

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 683/2012**

% *Judgment reserved on: 18th July, 2012*
Judgment delivered on: 08th October, 2012

BIJWASAN AGRO & ANR. Petitioners
Through: Mr.Dinesh Mathur, Sr. Adv. with
Mr. Sishir Mathur, Adv.

versus

CBI Respondent
Through: Ms. Sonia Mathur, Standing
Counsel for CBI.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioner has assailed the order on charge and framing of charge dated 23.07.2010 passed by Id. Additional Chief Metropolitan Magistrate-3 Delhi as under:-

“Order on charge.

Heard on charge. File perused prima facie record shows that the case for the offences, punishable u/s 471/420/511/IPC is made out against Kumar Sahay Verma & M/s. Bijwasan Agrao(P) Ltd. and a case for commission of offence punishable u/s 467 IPC is made out against accused Dilbagh Singh Kanwar and a case of commission of offence punishable u/s 120B IPC r/w Section 467/471/420 r/w 511 IPC is made against all the accused persons. Accordingly, charge for the said

offences framed against the accused persons separately. The accusation has been read over and explained to them to which they pleaded not guilty and claimed trial.

Framing of Charge.

That in the year 1994-95 at Delhi, all of you in furtherance of criminal conspiracy with one another agreed to prepare a false/forged MOU to give additional rebates of various types of M/s. Bijwasan Agro Pvt. Ltd. by National Fertilizers Ltd.(NFL) so that M/s. Bijwasan Agro Pvt. Ltd. could adjust its outstanding amount of Rs.4.16 crores and to cheat NFL and submitted this forged MOU to get rebate and thereby committed an offence punishable U/s 120-B read with Section 461/471/420 r/w 511 IPC within the jurisdiction of this court and within my cognizance.”

2. Being aggrieved, petitioner challenged the aforesaid orders vide Crl. Rev. P. No. 41/2010 before Ld. Addl. Sessions Judge (West), Delhi. Ld. Addl. Sessions Judge while dismissing the case recorded its observation as under:-

“I have perused the impugned order wherein Ld. Trial Court has reached to the conclusion that the record shows a prima facie case for the offences punishable u/s 471/420/511 IPC is made out against the accused Kumar Sahay Verma and M/s Bijwasan Agro Petitioner. Ltd. (revisionist herein). Further, Ld. Trial Court found a prima facie case for commission of offence punishable u/s 120 B IPC r/w/s 467/471/420 r/w/s 511 IPC was also made out against the accused persons that is petitioners herein and Mr.D.S. Kanwar accused No.1. Thus a charge is also framed against the accused persons separately for the offence u/s 471 IPC for using the forged MOU as genuine and further they have been charged for the offence u/s 420 r/w/s 511 IPC for their attempt to cheat NFL by dishonestly inducing it to gives

rebate on the basis of that false MOU. Petitioners have also been charged alongwith main accused Mr.Dilbagh Singh Kanwar who has allegedly signed the MOU on behalf of NFL after his retirement for the offence u/s 467/471/420 r/w/s 511 IPC. After going through the material on record, statements of witnesses recorded during investigation and documents relied by the prosecution, it is found that the material collected during investigation is sufficient which raises a grave suspicion against the revisionist/petitioners for their involvement in the alleged forgery of MOU which has been allegedly used as an attempt for cheating by producing the same before the NFL for getting rebates to the tune of Rs.4.16 crores by the revisionist/petitioners.

13. The points raised by the Ld. counsel for the revisionist, if considered, requires meticulous examination of evidence without affording an opportunity to the prosecution to lead its evidence in support of its allegations. Recently Hon'ble High Court of Delhi in Criminal Revision Petition No.513/2004 titled as **Rakesh Kumar Gupta vs. State (Govt. of NCT of Delhi)** dated 18.09.2009 has discussed the law relating to the framing of the charge in detail and was pleased to hold in Para no. 15 and 16 as under:

Para 15: Thus at the time of framing charge, the court is not supposed to look into the evidence of the case in detail and is only to consider whether there is a strong suspicion against the accused on the basis of the material that comes before it. The court has the power to sift the evidence for the limited purpose of finding out, whether or not a prima facie case is made out against the accused. However, the court is not supposed to delve deeply into the merits of the matter and start a roving expedition into the evidence that is brought forth it, as if conducting a trial. Further there is no tone fixed definition that may be ascribed to the term 'prima facie' nor can the terms

'strong suspicion' have a singular meaning. While coming to the conclusion of a strong prima facie case or strong suspicion, the court shall have to decide each case on the basis of its own independent facts and circumstances.

