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

Date of Decision: 4.01.2012

+W.P.(CRL.) No.805-07/2005

SANJAY DAKSHA & ORS. Petitioners

Through: Mr.Rakesh Mukhija, Adv.

Versus

THE COMMISSIONER OF POLICE & ORS.

..... Respondents

Through: Dr.Sushil Kumar Gupta,
Adv. for R-4

+Crl. M. C. No. 1650/2008

SANTOSH KUMAR BAGLA Petitioner

Through: Mr.Rakesh Mukhija, Adv.

Versus

THE COMMISSIONER OF POLICE & ANR.

..... Respondents

Through: Dr.Sushil Kumar Gupta,
Adv. for R-4

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

V.K. SHALI, J.

1. These are two petitions filed under Section 482 Cr.P.C.

The first petition is filed by Sanjay Daksha, Sofiur

Rehman and Binod R while as, the other petition bearing CrI. M.C. No. 1650/2008 is filed by Santosh Kumar Bagla. In both these petitions, a prayer for quashing of the FIR no. 21/2005, registered under Sections 120B/420/467/468/471/477A IPC by P.S. Lodhi Colony, New Delhi, dated 19.1.2005, is made. The aforesaid FIR has been registered pursuant to the complaint dated 10.8.2004, lodged by the respondent no.4/Ms.Mausumi Bhattacharjee.

2. Briefly stated, the facts leading to the filing of the present petitions are that the respondent no.4 lodged a complaint on 10.8.2004 against nine persons including the present four petitioners, making specific allegations that they had entered into a criminal conspiracy with the other five accused persons and committed the offence of cheating by using forged documents and submitting the same with the Registrar of Companies on different formats/forms and using the said forged documents as genuine in order to claim themselves to be the Directors

of the Company. It is also alleged that they also committed falsification of accounts.

3. In order to appreciate the rival contentions of the parties, it will be pertinent to give the contents of the complaint lodged by the respondent no. 4, on the basis of which the FIR has been registered. The same reads as under:-

"1) That the complainant is a company incorporated under the Companies Act, 1956 having its registered office at 55 Vidyut Nikunj Apartment 112, Patparganj, New Delhi 110092 and Ms. Mausumi Bhattacharjee has been its Director since November 1997 and became its Managing Director w.e.f. 04.5.2001 holding the entire share capital of the company either directly or through their friends and relatives (hereinafter collectively referred to as the 'Complainant').

2) The company was earlier owned, controlled, managed by Late Shri Damodar Prasad Gupta along with his sons, Sh. Yogesh Gupta and Sudhir Gupta until the complainant became Director w.e.f. 01.11.97 and later became the Managing Director w.e.f. 04.05.2001, took over the management of the company and its shareholding from the aforesaid erstwhile Directors/shareholders, while Late Sh. D. P. Gupta and Sh. Yogesh Gupta resigned as Director w.e.f. 01.11.1997.

Sh.Sudhir Gupta ceased to be Director w.e.f. 04.10.1999.

3) The complainant owns a plot of land at Dehradun. This plot was notified as a forest land on 01.09.1969 vide notification No.449/1-1-2(3)/69 by the then Government of Uttar Pradesh, which was challenged by the Company in the High Court of Allahabad vide Petition No.2160 of year 1970. The High Court of Allahabad decided the matter in favour of the company on 16.04.1974. The U.P. Government went for an appeal in the Supreme Court of India, vide Appeal No.2046 of 1974 against the order of High Court of Allahabad. The Supreme Court also decided in favour of the Company on 11.11.1975. However, the Government of U.P. and subsequently, the Government of Uttaranchal again notified the Area as forest land vide notification No.4968/12-2/96/4(1) 96 dated 20.11.1996.

Meanwhile, the petitioner, Director of the company, objected to this notification before the FSO (Forest Settlement Officer), Dehradun vide application no.261/98-99.

The SDM Dehradun vide his order dated 21.03.2003 upheld the contention of the company and denotified the area.

The Divisional Forest Officer (DFO) filed an appeal No.78/2003 before the District Judge, Dehradun on 02.07.2003 before the District Judge, Dehradun on 02.7.2003 against the aforesaid order titled as 'Divisional Forest Officer, Dehradun, Forest Department and State Government Vs.

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Anghaila Housing Private Limited, 55 Vidyut Nikunj, 112, Patpadganj, Delhi-92 through its Managing Director, Ms.Mausumi Bhattacharjee."

In both the cases i.e. representing before the FSO (Forest Settlement Officer) and representing before the Hon'ble District Judge, the petitioner (Ms.Mausumi Bhattacharjee) represented the company as the Managing Director.

4) The said Appeal has since been decided in favour of the Company vide order dated 13.7.2004 of Additional District Judge.

As it happened the monetary value of land owned by the company went upto 100 Crores which drew the attention of certain land grabbers/Mafias who joined hands and started some illegal interventions into the company's activities.

