

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

+CRL. M.C. No. 5133/2005, 5135/2005, 5381/2005, 5382/2005 and 5387/2005

Date of Decision : 20.01.2012

M/S SONY INDIA P. LTD. & ANR.

..... Petitioners

Through: Mr.Siddharth Luthra, Sr.
Adv. with Mr. Rajat
Joneja and Mr. Kunal
Sood, Advs.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Sunil Sharma, APP.

Crl. M. C. 5135/2005

MOHIT PARASHER

..... Petitioner

Through: Mr.Siddharth Luthra, Sr.
Adv. with Mr. Rajat
Joneja and Mr. Kunal
Sood, Advs.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Sunil Sharma, APP.

Crl. M. C. No. 5381/2005

NITANT MITTAL

..... Petitioner

Through: Mr.Siddharth Luthra, Sr.
Adv. with Mr. Rajat

Joneja and Mr. Kunal
Sood, Advs.

Versus

STATE & ANR.

..... **Respondents**
Through: Mr. Sunil Sharma, APP.

Crl. M. C. 5382/2005

RISHI RAJ

..... **Petitioner**
Through: Mr.Siddharth Luthra, Sr.
Adv. with Mr. Rajat
Joneja and Mr. Kunal
Sood, Advs.

Versus

STATE & ANR.

..... **Respondents**
Through: Mr. Sunil Sharma, APP.
Mr. Vijay Aggarwal, Adv.
for R-2.

Crl.M.C.No.5387/2005

AJAY SHARMA

..... **Petitioner**
Through: Mr.Siddharth Luthra, Sr.
Adv. with Mr. Rajat
Joneja and Mr. Kunal
Sood, Advs.

Versus

STATE & ANR.

..... **Respondents**
Through: Mr. Sunil Sharma, APP.
Mr. Vijay Aggarwal, Adv.
for R-2

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. These are five petitions filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No. 214/2005 under Section 420/465/467/468/471/120B IPC, registered by P.S. Defence Colony, New Delhi, dated 22.04.2005, lodged by the respondent no. 2/Company M/s. City Palace Electronics Pvt. Ltd. through their General Manager Sh. A. K. Chaturvedi.
2. In all the petitions a prayer has also been made for quashing of the complaint no. 598/1/2005 dated 28.02.2005 and the order dated 28.02.2005, passed by Sh. S. K. Sharma, the learned Metropolitan Magistrate on the basis of which the aforesaid FIR had been registered.
3. Briefly stated the facts leading to the filing of the present petitions are that the respondent no. 2 filed a complaint with the police station Shakarpur, Delhi against the petitioner no. 1 and its Directors/Executives/Managers

without disclosing their names on 15.10.2004 for allegedly having committed various offences. The said complaint read as under :-

Dated : 15.10.2004

To

*The SHO
Shakkarpur Police Station,
Delhi-110092*

Re.: Complaint against M/s Sony India Pvt. Ltd., its Directors and Executives, Managers responsible for day to day affairs and business of the company and liable for omissions and commissions.

Dear Sir,

We are Private limited company carrying on the business of trading of Electronics Products under the name & style of M/s City Palace in Delhi from 1995 and in NOIDA from 2000.

M/s Sony India Pvt. Ltd. appointed us their dealer in East Delhi in 1995 and after apprising our good performance they appointed us dealer in NOIDA in 2000.

That at the time of appointment as dealer M/s Sony India Pvt. Ltd. assured us to disburse schemes, incentives, cash discount, price supports, commission etc. for the purchase of products, achievement of targets yearly, quarterly

as well as monthly. Based on above representations and assurances we agreed for the dealership of their Products at both places Delhi as well as NOIDA.

That pursuant to the above understanding and agreement, we were carrying on and doing the business with hard work, dedication, loyalty and transparency along with achievement of targets and had been adjudged as best performing dealer in north India among various others. They graciously acknowledged our sincerity, business tragedy, marketing and salesmanship vide certificate dated 25.04.2001.

