

GAHC020000342023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : CRL.REVN/4/2023

SHRI. GAURAV MAMIK
SON OF SHRI. TEJ PRATAP MAMIK, 991 A ARALIAS,
DLF GOLF COURSE, GURGAON, HARYANA,
DIRECTOR (DEEMED SUSPENDED) OF
M/S UM GREEN LIGHTING PVT.LTD,
HAVING ITS REGISTERED OFFICE AT 806,
DEVIKA TOWER,
6 NEHRU PLACE, NEW DELHI - 110019,
AND CORPORATE OFFICE
AT UM HOUSE, PLOT NO.35 P, SECTOR 44,
GURGAON - 122002, HARYANA(NOW SUSPENDED).

VERSUS

M/S CSA CORPORATION PRIVATE LIMITED AND ANR
(FORMERLY KNOWN AS ORSUS AGRO DEVELOPERS PVT. LTD).
HAVING ITS CORPORATE OFFICE AT 250, FIRST FLOOR,
OKHLA INDUSTRIAL AREA, PHASE - III,
NEW DELHI - 110020 AND
REGISTERED OFFICE AT HOUSE NO.297,
1ST FLOOR, 17,
AOYIMKUM VILLAGE, DIMAPUR,
NAGALAND
AND REPRESENTED BY ITS CONSULTANT SHRI. SANTOSH KUMAR

2:THE STATE OF NAGALAND
NAGALAND
KOHIMA

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : T. B. JAMIR

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

**JUDGMENT & ORDER
(CAV)**

Date : 20-07-2023

Heard Mr. Dhanesh Relan, learned counsel for the petitioner assisted by Mr. Arindam Dey and Mr. Joshua Sheqi, learned counsels. Also heard Mr. T. B. Jamir, learned counsel for respondent No. 1 and Mr. V. Zhimomi, learned Public Prosecutor for respondent No. 2.

2. The present case has been instituted under Section 482, Code of Criminal Procedure, 1973 (CrPC) by the petitioner praying for quashing of the complaint case being CR Case No. 12/2021 under Section 406/420 IPC pending before the Chief Judicial Magistrate (CJM in short), Dimapur, Nagaland and also against taking cognizance under Section 406/420 IPC and the summon dated 09.03.2022 by the learned CJM, Dimapur, Nagaland.

3. The petitioner claims to be the Director of M/S UM Green Lighting Pvt. Ltd. which is a registered Company having its Office at 806 Devika Tower, 6 Nehru Place, New Delhi and Corporate Office at Haryana. The respondent is also a company namely M/S CSA Corporation, Private Limited (formerly known as Orsus Agro Developers Pvt. Ltd.), having its Corporate Office at New Delhi and registered Office at Dimapur, Nagaland, represented by its Consultant Shri Santosh Kumar. The case of the petitioner is that the Company of the respondent, M/S CSA Corporation Pvt. Ltd. (Company of the respondent, in short) in consortium with M/S UM Green Lighting Pvt. Ltd. (Company of the petitioner, in short) participated in the open tender for "design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in five (5) states namely Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for five (5) years" under Atal Jyoti Yojana (AJAY) of Ministry of New and Renewable Energy (MNRE), Government of India.

On being successful in the bidding, the parties were awarded the contract work vide Letter of Award dated 10.02.2017 and 13.09.2017. According to the petitioner, although no formal agreement was executed the parties had a clear understanding of the roles to be carried out by both the parties in their meeting at Delhi and accordingly by mutual understanding, the works were executed in the five (5) states mentioned above. The Company of the petitioner and the Company of the respondent shared the responsibility of Bank Guarantees at the ratio of 50:50. All the payments were received in the account of the Company of the respondent. The Company of the petitioner performed its duties according to the payments received from the Company of the respondent. In the first year there was no issue. In the second year the Company of the respondent did not make any payment to the Company of the petitioner. In the third year, the Company of the petitioner could not continue with the work due to non-payment by the Company of the respondent and also because the Company of the petitioner was held up under insolvency proceeding in the National Company Law Tribunal, New Delhi Bench.

4. In the meantime, the CR Case No. 12/2021 has been initiated against the petitioner by the Company of the respondent before the Court of CJM, Dimapur, Nagaland, on 15.11.2021. The complainant and his two (2) witnesses were examined on 16.11.2021.

5. The Court of CJM, Dimapur, by an order dated 15.12.2021 has postponed the issue of process for further enquiry in the case by invoking the provision of Section 202 of CrPC for further enquiry into the case. Pursuant thereto, the Enquiry Officer enquired to establish whether the element of Section 406 and 420 IPC can be established against the petitioner. The Enquiry Report was submitted on 09.03.2022 after obtaining oral statements made by the complainant and the two (2) other witnesses.

6. Vide order dated 09.03.2022, the CJM, Dimapur, relying upon the Report of the Officer took cognizance and issued process by summoning the petitioner for appearance on 11.04.2020.

7. The petitioner and the respondent had entered into the Consortium/Joint Venture Agreement on 01.05.2017.

8. Being aggrieved of taking cognizance and issue of process of summoning the petitioner for appearance on 11.04.2020, this petition has been filed by the petitioner for quashing of the proceedings pending before the CJM, Dimapur, being CR Case No. 12/2021 under Section 406/420 IPC, 1860.

9. The respondent complainant has filed the complaint before the CJM, Dimapur, which was registered as CR Case No. 12/2021 alleging that the complainant and the petitioner had entered into Consortium/Joint Venture Agreement dated 01.05.2017 which was authenticated and registered on 12.05.2017 at Dimapur, Nagaland, the petitioner has kept the complainant in the dark and even did not complete the supply of light and in some place did not complete design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in time and it is for such action of the petitioner the complainant Company had been served with the show cause notice by the Department EESL.

10. The complainant further alleged that the petitioner having plans to deceive the complainant induced the complainant at Dimapur and entered into Consortium/Joint Venture Agreement in respect of the electrification works and after obtaining the work directed the responsibilities of the maintenance of the work as expert and after collecting share intentionally ignored the work of maintenance in Uttar Pradesh, Bihar and other states. It further alleged that the petitioner has also collected huge amount from the complainant for the sake of maintenance of commissioned electric light, which the complainant paid even borrowing from other sources to keep intact the goodwill with the complainant Company, but the petitioner collecting such huge amount in the name of maintenance of the light has not employed proper and adequate employees and abandoned the maintenance work even after collecting money from the complainant *inter alia* for salaries of the employees. It also further alleged that the complainant had informed

that the petitioner is planning to leave India to go abroad for settlement to avoid the responsibility of maintenance works. Accordingly complainant had alleged that the petitioner has committed offence punishable under Section 406/420 IPC and prays for taking cognizance of the offence and issue process, thereto book the accused and put to trial and punish the accused as per the provisions of law.

11. Mr. Dhanesh Relan, learned counsel for the petitioner submits that the order dated 09.03.2022 is not sustainable in law and is liable to be outrightly set aside. Hence, the petitioner prays for quashing of the criminal proceedings and order dated 09.03.2022 in C.R. No. 12/2021 under Sections 406/420 IPC pending before CJM, Dimapur, on the following four grounds:

- (i) That the courts in Dimapur had no territorial jurisdiction to try, entertain or adjudicate upon the complaint filed by the complainant/respondent No. 2 as no cause of action has arisen in Dimapur or Nagaland.
- (ii) That independent of the ground No. 1 the complaint does not even remotely show any criminal act having been committed by the petitioner and thus, no criminal action could have been initiated against the petitioner. At best it could be a civil dispute.
- (iii) That the documents on the basis of which the impugned order dated 09.03.2022 has been passed/the Inquiry Report shows material improvements in the statement of the witnesses which is not permissible in law and this fact was completely ignored by the Magistrate. Had the Magistrate applied his mind the material improvements which are apparent would not have skipped and the impugned order dated 09.03.2022 would never have been passed. It is apparent that the improvements were made to somehow or the other give criminal angle to the allegations which otherwise were completely devoid of any criminality having been committed by the petitioner.
- (iv) That the impugned order of summoning has been passed by the Magistrate without any application of mind and in complete

disregard to the various judicial pronouncements wherein the Apex Court has held that there must be application of mind while summoning of the petitioner. A bare perusal of the order does not at all show that there was any application of mind, and it is the submission of the petitioner that had there been any application of mind, the summoning order could not have been passed by the Magistrate.

The aforesaid grounds are independent of each other and each and every ground, warrants the outright setting aside of the impugned order of summoning.

12. The learned counsel for the petitioner further submitted that for the purposes of ascertaining as to whether a criminal act can be alleged to have been committed by the petitioner, the complaint has to be seen. From a perusal of the complaint it is apparent that no offence, much less an offence under sections 406/420 IPC can even prima facie be alleged to be made out against the petitioner. The courts in Dimapur had no territorial jurisdiction to try, entertain or adjudicate upon the complaint filed by the complainant/respondent No. 1 as no cause of action has arisen in Dimapur or Nagaland.

