part and the order of the High Court was set aside insofar it quashes the complaint under sections 415 and 425 of the IPC.

LEGAL REASONING AND ANALYSIS

The Supreme Court considered four substantive questions of penal law and two procedural issues. The discussions on Ss. 378, 403, 405 & 415 make for an interesting study, but they remain beyond the scope of a case comment on procedural criminal law questions. Hence, the critical discussion herein shall be restricted to the procedural law problem u/s.482 raised by the court and the broader issue of procedural violations committed in the criminalization of civil disputes. The case may not be one of first impression but it is certainly noteworthy owing to the fact that it collates the existing judicial decisions on the subject matter [2] and presents a crisp analysis of the same that has been frequently cited in subsequent cases [3].

Criminal Cases in Civil Disputes: An Abuse of Procedure?

The Apex Court starts out with a broad question concerning the exploitation of legal remedies in criminal law to facilitate settlement in civil disputes but later restricts itself to adjudging whether the ingredients of a criminal offence are satisfied in the present case. The procedural question is left hanging after the red herring of subject ratios quoted from relevant landmark judgments. The present case can be located in a grey area of legal disputes where a concurrent cause of action arises in both civil and criminal law. The Court opined that such dual remedies are not mutually exclusive and proceeded to offer *obiter* on criminalization of civil disputes.

Quoting *G Sagar Suri v. State of U.P.*, [4] the Apex Court stated that criminal remedies shall not misused as a shortcut of other remedies available in law owing to the seriousness of the issue as far the accused is concerned. Further, it strongly discouraged the practice of initiating or persisting in unwarranted criminal proceedings in purely civil matters and hinted that some sanction should follow deliberate mischaracterization of civil disputes without reason. The court identified the instant dispute as a grey area where both civil and criminal cases are made out and refused to accept that realization of the former disqualifies the complainant from seeking the latter. It must be noted that the opinion of the court has better expression in a larger realm beyond the confines of the present case.

S.250 of the CrPC confers the Magistrate with powers to provide compensation to victims of unwarranted criminal prosecution [5]. The Magistrate is empowered under S.203 to dismiss complaints when he is of the opinion that there is no 'sufficient ground for a criminal proceeding' [6] and the Trial Court shall only entertain pleas where a *prima facie* criminal case is made out [7]. Further, it was held in *K.S. Chockalingam v. T. Kannappan* that the motivation of the parties or extrafactual issues should not be considered by the Magistrate in deciding the admittance of the matter [8]. Therefore, it can be logically inferred that the factors that actuate the filing of a criminal case should not influence the Magistrate in dismissing a complaint u/s.203. The policy of the law is that the Magistrate should not make a judicial overreach into external factors which have not been placed before it as evidence on record.

By locating the points raised by the Apex Court in the instant case in the context of the spirit of the law, it can be argued that, the consideration of the motivations behind the filing of a criminal case, is unwarranted and the *obiter* of the Court that such legal practice should be penalized is unfounded in law. The Apex Court stated that *"a complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable."*

It is argued that the Court has clearly exceeded its powers and it is submitted that it ought not have dictated procedural correctness and least so when it is incoherent with a stature. The researcher further submits the Court opinion that the motivation behind filing the case is of relevance to determine abuse of process can't but be described as a moment of judicial legislation and judicial overreach, which should be strongly discouraged in the interest of the preservation of the 'separation of powers' that holds the Indian State together.

Inherent Powers of the High Court: A Judicial Definition

S.482 of the CrPC saves the wide powers of the High Court to pass orders to preserve the ends of justice, to give effect to any order under the Code or to prevent the abuse of process [9]. The third category is especially relevant to us since the criminalization of civil disputes is arguably an abuse of process and the powers of the High Court in this regard have been discussed earlier. This extra-ordinary power has to be exercised sparingly with abundant caution and it should not be resorted to like remedy of appeal or revision [10].

In the present case, the Supreme Court with the support of several precedents [11], noted that a complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value, without going into merits, and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. In other words, *quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence* [12]. The stand taken by the Supreme Court does reflect precedents, yet important cases that expand the law, have been decided in this regard.

It was held in *Dhanlakshmi (Mrs.)* v. *R. Prasana Kumar [13]* that the High Court could quash criminal proceedings in exercise of its inherent powers but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive. Further, where necessary ingredients of a criminal offence were not made out but the attendant circumstances indicated that the FIR was lodged to prompt the filing of a complaint against the informant under another Act, the quashing of FIR was found to be proper to avoid the abuse of process [14].

The Supreme Court in the instant case has recognized these principles in different words and the judicial intent remains largely the same. Yet, the direction taken by the Apex Court compels criticism. The Court has identified the correct reasons yet chosen the wrong recourse. The Court merely characterized the matter as one where both civil and criminal proceedings are maintainable, and it failed to apply the other criteria used to decide admittance when a criminal case seems to obscure. Thus, the Apex Court brushed aside an important procedural question that it raised *suo motu* and lost its opportunity to finally clarify the judicial position in this regard.

CONCLUSION

Indian Oil Corporation v. NPEC is a landmark case, in as much as it has been recited hundreds of times as for the interesting direction taken by Justices Seema and Raveendran in the judgment. Despite opinionating on the crucial questions of inherent powers of the High Court and the quashing of proceedings where a criminal offence is not made out, the Court took an easy exit and classified the present case as an exception where dual remedies are in harmonious operation. Though this statement forms a minor part of the judgment, it is highly significant since merits are not considered in criminal cases unless a *prima facie* case is found to be made out at the Trial stage. While deciding on the admissibility of a complaint at an initial stage, the Magistrate has to record reasons to substantiate his decision and the entire process is further complicated when the Magistrate harbours slight suspicion as to the motives of the complainant. He is forestalled from deliberating upon the true intentions of the complainant and consequently, he cannot throw out criminal cases which seem to have been filed only to expedite a civil dispute. In this regard, the instant case has highlighted a loophole in the law which can be further exploited in subsequent cases where criminal charges are filed in clearly civil disputes since the Court won't have to make a hard choice whether to call a spade a spade. It can merely state that both proceedings are made out and proceed to the consideration of merits. This is problematic and a clarification on the final judicial position on the issue has been necessitated.

REFERENCES

1. AIR 2006 SC 2780.
2. The judgment relies on the following cases apart from mentioning and discussing several other precedents: Jaswantrai Manilal Akhaney v. State of Bombay AIR 1956 SC 575, Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin AIR 1953 SC 478, Rajesh Bajaj vs. State NCT of Delhi & Ors AIR 1999 SC 1216, Hridaya Ranjan Pd. Verma & Ors. vs. State of Bihar & Anr. AIR 2000 SC 2341, CBI v. Duncans Agro Industries Ltd., Calcutta 1996 V AD (SC) 341 and G. Sagar Suri & Anr. v. State of U.P. & Ors. AIR 2000 SC 754.
3. The case has been mentioned in or discussed in hundreds of cases including the recent Supreme Court cases of Ramdev Food Products Pvt. Ltd v. State of Gujarat AIR 2015 SC 1742 and Binod Kumar v. State of Bihar (2014) 10 SCC 663.
4. 2000 (2) SCC 636.
5. § 250, Code of Criminal Procedure (1973).
6. §203, Code of Criminal Procedure (1973); See also Pramatha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876.
7. Kewal Krishan v. Suraj Bhan 1980 Supp SCC 499.
8. 1977 Cri LJ 1382, 1386 (Mad.).
9. §482, Code of Criminal Procedure (1973).
10. Kavita (Smt.) v. State, 2000 Cr LJ 315 (Del).
11. Supra 2.
12. IOC v. NPEC ¶9.
13. AIR 1990 SC 494.
14. Sunil Kumar v. Escorts Yamaha, AIR 2000 SC 27; See also AIR 1992 SC 1815

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