Para 16: It would be applicant to recall that a court exercising revisional jurisdiction cannot go into intricate details as regards the merits of a matter and many interfere only when there is any illegality or material irregularity or impropriety in the order passed by the lower court. A revisional court cannot act as a court of appeal and reappraise the merits of the case.

While exercising revisional jurisdiction this court cannot go into intricate details as regards the merits of the matter and otherwise, I do not find any infirmity with the impugned order as there is no illegality or impropriety in the impugned order passed by ld. ACMM, New Delhi."

3. Mr. D.C. Mathur, ld. Senior Advocate appearing on behalf of the petitioners has submitted that the charges framed by the learned ACMM(W) upon M/s. Bijwasan Agro Pvt. Ltd. u/s 120-B of I.P.C. are apparently wrong.
4. Learned counsel has drawn the attention of the court on the Memorandum of Understanding for the additional margin to be allowed on the purchase of NFL Urea during 1994-95 by Bijwasan Agro Pvt. Ltd. whereby the additional terms of sale has been described and the said MOU was signed by the Director of the petitioners company and the Director of the National Fertilizer Ltd.
5. On the source of information, the CBI entered into and have registered case against the petitioners and Director of NFL, Mr.

D.S.Kanwar.

6. Learned counsel has further submitted that in MOU mentioned above, there is only understanding to allow additional margin for supply of NFL Urea to the petitioner company. If the MOU taken place between the Director of the petitioner company and the Director of the NFL were nothing but were understanding between two representatives of both the companies. If in the MOU, there was some irregularities, the higher authority of the NFL would have rejected the same. Therefore, the charge u/s 471 IPC cannot be framed on the said MOU being forged by the petitioners company in conspiracy of the Director of the NFL.

7. It is further submitted, by signing the MOU that nothing has been forged. It is only a document of understanding and that is upto NFL to abide by the MOU or not. Therefore, by this MOU, there is no harm has been caused to the NFL or gained by the petitioners company. It is not the case of the CBI that the signature of Director of NFL has been forged. Not even induced or deceit by the petitioners, therefore, the charges u/s 471 of IPC cannot be framed against the petitioners company. Therefore, charges framed cannot be sustained in law.

8. Learned counsel has further submitted that the FIR was registered by the CBI under the provisions of Prevention of Corruption Act, 1988 also. However, the charges under the Act were with drawn in post investigation. Thereafter, the chargesheet has been filed u/s 120(b), 420 r/w 511 and 467 r/w 471 IPC. Learned counsel has prayed to allow the said petition.

9. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of Supreme Court of India titled as **MD. Ibrahim & Ors. Vs. State of Bihar & Anr.** 2009 [4] JCC 2753 in para 12, observed as under:

“The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of ‘false documents’. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant’s land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner’s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of ‘false documents’, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is

authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.”

10. Ld. Senior Counsel has further submitted that the National Fertilizer Limited (NFL) is a manufacturer of urea and is selling the same in the country. For the sale of urea, NFL used to engage various bulk buyers and petitioner no. 1 was one of the Bulk Buyer Company which was also engaged in the trading of NFL urea during the year 1994-1995.

11. For the sale of urea to the various bulk buyers, Memorandum of Understanding (MOU) used to be signed between NFL and the bulk buyer company. This MOU used to be signed by D.S. Kanwar on behalf of NFL and representative of the company on the other hand and in the present case petitioner no. 2 used to sign MOU on behalf of petitioner no. 1.