13. The complaint on the basis of which the summoning order has been passed alleges the following which are extracted herein:

1. That the complainant before this Hon'ble Court is Shri. Santosh Kumar, Consultant of M/s CSA Corporation Private Ltd(formerly known as Orsus Agro Developers Pvt. Ltd) residing at Dimapur, Nagaland within the jurisdiction of this Hon'ble Court and duly authorized and empowered to file the complaint.

2. That Energy Efficiency Service Limited (EESL) has issued on invitation for bids vide dated 15.09.2016 for the design manufacture, supply, erection testing and commissioning of Standalone LED Street Lights in some states including complete system warranty and its AMC for 5 years under Atal Jyoti Yojana(AJAY) Ministry of New and Renewal Energy (MNRE) Government of India.

3. That in response of the above said tender, the Accused No. 2 approached the complainant and offered to execute the work jointly and submitted bids and was also successful in the bids, where to, the Accused No. 1 Company represented by the Accused No. 2 entered into an agreement dated 01.05.2017 at Dimapur, Nagaland.
4. That the above said Consortium/Joint Venture Agreement executed between the complainant and the accused was also authenticated and registered on 12.05.2017.
5. That in the above said Consortium/Joint Venture Agreement dated 01.05.2017 it has been besides, the other condition also stipulated that the allocated work of design, manufacture, supply, erection, testing of 10,000 nos. of Standalone Off Grid Solar LED Street Light including complete system warranty and its AMC for five (5) years under AJAY in any of the States of Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh shall be undertaken by the complainant and the accused jointly.
6. That the complainant begs to state that the accused No. 2 on all the occasions of the payment against the works released by the department has collected the shares of the accused No. 1.
7. That the accused No. 2 further took the responsibility for procurement of light, installation and for the maintenance of the light during the warranty period and collected extra amount in that regard for the aforesaid works and accused No. 2 appointed his own persons to do the work.
8. That the accused No. 2 in that context keeping the complainant in the dark, even did not complete the supply of light. Also in some phase did not complete the design, manufacturing, supply, erection, testing in time and it is for such action of the accused no. 2 the complainant company had been served with show cause notice by the Department EESL.
9. That the accused No. 2 having hatched plan to deceive the complainant induced the complainant at Dimapur and entered into

Consortium/Joint Venture Agreement dated 01.05.2017 at Dimapur in respect of the above said electrification works and for submission on behalf of accused No. 1, but after obtaining the work and taking the responsibility of maintenance of the work as expert and after collecting share intentionally ignored the work of maintenance pertaining to the electric light commissioned in Uttar Pradesh/Bihar and other states.

10. That the accused No. 2 has also collected huge amount from the complainant for the sake of maintenance of the commissioned electric light, which the complainant paid even borrowing from other sources to keep intact the goodwill with the complainant company, but the accused No. 2 collecting such huge amount in the name of maintenance of the light has not employed proper and adequate employees and abandoned the maintenance work collecting money from complainant *inter alia* for employee salaries.

11. That the complainant has information that the accused No. 2 is planning to leave India to abroad for settlement to avoid the responsibility of maintenance work.

12. That if and unless the passport of the accused No. 2 is being attached, Passport (Passport No. 2 Z4573323) Diving License No. DL-0619940117090, the accused No. 2 may leave India to frustrate legal action against him.

13. That since the accused No. 2 is residing outside the jurisdiction of the Hon'ble Court, the Hon'ble Court may initially issue postponement of process and entrust police to enquire into the matter and upon satisfaction may issue process to book the accused No. 2 in the interest of justice.

14. That the accused no. 2 has committed offence punishable under Section 420/406 IPC.

15. That the place of occurrence was initially at Dimapur and subsequently also shifted to other place.

16. That there is no other complaint against the accused

person pending in this case before any other forum.”

The aforesaid complaint was supported by list of witnesses. The statement of three witnesses i.e. Mr. Santosh Kumar Jasresaria; Mr. Rishitemjen and Mr. Sashiyongdang A.O. were recorded on 15.12.2021 and 16.11.2021 and their depositions were recorded.

14. While referring to the depositions he submitted that the complainant in the instant case, Mr. Santosh Kumar Jasresaria, deposed that he has been serving as consultant for more than six (6) years in M/S CSA Corporation Pvt. Ltd. which is located at Aoyimkum Village, Dimapur, Nagaland, and that he has filed this complain petition against M/s UM Green Lighting Pvt. Ltd and Sh. Gaurav Mamik, who is the director in the above mentioned company. That the company where he works as a consultant deals with the solar lighting business. The head office is in Dimapur. The accused persons also deal with solar lighting business. In the year 2017 in the month of May, they had entered into an agreement with M/s UM Green Lighting Pvt Ltd. In the said agreement, it has been agreed between the parties that M/S UM Green Lighting Pvt. Ltd shall provide five (5) years maintenance service in connection with solar lighting installments made by our company in seven (7) states. In view of the agreement entered between his company and M/S UM Green Lighting Pvt. Ltd. a Bank Guarantee has also been submitted to the department (Energy Efficiency Services Ltd) Government of India. Two Bank Guarantees totaling to an amount of Rs. 1,06,61,000/- (rupees one crore six lakh and sixty-one thousand) has also been deposited in the month of September to the Department. The accused Company after entering into agreement had provided their maintenance service for one year and had also during this time period taken an amount of Rs. 80,00,000/- (rupees eighty lakh) from time to time from the complainant. Thereafter, the accused Company has failed to provide their services as agreed upon on the pretext of one or the other reasons. In this connection, they had communicated with the accused Company, however, the accused No. 2 informed them that he intends to leave for

the US and will be completing the contract work only after his return from the US. The complainant Company has also been receiving termination letters from EESL to the effect that the work has not been executed. Hence, the criminal complaint petition before the Hon'ble Court for this Court's intervention as the Bank Guarantee amount deposited by their Company shall be forfeited, and their Company will be blacklisted. He also states that the accused Company has failed to comply to the agreement which is going to cause heavy loss and damage to their Company. He also stated that the presence of the accused person will be difficult to secure once he leaves India.

15. Mr. Rishitemjen has deposed that he knew why he was present and that he was acquainted with the facts of the case. That he was presently serving as Officer Assistant in the company of the complainant i.e., M/s CSA Corporation Pvt. Ltd. That he has been serving in the company for the last four (4) years. That his company deals with the solar lighting maintenance and installation. In the year 2017, the accused No. 2, Gaurav Mamik, came to their office in Dimapur and they got introduced to him and his company. The accused Company also deals with the solar lighting maintenance and installation and they have their main office at Gurgaon, Haryana. Working under this company as an office assistant he deals with record keeping of the company as such, he is acquainted with the present case. That he was present when the contract agreement was signed between the parties and he was also aware of the financial transactions that ensued as per this agreement. He stated before trial Court that the defendant company has failed to comply with the terms and conditions of the agreement and has now refused to give co-operation to them.

16. Mr. Sashiyongdang had deposed that he resides in Kashiram, Dimapur and that he knew why he was present. That he has been enlisted as witness No. 2 in the complaint case. That he knows the complainant Mr. Santosh Kumar. That he is serving as the consultant in

M/s CSA Corporation Pvt. Ltd. formerly known as Orsus Agro Developers Limited and also know where the office is i.e. at Aoyimkum Village, Dimapur. He has served as the Director in M/s CSA Corporation Pvt. Ltd. However, he left the corporation in the year 2018. That he is also aware as to against whom this complaint petition has been filed. The complaint petition has been filed against M/s UM Green Lighting Pvt. Ltd. having its registered office at Gurgaon, Haryana and against Sh. Gaurav Mamik. That he is also aware that this complaint petition has been filed against persons for non-performance of the contract work by the accused persons.

He also deposed that he was present when the Agreement dated 01.05.2017 was executed between the complainant and the accused persons. He had also appended his signature in the said Agreement as the director of the complainant Company. That on the strength of the agreement entered into the complainant Company has also deposited more than Rs. 1 crore Bank Guarantee against the contract work for installation of solar light and maintenance of the same with the accused Company. However, the accused Company has failed to perform their work. As such, this criminal complaint petition has been filed against the accused Company. That after signing the Agreement dated 01.05.2017, he had sold his share to one Abhinav and as such, he was not aware as to how the work had been executed between the parties. He also stated that, though he was the director, he had not personally visited the states where the contract work was to be carried out. As such, he cannot state whether the contract work was to be carried out and whether the contract work has been executed or not by the accused Company. He deposed before the trial Court that he had come to depose on the extent that he had appended his signature in the Agreement dated 01.05.2017 and that an agreement had been entered into between the parties.