On and around September 2002 the complainant learnt that certain forged documents had been filed with the office of the Registrar of Companies such as :

- *Form 32, dated 16.5.2002 along with the resignation letter showing the resignation of the complainant as the Managing Director of the company on which there were forged the signature of Sh.Sudhir Gupta who had already resigned from the office of the Director w.e.f. 04.10.1999.*
- *Form No.32 dated 16.5.2002 showing the appointment of accused No.7 to 9 as the directors of the company.*

- Form 18 dated 16.5.2002 showing the shifting of the registered office of the company to the nonexistent place of B-24, Hauz Khas, New Delhi bearing the signature of Shri. Sudhir Gupta who had already resigned from his office w.e.f. 04.10.1999. The above mentioned accused did not know the correct name of the company and spelt it as 'Anghaila Housing Pvt. Ltd.' along with a similar rubber stamp as well. The report by the private investigating agency i.e. Lancers Network Private Limited claims that one Mr.J.Berry lives at B-14, Hauz Khas, New Delhi and confirms that there is no office of Anghaila Housing (Private) Limited at that address.
- Form 2 dated 20.1.2003 showing the allotment of 4604 shares to accused Nos.7 to 9 on 19.8.2002 bearing the signatures of Sh.Sudhir Gupta who had already resigned from his office w.e.f. 4.10.1999 and were also filed late by five months.
- The complainant then approached the Company Law Board challenging the aforesaid Forms. During the proceeding before the Company Law Board the following forged documents were further filed before the Company Law Board.
- Affidavit filed by accused No.7 though attested by the Notary Public, also has made the following notings:

"Sd/- Naresh
Signed before me
Sd/- illegible
SDM()"

- *Form 32 along with the forged resignation of Sh/Sudhir Gupta*
- *Accused No.7 filed a copy of the Duplicate Driving Licence without signatures of any Issuing Authority.*
- *Filing of forged medical certificates.*
During the proceedings before the Company Law Board the accused No.6 i.e. Sh.Tarun Bharadwaj filed the following forged documents.
- *Board Meeting minutes. Minutes of the Board Meeting held on 19.7.2003, wherein no time and venue of the meeting is mentioned. The presence of Directors, as to who all had attended the meeting, is also not mentioned Registered Officer of the Company is again mentioned as B-24, Hauz Khas which is nonexistent.*
- *Even the notice of the Board Meeting held on 19.7.2003 also suffers from vital defects like they have been signed by Sh.Sudhir Gupta who is no longer the Company's Director.*
- *No time and venue of the meeting is mentioned. The present of Directors, as to who all had attended the meeting is also not mentioned. Registered office of the company is again mentioned as B-24, Huaz Khas which is nonexistent.*
- *Annual Return with the forged signatures of Sh.Sudhir Gupta along with the forged transfer of shares. Annual Return made on 26.9.2002 but filed on 09.9.2003, the shares purportedly issued to the Accused Nos.4 & 5 (3, 202 shares) have been transferred to the Accused No.6 (Tarun Bharadwaj). Hence the transfer of shares*

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is null and void ab initio, there is no further documents evidencing the aforesaid transfer.

- *Form 32 showing the appointment of accused no.6 (Tarun Bharadwaj) is claimed to have been made w.e.f.26.09.2002 on the basis of Form 32 signed by Sh. Sudhir Gupta (who had already ceased to be Director w.e.f. 04.10.1999).*

The date of passing of the resolution as per this Form 23 is 19.7.2003 whereas the Form itself is dated 09.7.2003. the authority to file it is given to Mr.Sudhir Gupta although he had already resigned w.e.f. 04.10.1999.

Similarly Form 23 filed in respect of the appointment of accused No.6 (Tarun Bharadwaj) as the Managing Director w.e.f. 19.7.2003 has also the colors of forgery as the same has been signed by Mr.Sudhir Gupta although he had already resigned on 04.10.1999.

During the proceedings before the Company Law Board the accused No.3, i.e. Sh.Sanjay Daksha, accused no.4 i.e. Sh.Sofi-ur-Rehman and accused No.5 i.e. Sh.Binod Rajhans also filed the following forged documents.

- *Form 2 dated 27.3.1995 in respect of the purported allotment of 1454 shares on 30.6.93 and Form no.2 dated 23.3.1995 in respect of the purported allotment of 3150 shares on 31.3.93 have been claimed to have been filed with the office of the Registrar of Companies on 29.3.1995 along with form 18 and form 32 against a*

consolidated Receipt No.35444, on which a cash of ₹300 has been paid as filing fees. It is pertinent to mention that despite repeated opportunities given to and availed by the Appellants they were unable to produce the copies of Form 2 duly certified by the Registrar of Companies. It appears that the appellants have made a fraudulent and an unsuccessful attempt to base their claims on the purported Form 2 linking the same to the Receipt not relating thereto.