That in the year 2002-2003 during the course of business and transactions between M/s Sony India Pvt. Ltd. and us there were various outstanding in the account in respect of Cash discount, defective products, obsolete models, price dropping, quantity schemes, monthly schemes, annual schemes, quarterly schemes, power retailer amount and others in Delhi as well as in NOIDA.

That all the transaction between them and us took place against valid invoices and the payment was made by cheque for every purchase made from them. During the course of transactions we issued blank cheques which were filled and encashed by them except cheque no.608977 which was reported lost. Hence a fresh cheque 610291 was issued in lieu thereof in replacement of cheque no.608977 which was encashed on 25.04.2002.

In August, 2004 they supplied Products and as per understanding the value of which was to be adjusted against our outstanding claims.

In 02.5.2002, we informed bank regarding misplacement of 7 cheques for recording stop payment. The cheque no.608977 which was reported lost was included in 7 cheques as aforesaid.

That it was also agreed by M/s Sony India Pvt. Ltd. that they will issue credit notes in respect of Cash discount, defective Products, obsolete models, price dropping, quantity schemes, monthly schemes, annual schemes, quarterly schemes, power retailed amount and others from time to time.

As per the accounts we are yet to received Rs.43.89 lacs from M/s Sony India Pvt. Ltd. but since last Aug. 04 they are lingering and not paying our dues. We made several requests and reminders with no positive results. We continued to pursue our sales, hence they started threatening and lastly filled up our blank signed cheque no.608977 lying with them with some fictitious amount and presented for payment with a view to cheat us and pressurize us to forgo our legitimate claims of Rs.43.89 lacs. Please also note that the said cheque was reported lost by them in 2002 and we issued fresh cheque no.610291 in lieu thereof which was encashed on 25.04.2002.

On 09.10.2004, we gave them final reminder to settle our account and pay our dues, but with no results.

On 11.10.2004 forced by circumstances and their delayed tactics a legal notice was issued on them by our lawyer to settle our claims and disburse our dues.

They are adopting pressure tactics forcing us to settle the accounts without making payment of our legitimate dues. To achieve their ulterior motives they have fabricated wrong accounts, showing false outstanding, filled up the cheque with imaginary figures and deposited into their accounts on 14.10.2002.

Our Banker (the Karnataka Bank Ltd.) has informed us the presenting of our cheque no.608977 which was already reported as misplaced and stop payment advice was communicated to them in 2002. We again requested our Banker not to honour the said cheque as it was without any consideration, but presented for payment only cheat us and pressurize us to liquidate our claims under their pressure.

In this manner they have purposely and intentionally committed fraud, cheating manipulation, fabrication, falsification and criminal conspiracy to harm the reputation, business and financial losses.

Therefore request you to please register FIR against M/s Sony India Pvt. Ltd. as cheating, manipulation, fabrication, falsification and criminal conspiracy to harm the reputation, business and financial losses to our company and take stern action as per law.

Thanking you,

*Yours truly,
Sd/-*

4. A perusal of the aforesaid complaint would show that the main grievance of the respondent no. 2 against the petitioner no. 1 was that it was appointed as a dealer by the petitioner no. 1 in the year 1995 for Delhi and in the year 2000 for NOIDA, for selling its various products on the assurance of M/s Sony India Pvt. Ltd. that it would get the benefit of incentives, cash discount, price support, commission etc. for selling of its products and achieving targets yearly, quarterly as well as on monthly basis, for both Delhi and Noida regions. It had been alleged in the complaint that in pursuance to this agreement and the business transaction, the respondent no. 2 had issued a number of blank cheques to the petitioners which were all filled up by the petitioners and encashed by them except cheque no. 608977 which was reported to be lost by them. For the cheque alleged to be lost petitioner is stated to have been issued cheque

no. 610291 in lieu thereof. It is further stated that this fact was intimated by the respondent No.2 to his banker in the year 2002. It is further stated that the petitioners had not paid the entire benefits to the respondent on account of various schemes to which they were entitled. It is stated that this amount was calculated by them to be approximately as ₹44 lakhs or so and when the respondent no. 2 demanded the aforesaid amount from the petitioners they instead of paying the same, filled up the cheque no. 608977 which was allegedly reported to be lost and presented the same for encashment on or about 25.04.2002, the petitioner no. 1 committed the offence of cheating (420 IPC) forging a document and using forged documents as genuine punishable under Section 468 read with section 471 IPC.