17. Mr. D. Relan, learned counsel submits that as is apparent and evident none of the aforesaid witnesses have ever deposed that any cause of action had arisen in Dimapur so as to bring any of the

allegations within the jurisdiction of the courts in Dimapur. However, the court of the Magistrate being conscious that there was no case made out for it to take cognizance, directed vide order dated 15.12.2021 the OC, West P.S. Dimapur to make an inquiry into the complaint. The Inquiry Officer submitted a Report dated 09.03.2022 solely based on the testimonies of Mr. Sashiyongdang A.O. Mr. Abhinav Mittal (Director of the complainant company) and Mr. Satish Kumar Jasresaria. All three witnesses (two of which had also given statement before the Court of the Magistrate), Mr. Abhinav Mittal was introduced as a fresh witness before the Inquiry Officer. All three witnesses gave more or less in verbatim statements while Mr. Sashiyongdang AO and Mr. Satish Kumar Jasresaria making material improvements in their statements. The material improvements as were made by all three witnesses were put on record. The material improvements as have been made by all three witnesses clearly show that the allegations which have now been made were never part of the complaint or the testimony of the three witnesses who had deposed in support of the complainant and thus, fresh and improved statements could not be introduced by the respondent with the sole and ulterior motive to somehow or the other get the petitioner summoned in a complaint where no cause of action was by any stretch of imagination made out against the petitioner. The learned counsel for the petitioner submits that apparently, the statement appears to have been made without at all any kind of documents. *Dehors* the aforesaid even the statements as have been made do not show by any stretch of imagination that the petitioner can be summoned for any criminal act much less for an offence under Section 406/420 IPC. The allegation, at best, may make a case of breach of an agreement for which the only remedy that would be available to the petitioner would be in a civil court.

18. Mr. D. Relan, learned counsel submits that as is apparent with respect to the jurisdiction, the complaint alleges to the following effect:

"That the place of occurrence was initially at Dimapur and subsequently also shifted to other place."

The complaint was supported by the statements of three

witnesses. It is only witness No. 2, Mr. Rishitemjem who has stated *"in the year 2017, accused No. 2, Gaurav Mamik, came to our office in Dimapur and we got introduced to him and his company. The accused company also deals with solar lights maintenance and installation and they have their main office in Gurgaon, Haryana. Working under this Company as an Office Assistant I deal with record keeping of the company such as, I am acquainted with the present case"*.

The third witness Mr. Sasiyongdang A.O. has deposed to the following effect :

"I was present when agreement dated 01.05.17 had been executed between the complainant and the accused persons. I have also appended my signature in the said agreement. I have appended my signatures as the Director of the complainant company."

Mr. D. Relan, learned counsel submits that as is apparent, the complaint does not detail as to what cause of action has allegedly been committed by the petitioner at Dimapur, except a bold averment in Para 18 which has also been stated herein above. The witness Mr. Rishitemjen has in a vague manner alleged that the petitioner had visited Dimapur in the year 2017. However, no detail viz. date, month of the visit of the petitioner to Dimapur have been stated, as the petitioner has never visited Dimapur in his entire life and thus, Mr. Rishitemjen could not have been given any alleged details except that the petitioner had visited Dimapur so as to make an attempt to bring the cause of action within the jurisdiction of Dimapur. Even otherwise, mere visit to Dimapur does not bring the alleged cause of action within the jurisdiction of the Court of Dimapur as neither the complaint nor the deposition could bring the case within the jurisdiction of courts of Dimapur in the statement as were made before the Inquiry Officer by Mr. Sashiyongdang A.O., Mr. Abhinav Mittal and Mr. Satish Kumar Jasresaria made considerable improvements so as to give the colour of criminality to a civil action as also to bring the cause of action within the jurisdiction of Dimapur.

19. Mr. D. Relan, learned counsel submits that Mr. Rishitemjen has alleged that Mr. Gaurav Mamik came in 2017 whereas Mr. Sashiyongdang

A.O. has alleged in his statement before the Inquiry Officer that *"in the year 2016 accused Mr. Gaurav Mamik and Mr. Sushant Chhabra with dishonest and fraudulent intention to cheat our company approached us and represented that UMG has unchallenged expertise in the supply, installation, commissioning and annual maintenance of the standalone off-grid solar LED street lights"*.

Mr. Rishitemjen has alleged that Mr. Gaurav Mamik had come to Guwahati in 2017 whereas Mr. Sashiyongdang A.O. has alleged that Mr. Gaurav Mamik and Mr. Sushant Chhabra had approached them and it has not been alleged that they had approached the complainant in Guwahati. Mr. Abhinav Mittal who was never a witness before the Court and only appeared before the Inquiry Officer has supported the statement of Satish Kumar Jasresaria by stating that Mr. Gaurav Mamik and Mr. Sushant Chhabra approached the complainant company in the year 2016. It is also a matter of fact that the complainant company has a Corporate Office at 250, First Floor, Okhla Industrial Area, New Delhi.

20. He further submits that even after going through the improved statements, it is apparent that there is no cause of action which has arisen in Dimapur for the court in Dimapur to have entertained the complaint of the respondent No. 1. As already submitted herein above, the only averment to bring the cause of action in Dimapur is para 18 of the complaint and the statement of Mr. Rishitemjen where he stated very vaguely and dishonestly that it was in May, 2017 that Mr. Gaurav Mamik came to Dimapur. This false and incorrect statement is belied by the statement of the three witnesses who appeared before the Inquiry Officer who though said that the petitioner and Mr. Sushant Chhabra approached the complainant Company but not in 2016. Furthermore, it is a matter of fact that the complainant Company has its own Corporate Office in Delhi. Thus, on a conjoint reading of the aforesaid, it is apparent that no cause of action has arisen in Dimapur for the Courts to have taken cognizance and impugned order summoning the petitioner.

21. In support of his submissions, the learned counsel for the petitioner relied on the following judgments:-

- (i) **Subhakaran Loharuka & Anr. vs. State & Anr.**, reported in (2010) 170 DLT 516
- (ii) **Ramesh Boghabhai Bhut vs. State & Anr.**, reported in 2020 SCC Online Del 1475
- (iii) **Asit Bhattacharjee vs. Hanuman Prasad & Ors.**, reported in (2007) 5 SCC 786
- (iv) **Swati Nirkhi & Ors. vs. State (NCT of Delhi) & Ors.**, reported in (2021) 11 SCC 163
- (v) **Kaushik Chatterjee vs. State of Haryana & Ors.**, reported in (2020) 10 SCC 92
- (vi) **MNG Bharateesh Reddy vs. Ramesh Ranganathan & Anr.**, reported in 2022 SCC Online SC 1061
- (vii) **Sarabjit Kaur vs. State of Punjab**, reported in 2023 SCC Online SC 210
- (viii) **Vijay Kumar Ghai & Ors. vs. State of West Bengal**, reported in (2022) 7 SCC 124
- (ix) **Rishipal Rahul & Another vs. Kotak Mahindra Bank Limited**, reported in 2023 SCC Online Cal 285
- (x) **Prof R. K. Vijatasarathy & Another vs. Sudha Seetharam & Another**, reported in (2019) 16 SCC 739
- (xi) **Satishchandra Rattan Lal Shah vs. State of Gujarat & Another**, reported in (2019) 9 SCC 148
- (xii) **Mitesh Kumar J. Sha vs. State of Karnataka**, reported in 2021 SCC Online SC 976
- (xiii) **Thermax Limited & Others vs. K.M. Johny & Other**, reported in (2011) 13 SCC 412
- (xiv) **Hridaya Ranjan Pd. Verma vs. State of Bihar**, reported in (2000) 4 SCC 468
- (xv) **Sunil Kumar Sambhudayal Gupta vs. State of Maharashtra**, reported in (2000) 4 SCC 468

22. Refuting the submissions of learned counsel for the petitioner, Mr. T.B. Jamir, learned Counsel for the respondent No. 1 submits that the main ground on which the petitioner is questioning the territorial

jurisdiction of the Court of the CJM, Dimapur, that no cause of action arose in Dimapur is not a correct proposition of law. Accordingly, determination of territorial jurisdiction in civil and criminal cases are different and depend upon several factors as has been held by the Hon'ble Apex Court in the case of **Kaushik Chatterjee vs. State of Haryana**, reported in (2020) 10 SCC 92. Therefore, unlike in Civil matters, place of cause of action is not the sole determining factor to confer territorial jurisdiction on a Criminal Court. The place where the consequence of the criminal act will ensue and will be accounted for is also one of the determining factors to confer territorial jurisdiction to a Criminal Court. Just because the contract works in question are executed outside of Dimapur, it cannot be said that the Court at Dimapur does not have territorial jurisdiction to entertain the criminal complaint.

23. The learned counsel for respondent No. 1 further submits that it is also admitted by the petitioner himself that the respondent No. 1 has its registered Office at Dimapur. Therefore, it cannot be disputed that the consequence of the criminal act of the petitioner will also ensue and will be accounted for at Dimapur. Being so, as per the provisions of CrPC and as held by the Hon'ble Apex Court, under the given facts and circumstances, the Court of CJM, Dimapur, does have territorial jurisdiction to entertain the criminal complaint. As such, questioning the territorial jurisdiction of the Court of CJM, Dimapur, solely on the ground that no cause of action arose in Dimapur is not legally sustainable and is liable to be rejected.