- It is also to note that the accused nos.3,4 and 5 are claiming to be the shareholders/owner of the Company right from 1993 onwards. They file so many forms such as Form 32, Form 18. Annual Returns to Registrar of Companies all on one day i.e. 08.3.2004 and moreover they fail to include the Director's and Auditor's Report Balance Sheet and Profit and Loss Account for all these years.
- The Share Certificates and the Transfer Deeds suffer from vital defects and fail to comply with the provision of the Companies (Issue of Share Certificate) Rules, 1960 The Hon'ble Company Law Board while dealing with the aforesaid documents passed an order dated 25.5.2004 in favour of the complainant disregarding/canceling the aforesaid forged documents. Despite the aforesaid order of the Company Law Board the accused No.1 to 9 continue to represent themselves as the Directors of the Company and misrepresenting the public and the poor farmers, villagers with a view to defraud them and grab the Company's property.

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During the proceedings before the Additional District Judge in respect of Appeal 78/2003 in the matter of DFO Vs. Anghaila Housing Pvt. Ltd. the accused No.1 to 5 Sanjay Daksha and Party have filed an application in the name of Shalini Projects Private Limited along with the following forged documents.

- Memorandum of Understanding purportedly executed on 23.6.2001.
- Agreement of sale purportedly executed on 17.6.2003.
- Power of Attorney dated 23.3.2004 signed on 29.9.2004 in favour of accused no.1 and accused no.2.

The Memorandum of Understanding Agreement of sale and the power of attorney appeared to having been executed by accused no.3, Sanjay Daksha along with Shalini Projects Pvt. Ltd., whose Managing Director is Mr.Santosh Kumar Bagla. It appears that the accused no.1 is the kingpin and all others are puppets playing into the hands of and as per the instructions from Santosh Kumar Bagla.

You are requested to register an FIR against accused no.1 to 9 for fraud, forgery, cheating and land grabbing, criminal conspiracy and using the forged documents in judicial proceedings in terms of Section 420/468/471 read with 120B IPC and other applicable provisions in order to safeguard the interests, property of the

Company from Mafia, land grabbers/criminal conspirators.

Sd/-

4. On the basis of the aforesaid complaint, an FIR No.21/2005 for offences under Sections 120B/420/467/468/471/477A IPC was registered against the petitioners. The petitioners started getting notices for the purpose of joining the investigation after registration of the FIR. The first petition was filed by the three petitioners named above which came to be listed before the Court on 31.05.2005, on which date, the notices were issued to the respondents to show cause as to why rule nisi be not issued. In the meantime, no coercive action was directed to be taken against the petitioners. It may be pertinent here to mention that the only coercive action which was being taken by the respondent nos. 1 to 3 was issuance of non-bailable warrants against the present petitioners as they were not cooperating in the investigation. The interim order is

continuing till date. The second petition was filed in the year 2008 in which a similar order was passed by the Court on the basis of the order having been passed in the first petition. Thus, the petitioners having got an order that no coercive action be taken against them, have been prolonging the matter. As a consequence of this, despite the fact that the FIR has been registered six years back, still the investigations could not be completed and final report could not be filed in Court till date.

5. I have heard the learned counsel for the parties. Since there was a definite attempt on the part of the petitioners to prolong the matter, for one reason or the other, by seeking repeated pass overs, the Court had no other option but to permit the parties to file written synopsis and reserve the order. I have gone through the record as well as the written synopsis filed by the petitioners.
6. It may be pertinent to mention here that both the petitions are emanating from the same FIR. The

grounds for the quashing of the FIR and the complaint on the basis of which the said FIR has been registered are essentially the same, and therefore, they are being dealt with together.

7. Before taking up the grounds which have been urged in the petition or in the written synopsis filed by the petitioners for quashing of the FIR or the complaint, it may be pertinent here to mention that the law regarding quashing of an FIR is no more res integra. The Supreme Court in the case titled **State of Haryana & Ors. Vs. Bhajan Lal & Ors.** AIR 1992 SC 604, after reviewing the previous case laws on the subject of quashing of FIR or the complaint, has observed that there are seven illustrative contingencies in which the FIR may be quashed by the High Court in exercise of its power under Article 226 of the Constitution of India or under Section 482 Cr.P.C., but at the same time, a note of caution has been struck that the power of quashing of the FIR or the complaint, must be used very sparingly and the Courts

should refrain from going into the arena of disputed questions of fact and creditworthiness of the witnesses or the evidence which the parties may like to produce during the course of trial. It may also be pertinent to mention here that despite the expiry of almost two decades from the date of decision of **Bhajanlal's case (Supra)**, the same has held the ground till date without any substantial change. I am, accordingly, prompted to reproduce the paragraph no. 108 of the said judgment, which reads as under:

"108. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have been extracted and reproduces above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the processes of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down*

any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as

contemplated under Section 155(2) of the Code.

5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and /or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

8. Further, a note of caution had also been struck in the following words:

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise to the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

9. It may also be pertinent here to mention that Supreme Court in **State of Bihar Vs. Murad Ali** AIR 1989 SC 1 has held as follows:

"it is trite that jurisdiction under Section 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not that is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that

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when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

10. In **Municipal Corporation of Delhi Vs. R. K. Rohtagi**

(1983) 1 SCR 884 at p. 890 : (AIR 1983 SC 67 at p. 70)

it is reiterated:

"It is, therefore, manifestly clearly that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

11. In **Municipal Corporation of Delhi Vs. P.D.**

Jhunjunwala (1983) 1 SCR 895 at page 897 : (AIR

1983 SC 158 at page 159) it was further made clear:

"..... As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further."

12. Thus, as per the settled position of law the power under Section 482 Cr.P.C. has to be exercised very sparingly and while doing so the court has to look at the contents of the FIR/allegations and the investigation reports i.e. the status reports in this case, whether they lead to the inference of the fact that any offence has been committed or not.

13. That the main grounds taken by the petitioners for quashing of the FIR and the complaint in question are as under:-

- (a) According to the facts of the case. No case under Sections 120B/ 420/467/468/471/477A IPC is made out.
- (b) FIR is liable to be quashed on the ground of malafide of Ms.Mausumi Bhattacharjee, the complainant
- (c) FIR is liable to be quashed because of double jeopardy
- (d) Matter is of civil nature and has been converted into a criminal dispute.

14. So far as the first ground regarding no case under Section 420/467/468/471/477A/120B IPC is being made out, is concerned, the only thing to be seen is whether from the plain reading of the FIR, a case of cheating and forging a document, using forged documents as genuine and falsification of the accounts be made out or not. The second and fourth ground, which pertains to the allegations of malafide and the dispute being of a civil nature, are overlapping the first one, so all of them are being dealt with together.

15. I have purposely reproduced the entire contents of the FIR in paragraph 3. Suffice it would be to mention here

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that a plain reading of the said FIR makes a definite allegation against the petitioners that they are alleged to have forged the resignation papers of Sudhir Gupta, board meeting minutes, medical certificates and even the notices of the board meeting including the annual returns and on the basis of the same they had sought to claim themselves to be the shareholders and the Directors of the company in question. If this is prima facie accepted to be correct, then obviously a case for cheating under Section 420 IPC, for forging documents and using forged documents as genuine punishable under Section 468/471 IPC and falsification of accounts punishable under Section 477A IPC is made out. I have purposely not dealt with the entire complaint in extenso because a reading of the complaint itself makes out a prima facie case for registration of a cognizable offence which has been done in the instant case. In terms of Bhajan Lal's case (supra), one of the illustrative grounds enunciated for quashing of the FIR is that if a plain reading of the

FIR or the complaint does not make out a prima facie case against the accused persons, then only the FIR can be quashed. Certainly, in the instant case such a view cannot be held.

16. The learned counsel for the petitioners has submitted that no offence of forgery is made out. He has relied upon a number of authorities:

Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr. 2006 (5) SCALE 638

Shashi Lata Khanna Vs. State of Delhi & Ors. 2005 (2) JCC 1220

Hridaya Ranjan Prasad Verma Vs. State of Bihar 2000 CrL LJ 2983

17. I have gone through these authorities. Although there can be no dispute about the principle of law laid down in them but in my view they are not of any help to the petitioners.

18. In **Ram Biraji Devi's case** and **Hridaya Ranjan's case** a distinction has been drawn by the Supreme Court between a breach of contract simpliciter and the offence

of cheating, and it has been observed that in a breach of contract there need not be any dishonest intention at the time of entering into the contract while as in a case of cheating this is a pre-requisite for registration of the FIR.

In **Shashi Lata Khanna's case** a revision against an order of acquittal in a case of cheating was being considered, which stage obviously arises after the parties have adduced evidence while as in the instant case only an FIR has been registered.

19. The learned counsel for the petitioners has also contended that the petitioners have been subjected to needless harassment and the criminal proceedings are being used as an engine of oppression. It is also contended that the dispute between the parties is essentially a civil dispute, which has been sought to be converted into a criminal dispute. For this purpose, the petitioners have relied upon the following judgments:

M/s Indian Oil Corporation Vs. NEPC India Ltd. & Ors. AIR 2006 SC 2780

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Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. Appeal (Crl.) 1392 of 2007

20. I have gone through all these authorities. It must be stated that there is no dispute about the proposition of law laid down by the Supreme Court in **Indian Oil Corporation** and **Inder Mohan Goswami's cases (supra)** that of late, there has been a tendency on the part of the litigants to convert a dispute which is essentially civil in nature into a criminal dispute, to make the other party to submit to the dictates of the complainant. In all such cases, the Courts have in exercise of its powers under Section 482 Cr.P.C. or under Article 226 & 227 of the Constitution, granted the relief to the accused persons either by setting aside the order of summoning or quashing the FIR itself. In **Indian Oil Corporation's case (supra)** the aircrafts had been mortgaged while as in **Inder Goswami's case (supra)** loan was taken and post dated cheques were issued.