5. Consequently, it was alleged that an offence of cheating, manipulation, falsification, fabrication of accounts and criminal conspiracy was committed by the petitioner no. 1, and accordingly, a prayer was made that an

appropriate action be taken against the offenders in accordance with law.

6. Since no action was purportedly taken by the local police of Shakarpur, Delhi, the respondent no. 2 filed a criminal complaint on 18.01.2005 under Section 406/420/465/471/477/120B/34 IPC, before the learned ACMM, Karkardooma Courts, Delhi against the petitioner no.1 and its 22 Directors/Managers/Executives, the rest of the petitioners, namely Mr. Keiichi Sakamoto (Managing Director), Mr. Haruki Tsukada, Mr. Hiroshi Yamasa, Mr. Nobutomo Fujimori, Mr. Hajimi Kamata, Mr. Kimihiro Itoki, Mr. Yumiki Abe, Mr. Koji Mihara, Mr. Naoki Matasumoto, Mr. Toshiya Kasita, Mr. Yashio Kubo (all foreign nationals and Directors), Mr. Sanjay Bhargava (General Manager), Mr. Mohit Parasar (Sales Head), Mr. Manoj Maithani (Branch Manager), Mr. Prasun Banerjee (AGM), Mr. Nitant Mittal, (Branch Manger), Mr. Vijay Singh (Branch Manager, Noida), Mr. Ajay Ghanti, Sales Officer, (UP), Mr. Ajay Sharma, Sales Officer (Delhi),

Mr.K.M.Barua, Sales Officers (Delhi), Mr.Rishi Raj Rai, Sales Officer (Delhi) and Mr.Sanchit, Sales Officer (Noida).

7. On 22.01.2005, the learned Metropolitan Magistrate, Karkardooma Courts, Delhi passed an order on the complaint of the respondent no. 2 wherein the cognizance was taken and instead of directing the police to register an FIR in pursuance to an application under Section 156(3) Cr.P.C. which was filed along with the complaint, a direction was given to the respondent no.2 to lead evidence, so that an appropriate inquiry into the matter, in pursuance to Section 200 and 202 of Cr.P.C., could be made.
8. It is alleged in the petitions since the respondent no. 2 was unable to get a direction under Section 156(3) Cr.P.C. from the Court to register an FIR against M/s Sony India Pvt. Ltd. or against any of its Directors or employees, consequently, the respondent no. 2 on the basis of same allegations filed a fresh complaint with P.S.

Defence Colony, New Delhi, against the 22 Directors of the petitioner no. 1, without making petitioner no. 1 as a party, although, in the complaint it was alleged that the beneficiary of this allegedly cheating, falsification and manipulation of accounts was no other than the petitioner no. 1/company. Since no action was taken by the police of Police Station Defence Colony, New Delhi where the complaint was lodged, another complaint, on 28.02.2005, for offences under Section 420/465/471/120 B IPC was filed before the learned ACMM, Patiala House Courts, New Delhi against 22 Directors/Officials of the petitioner no.1/company, on the same allegations, on the basis of which earlier complaint dated 18.01.2005 was filed before the learned ACMM, Karkardooma Courts, Delhi. It may be pertinent here to mention that the respondent no.2, in the complaint dated 28.02.2005, had not mentioned the factum of the complaint pending before the learned ACMM, Karkardooma Courts, Delhi and the orders having been passed by the learned

Magistrate to the respondent no.2 to produce the evidence.

9. On the basis of the aforesaid second complaint at Patiala House Courts, the learned Metropolitan Magistrate, on 28.02.2005, passed an order directing the SHO, Defence Colony, New Delhi, to register an FIR and investigate the allegations made in the complaint. As a consequence of this direction, the police station, Defence Colony, registered an FIR No. 214/2005 under Section 420/465/467/468/471/120B IPC registered by P.S. Defence Colony, New Delhi against the 22 Directors/Officials of M/s Sony India Pvt. Ltd. including the aforesaid petitioners except petitioner no.1.
10. The grievance of the petitioners is that the respondent no.2/complainant has grossly abused the processes of law on account of the fact that civil dispute between M/s. Sony India Pvt. Ltd and the respondent no.2/complainant, M/s City Palace Electronics Pvt. Ltd. has been converted into a criminal dispute, with a view

to put pressure on the petitioner no.1/company and its by using these proceedings as a lever to settle their claim and not to pursue cases against them.