12. The petitioner no. 2 has made a claim to NFL by placing an MOU wherein various additional rebates were given to petitioners. The said MOU was duly signed by Shri D.S. Kanwar, Executive Director (Marketing) of NFL and by the petitioner no. 2.

13. It is further submitted that Sh. D.S. Kanwar used to allow such additional rebates to various bulk buyers in the normal course of business, said fact was in the knowledge of other officials of NFL and

was also mentioned in annual reports of NFL of the year 1990-1991 and 1991-1992.

14. Petitioners vide letter dated 14.02.1995 had informed NFL about the above said MOU and requested NFL to look into the matter.

15. It is further submitted that petitioner vide letter dated 17.07.1996 requested NFL for reconciliation of accounts and clearing of outstanding, however nothing happened.

16. The said letter and MOU are missing from the records of NFL and according to them the same were forged by the petitioners for claiming additional margin. Consequently, they refused to entertain the claim of petitioners and on 04.06.1997 got registered the FIR against them.

17. It is further submitted that pursuant to the investigation carried out, charge-sheet was filed before the concerned Metropolitan Magistrate in the year 1998 against (1) Sh. D.S. Kanwar (2) Sh. K.S. Verma and (3) M/s Bijwasan Agro Pvt. Ltd., alleging that accused persons in conspiracy with each other attempted to cheat the NFL on the basis of false and fabricated MOU and committed offences under Sections 120-B, 420 read with sections 467/471 and 511 IPC.

18. Further it is submitted that after 12 years, Id. ACMM on 23.07.2010 was pleased to frame charges under sections 120B read with Section 420, 467, 471, 511 and also substantive charges framed under sections 471, 420 of IPC against the petitioners. Thereafter, petitioners filed a revision petition before the Id. ASJ challenging the said order, however, on 16.03.2011 the same was dismissed on flimsy grounds.

19. On the point of maintainability of the instant petition, Id. Senior Counsel has submitted that there is no bar under Cr. P.C. which can take away jurisdiction of Section 482 and the power of this Court. He has placed reliance on the judgement titled as **Krishnan & Anr. V. Krishna Devi & Anr. 1997 4 SCC 241**, wherein it is held as under:

“The object of Section 483 and the purpose behind conferring the revisional power under section 397 read with section 401 upon the High court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to met out justice or to correct irregularity of the procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 462 . The Power of the High court therefore is very wide, However , High Court must exercise such power sparingly and cautiously when the sessions judges has simultaneously exercised revisional power under Section 397 (1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or tow correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

The inherent power of the High Court is not one conferred by the code but one which the high Court already has in it and which is preserved by the Code, the object of Section 397 (3) is to put a bar on simultaneous revisional applications to the High Court and the court of Sessions so as to prevent unnecessary delay and multiplicity of

proceeding as seen , under sub-section (3) of section 397 revisional jurisdiction can be invoked by" any person" but the code has not defined the word 'person', However, under section 11 of the IPC, 'PERSON' INCLUDES ANY COMPANY OR ASSOCIATION or body of person whether incorporated or not. The word 'person' would, therefore include not only the natural person but also juridical person in whatever form designated and whether incorporated or not By implication the State stands excluded form the purview of the word 'person' for the purposes of the limiting its right to avail the revisional power of the High Court under Section 397 (!) of the code for the reason that the Sate, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The Object behind criminal law is to maintain law, public order, stability as also peace and progress in the society, Generally, Private complaint under section 202 of the code are laid in respect of non-cognizance offences or when it is found that police has failed to perform its duty under Chapter XII of Code or to report as mistake of fact. In view of the principle laid down in the maxim Ex debito justitiae i.e. in accordance with the requirements of justice, the prohibition under section 397 (3) on revisional power given to the High Court would not apply when the state seek s revision under section 401 . So the state is not prohibited to avail the revisional power of the high Court under section 397 (1) read with section 401 of the code.

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent

power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted expeditiously.

In view of the above discussion, we hold that through the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof,

inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the in the context of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.”