21. But the moot question which arises for consideration is that as to whether this proposition of law fits into the facts of the present case or not. The learned counsel for the petitioners has relied upon few other authorities on the question of sale and purchase of immovable properties where either the summoning order has been quashed or the complaint itself, which has resulted in summoning of an accused for cheating, has been quashed, either by the High Court or by the Supreme Court, by observing that the dispute between the parties was essentially one of sale and purchase of a piece of land or breach of contract, which should not be converted into an offence of cheating, as there was no dishonest intention on the part of the accused in those cases at the time of entering into the transaction, to either cause wrongful gain to himself or to cause wrongful loss to the accused, which are essential ingredients of the offence of cheating. But I do not feel that any of these authorities is applicable to the facts of the present case, for the simple

reason that no facts of two cases are similar and the learned counsel for the petitioners has been missing the point that the Apex Court in catena of judgments has held that the proposition of law laid down in a given case should not be applied like theorems to the case which is sought to be decided. In other words, it has been observed that one single change of fact may be of a vital importance, to make a distinction between the two cases, such that the proposition of law which has been enunciated by the Apex Court or by the High Court may make it distinguishable from the reported case. Reliance in this regard can be placed on case titled **Haryana Financial Corporation vs. Jagdamba Oil Mills** AIR 2002 SC 834.

22. Coming back to the facts of the present case, the petitioners have made a definite averment that she became the Director of the company in question in the year 1995, after the previous Director, Mr. Sudhir Gupta, had ceased to be the Director of the company in

question. The company owned valuable chunk of land measuring 1200 acres in Dehradun which was stated to be of more than Rs. 100 crores at that point of time, when FIR was registered, which now, as on date must be 10 times more than what it was at that point of time. The petitioners were alleged to have forged certain documents with regard to Form 32 and various other documents submitted with the Registrar of Companies, purported to have been signed by Sudhir Gupta and duly supported by forged board meetings, annual returns and other connected documents so as to claim themselves to be shareholders and holder of the post of Director in the company, so as to allegedly deprive and divest the complainant of the control of the assets of the company. Obviously, if this is the case, it clearly shows that there was a dishonest intention at the time when the acts are purported to have been done by the petitioners, in as much as, they wanted to cause wrongful gain to themselves, if not the wrongful loss to the complainant.

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Merely because certain previous litigation between the parties is pending in the Company Law Board or in civil courts, this does not preclude a complainant from registering a criminal offence against the offender, in case it is made out. This has also been observed by the Apex Court in Indian Oil Corporation's case (Supra) wherein it was held that merely because civil disputes exist between the parties, this does not mean that a criminal offence cannot be registered. Therefore, I feel that although the judgment with regard to the proposition of law that the FIR may be quashed, in case there is purely a civil dispute, cannot be found at fault with, but it can by no stretch of imagination be said that in the instant case the dispute between the petitioners and the complainant is essentially a civil dispute which may warrant quashing of the FIR. Similarly, the learned counsel for the petitioners has failed to see the distinction between a case where the matter has reached to the High Court or to the Supreme Court after the

parties have adduced evidence before the trial court and a finding has been returned by the trial Court holding whether an offence is made out or not in stark contrast to the case like the present one which is at the threshold itself.

23. It will not be out of place to mention here that the very registration of the FIR in the instant case immediately activated the three petitioners to originally file a petition in the year 2005 itself and obtain a restraint order that the police shall not take any coercive action against them for the purpose of investigation, followed by a writ petition in 2008 by Santosh Kumar Bagla, who also obtained a similar restraint order. It may be pertinent here to mention that though there was specific direction by the Court to the petitioner/Santosh Kumar Bagla to join the investigation on at least three occasions, but he not only defaulted and did not appear before the IO in pursuance to the Court orders, but also created hurdles in the investigation which is the right of an investigating

agency to arrive at the bottom of the matter, so much so that the Court was compelled to impose a cost of Rs.25,000/- on the said petitioner/Santosh Kumar Bagla for having defaulted in appearing before the IO and for not joining the investigation. This clearly shows that instead of cooperating with the investigating agency they created all sorts of hurdles to ensure that the investigation could not be conducted at all and filing of the present petition in itself is an act in that direction. I, accordingly, feel that there is no merit in this contention of the learned counsel for the petitioners that no case under Section 420/468/471 or 477A IPC is made out and therefore the FIR is liable to be quashed.

24. Another Point which was raised by the learned counsel for the petitioners in his written submission is the allegations of mala fides against the complainant Mausumi Bhattacharjee, to implicate the petitioners in a false case. The sum and substance of this contention is that Mausumi Bhattacharjee/ complainant fraudulently

represented before two or three forums as Director of the company in question. The complainant is alleged to be presently aged around 35 years and at the time of incorporation of the company it is alleged that she must have been a toddler of 1-2 years and hence by no stretch of imagination she could ever become the Director of the Company when she had allegedly purported to have become one. It is alleged that the complainant has indulged in forgery and deceit, by filing the balance sheet and annual report for the year ending March 31, 1993 and March 31, 1994 with the Registrar of Companies, purported to have been signed by M/s Ved & Co., Chartered Accountants, while as the said firm has never been appointed as an auditor of the company and further the address of their registered office has not been reflected on the letterhead. The allegations are that the complainant must have managed to get these forms from the office of Registrar of Companies office removed, which were beneficial to the present petitioners. It may

be pertinent to mention here that the Apex Court in **State of Bihar Vs. P. P. Sharma** AIR 1991 SC 1106 has observed that allegations of mala fides are very easy to make but very difficult to prima facie establish. A very heavy onus has to be discharged by the petitioner in this regard. But in the instant case, the instances which the petitioners are relying upon by way of allegations of mala fides, to prove the falsification against them, essentially constitutes their defence and it will have to be proved by the petitioners during the course of the trial by adducing evidence to that effect. It cannot be said at this stage that what is being stated by either of the parties, especially by the petitioners, is a gospel truth and by putting reliance upon the same, the FIR deserves to be quashed. As a matter of fact, the entire effort of the petitioners has been to convert the jurisdiction of the High Court under Section 482 Cr.P.C., into the jurisdiction of a trial Court and return a finding of a fact that the allegations against them are false. Once a party

says that allegations levelled against him are false, it obviously warrants adducing evidence by both the parties before the Trial Court and the adjudication thereof by the Trial Court to return a finding as to whether this is correct or not. In the light of the aforesaid facts, I am of the view that there is no merit in this contention of the learned counsel for the petitioners, and accordingly, this contention is without any merit and is accordingly dismissed.

25. The petitioners have relied upon the case titled **T.T. Anthony Vs. State** AIR 2001 SC 2637 to contend that the police having registered an FIR in Dehradun and having chosen to file the charge sheet, it is not open to them to have registered another FIR under Section 420/467/468/471/477A read with section 120 B IPC.
26. So far as the judgment of **T. T. Anthony's** case is concerned, the facts of the present case are totally different. Anthony's case was a case where the Supreme Court, in the facts of that case, observed that on the

basis of the same factual matrix, the second FIR cannot be registered. The differences which exists between the two FIRs in the present case have been given in tabular form hereinafter which will show that there is a marked difference in the character of the two offences.

27. That the third ground taken by the petitioners is of double jeopardy. This is a constitutional right of an accused granted under Article 20(2) of the Constitution. The provision relating to double jeopardy is contained in Section 300 Cr.P.C. which reads as following:

"300 person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under subsection (2) thereof.

(2) A person acquitted or convicted of any offence afterwards tried with the consent of the State Government for any distinct offence for which a separate charge has been made against him at the former trial under subsection (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

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Explanation. The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

28. A bare perusal of the aforesaid provision will show that the present case does not fall in the above category as in this case neither there is any acquittal nor any conviction in respect of the case registered at Dehradun. Even the trial has not yet stated to have been commenced because of the stay granted on the proceedings of the case by the Hon'ble High Court of Uttarakhand situated at Nainital. Consequently, the petitioners have not even been discharged. As against this present case is at the stage of investigation. Conviction, acquittal or discharge in respect of the same offence is a precondition for applicability of principle of double jeopardy. I fail to understand as how the said principle would be applicable to the case of the petitioners.
29. Further, one of the preconditions for applicability of principle of double jeopardy in the two FIR's for the 'same offence' being alleged is the one in which he is

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convicted or acquitted in comparison to the one in which he is charged or alleged to have committed. A comparison chart depicting the difference between the two FIRs is as under:

Comparative statement of FIRs

particulars	FIR no. 21/2005 (NEW DELHI)	FIR NO. 191/2004 (DEHRADUN)
Date of complaint	10.08.2004 Economic Offence Wing	01.01.2005
Police Station	Lodhi Colony, District South, New Delhi	Police Station Cantt., District Dehradun
Date of registration of FIRs	19.01.2005	20.11.2004
Sections invoked	U/s 420, 467, 468, 477A read with Section 120B IPC	U/s 420/467 read with section 468, 471, 504, 506, 120B IPC
Name of the accused	(i) Sh. Santosh Kumar Bagla r/o Y-14 A, 2 nd Floor, Green Park (Main), New Delhi (ii) Sh. Kailash Nath Chaturvedi r/o 2 nd Floor, 115, Defence Enclave, Vikas Marg, New Delhi. (iii) Sh. Sanjay	(i) Sh. Sanjay Daksha s/o Sh. D. N. Daksha (ii) Sh. Vimal Joshi s/o Sh. R. L. Joshi (iii) Sh. Santosh Kumar Baghla s/o Sh. Laxmi Narain Bagla (iv) Sh. Shyam Chaturvedi s/o Sh.