11. It has also been contended by the learned counsel for the petitioners that non-disclosure of the fact that the respondent no. 2 were unable to obtain an order from the Court at Karkardooma Courts, Delhi, in respect of which a similar case was filed in the first instant against the petitioner and its officials was purposely not mentioned in the second complaint, because of which the learned Magistrate did not get the complete picture of the matter and an FIR for the aforesaid offences pursuant to the order dated 28.02.2005 was directed to be registered. The respondent no. 2 has grossly misused the processes of law by making at least 11 Directors of the petitioner no.1/company, who are foreign nationals, as accused persons purposely with a view to harass them.

12. I have heard the learned counsel for the parties. However, the learned counsel for the respondent no.2 was more keen in making submissions on his application filed under Section 340 Cr.P.C. for initiating action against the petitioners in some of the cases by alleging the offence of perjury allegedly having been committed by the petitioners. It was informed to the learned counsel for the respondents that the question of deciding as to whether the prima facie offence of perjury is allegedly made out or not can be considered only at the time of final disposal of the matter and not prior to that. It seemed that the learned counsel for the respondent no.2 in order to sidetrack the main issue was deliberately trying to insist the decision on the application under Section 340 Cr.P.C. so that the main issue regarding the quashing of the complaint and the FIR is deferred and the petitioners are kept in limbo. I have gone through the record.

13. In my considered opinion, the following are the factors which make the Court believe that the second complaint which was filed at Patiala House Court by the respondent no.2 against the petitioners was essentially a complaint on the basis of the same facts though with a slight variation in language. In order to show that both the complaints which were filed by the respondent no.2 at Patiala House Court and the Karkardooma Courts in which the common allegations are made and which have purportedly constituted the offence under various sections, for which the petitioners have been summoned, are reproduced hereunder:-

COMPARATIVE CHART OF COMPLAINTS BEFORE MM, KARKARDOOMA AND MM, PATIALA HOUSE

<u>MM, PATIALA HOUSE</u>	<u>MM, KARKARDOOMA</u>
Complaint by A K. Chaturvedi on behalf of the Respondent no.2 against 23 directors/officials only of the petitioner no.1 though petitioner no. 1 not a party (Page no.29 of petition)	Complaint by A K. Chaturvedi on behalf of the Respondent no.2 against the petitioner no.1 and its 23 directors/officials, in similar seriatim. Petitioner no.1 is a party. (Page no.140 of petition)

The said accused persons further assured to the complainant/respondent no. 2 to disburse schemes, incentives, cash, discount, price, support, commission and power retailer for the purchase of its various products (Para no.3 at page no.30)	It was assured by the accused persons to the complainant company/respondent no. 2 that the Complainant company would be entitled for various schemes, incentives, cash, discounts, price supports, price dropping, commissions, reimbursement of publicity expenses for purchase of products, achievement of targets, yearly as well as monthly. (Para no.6 at page no.143)
The said cheque was reported by above said accused persons/the petitioner, to have been lost hence fresh cheque no.610291 was issued by the complainant company/respondent no. 2 in lieu of the said cheque no.608977 as its replacement which was encashed by said accused persons on 25.4.2002. (Para no.5 at page no.30)	The accused M/s Sony India Pvt. Ltd./Petitioner no. 1 has misused Blank Cheque No.608977 issued by Complainant company by fraudulently converting it into a valuable security by filing amount of ₹2,775,092/-. When accused persons informed complainant company regarding misplacement of the old cheque no.608977, the complainant company had given new cheque no.610291 along with PO no.934 dated 22.4.2002. This cheque 608977 was entrusted to the accused along with order cheques no.608978-980 of the same series on 28.3.2002. (Para no.20 at page no.147)