20. On the point of charge framed against the petitioners, Ld. Sr. Counsel has further submitted that charge of criminal conspiracy is not attracted as there is no iota of evidence on record to show that petitioner in criminal conspiracy with co-accused D.S. Kanwar committed any offence. Charge of 120B IPC against the petitioner no. 1 is misconceived as a company cannot enter into conspiracy. It has to be a living person and company can't be in conspiracy by itself as it is a fictitious person. In the charge sheet filed by CBI, it is alleged that D.S. Kanwar had signed the MOU after his retirement on 31.01.1996.

21. It is submitted that ld. ACMM has framed charges stating that in the year 1994-1995 accused persons in conspiracy with each other prepared the false / forged MOU. The charges framed are contradictory

with the allegations made in the chargesheet, this shows that there is no material against the petitioners, which can be termed as a “*legally convertible evidence*” to prove the charges against them.

22. Ld. Senior Counsel has further submitted that it is an admitted case of the CBI that signatures on the alleged MOU belongs to the petitioner no. 2 and D.S. Kanwar, therefore, there is no question of forgery committed by anybody.

23. On this issue, ld. Senior Counsel has relied upon a case of ***M.D. Ibrahim & ors. v. State of Bihar & Anr., 2009 (4) JCC 2753***, wherein it is held as under:

“The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of ‘false documents’. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant’s land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner’s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is

that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

Section 420 IPC

Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of cheating are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence

under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot

be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

24. It is alleged that during the year 1995 D.S. Kanwar entered into a criminal conspiracy with the petitioner no. 2 i.e. Director of M/s. Bijwasan Agro Private Limited to cheat the NFL to the tune of Rs.4 Crores which was to be paid to NFL by Bijwasan Agro Private Limited along with other balance amount in the Urea dealings. It is further the case of the CBI that false MOU was prepared to adjust the outstanding amount. Thus, the same amounts asking for adjustments in the balance of payments in the transaction. However, there is no inducement, no deceit and no delivery of property. Therefore, the offence of cheating is not made out against the petitioners.

25. On this issue, Id. Senior Counsel has relied upon a Judgment in the case titled as ***Hridaya Ranjan Pd. Verma & Ors. v. State of Bihar and Anr, 2000 4 SCC 168***, wherein it is held as under:

“Cheating is defined in Section 415 of the Code as, “Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation - A dishonest concealment of facts is a deception within the meaning of this section.

The section requires - (1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.”

26. Further relied upon a case of ***S.W. Planitkar & Ors. v. State of Bihar and Anr., (2002) 1 SCC 241*** wherein it is held as under:

“One of us (D.P. Mohapatra J.), speaking for the Bench, in Haridaya Ranjan Prasad Verma & Ors. vs. State of Bihar & Anr. , on facts of that case, has expressed thus:-

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. it depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. 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, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a persons guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. "

27. Also relied upon a case of ***All Cargo Movers (I) Pvt. Ltd. & Ors. v. Dhanesh Badarmal Jain and Anr.*** AIR 2008 SC 247 wherein while relying upon the case of ***Anil Mahajan v. Bhor Industries Ltd. and Anr.*** (2005) 10 SCC 228 Apex Court held as under:

"8. The substance of the complaint is to be seen. Mere use of the expression 'cheating' in the complaint is of no consequence. Except mention of the words 'deceive' and 'cheat' in the complaint filed before the Magistrate and 'cheating' in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086 out of the total amount of Rs.3,38,62,860 was paid leaving balance of

Rs.33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

28. Further relied upon a case of ***Indian Oil Corporation v. NEPC India Ltd. And Ors. AIR 2006 SC 2780***, wherein while relying upon the case of ***Hridaya Ranjan Prasad Verma (Supra)*** held as under:

"On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. 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, that is the time

when the offence is said to have been committed. Therefore it is the intention which is the gist of the 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 the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

29. Further relied upon a case of **Anil Mahajan v. Bhor Industries Ltd. and Anr. (2005) 10 SCC 228**, wherein it is held as under: -