24. The learned counsel for respondent No. 1 submits that as regard execution of Agreement, the issue needs to be established at the time of evidence and cannot be gone into by this Hon'ble Court in this petition under Section 482 CrPC. Even otherwise, for the purpose of territorial jurisdiction, it is not disputed that the respondent No. 1 has its registered Office at Dimapur. So, the consequence of the criminal action of the petitioner will also ensue or will be accounted for, at Dimapur. Therefore, the contention of the petitioner that the Court of CJM, Dimapur, lacks territorial jurisdiction to take cognizance of the criminal complaint is not

legally sustainable.

25. The learned counsel also submits that the question of territorial jurisdiction should be raised before the Court where the case is pending, i.e. before the Court of CJM, Dimapur. However, the petitioner never raised any objection as regards lack of territorial jurisdiction before the Court of the learned CJM, Dimapur. As held by the Apex Court, the question of territorial jurisdiction should be raised before the Court where the case is pending and not before this Hon'ble Court in a petition under Section 482 CrPC.

26. The learned counsel for respondent No. 1 submits that lack of territorial jurisdiction is not one of the parameters to be considered for quashing a case. The issue of territorial jurisdiction does not go to the root of the matter having the effect of vitiating the proceedings. Hence, a proceeding cannot be quashed merely on the ground of lack of territorial jurisdiction. If, on objection being raised as regards territorial jurisdiction, the Court arrives at a finding that the Court of the CJM, Dimapur, does not have territorial jurisdiction then the Court may return the complaint for being presented before the appropriate Court. The learned counsel has relied on the case of **Sistu Pullam Raju and Anr. vs. State of Andhra Pradesh & Anr**, reported in 2006 SCC Online AP 526 wherein the Hon'ble Apex Court has held which reads as follows:-

"15. The above referred provisions of the Code would make it visibly clear that territorial jurisdiction is one which will not go to the root of the matter having the effect of vitiating the proceedings. It is a matter of convenience for the Court and the parties as well. This does not mean that a criminal Court which has no territorial jurisdiction with eyes wide open can proceed with the trial or enquiry in the case when such an objection is taken. It is appropriate, therefore, to take such objections before the self-same Court at the earliest stage possible, so that necessary steps may be taken for the transfer of the case to the Court of a competent jurisdiction or for returning the complaint/charge-sheet for being presented before the appropriate Court.

22. Trial in a wrong place is not vitiated when the accused is not prejudiced is the authoritative pronouncement of a constitutional bench of the Apex Court in Mangaldas v. Maharashtra State (3) AIR 1966 SC 128. The Apex Court further held inter alia therein

that if the objection as regards lack of territorial jurisdiction is not raised at trial, it would be legitimate to presume that the accused apprehended to prejudice.

In Nasiruddin Khan v. State of Bihar (4) (1973) 3 SCC 99 : AIR 1973 SC 186 at page 189 it was held thus:

"According to the scheme of the code trial within a wrong territorial jurisdiction does not by itself vitiate it."

In Trisuns Chemical Industry v. Rajesh Agarwal (5) (1999) 8 SCC 686 in para 11 it was held thus:

"It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well."

28. It may be mentioned that lack of territorial jurisdiction is not one of the parameters to be considered for quashing a case. Quashing the criminal proceedings in my considered view, means annulling or overturning or declaring the proceedings as invalid. Once the proceedings are directed to be quashed, there remains no proceedings on the file of the Court. The complainant or the de-facto complainant, who or at whose instance the proceedings are initiated will have to walk out of the Court. Well, then the allegations made against the accused inter alia in the proceedings amply disclose a prima facie case, it is quite incomprehensible as to why the case shall be quashed, the allegations are to be tried before the appropriate Court elsewhere. But, by quashing the proceedings on which the premise of lack of territorial jurisdiction the complainant will be made remediless. On the other hand, if the accused in the criminal proceedings takes up the plea before the Court of Magistrate that Court lacks territorial jurisdiction, upon hearing the complainant and the accused, the Court will be in a position to decide the question of territorial jurisdiction and in the event it comes to a conclusion that it lacks that jurisdiction, it may return the proceedings directing the party to approach the proper Court. In which event, the criminal proceeding initiated earlier will, not be annulled or overturned. A clear distinction is discernible from the category of cases where the proceedings are sought to be quashed on the sole premise of the Court lacking territorial jurisdiction and of the category of cases where prima facie there is no case made out even assuming the allegations made inter alia in those proceedings to be true. In the latter category of cases, it is appropriate to quash the proceedings, inasmuch as it is nothing but abuse of the process of the Court, but in the former category of cases, it may be mentioned that there is a prima facie case discernible from the allegations, but the Court is precluded from trying the case for want of territorial jurisdiction. But, essentially it is a case where the proceedings shall have to be tried elsewhere. But, essentially it is a case where the proceedings shall have to be tried elsewhere. For the above reasons, quash is not the appropriate remedy in all cases where the proceedings are sought to be assailed on the sole premise of

lack of territorial jurisdiction."

Therefore, he submits that the above reading only adds persuasive value to the fact that the Court of the learned CJM, Dimapur does not have the territorial jurisdiction alone will not be a sufficient ground to quash the criminal proceedings.

27. Further the learned counsel for respondent No. 1 submits that the issue of territorial jurisdiction depends upon the facts to be established by evidence. The plea as to lack of territorial jurisdiction needs to be established by evidence and cannot be decided in a petition under Section 482 CrPC, therefore, the present petition is totally misconceived. A bare perusal of the complaint and materials available on record, prima facie established a case against the petitioner/accused No. 2 and that, while exercising jurisdiction under Section 482 CrPC, the Hon'ble Court does not examine the correctness of the allegations in a complaint. In order to ascertain as to whether a case is made out against the petitioner/accused No. 2, the Court is required to take into consideration the complaint along with the statement of the witnesses as well as the Inquiry Report.

28. Mr. T.B. Jamir, learned counsel submits that in the present case, from the complaint, statement of the complainants/witnesses and the Inquiry Report, a prima facie case is clearly established against the petitioner to initiate criminal proceedings against him under the relevant provisions of law. Therefore, it cannot be said that there is no material evidence to prove the charges against the petitioner. As such, the prayer of the petitioner for quashing the criminal proceedings on the ground of allegations being false without any material evidence is not legally sustainable. Moreover, while exercising jurisdiction under Section 482 CrPC, the Hon'ble Court does not examine the correctness of the allegations in a complaint. In the present case, from the complaint statement of the complainants/witnesses and the Inquiry Report, a prima facie case is clearly established against the petitioner, no interference is called for and the petition is liable to be dismissed.

29. He submits that mere framing of charges under Sections 406 and

420 IPC cannot by itself be a ground to quash a criminal complaint/proceeding.

30. The learned counsel for respondent No. 1 submits that just because alternate civil remedies are available does not mean that a criminal complaint cannot be maintained. To decide as to whether the criminal complaint was filed simply to harass the petitioner, the antecedent/past history of the petitioner may also be taken into consideration. The Company of the petitioner was blacklisted/banned by EESL and another Company, M/s Jackson Engineers Ltd. had also filed a case against the Company of the petitioner before the NCLT, New Delhi. As such, the past history of the Company of the petitioner may be also looked into while considering the issue as to whether the respondent has filed the criminal complaint simply to harass the petitioner or bonafide. The petitioner has failed to make out a prima facie case which calls for intervention of this Hon'ble Court in exercise of its power under Section 482 CrPC. The petition is devoid of any merit and liable to be dismissed.

31. Learned counsel for respondent No. 1 has relied on the judgments of the Hon'ble Apex Court which are as follows:-

- (i) **Kaushik Chatterjee vs. State of Haryana**, reported in (2020) 10 SCC 92
- (ii) **Abiram Veer vs. NE Regional Agri Marketing Co. Ltd.**, reported in (2000) 10 SCC 433
- (iii) **Debabrata Gupta vs. S.K. Ghosh**, reported in 1970 (1) SCC 521
- (iv) **Ramveer Upadhyay vs. State of U.P. & Anr.**, reported in 2022 SCC
- (v) **Pinku Roy vs. the State of Assam**, reported in Crl. Pet. 379/2013
- (vi) **Vijayander Kumar vs. State of Rajasthan**, reported in (2014) 3 SCC 389
- (vii) **Lalmuni Devi vs. State of Bihar**, reported in (2001) 2 SCC 17

(viii) **State of Haryana & Ors. vs. Bhajan Lal & Ors.**, reported in 1992 Supp (1) SCC 335

32. I have considered the rival submissions advanced by the learned counsel for the parties and the materials available on record.

33. The points for determination in the present proceeding are whether, on the face of the complaint the necessary ingredients of offences punishable under Section 406/420 IPC are prima facie made out. Whether the Court of CJM, Dimapur, Nagaland has a territorial jurisdiction. Whether the discontinuance of maintenance work pertaining to the Electric Light Commissioned in Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh and other States pursuant to the Consortium/Joint Venture Agreement by the parties for the allocated work of design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in five (5) states namely Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for five (5) years amounts to criminal breach of trust or cheating. And whether, the dispute is of breach of contract which is purely of civil nature.

34. Before determining the above points this Court will proceed to consider and appreciate the cases relied on by the learned counsel for the parties.