When the complainant/respondent no.2 made written demand from M/s Sony India Pvt. Ltd., the complainant/respondent no.2 was surprised & shocked to find out that immediately on receipt written demand they have filled up an amount of ₹27,75,092/- in lost blank cheques & presented it to the bankers of complainant company. (Para no.7 at page no.30 & 31)	They filled up fictitious amount of ₹27,75,092/- & dated 14.10.2004 of encashment in their Deutsche Bank Account. The accused people were knowing it fully that there was no outstanding against the complainant company and the said cheque was to be returned to the complainant company. (Para no.25 at page no.149)
Now it is very clear that the said cheque given by complainant company/respondent no. 2 to M/s Sony India Pvt. Ltd. was in fact not misplaced by above said accused persons, rather on the plea of misplacement they dishonestly & fraudulently induced the complaint to part with a new cheque bearing no.610291 & subsequently by presenting for payment they said misplaced cheque, they above said accused persons have committed an offence of cheating punishable u/S 420 IPC. (Para no.9 at page no.31)	The accused persons have deceived the complainant company fraudulently & dishonestly inducing the complainant company/respondent no. 2 to deliver those blank cheques under the garb of false representation and assurance and thereby have cheated and dishonestly induced the complainant company to deliver those cheques. The accused persons have committed an offence under Section 420 of the Indian Penal Code. (Para no.28 at page no.150)
That as the said accused persons by filling arbitrary figures in the misplaced blank cheque, have made a false document and hence committed cognizable offence of forgery punishable U/s 465 IPC. (Para no.10 at page	The accused person have forged the above cheques by altering the date and by filling the amount in the blank cheques forged and fabricated the said instrument by making interpolations. As the accused

no.31)	persons have committed and offence of forgery, which is punishable under section 465 of the Indian Penal Code. (Para no.29 at page no.150)
That as the above said accused persons have committed forgery in respect of valuable security hence offence U/s 467 IPC has been committed and used that forged cheque for the purpose getting cash from the bankers of complainant company hence cognizable offence of Forgery for the purpose of cheating punishable U/s 468 IPC has been committed. Further as the said forged cheque has been used as genuine hence offence U/s 471 IPC has been committed. (Para no.11 at page no.31)	That the said cheques are valuable security as defined in the statute and the same were bonafidely entrusted to the entrusted persons, they were signed, but blank except the date and the accused persons have forged these cheques in order to receive money from the account of the complainant company knowingly fully well the said cheques were without any consideration, blank and the accused persons had no authority to do so and as such the accused persons have committed an offence of forgery of valuable security which is punishable under section 467 of the Indian Penal Code. (Para no.29 at page no.150) That the accused persons have committed forgery on the above blank cheques with the intention to use the said forged cheques for the purpose of such the accused persons have committed an offence under section 468 of the IPC. (para no.30 at pare no.151) That the accused persons, have

	dishonestly and fraudulently used the above said cheques as genuine by depositing the same in the blank by making interpolations knowing fully well that the same have been forged by them and as such the accused persons have committed an offence under section 471 of the Indian Penal Code. (Para no.32 at page no.151)
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14. On the basis of the aforesaid facts, the Court has every reason to hold that FIR No. 214/2005, under Section 420/465/467/468/471/120B IPC which had been registered by P.S. Defence Colony on the basis of a complaint dated 28.02.2005 lodged by the respondent no.2 is a gross abuse of the processes of law on account of the following reasons.

(i) The first reason to hold that the aforesaid registration of the FIR is a gross abuse of the processes of law, by the respondent no.2, is that the respondent no.2 had earlier filed a criminal complaint in Karkardooma Courts and the learned Magistrate had duly taken cognizance of the complaint and had directed holding of an inquiry in terms of Section 200

read with Section 202 IPC. While doing so, it had rejected the application of the respondent no.2 under Section 156(3) Cr.P.C. for directing the local police to investigate into the matter. It may be pertinent here to mention that the Supreme Court in case title **Devarapalli Lakshminarayana Reddy & Ors. Vs. Narayana Reddy & Ors.** (1976) 3 SCC 252 has laid down that the exercise of power for the registration of an FIR under Section 156 (3) Cr.P.C. can be invoked at the state of pre-cognizance, meaning thereby, the power under Section 156 (3) is to be exercised by the learned Magistrate before taking cognizance on the basis of a complaint filed under Section 190 (1) (a) Cr.P.C. Correspondingly, it means that once the learned Magistrate has embarked on holding an inquiry after taking cognizance of the offence, it is not open to the learned Magistrate to revert back to Chapter XIV and XV for the purpose of directing investigation to be conducted by the local police at the pre-cognizance stage. This is precisely what has been done in the instant case though at the instance of respondent no.2. The respondent no.2 had firstly filed a criminal complaint bearing no. 97/1/2005 before the learned Magistrate at

Karkardooma Courts. An application under Section 156 (3) Cr.P.C. was also filed by the learned counsel for the respondent no.2, but the learned Magistrate did not consider it to be a fit case for directing the investigation by the police to be conducted after registration of an FIR. On the contrary, the Court directed the respondent no.2 to get the statement of the complainant recorded and produce evidence in terms of Section 202 Cr.P.C. The respondent no.2, instead of getting his statement recorded and producing evidence, as directed by the learned Magistrate, chose to file a fresh complaint on the basis of the same facts before the learned Magistrate at Patiala House Court without disclosing the fact that on the basis of the same facts, he had already filed a complaint at Karkardooma Courts wherein the prayer of the petitioners for the purpose of registration of an FIR and investigation into the matter had already been turned down. The very concealment of facts and persuading the Court to get a fresh direction issued to PS Defence Colony, to register the FIR in question without disclosing the previous background of the case was not only a gross abuse of the processes of law but also against the provision of law inasmuch as the respondent no.2

had taken the Court at Patiala House Court from post cognizance stage to the pre-cognizance stage, afresh, which was in gross violation of the scheme envisaged under Chapter XII, XIV and XV Cr.P.C.

- (ii) The second ground to hold that the registration of the FIR by the respondent no.2 was gross abuse of the processes of law and that the respondent no. 2 had not come to the Court with clean hands and suppressed the material facts. The Supreme Court in **S.P. Chengalvaraya Naidu Vs. Jagannath** 1994 AIR 853, though in a different context has clearly laid down that a fraud which is played by a party by withholding the documents or the material information of which he is in possession will vitiate the entire proceedings. The same principle has to be applied to a criminal proceeding especially in a criminal complaint which a party sets into the motion for the purpose of seeking redressal of his grievance. The Supreme Court in number of cases has laid down that purity of justice must be maintained at all cost. One of the facets of maintaining the purity of scheme of justice is that the party who invokes the jurisdiction of the Court must come with clean hands and should not suppress the material facts.

In the instant case, as has been noted above, the petitioners had suppressed the material fact of putting the criminal justice machinery into motion firstly by filing a complaint in Karkardooma Courts and failed to obtain the requisite order regarding the registration of FIR under Section 156(3) Cr.P.C. and chose to file a fresh complaint before the learned Magistrate at Patiala House Court in a different forum without disclosing this fact, yet getting a direction to the police under Section 156 (3) Cr.P.C. to register an FIR on the basis of the same facts. This was purely possible on account of the concealment of the fact and therefore, in my considered opinion constitutes concealment of material facts as well as invoking the jurisdiction of the Court with unclean hands and the necessary consequence of this would be that this Court must quash the direction passed by the learned Magistrate directing the registration of the FIR and the FIR itself as it was obtained by a gross abuse of the processes of law.

- (iii) The third ground on the basis of which, this Court holds that the registration of the aforesaid FIR would be a gross abuse of the processes of law is on account of the fact that the respondent no.2 has tried to convert a civil dispute, which it