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	Daksha r/o Y-14 A, 2nd Floor, Green Park (Main), New Delhi (iv) Sh. Sofi-ur-Rehman r/o RZ 20, E/6, Raj Nagar, Palm Colony, New Delhi (v) Sh. Vinod Rajhans r/o Y-14 A, 2nd Floor, Green Park (Main), New Delhi (vi) Sh. Tarun Bhardwaj r/o H-452, 3rd Floor, New Rajinder Nagar, New Delhi. (vii) Sh. Naresh Kumar r/o 237, Shastri Nagar, Meerut. (viii) Sh. Ram Saran Singh r/o Shakti Nagar olony, Bijnor. (ix) Smt. Kusum Lata r/o 75, Rajpur Road, Dehradun	Jintender Chaturvedi (v) Sh. Ashok Mangai All the above persons are resident of Shalini Projects Office, 161, Phase II, Basant Vihar Police Station, Basant Vihar, Dehradun.
Offence	(i)the following documents were	(i)Sanjay Daksha and Santosh Kumar Baghla

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	allegedly forged and filed with ROC-Delhi:	with malafide intention to usurp the assets of the company in village Galjwari at Dehradun and fabricated and forged the MoU/Agreement to sell, Power of Attorney etc. These documents were filed before the Court of ADJ-III, Dehradun on 31.05.2004.
	Form 32 dated 16.05.2002	
	Form 18 dated 16.05.2002	
	Form 3 dated 20.01.2003	
	Duplicate driving license	
	Annual return dated 26.09.2002	
	Form 23 dated 09.07.2003	(ii) All the above named accused had given threats through various phone calls to kill the respondent no. 3 (Ms. Mausumi Bhattacharjee) and was asked to leave the possession of the company. Her supervisor was also threatened and asked to leave the service of the respondent no. 3.
	Form 2 dated 27.03.1995 in respect of purported allotment of 1454 shares on 30.06.1993	
	Form 2 dated 23.03.1995 in respect of purported allotment of 3150 shares on 31.03.1993	
	Form 32 with receipt no. 34444	
	(ii) Various forms	

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	such as Form 32, 18 and Annual Return were filed by the accused on 08.06.2004 showing themselves to be the shareholders/owners of the Company from 1993 onwards (iii) Allegedly forged share certificates and transfer deeds (iv) Allegedly MoU purportedly executed on 23.06.2001 (v) Allegedly Agreement to sell purportedly executed on 17.06.2003 (vi) Allegedly POA dated 29.03.2004	
Charge sheet filed	Not yet	Charge sheet has been filed by the police on 30.12.2004 against the aforementioned accused. It was also mentioned in the

		charge sheet that all the accused are guilty of criminal conspiracy and cheating with an intention of sale and purchase the assets of the company through forged documents. The charges framed U/s 420,467,468,471 and 120B IPC against the above named accused are proved. It is also proved U/s 504 and 506 IPC that accused Sanjay Daksha, Vimal Joshi and Santosh Baghla had threatened to kill respondent no.3.
Status report filed	(i) First status report filed on 24.10.2005 (ii) Second status report filed on 2007 (iii) Third status report filed on 08.07.2008 (iv) Fourth status report filed on 13.04.2009	Nil

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	(v) Affidavit in respect of FIR No. 21/2005 by DCP, EOW filed on 02.09.2009	
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30. Though a large number of facts of the two FIRs may appear to be common, but they disclose commission of different offences, as some of the offences mentioned in the FIR lodged at Dehradun had not been allegedly committed at the time when the first complaint was made in Economic Offence Wing, at New Delhi. The main allegation in the complaint lodged at Economic Offence Wing, New Delhi (FIR 21 of 2005) pertains to the petitioners having forged and filed several documents before Registrar of Companies and the main offence pertained to criminal conspiracy, cheating, forgery, falsification of accounts etc. Whereas the FIR lodged at Dehradun (FIR 191 of 2004) the main allegation was conspiracy with regard to criminal intimidation, forcible

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grabbing of land, cheating etc. The offence of criminal intimidation and intentional insult with intent to provoke breach of peace were not even in existence at the time when the complaint was lodged at Economic Offence Wing, New Delhi so the question of 'same offence' in existence in respect of two FIRs also does not meet the prima facie requirement of double jeopardy and thus Section 300 Cr.P.C. or Article 20 (2) of the Constitution of India are not attracted at all.

31. The Apex Court with regard to this issue makes the position of the law very clear in case titled **State of Bihar Vs. Murad Ali** AIR 1989 SC1 (1989) 4 SCC 655 makes the position of the law very clear. The relevant extracts of the judgment are as follows:

"In the State of Bombay Vs. S. L. Apte, (1961) 3 SCR 107 : (AIR SC 578), the question that fell for consideration was that in view of earlier conviction and sentence under Section 409 IPC a subsequent prosecution for an offence under Section 105 of Insurance Act, 1935 was barred by Section 26 of the General Clauses Act and

Article 20 (2) of the Constitution. This Court observed (at Pp. 581 and 583 of AIR):

"To operate as a bar the second prosecution and the consequential punishment there under, must be for 'the same offence'. The crucial requirement therefore for attracting the Article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out....."