35. The Hon'ble Supreme Court of India in the case of **Subhakaran Loharuka & Anr. vs. State & Anr.**, reported in (2010) 170 DLT 516 observed as follows:-

"59. I have perused the aforesaid judgments and find that in all those judgments it has been held that jurisdiction can be conferred on the Court either where the offence has been commenced or where it has been completed and even where part of the offence was committed. Therefore, only plea raised by the complainant that a meeting had taken place in Delhi office of the complainant without giving any details as to when and for what purpose such a meeting had taken place, of which no minutes has been provided by the complainant, jurisdiction cannot be conferred in Delhi.

63. As regards inducement, it is submitted that there is no allegation of deceit, cheating or fraudulent intention of the accused at the time of entering into the contract. There is

no pleading that there was any intention to cheat from the very beginning or that the 1994 agreement was fraudulently executed. The contract was executed in 1994 and after that parties have even given effect to the agreement. The assignee of the rights of the Company has already constructed the Flats over the land. Even otherwise a subsequent breach of a contract i.e creation of Mortgage cannot be construed as cheating. 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 [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 48 of 69] to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. The element of mens rea is totally missing."

36. In the case of **Ramesh Boghabhai Bhut vs. State & Anr.**, reported in 2020 SCC Online Del 1475, Hon'ble Supreme Court has held as follows:-

"23. It is trite that an inquiry and trial with respect of an offence shall be conducted by the Court within whose local jurisdiction occurrence in question is said to have taken place and thereby cause of action has arisen. Section 178 and Section 179 of Cr.P.C. are merely exceptions to this principle enumerated in Section 177, and their scope should not be enlarged on analogous consideration. Ordinarily the case shall be tried by the Court in whose local limits the offence was committed, which is in the state of Gujarat in relation to the present dispute. In addition to the aforesaid, for determination of offences alleged to have been committed under Section 406 of the Indian Penal Code 1860, Section 181 of the Code of Criminal Procedure, 1973 lays down the jurisdiction of such court where "the offence was committed or any part of the property which is the subject of the offence was received or retained."

24. In the case in hand, the transaction between the parties in relation to transaction of goods took place in Gujarat, the representations and meeting took place in Gujarat, the goods were shipped from Pipavav Port Gujarat, bill of lading were released from Ahmedabad Gujarat, the invoices were raised by the entity based out of Gujarat and the jurisdiction of such invoices were subject to the court of Gujarat, therefore, applying the direct principles of Section 181, only the court situated in Gujarat can exercise jurisdiction over the alleged criminal breach of trust, if any.

25. It is pertinent to mention here that for the application of Section 179, the primary consequence should be considered in determining jurisdiction and not any secondary consequence. If the primary consequence completes the offence, the mere fact

that there is a more remote consequence will not make Section 179 applicable. Therefore, the consequence of the offence, if any, is sustained by the Tiger Logistics Branch situated in Gujarat. It cannot possibly be the argument of the Complainant/Respondent No.2, that tomorrow, if Tiger Logistics were to send an email from its Hyderabad office demanding repayment of money, then courts in Hyderabad will have jurisdiction over the matter. Such interpretation of law is absurd and deserves to be outrightly rejected.

26. In case of Jai Prakash vs. Dinesh Dayal: (1989) 39 DLT 376, this Court held that where the accused is carrying on business in a city, agreement to supply to complainant's branch office at that city is entered within the local jurisdiction of that city, institution of complaint at New Delhi on the ground that the complainant's head office situated there, is without jurisdiction."

37. In the case of **Asit Bhattacharjee vs. Hanuman Prasad & Ors.**, reported in (2007) 5 SCC 786 Hon'ble Supreme Court held as follows:-

"21. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the Court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation."

38. In the case of **Swati Nirkhi & Ors. vs. State (NCT of Delhi) & Ors.**, reported in (2021) 11 SCC 163, Hon'ble Supreme Court observed as follows:-

"18. In a criminal case, the place of inquiry and trial has to be by the Court within whose local jurisdiction, the crime was allegedly committed as provided by Section 177 of Cr.P.C.

"177. Ordinary place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

19. The cause of action as per the averments in the FIR are alleged to have arisen in New Delhi, where the matrimonial home of the Petitioner is situated. This court has consistently held that a criminal case ought to be inquired and tried ordinarily

where the cause of action has accrued¹.

20. In *Y. Abraham Ajith v. State*, this Court held that: (SCC pp. 105-06 paras 12-18)

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action"."

39. In the case of **Kaushik Chatterjee vs. State of Haryana & Ors**, reported in (2020) 10 SCC 92, Hon'ble Supreme Court has held as follows:-

"20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression "local jurisdiction" found in Section 177 is defined in Section 2(j) to mean "in relation to a court or Magistrate, means the local area within which the court or

Magistrate may exercise all or any of its or his powers under the Code”.

20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.4. In the case of a continuing offence which is committed in more local areas it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.5. Where an offence consists of several acts done in different local areas it may be inquired into or tried by a court having jurisdiction over any of such local areas. (Numbers 2 to 5 are traceable to Section 178)

20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.7. In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either of the acts was done. (Section 180)

20.8. In certain cases such as dacoity, dacoity with murder, escaping from custody etc., the offence may be inquired into and tried by a court within whose local jurisdiction either the offence was committed or the accused person was found.

20.9. In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

20.10 The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.

20.11. An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person.

20.12. An offence, which includes the possession of the stolen property, may be inquired into or tried by a court within whose local jurisdiction the offence was committed

or the stolen property was possessed by any person, having knowledge that it is stolen property. (Nos. 8 to 12 are found in Section 181)

20.13. An offence which includes cheating, if committed by means of letters or communication messages, may be inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or received.

20.14. An offence of cheating and dishonestly inducing delivery of the property was delivered by the person deceived or was received by the accused person."

40. The Hon'ble Supreme Court of India in the case of **MNG Bharateesh Reddy vs. Ramesh Ranganathan & Anr.**, reported in 2022 SCC Online SC 1061 held as follows:-

"12. Paragraph 6 of the complaint contains a recital that as a result of the incompetence of the billing staff in the hospital, the fees which were to be charged for the first respondent were wrongly billed and drastically reduced. The complaint states that he drew this to the attention of the Chief Operating Officer in October 2011 and thereafter to the Appellant who had recently joined as the General Manager of the hospital. The complainant alleges that he had sustained a loss on the receipt of his professional fees and was verbally assured by the Appellant that the hospital would reimburse the fees after a thorough enquiry. Further, there are bald averments in the complaint that the complainant was targeted by the Appellant "along with his henchmen". The complaint refers to certain bills which were raised by the hospital on 28 April 2013 and 4 November 2013 wrongly showing the surgery charges at Rs 1 and Rs 2. The complainant states that he was removed from the duty roster between 17 May and 31 May 2014 and that he was eventually removed from the service of the hospital.

16. In Hridaya Ranjan Prasad Verma v. State of Bihar 4, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus: (2000) 4 SCC 168 "14. 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.

15. 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 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."

17. In *Dalip Kaur v. Jagnar Singh* 5 a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:

"9. The ingredients of Section 420 of the Penal Code are:

- "(i) Deception of any persons;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an (2009) 14 SCC 696 offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])" (emphasis supplied)

18. Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.

19. The allegations in the complaint are conspicuous by the

absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand."

41. The Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. State of Punjab**, reported in 2023 SCC Online SC 210 has observed as follows:-

"4. The argument raised by learned counsel for the appellant is that the respondent No.2 who claims himself to be the husband of vendee had filed two complaints earlier with the same set of allegations and those were consigned to record on the basis of the legal opinion received opining the case to be of civil nature. In the first such complaint, there were no allegations against the appellant. In fact the dispute is purely civil in nature. In case the appellant failed to execute the sale deed for which admittedly the last date fixed was 24.12.2014. Respondent No.2 could have availed of his appropriate remedy of specific performance of Agreement to Sell but no suit was filed. However, third complaint was filed without disclosing the fate of earlier two complaints. The F.I.R. in question was registered on the basis of the complaint filed by respondent No.2 on 15.06.2017 i.e. nearly three years after the date fixed for execution of sale deed. The respondent No.2 had never issued any notice prior to the filing of the complaint with the police seeking any remedy. A perusal of three complaints filed by respondent No.2 clearly suggest that from the initial prayer for return of the amount paid by him, subsequently the allegations of cheating was made. In the first complaint while referring to different transactions, the allegation was only against the property dealers not against the appellant whereas in subsequent complaint improvement was made and she was also involved.

13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that

the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.

14. Hence, in our opinion the impugned order passed by the High Court deserves to be set aside. The petition filed by appellant for quashing of F.I.R. is ordered to be allowed. As a consequence, F.I.R. No.430 dated 16.10.2017 and all the subsequent proceedings therewith are ordered to be quashed. The appeal is, accordingly, allowed."

42. The Hon'ble Supreme Court of India in the case of **Vijay Kumar Ghai & Ors. vs. State of West Bengal**, reported in (2022) 7 SCC 124 observed and held as follows:-

24. This Court in G. Sagar Suri & Anr. Vs. State of UP & Ors. 21 observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corporation (Supra) noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that:-

"13. ...any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

26. At the outset, Respondent No. 2/Complainant alleged that the Appellants were responsible for the offence punishable under Section 420, 405, 406, 120B IPC. Therefore, it is also imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

38. There can be no doubt that a mere breach of contract is not

in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.26, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants.