"The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086 out of the total amount of Rs.3,38,62,860 was paid leaving balance of Rs.33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

In Alpica Finance Ltd. v. P. Sadasivan this court was considering a case where the complainant had alleged that the accused was not regular in making payment and committed default in payment of installments and the bank

had dishonoured certain cheques issued by him. Further allegation of the complaint was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of Nagawwa v. veranna Shivalingappa Konjalgi wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if proved, would untimely end in the conviction of the accused, and the circumstances, under which the process issued by the Magistrate could be quashed, the contours of the powers of the High Court under Section 482 Cr.P.C. were laid down and it was held:

“10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also

be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessary evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that the respondents, though committed default in paying some installments, have paid substantial amount towards the consideration.

We have examined the complaint and it is clear from its substance that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in Alpica Finance Ltd. case were rightly applied by Id. Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant.

30. Mrs. Sonia Mathur, Id. Counsel appearing on behalf of respondent CBI has submitted that during investigation, it was

disclosed that NFL being manufacturing of urea and was engaged by the various bulk buyers for sale of urea and M/s Bijwasan Agro Pvt. Ltd. was one of the bulk buyers company which was also engaged in the trading of the NFL urea during the year 1994-95. For selling the urea various MOU used to be signed by the bulk buyer company twice a year i.e. one for Kharif season and the other for the Rabi season.

31. A copy of the Statement of Accounts prepared for the said transaction in respect of revisionist no. 1 was prepared and forwarded to it for the financial year 1994-95 and as such the said statement of account showed an outstanding balance of Rs. 6.07 Crores towards NFL and was received by petitioner no. 1 by July, 1995. After the receipt of the statement of account in July, 1995 the petitioner no. 1 did not raise any objection towards outstanding amount of Rs.6.07 Crores.

32. During investigation, statement of Mr. Parveen Kumar and Mr. Jitender Mohan recorded u/s 161 Cr.P.C. Mr. Praveen Kumar in his statement has clearly stated that the alleged MOU was produced before him in the capacity of Additional Managing Finance of NFL and the said MOU was never received in his office as per the procedure of the NFL. Similarly, witness Mr. Jitender Mohan who was also working as Marketing Manager, NFL has also stated that the said MOU was forged and fabricated document and was submitted to the NFL for the purpose of wrongful gain to the tune of Rs. 4.16 Crores to the petitioners and wrongful loss to the NFL.

33. It is further submitted that on 04.06.1997, CBI registered the FIR on source information being RC-1 (A) /97-ACU-II/CBI/NEW

DELHI against the petitioner, Sh.D.S. Kanwar, the then Executive Director(Marketing), National Fertilizer Ltd. (NFL), Sh.K.S. Verma, Director, M/s Bijwasan Agro Pvt. Ltd. (BAPL) and others for the offence punishable under Section 120B, 511 r/w 420 IPC and section 15 r/w 13(i)(d) of Prevention of Corruption Act, 1988 on allegation that Sh. D.S. Kanwar while functioning as Executive Director of National Fertilizer Ltd. During 1995 entered into criminal conspiracy with K.S. Verma, Director M/s Bijwasan Agro Pvt. Ltd. to cheat with NFL and in furtherance of which NFL was cheated to tune of Rs.4 Crores.

34. In furtherance of the aforesaid conspiracy, a false Memorandum of Understanding (MOU) dated nil was prepared and signed by Sh.D.S. Kanwar on behalf of NFL and by Sh.K.S. Verma on behalf of BAPL. As per the MOU, additional rebates of various types were to be given by NFL to BAPL. After getting such rebates M/s BAPL adjusted the outstanding of Rs.4 Crores by submitting the photocopy of the said false MOU to NFL office giving reference of their letter dated 14.02.1995 although no such MOU or any such letter was processed in NFL.