had with the petitioners or its company specially with regard to the statement of accounts and the payment of monies, into a criminal dispute. The Supreme Court has deprecated the recent practice of the litigants to put pressure on the opposite side by getting the cases registered for an offence of cheating and various other criminal offences under various Sections of IPC in respect of a dispute between the parties, which is essentially civil in nature. The Apex Court in case titled----- ---- has made a distinction between the breach of contract and the offence of cheating and has observed that while as in a breach of contract, simplicitor there is no dishonest intention on the part of the petitioners against whom the FIR is got registered in sharp contrast to a case of offence of cheating where there has to be dishonest intention at the threshold itself to commit the offence of cheating. The word 'dishonestly' defined under Section 24 IPC as the intention of a party to cause wrongful gain to himself or wrongful loss to another person. In the instant case admittedly, according to the respondent no.2 himself, he was appointed as a dealer of various products of Sony both in Delhi as well as in NOIDA. The terms and conditions of the dealership were also settled

between the parties and it was the case of the respondent no.2 that in terms of the said dealership agreement, it did not receive the requisite cash payment on account of various incentives, discounts, etc. As against this, the respondent no.2 alleged that the cheques which were purposely given by way of security by them to the petitioners were sought to be encashed by them and therefore, they had committed the offence of cheating. The factual matrix clearly shows that there was essentially a civil dispute between the parties and that there was no dishonest intention on the part of the petitioner no.1/company at the time when the dealership agreement was signed in the year 1995 much less, in the year 2004-05, when the complaint was sought to be got registered. Accordingly, I feel that the dispute between the parties is essentially a civil dispute which ought to have been adjudicated in civil forums. I have been given to understand that some civil proceedings between the parties including a case under Section 138 of the Negotiable Instruments Act is pending between the parties in a competent Court. Therefore, in the light of the aforesaid facts, I feel that the registration of the FIR by the respondent no.2 against the

petitioner no.1 and the petitioner nos.2 to 23 was gross abuse of the processes of law and the order of the learned Magistrate directing the registration of FIR deserves to be quashed.

- (iv) Last but not the least the respondent no. 2 is indulging in gross abuse of the processes of law against the petitioner nos.2 to 23. The petitioner Nos.2 to 11 are the foreign nationals and the Directors of the petitioner no.1/company, while as the petitioner nos. 12 to 23 are various office bearers/employees of the petitioner no.1/company holding different positions. It has also been laid down by the Supreme Court in number of cases, that offence of cheating or breach of trust or forging a document for that matter and using forged document as genuine is an individual offence unless and until a party is shown to have committed the said offence either in person or in furtherance of common intention or inspired to commit such an offence he cannot be summoned for such an offence under the concept of vicarious liability. Reliance in this regard can be placed on case titled **S.K.Alagh Vs. UOI** JT 2008 (2) SC 540. In the instant case, the only reason why the respondent no.2 has made a

complaint against the petitioner nos.1 to 22 at Karkardooma Courts, Delhi on the basis of which FIR has been got registered is only on account of the fact that they are the Directors and employees of the M/s Sony India Pvt. Ltd., which was subsequently, withdrawn on the same day on which an order was passed by the Patiala House Court directing the registration of offence. M/s Sony India Pvt. Ltd. may not have been made an accused in the present FIR but if one reads the contents of the complaint on the basis of which the FIR has been registered above. It is abundantly clear that M/s Sony India Pvt. Ltd. is stated to be the sole beneficiary of the cheating purportedly alleged to have been committed by the petitioner nos.2 to 22 and therefore, it also comes under clout, it is in my view competent enough to maintain the present petition.

15. For the above mentioned reasons, I am of the considered opinion that the respondent no.2 has grossly abused the processes of law by concealing the material facts and getting the civil dispute converted into a criminal dispute and got the FIR registered against the petitioners only with a view to put pressure on them so that they are brought to the negotiating

table. Such a gross abuse of the processes of law cannot be permitted to be done much less perpetuated by the respondent no.2. As a matter of fact, such practice is not only being deprecated but there are also serious consequence of putting criminal justice machinery into motion by wrong facts. However, in the instant case I refrain from initiating any action against the respondent no.2 and leave it to the petitioners to take such appropriate action if they so desire, against the respondent no.2, for malicious prosecution, as they may deem fit. Accordingly, all the five petitions are allowed and the FIR no. 214/2005 under Section 420/465/467/468/471/120B IPC registered by P.S. Defence Colony, New Delhi as well as the complaint are quashed.

V.K. SHALI, J.

January 20, 2012
KP