39. In Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors. 27, this Court made the following observation:-

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be 26 (2000) 4 SCC 168 27 (2015) 8 SCC 293 encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."

40. Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that Appellants had any malafide intention against the Respondent which is clearly deductible from the MOU dated 20.08.2009 arrived between the parties.

47. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to

attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever."

43. The Hon'ble Supreme Court of India in the case of **Rishipal Rahul & Another vs. Kotak Mahindra Bank Limited**, reported in 2023

SCC Online Cal 285 has observed and held as follows:-

"3. Having considered the nature of the transactions complained of and the purpose for initiating the instant complaint case was with the object of recovering outstanding arrears/interest of Rs. 1 crore from the present petitioner, I am of the opinion that, as majority regular transactions has taken place, there is no offence under Sections 417/426 of the Penal Code, 1860 being made out. It is a settled proposition of law that mere breach of agreement or contract do not give rise to a cause or action for criminal breach of trust, particularly, in the present case when the parties have continuously transacted amongst themselves."

44. The Hon'ble Supreme Court of India in the case of **Prof R. K. Vijatasarathy & Another vs. Sudha Seetharam & Another**, reported in (2019) 16 SCC 739, has observed and held as follows:-

*"8. The primary question before this Court is whether the High Court has erred in rejecting the plea of the appellants for quashing the criminal proceedings against them. The question at the heart of the present dispute is whether the averments in the complaint disclose the ingredients necessary to constitute an offence under the Penal Code.
10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments*

taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

11. The first respondent has alleged in the complaint that the appellants have committed offences under Sections 405, 406, 415 and 420 read with Section 34 of the Penal Code. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

22. The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. The first respondent has stated that the disputed sum was transferred by the son of the appellants of his own volition to her. The complaint clearly states that the amount was transferred for the benefit of the son of the appellants and that the first respondent was to hold the amount 'in trust' for him. The complaint alleges that the money was transferred to the appellants 'as per the dicta' of the son of the appellants. There is on the face of the complaint, no entrustment of the appellants with any property.

23. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out.

24. In Binod Kumar v State of Bihar⁷ certain amounts were due and payable to a contract worker. When the amount due was not paid due to a termination of the contract, the worker filed a criminal case against the appellant for criminal breach of trust.

The appellants' petition under Section 482 of the Code of Criminal Procedure for quashing was dismissed by the High Court. A two judge Bench of this Court examined the ingredients of the offence and whether the complaint on its face disclosed the commission of any offence. This Court quashed the criminal proceedings holding thus:

"14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent 7 (2014) 10 SCC 663 and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property...

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."

28. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

29. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."

45. The Hon'ble Supreme Court of India in the case of **Satishchandra Rattan Lal Shah vs. State of Gujarat & Another**, reported in (2019) 9 SCC 148, has observed and held as follows:-

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 306 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to receive the aforesaid amount, Respondent 2 is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

12. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellant for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to *Gian Singh v. State of Punjab*) The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC.

15. However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein.

16. In our considered opinion, the High Court should have maintained judicial restraint and desisted from making such general observations at this stage of the criminal proceeding, as they may have had a bearing on the adjudication of the trial. Therefore, the observations made in paragraphs 43 and 44 of the impugned judgment stand expunged.

17. In view of the above, we are unable to uphold the impugned order passed by the High Court in *Satishchandra Ratanlal Shah v. State of Gujarat* and the same is hereby set aside. The application filed by the appellant under Section 482 CrPC is allowed and the proceedings initiated based on the FIR instituted at the instance of the Respondent 2 are hereby quashed.

46. The Hon'ble Supreme Court of India in the case of **Mitesh Kumar J. Sha vs. State of Karnataka**, reported in 2021 SCC Online SC 976, has held as follows:-

"37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even *prima facie* made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

38. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and

an offence of cheating has been discussed in the ensuing paragraphs.

Whether sale of excess flats even if made amounts to a mere breach of contract?

39. This Court in the case of Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.6, has observed:-

"15. 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..."

40. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at hand, in our considered opinion is a suitable case necessitating intervention of this Court.

Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

42. It was also observed:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

43. On an earlier occasion, in case of *G. Sagar Suri and Anr. Vs. State of UP and Ors.*⁸, this Court has also observed:-

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

44. Furthermore, in the landmark judgment of *State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.*⁹ regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

"(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) of the Code except

under an order of a 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 FIR 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 proceeding is 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."

45. *Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it."*

47. The Hon'ble Supreme Court in the case of **Thermax Limited & Others vs. K.M. Johny & Other**, reported in (2011) 13 SCC 412, has held as follows:-

"34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

35. Dr. A.M. Singhvi, learned senior counsel for the appellant/accused contended that not only material facts were suppressed from the Magistrate but the previous three complaints to various police authorities and their closure reports were kept away from the Magistrate so as to mislead the Court. It is seen from the materials placed that three complaints containing similar allegations have been investigated previously and all were closed as the alleged claim was found to be of civil nature. In those circumstances, it did not lie for Respondent No.1-the complainant to approach the Magistrate with the same subject Complaint. Inasmuch as the dispute arose out of a contract and a constituted remedy is only before a Civil Court, the Magistrate ought to have appreciated that Respondent No.1 was attempting to use the machinery of the criminal courts for private gains and for exerting unjust, undue and unwarranted pressure on the appellants in order to fulfill his illegal demands and extract undeserving monetary gains from them.

36. The Courts below failed to appreciate that Ex. 61 is a reply filed by the Crime Branch-II and Ex. 63 is the statement of Shri V.B. Kadam, which categorically stated that the complaint preferred by Respondent No.1 registered at Crime Register No. 11/2000 was filed as being civil in nature. Even if we accept that the records were destroyed and notwithstanding such destruction, it was a matter of record that the complaint preferred by Respondent No.1 was indeed investigated and categorized as civil in nature. This aspect has not been considered either by the Magistrate or by the High Court.

37. It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant-Company had acted in terms of the agreement and in a bona fide manner, it

cannot be said that the act of the appellant-Company amounts to a breach of contract.

38. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1-Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company.

40. It is useful to demonstrate certain examples, namely, Section 141 of the Negotiable Instruments Act, 1881 which specifically provides that:

"141. Offences by companies.-(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

41. Likewise, Section 32 of the Industrial Disputes Act, 1947 provides that:

"32. Offence by companies, etc.- Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons, every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."

42. We have already noted that the offence alleged in the criminal complaint filed by respondent No.1 is under Sections 405 and 420 IPC whereunder no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than appellant No.1-Company can be prosecuted under the alleged complaint.

43. The Courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly

pointed out, the Courts below ought to have appreciated that respondent No.1 was trying to circumvent the jurisdiction of the Civil Courts which estopped him from proceeding on account of the law of limitation.

44. We have already pointed out that respondent No.1 had previously filed three complaints which were concluded after exhaustive enquiry with the respective police authorities. The first complaint was on 06.05.2000 being Javak No. 974/2000 with the Crime Branch-II, Pune which registered the same in its Criminal Register No. 11/2000. Pursuant thereto, the appellants were summoned and exhaustive enquiry was conducted by the Crime Branch-II and after recording the statements and perusal of documents and after undertaking an extensive interrogation, the Crime Branch-II closed the case. The said closure of the case was informed to respondent No.1 by the police authorities by their letter dated 28.07.2000.

45. The materials placed further show that notwithstanding the complaint dated 06.05.2000 which was closed by the Crime Branch-II, another complaint on the same facts, was filed by respondent No.1 at the Bhosari Police Station being Javak No. 3142/2001. It is pointed out that the appellant and its officers attended the Bhosari Police Station, thereafter the said complaint was also closed after the facts were placed before the officers of the Bhosari Police Station.

46. Apart from these complaints, respondent No.1 once again filed a third complaint at the Commissioner's Office, Crime Branch, Pune being Javak No. 100/2001. The officers of appellant-Company appeared before the Crime Branch, who after perusing the documents and the written statements of appellant No.1, informed the appellants that the matter was closed.

47. It is the grievance of the appellants that without disclosing these material facts and suppressing the fact that the complainant had previously filed three different complaints to various police authorities and that the said complaints were closed on being classified as civil disputes, the complainant had filed the aforesaid criminal complaint before the Magistrate being RCC No. 12 of 2002."

48. The Hon'ble Supreme Court in the case of **Hridaya Ranjan Pd. Verma vs. State of Bihar**, reported in (2000) 4 SCC 468, has held as follows:-

"14. 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.

15. *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."*

49. The Hon'ble Supreme Court in the case of **Sunil Kumar Sambhudayal Gupta vs. State of Maharashtra**, reported in (2000) 4 SCC 468, has held as follows:-

30. *While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.*

31. *Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.*

32. *The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt.*

33. *In case, the complainant in the FIR or the witness in his statement under section 161 Cr.P.C., has not disclosed certain*

facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded.