35. The NFL, being manufacturer of urea, was engaged by various bulk buyers for sale of urea and M/s. BAPL was one of the bulk buyers companies which was also engaged in trading of the NFL urea during 1994-95. For selling urea MOU used to be signed by the bulk biuyer company twice a year i.e. for kharif and rabi reason. The MOU contained the amount of urea to be given to such bulk buyer and the rebates to be given under various heads and the quantity of the rebates

under each head. The rebates given to M/s BAPL under alleged MOU for cash rebates were more beneficial than those given to other bulk buyers.

36. The bulk buyer companies lifting urea from NFL were supposed to deposit the payment for urea with NFL from time to time and for all such transaction statement of account was prepared by the Finance and Account wing of NFL, every financial year by the month of July. The statement of account in respect of M/s BAPL for financial year 1994-95 (i.e. from April 1994 to March 1995) showed an outstanding balance of Rs.6.07 Crores toward NFL. After receipt of the statement of account in July 1995, M/s BAPL sought some clarifications on few matters of the statement of account, but no clarification was sought regarding amount of outstanding balance of Rs.6.07 Crores.

37. On 17.07.1996 and 01.08.1996 after one year of receipt of statement of accounts M/s BAPL wrote to NFL stating that some of its claims were pending with NFL for the year 1994-95. The said claim was negated by the NFL by reply dated 01.08.1996 and 19.08.1996 stating that all claims of 1994-95 had been paid and that the letter dated 14.02.1995 as referred supporting its claim was not on records as such the margin proposed by M/s BAPL have not been accepted and not allowed.

38. Thereafter Sh. K.S. Verma contacted A.V. Singh then MD NFL and handed over the photocopy of the MOU of additional margin for M/s BAPL for the year 1994-95. The MOU was signed by the K.S. Verma for M/s BAPL and Sh. D.S. Kanwar for NFL providing exceptionally high and unrealistic additional margin in favour of M/s

BAPL. The said MOU was verified from O.P. Sharma then Advisor(Finance), NFL and also from NFL officers of Sales and Distribution Wing as well as Finance & Account & Wing who are supposed to be acquainted with the signing of all MOUs, they were not aware of any such signing of MOU of additional margin to M/s BAPL for 1994-95. That there are oral evidence of witnesses disclosing that no such MOU was available on the relevant files and there is GEQD opinion to prove the fact that the MOU is false and fabricated.

39. As per the copy of the alleged letter dated 14.02.1995 there was a request to allow additional margin on two grounds (I) increase in price of urea (ii) the lifting of the maximum quantity during off season months. Investigation has brought into light that the increase in price of urea was for all bulk buyers and it was not only the petitioner company which had lifted the maximum quantities of urea during off season. There were other companies also who had lifted maximum quantities of urea during off season and they neither demanded the additional rebate nor the same was given to them although they all operated in same region.

40. It is further submitted that MOU was prepared after the retirement of D.S. Kanwar i.e. he retired from service on 31.01.1996 and such had no power to sign anything on behalf of NFL. That as per the delegation of power to General Manager (Marketing) his power of signing the MOUs was restricted up to Rs.50,000/- only whereas the MOU in question contained rebates of Rs.4.16 Crores. Hence, the MOU was dishonestly and unauthorizedly signed by him.

41. She submitted, no fresh MOU was required to be signed for giving such additional rebate as sanction were to be obtained on the proposal being initiated by the Junior officers and signed by officers at each steps before being finally approved by D.S. Kanwar. That a total rebate of Rs.2.5 Crores was already allowed to M/s BAPL in the year 1994-95 and thus there was no ground for execution of another MOU for allowing of additional rebates of Rs.4.16 Crores to M/s BAPL.

42. It is further submitted that the petitioner had preferred a revision petition against the order on charge dated 23.07.2010 which has been dismissed by the learned ASJ in terms of the impugned order dated 16.03.2011 and therefore in view of the bar under Section 397 Cr.P.C., the petitioner may not be permitted to seek second revision in the garb of a petition under Section 482 Cr.P.C. It is settled position in law that the Court would exercise its power of quashing criminal proceeding very sparingly and such power would not be utilized as a substitute for second revision. Therefore, while exercising the inherent power under Section 482 Cr.P.C. this Court would refrain from acting as a second Revisional Court.

43. It is submitted that on the facts of the present case, while exercising inherent power, this Court may consider that the Ld. Session Judge has declined to exercise its revisionary power in the matter and therefore this Court would not re-appreciate the evidence unless there exists an exceptional circumstance. This Court would interfere in exercise of its inherent jurisdiction if it would amount to abuse of process of court or when there is serious miscarriage of justice or when

mandatory provision of law are not complied with or that the interests of justice otherwise call for quashing of the charge.

44. To strengthen her arguments, Id. Counsel has relied upon a case of ***Ganesh Narayan Hegde v. S. Bangarappa and Ors.*** 1995 (4) SCC 41, wherein it is held as under:

“While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges. A few decisions of this Court may usefully be referred at this stage. [In Mrs.Dhanalakshmi v. R.Prasanna Kumar & Ors. \(AIR 1990 S.C.494\)](#) this Court stated in a case of similar nature:

"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash

the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.

The High Court without proper application of the principles that have been laid down by this Court in [Sharda Prasad Sinha v. State of Bihar](#), (1977) 2 SCR 357 : (AIR 1977 SC 1754), [Trilok Singh v. Satya Deo Tripathi](#), 1980 Cri LJ 822: AIR 1979 SC 850 and [Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala](#), (1983) 1 SCR 895: (AIR 1983 SC 158) proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the

complaint does disclose the commission of an offence there is no justification for the High Court to interfere. "

In Para 23 the learned Judge states that the oral evidence should have been considered along with the documentary evidence and that if that had been done, the learned magistrate would have come to the conclusion that the imputation made by the accused is "neither intentional nor it amounted in lowering the reputation of the complainant in the estimation of general public and the context in which such a statement was made." In Para 24 the learned Judge states that the courts below have not considered the evidence of the witnesses properly and that it has merely picked out those portions from evidence which are against the accused and relied upon them for framing the charge. In Para 25, the ld. Judge observes that the documents and statements of the witnesses were not properly taken into consideration by the courts below and that the reasons assigned by the learned Magistrate for framing the charge are not convincing in nature. Then in para 26, the learned Judge says that for the reasons given by him, the courts below must be held to have acted without applying their mind to the relevant material. In para 27, the learned Judge records a finding that the complaint was more a matter of mere prestige for both the parties, who belong to different political parties and that it is not a genuine proceeding. In our opinion, while acting under Section 482 and that too after the learned Sessions Judge had declined to interfere in the matter, the High Court ought not to have entered the arena of appreciation of evidence nor should it have recorded a finding that the complaint was the result of political differences or that it was more a matter of prestige than a genuine proceeding. The last mentioned conclusion

is drawn from the averments in the complaint, from the fact that the complainant is pursuing the complaint and from the ipse dixit of the accused; we are unable to appreciate this reasoning.

45. Further relied upon a case of **Rajarathi v. C. Ganesan 1999 (6) SCC 326**, wherein it is held as under:

We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, we are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.

In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code trial court is to take a prima facie view of the matter and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. Section provides maintenance at the rate of Rs.500/- per month.

There is outcry that this amount is too small. In the present case, however, we are quite surprised that the court granted paltry amount of Rs.200/- per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.

46. Further relied upon a case of ***Kailash Verma v. Punjab State Civil Supplies Corporation and Anr.*** 2005 (20) SCC 571, wherein it is held as under:

It may also be noticed that this Court in [Rajathi v. C. Ganesan](#) said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

47. To conclude her argument, Id. Counsel has submitted that the accused persons had continuously hampered and delayed the trial by adopting the dilatory tactics. Therefore, this Court may not exercise jurisdiction as has been prayed for by the petitioner as this would lead to obstruction in carrying out of a criminal trial to its logical end.

48. After hearing learned counsel for the parties, it has emerged that Dilbagh Singh Kanwar while functioning as Executive Director of National Fertilizer Ltd., during 1995, entered into a criminal conspiracy with Kumar Sahay Verma, Director of M/s. Bijwasan Agro Private Limited/petitioner to cheat the NFL. In furtherance of the same, a false Memorandum of Understanding(MOU) dated nil was prepared and signed by Dilbagh Singh Kanwar on behalf of the NFL and by Kumar Sahay Verma on behalf of the petitioner company. As per the MOU additional rebates of various types were to be given by NFL to petitioner company. After getting such rebates, the petitioner company adjusted the outstanding of Rs.4 Crores by submitting the photocopies of the said MOU to NFL office giving reference of their letter dated 14.02.1995.

49. The NFL being manufacturer of urea was engaged in various bulk buyers for sale of urea and the petitioner was one of the bulk buyers companies which was also engaged in trading of NFL urea during 1994-95. For selling urea, MOU used to be signed by the bulk buyer company twice a year, i.e., for kharif and rabi season. The MOU contained the amount of urea to be given to such bulk buyer and the rebate to be given under various heads and the quantity of rebates under each head. The rebates given to the petitioner company under the alleged MOU for cash rebates were more beneficial than those given to other bulk buyers. The bulk buyer companies lifting urea from NFL were supposed to deposit the payment of urea with NFL from time to time and all such transactions, statement of accounts were

prepared by the Finance and Account wing of NFL every financial year by the month of July.

50. As per the statement of accounts in respect of the petitioner company for the financial year 1994-95(i.e., from April, 1994 to March, 1995) showed an outstanding balance of Rs.6.07 Crores towards NFL. After receipt of the statement of account in July, 1995, the petitioner company sought some clarifications on few matters of the statement of account, but no clarification was sought regarding amount of outstanding balance of Rs.6.07 Crores. Therefore, on 17.07.1996 and 01.08.1996 after one year of receipt of statement of accounts, the petitioner company wrote to NFL stating that some of its claims were pending with NFL for the year 1994-95. The said claim was negated by NFL by reply dated 01.08.1996 and 19.08.1996 stating that all claims of 1994-95 had been paid and that the letter dated 14.02.1995, has referred supporting its claim was not on record as such the margin proposed by the petitioner company was not accepted and not allowed.

51. There are allegations that MOU was prepared after the retirement of Dilbagh Singh Kanwar and as such he had no power to sign anything on behalf of NFL. This fact can be established only in trial.

52. It is also revealed that a total rebate of Rs.2.5 Crores was already allowed to the petitioner company for the year 1994-95 and, thus, there was no occasion for execution of any other MOU for allowing of

additional rebate of Rs.4.16 Crores to the petitioner company. This creates suspicion on the act of the petitioners.

53. The present petition has been filed against the impugned order dated 16.03.2011 passed by learned Additional Sessions Judge in a revision against the order on charge dated 23.07.2010. The settled law is that a case can be quashed at the stage of charge if evidence against the accused go un-rebutted and still the accused cannot be convicted. The Court is not supposed to delve deeply into the merits of the matter and start a roving expedition into the evidence that is brought forth it, as if conducting a trial.

54. There are disputed facts which can be proved or disproved during trial. The settled law is that the High Court should not act as a second revisional Court under the garb of exercising inherent powers. The interference is required only when the complaint is allowed to be proceeded with and which amount to abuse of process of court or with the interest of justice otherwise call for quashing of the charges. Who had signed the alleged MOU and on what date and who processed thereafter can be established only during trial.

55. At this stage, though it is not established whether the petitioner company has really cheated NFL, but there was an attempt to cheat, therefore, the learned ACMM has framed charges u/s 120-B r/w sections 461/471/420 r/w section 511 of IPC.

56. The two courts below have already taken their views. I find no discrepancy in the orders passed by them.

57. In view of the above, I find no merits in the instant case, therefore, the same is dismissed.

58. No orders as to cost.

59. TCR be sent back forthwith.

Crl. M.A. 2402/2012 (Stay) & Crl. M.A. 3686/2012 (Direction)

In view of the above, instant applications have become infructuous and disposed of as such.

SURESH KAIT, J

OCTOBER 08, 2012

RS/jg