32. In one of the latest judgment titled **Jitendra Panchal**

Vs. Intelligence Officer, NCB & Anr. (2009) 3 SCC 57

/ AIR 2009 SC 1938 it has held as under:

"In our view, the offence for which the appellant was convicted in the USA is quite distinct and separate from the offence for which he is being tried in India. As was pointed out by Mr. Naphade, the offence for which the appellant was tried in the USA was in respect of a charge of conspiracy to possess a controlled substance with the intention of distributing the same, whereas the appellant is being tried in India for offences relating to the importation of the

contraband article from Nepal into India and exporting the same for sale in the USA. While the first part of the charge would attract the provisions of Section 846 read with Section 841 of title 21 USC controlled substances Act, the latter part, being offences under the NDPS Act, 1985, would be triable and punishable in India, having particular regard to the provisions of Sections 3 and 4 of the Indian Penal Code read with Section 3 (38) of the General Clauses Act, which has been made applicable in similar cases by virtue of Article 367 of the Constitution. The offences for which the appellant was tried and convicted in the USA and for which he is now being tried in India, are distinct and separate and do not, therefore, attract either the provisions of Section 300 (1) of the Code or Article 20(2) of the Constitution."

33. Thus it is crystal clear from the above that the ground of double jeopardy sought to be relied upon by the petitioners is totally misconceived.
34. The next submission made by the learned counsel for the petitioners is that the I.O. is making frivolous allegations on the petitioners that the applicant is holding documents on the basis of which notice was issued as per interim order passed by the Hon'ble Court. The sum and substance of this allegation is that the IO wanted the

petitioners to produce 14 original documents for the purpose of investigation into the matter and it is the case of the petitioners that out of those 14 documents, 10 documents have already been handed over to the IO while as the remaining four documents are self-attested copies, therefore, the FIR deserves to be quashed.

35. This cannot be a ground for quashing of the FIR. If any action is taken by the IO beyond the powers conferred on him under Code of Criminal Procedure, the petitioners may have an appropriate remedy available to them in law, but certainly it cannot be a ground for quashing of the FIR. In the instant case, the petitioners themselves have admitted that certain documents had been handed over in original by the petitioners to the IO while the remaining could not be produced. If that be so, for this purpose the petitioners have to satisfy the IO as to whether they are cooperating in the investigation or not. Normally in a case of this nature, it will be essential that the person concerned is subjected to custodial

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interrogation as it entails investigation as well as custodial interrogation. In the instant case, the matter is that some of the documents were forged and the same were used as genuine documents, which could not be recovered. Normally, when a person insulates his liberty by obtaining a restraint order against the local police, he does not co-operate with the investigating agency.

36. Before disposing of the case, I am constrained to say that a new breed of litigants have come into existence, who file petitions for quashing of the FIR where they flood the Court with a lot of paper work and after obtaining the interim order not only they prolong the disposal of the matter but also ensure that the point which may be very short one may not be considered and disposed, so that the petition cannot be decided and the protection of interim order is continued to be enjoyed by the petitioners, as long as they can, so that with the passage of time, either the complainant's patience is worn out or he is made to come on to his knees and

strike a compromise. This is precisely what is happening in this particular case. The respondent no.4, after getting the FIR registered against the petitioners, for having used certain forged documents purported to have been submitted by them with the Registrar of Companies, the police started investigation and since the petitioners were not cooperating in the investigation and not submitting the documents in original with the police, the police was constrained to issue coercive process against the petitioners. It is with this view that the petitioners in order to prevent and blunt the issuance of coercive process against them, filed the present petition, praying for quashing of the FIR and obtaining the order that the coercive process may not be taken against them. As a consequence of this, more than six years have gone by and the investigations are still going on as the investigating agency is also not able to take any appropriate coercive action to make the petitioners

submit to the processes of law. This is, in my view, a gross abuse of processes of law.

37. I, accordingly, do not consider that there is any merit in the contentions of the petitioners. On the contrary, I feel that the conduct of the petitioners is such which raises a serious doubt and makes the Court to believe that the IO is perhaps right in observing that the petitioners are not cooperating in investigation, as there is a restraint order operating against them of not taking any coercive process against the petitioners. After all, the police have no magic wand in their hand to extract the documents until and unless the petitioners are subjected to custodial interrogation.

38. I feel that the petitions are without any merit and the same are accordingly dismissed and the interim order stands vacated

39. I feel that the petitioners have abused the processes of law by invoking provision of Section 482 Cr.P.C. The petitions are accordingly dismissed, with a cost of

₹1,00,000/- each to be recovered from the petitioners for having taken so much time of the Court and the Registry during all these years. The aforesaid cost shall be recovered after expiry of 120 days from the date of the order by the learned ACMM by resorting to provision under Section 421 Cr.P.C.

40. A copy of this order be sent to the learned ACMM after expiry of 120 days to recover the aforesaid cost until and unless the same is set aside by the Apex Court.

41. Dismissed.



V.K. SHALI, J.

JANUARY 24, 2012
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