34. In State of Rajasthan v. Smt. Kalki & Anr., AIR 1981 SC 1390, while dealing with this issue, this Court observed as under:

"8. ... In the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."

35.. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

36. In Bihari Nath Goswami v. Shiv Kumar Singh & Ors., this Court examined the issue and held:

"9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility."

37. While deciding such a case, the Court has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

There had been a lot of improvements and contradictions in his statements. The witness deposed for the first time in the court during the trial, that when he went to examine the deceased, she was found in an unkept room/store room and that he was introduced to the deceased as a Psychiatrist and that the deceased had asked him whether he treated his wife in the same way as she had been treated by her husband. None of this was mentioned in his statement recorded by the police. Nor it had been recorded therein that the deceased had told him that she was harassed by the appellants and her ornaments were taken away/worn by her mother in law (A.3). More so, he had not stated in his police statement that the deceased was merely mentally disturbed and not suffering from a gross psychological problem. Nor had he stated therein that the deceased had told him that she was not having any faith in any of her family members and she was deprived of their love, affection and sympathy. Such contradictions in his statements cannot be held to be mere explanations or elaborations of his version, but are tantamount to material contradictions or vital omissions."

50. The Hon'ble Supreme Court in the case of **Kaushik Chatterjee vs. State of Haryana**, reported in (2020) 10 SCC 92, observed as follows:-

"17. As seen from the pleadings and the rival contentions, the petitioner seeks transfer, primarily on the ground of lack of territorial jurisdiction in civil cases, revolves mainly around (i) cause of action; or (ii) location of the subject-matter of the suit or (iii) the residence of the defendant, etc., according as the case may be, the question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of the act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc., according as the case may be.

20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.11. An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person."

51. The Hon'ble Supreme Court in the case of **Abiram Veer vs. NE Regional Agri Marketing Co. Ltd.**, reported in (2000) 10 SCC 433 observed as follows:-

"1. This petition for transfer of 10 cases under Section 138 of the Negotiable Instruments Act cannot be allowed on the ground specified in this petition (the ground shown is that the cause of action arose at Lucknow, and therefore, only a court of Lucknow can exercise jurisdiction). Question of jurisdiction is a matter which the petitioner will have to raise before the Court, where the case is now pending."

52. The Hon'ble Supreme Court in the case of **Debabrata Gupta vs. S.K. Ghosh**, reported in 1970 (1) SCC 521 observed/held as follows:-

"12. In the present case, the appellant denies that there

was any special entrustment of any property or that he was holding any property in a fiduciary capacity. It is neither possible nor desirable to express any opinion on the merit of such a plea. It is not possible to do so because the facts are not in possession of the court and furthermore the facts cannot be before the court without proper investigation and enquiry. It is not desirable to do so because if any such opinion be expressed it may prejudice or embarrass either party.

13. The plea s to lack of territorial jurisdiction cannot also be decided on the materials nor can an opinion be expressed on that question.

14. It is made clear that all pleas and defences are left open to that appellant including the question whether there was any special entrustment of any property to the appellant and the territorial jurisdiction of the Court."

53. The Hon'ble Supreme Court in the case of **Ramveer Upadhyay vs. State of U.P. & Anr.**, reported in 2022 SCC Online SC 484, observed as follows:-

"31. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.6 A three Judge Bench of this Court held:

"6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code.

7. The limits of the power under Section 482 were clearly

defined by this Court in *Raj Kapoor v. State* [(1980) 1 SCC 43 : 1980 SCC (Cri) 72] where Krishna Iyer, J. observed as follows: [SCC para 10, p. 47: SCC (Cri) p. 76]

"Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 6(1983) 1 SCC 1 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507 : 1976 Supp SCR 123 : 1976 Cri LJ 1533] where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC para 5, p. 741 : SCC (Cri) pp. 51112]

"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

9. Same view was taken in a later decision of this Court in Sharda Prasad Sinha v. State of Bihar [(1977) 1 SCC 505 : 1977 SCC (Cri) 132 : (1977) 2 SCR 357 : 1977 Cri LJ 1146] where Bhagwati, J. speaking for the Court observed as follows: [SCC para 2, p. 506 : SCC (Cri) p. 133]

"It is now settled law that where the allegations set out in the complaint or the chargesheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence.

10. It is, therefore, manifestly clear 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."

32. As held by this Court in State of Andhra Pradesh v. Gourieshetty Mahesh⁷, the High Court, while exercising jurisdiction under Section 482 of the Cr.P.C, would not ordinarily embark upon an enquiry into whether the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained.

33. In Paramjeet Batra v. State of Uttarakhand⁸, this Court held: "12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. ..."

54. The Hon'ble Supreme Court of India in the case of **Pinku Roy vs. the State of Assam**, reported in Crl. Pet. 379/2013, held as follows:-

"16. While looking at the ingredients of the offence under Section 420/406 IPC, there is no doubt, that on the same set of facts, there may not be conviction of a person, simultaneously under both Sections i.e. 420 and 406 IPC, being cheating and criminal breach of trust. But there is no difficulty in taking cognizance or framing charge under Section 406 and 420 IPC simultaneously against same person on the same set of facts as framing of alternative

charge is permissible under Section 221 CrPC which reads as under:

"221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

17. Illustration (a) to Section 221 makes the provision further clear, which reads as under:

"(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating."

18. The illustration (a) to Section 221 CrPC, thus makes it abundantly clear that simultaneous framing of charge for the offence of cheating and criminal breach of trust is permissible on the same set of facts, as indicated in Section 221 CrPC. When it is permissible to frame alternative charge simultaneously for offence of cheating and also criminal breach of trust on the same set of facts, if it is doubtful as to which offence has been committed, in my considered view, there is no difficulty in taking cognizance under all the sections, which prima facie appears to be attracted by the allegations made in the complaint or when it is doubtful or there is confusion as to which of the several penal provision will be attracted, notwithstanding the facts that all the offences may not be proved finally or conviction for all the offences, of which cognizance is taken, may not be possible at the conclusion of the trial.

19. When it is permissible under the statute to frame alternative charge, for the offence of "cheating" and "criminal breach of trust", taking cognizance by the Magistrate on the same set of facts alleged in the complaint for offences both under Section 406 and 420 IPC cannot vitiate the entire proceeding or trial, nor a complaint deserves to be quashed solely on the ground of taking cognizance under Section 406 and 420 IPC simultaneously

on same set of facts.

20. What therefore follows from the above discussion is that though conviction of an accused for offence of cheating and criminal breach of trust may not be possible on the same set of facts, there should not be any difficulty in framing alternative charge or taking cognizance of offence under Section 420 and 406 IPC, simultaneously.

21. Being of the above view, I have no hesitation to hold that taking cognizance under Section 420 & 406 IPC at the same time on the same set of facts cannot be held to be impressible under the law, nor can it be held as abuse of the process of court. In the above facts and circumstances, having regard to the allegations made in the complaint in the instant case and also the scope of interference with the criminal proceeding under Section 482 CrPC as enunciated by the Apex Court, I am unable to persuade myself to concur with the submission of the learned counsel for the petitioner that the proceeding is liable to be quashed only because of the fact, that cognizance was taken both under Section 406 and 420 IPC on same set of facts.

22. For the reasons stated hereinabove, it is held that the instant criminal petition is devoid of merit and deserves to be dismissed. Accordingly, the criminal petition is dismissed."

55. The Hon'ble Supreme Court of India in the case of **Vijayander Kumar vs. State of Rajasthan**, reported in (2014) 3 SCC 389, observed as follows:-

"12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the information/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd."

56. The Hon'ble Supreme Court of India in the case of **Lalmuni Devi vs. State of Bihar**, reported in (2001) 2 SCC 17, held as follows:-

"8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a

civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

57. The Hon'ble Supreme Court of India in the case of **State of Haryana & Ors. vs. Bhajan lal & Ors.**, reported in 1992 Supp (1) SCC 335, held as follows:-

"102. 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 extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a 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 FIR 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 malafide and/or where the proceeding is 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.*

103. We also give a note of caution to be 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 of 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."

58. On careful appreciation of the above cases, I find that none could deviate from the above proposition of law as enunciated by the Hon'ble Supreme Court.

59. Having considered the relevant facts and circumstances and the submissions made by the learned counsel for the parties and also after

consideration of the judgments of the Hon'ble Supreme Court, in my considered view finally following points require determination in this present petition:-

(i) whether the Court of CJM, Dimapur has the territorial jurisdiction to entertain or adjudicate upon the complaint filed by respondent No. 1.

(ii) whether on the face of the complaint dated 15.11.2021, the necessary ingredients of offences punishable under Section 406/420 IPC, 1860 are prima facie made out.

(iii) whether discontinuation/abandonment of maintenance and other works in respect of the design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in five (5) states namely Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for five (5) years amounts to breach of contract or constitute an offence of criminal breach of trust and cheating, and

(iv) whether the dispute is one of purely civil nature and therefore, criminal proceeding is liable to be set aside.

60. The complaint against the petitioner is one which involves commission of offence of criminal breach of trust and cheating. To find out the veracity of submissions made by the learned counsel for the parties and appreciate the present matter, it is imperative to examine whether the necessary ingredients of offences which the petitioner had been charged with are prima facie made out, I deem it apposite to consider the relevant provisions of alleged offences and I quote the relevant sections which are reproduced herein below:-

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

¹ [[Explanation 1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

⁴ [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

415. Cheating.—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.

420. Cheating and dishonestly inducing delivery of property.—*Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

61. On bare reading of the above sections, it is clear that while the criminal breach of trust as postulated under Section 405 of IPC, entails misappropriation or conversion of another's property for one's own use, with dishonest intentions, cheating too, and on the other hand, offences defined under Section 415, IPC involves the ingredients of having dishonest or fraudulent intention in inducing the other party to deliver any property to a specific person. Both the sections clearly prescribes dishonest intention as a pre-condition for even prima facie establishing the commission of said offences. Thus, in order to consider the submissions made by the learned counsel for the parties, the question whether the actions of the petitioner was committed in furtherance of a dishonest or fraudulent scheme is one which requires consideration.

62. In the present case the Company of the petitioner and the Company of the respondent had entered into an executed Consortium/Joint Venture Agreement dated 01.05.2017, which was registered on 12.05.2017. In the said Agreement besides the other conditions, stipulated with allocated work of design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in any of the five (5) states namely Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for five (5) years shall be undertaken by the company of the respondent and the company of the petitioner jointly. It was also the responsibility of the company of the petitioner for procurement of light, installation and for the maintenance of the light

during the warranty period.

63. The allegations in the complaint was that the petitioner Company, keeping the respondent in the dark, even did not complete the supply of light and in some places, did not complete the design, manufacturing and testing on time and it is for such action of the petitioner the complainant Company had been served with show cause notice by the Department EESL. The respondent alleged that the petitioner having planned to deceive the complainant induced the complainant at Dimapur and entered into Consortium/Joint Venture Agreement on 01.05.2017 at Dimapur in respect of the above said electrification works and for submission on behalf of the petitioner Company, but after obtaining the work and taking the responsibility of maintenance work as expert and after collecting share intentionally ignored the work of maintenance pertaining to the Electric Light commissioned in the States of Assam, Jharkhand, Bihar, Odisha and Uttar Pradesh. It is further allegation of the respondent that the petitioner has collected huge amount from the respondent for the sake of maintenance of the commissioned of electric light, which the complainant paid even borrowing from other sources to keep intact the goodwill with the complainant Company. But the petitioner after collecting such huge amount in the name of maintenance of the light has not employed proper and adequate employees and abandoned the maintenance work after collecting huge amount of money from the respondent for salaries of the employees.

64. Upon perusal of the complaint filed by the respondent on the face of it, this Court is not able to accept and conclude that the petitioner has deceptively or intentionally discontinued and abandoned the project for maintenance of the electric works pertaining to design, manufacture supply, erection, testing and commissioning of standalone Off Grid Solar LED Street Lights in five (5) states namely Assam, Bihar, Jharkhand, Odisha and Uttar Pradesh including complete system warranty and its AMC for five (5) years, which constitute prima facie any

criminal offence. The Agreement dated 01.05.2017 clearly stipulates the conditions/covenants whereby the liabilities and responsibilities of the parties are mentioned. The parties have decided to enter into a Consortium/Joint Venture for executing the said work by Agreement with certain terms and conditions. In the Agreement the financial liabilities and responsibilities have also been provided.

65. In the said Agreement it also provides that if any of the party/partner fails to perform the part of their obligation under the present Consortium/Joint Venture Agreement or commits the breach of duty/responsibility or is declared NPA/Insolvent then the suffering partner has the right to claim loss of capital/profit/goodwill from the defaulting partner/party. The loss caused due to non-performance/breach of duty/negligence/defaults or due to a partner being declared NPA/Insolvent, the losses shall be solely recovered/adjusted by the suffering partner from the other partner's share of money. It is also made clear that any damages/losses suffered shall be deducted from the share/account of the defaulting partner. If any payment is deducted by EESL due to any default/delay committed in executing the contract, the same shall be deducted from the account of the defaulting partner responsible for the same. It also provides that the jurisdiction regarding any action arising out of or pertaining to the said Agreement shall be initiated and maintained in a Court of competent jurisdiction in Nagaland.

66. Upon careful examination of the facts and circumstances in the present case, this Court is of the view that the issue appears to be pure breach of contract, if any, as the allegation, *inter alia* is of discontinuation and abandoning of responsibility on the part of the petitioner Company which is purely a civil dispute.

67. As held by the Hon'ble Supreme Court that although there comprise even an iota of doubt a singular factual premise can give rise to a dispute which is both civil as well as criminal in nature, each of which could be pursued regardless of the other. In the present case the

actual question which requires determination is to whether relevant ingredients for an offence under Section 406/420 IPC are prima facie made out. On bare perusal of the complaint of the present case this Court is of the considered view that no cogent case regarding the criminal breach of trust or cheating is made out.

68. The dispute between the parties at best be termed as one involving a mere breach of agreement or whether the petitioner Company has discontinued or abandoned the responsibilities and duties as enumerated in the Agreement dated 01.05.2017, which is, in my view, purely of civil nature.

69. On the examination of entire facts and circumstances this Court is of the view that allegations in the complaint read on the face, it does not disclose the ingredients necessary to constitute offence under Section 406/420 IPC, 1860.

70. Regard being had to the point of territorial jurisdiction of the Court of Chief Judicial Magistrate, Dimapur, that no cause of action arose in Dimapur, this Court is not able to accept the same in view of the fact that the determination of territorial jurisdiction in civil and criminal case are different and depend upon several factors as has been held by the Hon'ble Supreme Court, in the case of **Kaushik Chatterjee** (supra) as rightly relied upon and urged by the learned counsel for the respondent No. 1. More so, in the Agreement dated 01.05.2017, the jurisdiction is said to be in Court of Nagaland, therefore, the Court of CJM has the territorial jurisdiction. However, for the purpose of final determination of the present case under Section 482, CrPC this Court is of the view that territorial jurisdiction of a Court may not be a relevant factor to invoke section 482 of CrPC, 1973.

71. The issue of discontinuation or abandonment of the work of maintenance and other works as per agreement is at best could be a mere breach of contract which does not constitute an offence of criminal breach of trust or cheating and the entire dispute between the parties is purely of civil nature. Accordingly, this Court is of the view

that criminal proceedings against the petitioner would be an abuse of process of Court. Consequently, the points (ii), (iii) and (iv) are held in affirmative.

72. The Hon'ble Supreme Court in the case of **Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another** reported in (2000) 4 SCC 168 has observed that the distinction between the 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 inducing which may be judged by its 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 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.

73. Hon'ble Supreme Court in the case of **M/S Indian Oil Corporation vs. M/S Npc India Ltd. and others** reported in (2006) 6 SCC 76 has held which is reproduced as under:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. ...There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

74. This Court is not oblivious of the dictum in the case of **G. Sagar Suri and Anr. V. State of UP and Ors** reported in (2002) 2 SCC 636, wherein the Hon'ble Supreme Court has observed that *,"Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

75. In the landmark judgment of **State of Haryana & Ors v. Bhajan Lal and Ors**, reported in (1992) Supp (1) SCC 335, the Hon'ble Supreme Court has laid down the following categories of instances wherein inherent powers under Section 482 of CrPC can be exercised. They are:-

"(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) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and 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 FIR 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 proceeding is 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."

76. By applying the above case the key ingredients of having dishonest or fraudulent intention under Section 405/406/415/420 IPC is not made out, the present case in my opinion is one of those cases which warrants invoking of inherent power under Section 482 CrPC, 1973.

77. On the careful examination of the materials available on record and perusal of the above law enunciated by the Hon'ble Supreme Court and applying it on the present case, this court may conclude that the present case warrants intervention of this Court by exercising its inherent powers under Section 482 of CrPC. This Court finds that there has been an attempt to stretch the contours of civil dispute and essentially impart a criminal colour to it. As noted above, the Hon'ble Supreme Court has on several occasions expressed its disapproval for applying criminal colour to civil dispute, which has been made merely to conduct additions of relatively quick relief granted in contents of civil dispute which is nothing but an abuse of the process of law which must be discouraged in its entirety.

78. In view of the above discussions and conclusions and also law enunciated by the Hon'ble Supreme Court, this Court is of the considered view that complaint case being CR Case No. 12/2021 under Section 406/420 IPC pending before the CJM, Dimapur, Nagaland and its consequential proceedings in taking cognizance and the summon dated 09.03.2022 under Section 406/420 IPC against the petitioner is nothing but an attempt to impart a criminal colour to a civil dispute.

79. Accordingly, the CR Case No. 12/2021 under Section 406/420 IPC

against the petitioner pending before the CJM, Dimapur, and its consequential proceedings in taking cognizance and the summon dated 09.03.2022 by the CJM, Dimapur, Nagaland, is hereby set aside and quashed.

80. In the result, the criminal petition is allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant