

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETITION NO. 20 OF 2017

Shri Sunil Kumar Sethi, aged about 47 years, S/o
Mahavir Sethi, resident of Thangal Bazar, P.O. Thangal
Bazar, P.S. City, District, Imphal West, Manipur.

.... Petitioner

- Versus -

1. The State of Manipur represented by the Principal Secretary (Home), Government of Manipur, P.O & P.S. Imphal, District: Imphal West, Manipur.
2. The Officer-in-Charge, City Police Station, Imphal West, P.O Thangal Bazar, P.S. City, District : Imphal West, Manipur.
3. Shri, Sunil Kumar Patni, aged about unknown years, S/O Kailash Patni, resident of Thangal Bazar, P.O Thangal Bazar, P.S. City, District : Imphal West, Manipur.

.... Respondents

B E F O R E

HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. L. Shashibhushan, Senior Advocate
For the respondents: Mr. Samarjit Hawaibam, Public Prosecutor
Mr. H. Kenajit, Advocate
Date of hearing : 07.06.2024
Date of judgment &
order : **18.07.2024**

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. L. Shashibhushan, learned senior counsel appearing for the petitioner; Mr. Samarjit Hawaibam, learned PP appearing for the State and Mr. H. Kenajit, learned counsel appearing for the respondent No. 3 at length.

[2] The present petition has been filed by the petitioner challenging the legality, correctness and propriety in registration of the FIR with a prayer for quashing and setting aside of FIR No. 97(7)2016 of City Police Station, Imphal, Manipur dated 06.07.2016 registered by respondent No. 2 against the petitioner under Sections 34 r/w 406, 420 and 506 of IPC even though no offence was made out.

For easy reference and for convenience, the above mentioned Sections are extracted herein below:

"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.

420. Cheating and dishonesty 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.

506. Punishment for criminal intimidation –

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. - And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or (imprisonment for life), or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

[3] The case of the petitioner is that he was running a retail medicine shop namely, "M/S Kanchan Medical Store" at Thangal Bazar. But, his father was diagnosed to be suffering from Parkinson ailment. Due to his father's illness, his family has shifted to Jaipur and the petitioner has been settling between Imphal and Jaipur and decided to wound up all his business interest at Imphal and shift base to Jaipur except the share portion of the property including the residential building jointly recorded in the name of his father and his 2 (two) brothers exclusively belonging to them. Further due to his father's illness, the petitioner was managing the affairs of the family.

[4] The learned counsel for the petitioner submits that the respondent No. 3, who is the complainant in FIR Case no. 97(7) 2016 City P.S. u/s 406/420/506/34 of IPC, is a close friend of the petitioner and also running a retail outlet of 'Peter England'. He, further, submits that the respondent No. 3 proposed to the

petitioner to buy his father's share in the property including the building situated at Thangal Bazar, Imphal by taking advantage of the petitioner's situation but, the petitioner refused it on the ground that he has got an emotional attachment with the property and the place but the respondent No.3 kept insisting the proposal and even threatened the petitioner.

[5] The learned counsel for the petitioner, further, submits that while the petitioner was at Jaipur, a team of Rajasthan Police personnel visited his residence at Jaipur on 25.07.2016 inquiring about him with an intent to cause arrest of him but, when the aforesaid police personnel came looking for him he was not at Jaipur. On subsequent enquiry, the petitioner came to know that the respondent No. 3 has filed an application to the Director General of Police, Manipur by falsely alleging that the petitioner took money from him for doing business and in return, he would be paid interest. Over a period of time i.e. between 05.12.2014 till 04.07.2015, he made total cash payment amounting to Rs. 1,52,00,000/- (Rupees one crore fifty two lakhs) only and the petitioner paid a sum of Rs. 32,65,600/- (Rupees thirty two lakhs sixty five thousand and six hundred) only by way of interest between the period from 02.01.2015 till 28.03.2015 and thereafter, he failed to make payment to the respondent No. 3. He, further, submits that the petitioner has strongly and vehemently denied the allegations of the respondent No. 3 of lending any sum of amount to him on the

assurance of giving interest. Further, it is submitted by the learned counsel for the petitioner that the allegation was not supported by any document or documents to substantiate his allegation.

[6] The learned counsel for the petitioner contended that the application filed with the DGP, Manipur was forwarded to the SP, Imphal West, Manipur who in turn endorsed the same to the respondent No. 2 for taking up necessary action in the matter. On the basis of the said endorsement, the respondent No. 2 registered the FIR Case No. 97(7) 2016 City P.S. u/s 406/420/506/34 of IPC against the petitioner without application of his mind. He, further, contended that the FIR case was filed by way of pressure tactics by the respondent No. 3 to part with the share portion of the property and building belonging to his father when all his allurements to win over the petitioner has failed. He, further, submits that the allegation made in the complaint is false and they are all figmentations of the respondent No. 3 and further submitted that the petitioner has never indulged in any illegal business for sales of Tobacco, Gutka etc. as alleged by the respondent No. 3.

[7] The learned counsel for the petitioner, further, submits that even assuming but not admitting that if the petitioner was engaged in the business for sales of Tobacco, Gutka etc. which is banned in the State of Manipur, the respondent No.3 too

is liable to be prosecuted by the State for indulging in business which is against the law of the land. He, further, contended that the FIR case was filed by the respondent No. 3 in connivance with the respondent No. 2 to extort money from him which he never borrowed and used it as a pressure tactics by the respondent No. 3 to part with the share properties. He, further, submits that complaint regarding non-payment of interest or principal amount, even if taken at the face value does not constitute offence u/s 420/406 but breach of contract.

[8] The respondent No. 3 filed affidavit-in-opposition stating that he has denied all the allegations made by the petitioner in the present petition. He, further, submits that the present petition is not maintainable, as there is specific provision with the inherent power of the High Court in the Cr.P.C.

[9] The learned counsel for the respondent No. 3, further, submitted that the petitioner is narrating a concocted story not to return the amount of Rs. 1.52 Crore taken from him by deceiving/cheating and when asked him to pay back the said amount, he had threatened him with dire consequences. He, further, submits that the registration of the FIR after his complaint to the O.C., City P.S can be known after and are to make proper investigation and the coming of the Rajasthan Police to the petitioner's place must be a part of the investigation. He, further,

submits that the petitioner cannot raise the nature of the transaction and its fulfillment of the income tax Act and mere denial of not taking the sum cannot prove the innocence of the petitioner, as he has left Manipur since February, 2016 and has been staying at Jaipur. Thus, on trail of the petitioner, his wife made an application to the OC of the Mahesh Nagar P.S, Jaipur in helping her to track down the petitioner in his Jaipur residence. He, further, submits that the petitioner had merely taken the names of some persons with whom he was doing the tobacco, gutkha business but never informed the place in which he was doing business. If he had known the business of the petitioner in Manipur and if he had not promise of the interest, he would have never lent the said huge amount of money. Thus, the act of the petitioner is a clear case of cheating and breach of trust.

[10] The learned counsel for the respondent No. 2 submits affidavit-in-opposition on behalf of respondent No. 2 stating that he has denied all the allegations made by the petitioner categorically that the filing of the complaint (in connection) with FIR No. 97(7)2016, City P.S was motivated and the registration of FIR is perverse, abuse of process of law and requires to be set aside. He further submits that the petitioner has not put forth any reasonable ground for invoking the jurisdiction of the Hon'ble High Court to quash the FIR.

[11] The learned counsel for the respondent No. 2, further, submits that mere disclosure of the cognizable offence is sufficient for registration and investigation. Disobeying the provisions and rules under Income Tax Act, if any, by a person, cannot mean that such person did not give certain sums to another person. Any disobedience or violation of the provisions of Income Tax Act has to be dealt with under the same. The alleged transactions is to be supported by documents as required by the Income Tax Act are not relevant for the consideration of quashing or not quashing an FIR.

[12] The learned counsel for the respondent No. 2, further, submits that the petitioner is alleging the respondent No. 2 without any evidence and material, that the FIR was filed by respondent No. 3 in connivance with respondent No. 2. He, further, submits that the police have nothing to do with when a person is desirous of either filing an FIR or not. The only matter to be considered at the time of registration of FIR is whether the FIR discloses cognizable offence or not. Truth of the matter and consequences thereof has to be dealt with in the investigation and the trial. Further, he submits that it is too absurd for the petitioner to blame a police officer for registering an FIR against him and that too, on the basis of written report disclosing cognizable offence as per law. He, further, submits that the sale of tobacco, gutka etc., were not completely banned in the years 2014 and

2015 mentioned in the FIR by the respondent No. 3 as complaint of the FIR case, the same was allowed on fulfillment of some criteria and procedures as per rule and law but banned was imposed only recently in the State. The matter of ban has to be dealt with under relevant law.

[13] He, further, submits that offence of cheating and deception, document is not the sole material for the proof of the same but can also be proved by oral or other evidences. Moreover, criminal breach of trust can also be proved by evidences other than documentary evidence. Further submits that a person can be liable both under the Criminal Law and the Civil law, availability of having remedy under civil proceedings is not bar to seek remedy under criminal proceedings.

[14] The learned counsel for the respondent No. 2 submitted that the petitioner while alleging that there is no document to show that took any sum of money from respondent No. 3, he himself has also failed to show any documents for the allegations made by him. Accordingly, the FIR was registered and investigation was set into motion. He, further, submits that the O.C. of a police station is bound by the laws and has to investigate under Cr.P.C., if there is disclosure of cognizable offence in the FIR, as there are many cases taking cognizance for misappropriating huge sums and cheating the people thereby

converting the huge sums to their own use. He, further, submits that as per the FIR, the respondent No. 3 entrusted his money but, the petitioner after paying interest for some months converted to his own use and fled away even after ensuring of the payment by an arbitrator, Mr. Suresh Jain.

[15] The learned counsel for the respondent No. 2, further, submits that the set of facts specified in the FIR are different from the claim of the petitioner. Filing of written report by the respondent No. 3 in connection with the FIR case cannot mean that the written report was malafide or with malice or with ulterior motive for wreaking vengeance on the petitioner due to personal grudge instead the petitioner should clearly established the malafide, malice, ulterior motive for wreaking vengeance and personal grudge for quashing the FIR. He, further, submits that in compliance of Sec -154(1) of the Code, the Police Officer cannot embark upon an enquiry as to whether the information given by the informant is reliable and genuine or otherwise and refuse to register a case. And also, the O.C. of a police station is obliged to register a case and then proceed for investigation under Section 156 subject to the proviso of Sec-157 of the Code. Indeed, a noticeable feature of the scheme under chapter XIV of the Code, a Magistrate is kept in the picture at all stages of the investigation but he is not authorized to interfere with the actual investigation

or to direct the police how that the investigation is to be conducted.

[16] The learned counsel for the respondent No. 2, further, submitted that it is well settled that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit the investigation to be completed and if, however, the materials do not disclose an offence, no investigation should be permitted.

[17] The learned counsel for the petitioner relied upon the following judgments in support of his case;

1. Pepsi Foods Ltd. And Anr v. Special Judicial Magistrate & Ors – [1998] 5 SCC 749.
2. P.N. Poddar v. State of Maharashtra & Ors. – [2007] 15 SCC 705.
3. Hridaya Ranjan Prasad Sharma v. State of Bihar – [2000] 4 SCC 168.
4. Uma Shankar Gopalika v. State of Bihar – [2005] 10 SCC 336.
5. Binod Kumar v. State of Bihar – [2014] 10 SCC 663.
6. Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrajirao Angre – [1988] 1 SCC 692.
7. Vesa Holdings (P) Ltd v. State of Kerala – [2015] 8 SCC 293.
8. Satishchandra Ratanlal Shah v. State of Gujarat – [2019] 9 SCC 148.
9. Kapil Agarwal v. Sanjay Sharma – [2021] 5 SCC 524.
10. BLS Infrastructure Ltd. v. Rajwant Singh– [2023] 4 SCC 326.

[18] The learned counsel for the respondent Nos. 2 & 3 relied upon the following judgments in support of their case:

1. State of Telangana v. Habib Abdullah Jeelani – [2017] 2 SCC 779.
2. State of Kerala v. Kerala Rare Earth & Mineral Ltd. – [2016] 6 SCC 323.
3. Homi Rajvansh v. State of Maharashtra – [2014] 12 SCC 556.
4. Sesami Chemicals (P) Ltd. v. State of Meghalaya – [2014] 16 SCC 711.
5. Lalita Kumari v. Govt. of U.P. and Ors., – [2014] 2 SCC 1.
6. State of Haryana & Ors v. Bhajan Lal & Ors. – [1992] Supp. (1) SCC 335.

[19] Have gone through the citations made by both parties, but in the instant case, the above citations relied upon by the respondent Nos. 2 & 3 are not reliable.

[20] After hearing both the learned counsels for the parties and also after hearing the rival contentions put forth by the learned counsels for the parties and also after perusal of the materials on records, I am of the view that the point for consideration to discuss in the present case is whether the complaint filed by the respondent No. 3 and subsequent registration of the FIR by the respondent No. 2, can make out a case under Sections 406, 420, 506 and 34 IPC.

As per the complaint made by the respondent No. 3, the contents thereof is that the petitioner borrowed a sum of Rs. 1,52,00,000/- (Rupees one crore and fifty two lakhs) from the respondent No. 3 with an assured interest of 6.5% per lac rupees + marginal profits (dividends) in the years 2014, 2015 and as agreed, an interest amount of Rs. 32,65,600/- (Rupees thirty two lakh) is paid to the respondent No. 3 by the petitioner up to April, 2015. Thereafter, the petitioner failed to pay the interest amount. But, after some time, the petitioner introduced Mr. Suresh Jain to the respondent No. 3 to act as an arbitrator to settle the matter between the petitioner and respondent No. 3. However, when the respondent No. 3 approached the petitioner and the said Suresh Jain, the said duo response with an unpleasant manner and refused to pay any money and threatened the respondent No. 3 with dire consequences. Hence, he filed the complaint against the said duo.

[21] But, on further perusal of the complaint as well as the FIR copy, the complainant did not file any supporting documents in the complaint.

For reference and for convenience, the contents of the complaint are extracted herein below:

"To
The Director General of Police
Manipur Police Headquater
"Government of Manipur
Imphal West – 001
MN INDIA

Date : 23 October 2015
Ref. : SP/IW/MP/Case001

Subject: Fraudulent and cheating
done by Mr. Sunil Sethi.

Dear Sir,

I would like to bring to your attention a fraudulent case in which an individual named Mr. Sunil Sethi (s/o. Shri Mahavir ji Sethi), Kanchan Medicos, Thangal Bazar, Opp. Kasturi Building, Imphal West, Manipur has deceived me by taking money for doing a business and in return I would get interest. I gave him the large sum of money based on trust, friendship and being a member of the community. The sum was given to him against no securities.

Mr. Sunil Sethi demanded all the payment in cash and mentioned that he is doing a business with two other individuals namely, 1) Mr. Kishore from Kanglatombi and 2) Mr. Satyanarayan from Kolkata. He mentioned that Mr. Kishore looks after the purchase and distribution of finished products viz Tobacco, Gutka etc. and Mr. Satyanarayan was the source of purchase. Mr. Sunil claimed that his role in the entire business was that of investor, financier and interacting with key business stakeholders.

Over a period of time (December 2014 till July 2015). I have borrowed and invested a sum of Rs. 15200000 (India Rupees one crore fifty two thousand only) in Mr. Sunil and return I was assured an interest of 6.5% per lac rupees+marginal profits (dividend). The payment was made to him in cash accordingly.

Timeline 001 : Payment made to Mr. Sunil Sethi

Date	Payment Made to	Amount
05/12/2014	Sunil Sethi (S/o Shri	Rs. 1600000.00
15/01/2015	Mahavir Ji Sethi)	Rs. 2400000.00
21/01/2015	Kanchan Mewdicos,	Rs. 2400000.00
20/03/2015	Thangal Bazar, Opp. Kasturi	Rs. 4000000.00
04/07/2015	Building	Rs. 4800000.00
	Total	Rs. 15200000,00

During the course of investment, I had requested him numerous times to make me meet his business partners, but at each stanced he came up with some excuse or the other. He even gave me the contact I stumbled upon the fact that the numbers given by him (Mr. Sunil Sethi) were his Rajasthan and Kolkata numbers. This is when my suspicion started.

Mr. Sunil Sethi, in order to conceal his scam, made timely interest payment till April 2015 and post April 2015, no interest was received.

Timeline 2 : Interest received

<i>Date</i>	<i>Month</i>	<i>Amount</i>
<i>02/01/2015</i>	<i>January</i>	<i>Rs. 272400.00</i>
<i>24/02/2015</i>	<i>February</i>	<i>Rs. 1121600.00</i>
<i>28/03/2015</i>	<i>March</i>	<i>Rs. 1121600.00</i>
<i>2015</i>	<i>April</i>	<i>Rs. 750000.00</i>
<i>2015</i>	<i>May</i>	<i>Due</i>
<i>2015</i>	<i>June</i>	<i>Due</i>
<i>2015</i>	<i>July</i>	<i>Due</i>
<i>2015</i>	<i>August</i>	<i>Due</i>
<i>2015</i>	<i>September</i>	<i>Due</i>
<i>2015</i>	<i>October</i>	<i>Due</i>
	<i>Total</i>	<i>Rs. 3265600.00</i>

On asking him for interest post April, Mr. Sunil mentioned that the interest for May, June, July & August would be paid together since the rainy season had begun and no business activities is being carried out. While the delay was being burdened, I came to know that there were investors also into the business. I came to know from the other investors that Mr. Sunil had sought the money citing the similar business plan to them. But, when interest was not being received, all the parties were getting restless.

September passed and October entered, yet no interest was received. On trying to reach Mr. Sunil, it turned out he was no more in Imphal and his store staffs had no clue about his presence. Rumour spread in the market area that he has run away with large sum of money. After an approximate period of 10 days he resurfaced and confessed that he has spent the money in meeting his personal needs.

When the situationl out of hand, he introduced another individual Mr. Suresh Jain into the scene. Mr. Suresh Jain was acting as an arbitrary and ensured payment settlement to all parties that the invested in Mr. Sunil Sethi. It was remuored that after a through round of argument and negotiation, Mr. Suresh Jain settled the payment for one party and has openly stated that he would not be required to settle for any other parties.

I went to the arbitrator and Mr. Sunil Sethi to ask for my invested principal amount and the interest amount to be received till October 2015. The duo approached me in a very unpleasant manner and refused to pay me any money. This continued for 15 days. Mr. Suresh Jain, dictated that I would not receive any payment. He mentioned no logical explanation to his settlement and tempted on stating that I do not need any settlement. Mr. Suresh Jain, then out on took a very condescending approach and starting saying that I could do whatever I want, I could go to who ever I pleased but no one can take out the money from him in order to threaten me, in the afternoon of 20 October 2015. Mr. Suresh Jain had sent two individuals to my shop. The individuals informed my shop staffs that I be prepared to face consequences, if I do not back out from the claim.

Also in view of the approach taken up by Mr. Suresh Jain, I am under the impression that if anything happens to me or to anyone in my family in and out of my living premises, the most likely responsible culprit may be booked as stated.

Therefore, I earnestly request your immediate attention in taking legal action against Mr. Suresh Jain (for sending unidentified and unwanted individuals to threaten me) and the culprits involved along with Mr. Sunil Sethi for cheating me. I pray that you would look into this matter urgently.

*Treated as an OE of Case FIR No.
97(7)2016 City PS U/s 380 IPC.*

*Sd/-
OC City PS
Dt. 5/07/2016*

*Yours faithfully,
Sd/-
Sunil Patni"*

[22] In this situation, it is observed that except for stating that the petitioner has cheated the respondent No. 3 by failing to pay the assured interest amount, no details have been mentioned in the complaint to attract the criminal jurisdiction for registering FIR against the petitioner, simply mentioning of cheating for not paying the assured interest amount made in the complaint is not enough but, there must be some concrete satisfaction of the I.O.

concerned for registering the FIR. In the circumstances, registration of FIR either bailable or non-bailable with proper scrutiny of mind is required. The Hon'ble Supreme Court in **"Inder Mohan Goswami & Anr. V. State of Uttaranchal & Ors. (2007) 12 SCC 1** at Para No. 54 observed that –

"54. As far as possible, if the Court is of the opinion that a summon will suffice in getting the appearance of the accused in Court, the summon or the bailable warrants should be preferred. The warrants with bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The Court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive."

[23] Mention is made here that as per the submission of the learned counsel for the respondent No. 3, the petitioner borrowed the said amount of money from the respondent No. 3 for doing business and with a promise to pay interest for the said borrowed money with marginal profits and as per the respondent No. 3, the petitioner paid interest for some time. Assuming the submission made by the respondent No. 3 is true, this shows the trust between the two parties.

[24] On further perusal of the rival contentions made by the parties and the materials placed before this Court, it is evident that the litigation, if any, is purely on account of breach of agreement between the two parties. In **"Sarabjit Kaur V. Station**

of Punjab & Anr.” (2023) 5 SCC 360”, the Hon’ble Supreme Court at Para No. 13 observed that –

"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 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 only that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by respondent No. 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with which was not there 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 of pressurize parties to settle civil disputes. Whenever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR 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."

[25] In **"Vijay Kumar Ghai V. State of W.B. (2022) 7 SCC 124”,** the Hon’ble Supreme Court at Para Nos. 36 – 39 observed that -

"36. As observed and held by this Court in R.K. Vijayasathy Vs. Sudha Seetharam, the ingredients to constitute an offence under Section 420 are as follows:

- (i) A person must commit the offence of cheating under Section 415; and*
- (ii) The person cheated must be dishonestly induced to :*
 - (a) Delivery property to any person; or*

(b) Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

37. *The following observation made by the Court in Uma Shankar Gopalika V. State of Bihar with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp 338-39. Para 6-7)*

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Section 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,00, they would pay a sum of Rs. 2,60,000 to the complainant out of that but the same has never been paid..... It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs. 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on the same cannot amount to cheating. In the present case, it was nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

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 V. State of Bihar*, 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 respondent 2 does not disclose dishonest or fraudulent intention of the appellants.

39. In *Vesa Holdings (P) Ltd. V. State of Kerala*, this Court made the following observation : (SCC pp. 297- 98, para 13).

"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 criminal 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 intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The 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 error in refusing to exercise the power under Section 482 CrPC to quash the proceedings."

[26] In ***Criminal Appeal No. 660 of 2024 arising out of SLP (Crl) No. 13485 of 2023***, the Hon'ble Apex Court observed that –

"This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Section 420 and 406 of the IPC.

Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid."

As pointed out the distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of contract terms and criminal offence under Section 420 and 406 of the IPC, in the instant case, the Hon'ble Supreme Court set aside the order of the High Court dismissing the application filed by appellants under Section 482 of CrPC on the ground of delay/laches and in this regard, has referred to a series of judgments rendered by it :

"In "Mohammed Ibrahim & Ors. V. State of Bihar & Anr." this Court had referred to Section 420 of the IPC to observe that in order to constitute an offence under the said Section, the following ingredients are to be satisfied :-

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

- (i) Deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
- (ii) Fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*

- (iii) *Such act or omission causing or is likely to cause damage or harm to that person is body, mind, reputation or property.*

19. *Constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived.*

- (i) *to deliver any property to any person, or*
(ii) *to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."*

Similar elucidation by this Court in "V.Y. Jose and Another v. State of Gujarat and Another." Explicitly stats that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purposes viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in 'Hira Lal Hari Lal Bhagwati v. CBI', "Indian Oil Corporation v. NEPC India Ltd.", "Vir Prakash Sharma v. Anil Kumar Agarwal" and "All Cargo Movers (I) (P) Ltd. V. Dhanesh Badarmal Jain".

[27] Having gone through the above reproduced judgments of the Hon'ble Apex Court and its observations made therein, it is made clear that it can be applied in the instant case,

as it is a clear case that the respondent No. 3's grievance is regarding failure of the appellant's to pay the outstanding amount with interest in spite of the respondent No. 3's repeated demands i.e. after the month of April, 2015. As per the complaint, the petitioner had paid interest till the month of April, 2015. Assuming that the assertion made in the complaint is correct, but even then a criminal offence under Section 420 of IPC is not established in the absence of deception by making false and misrepresentation, dishonest concealment or any other act of omission, or inducement of the complainant to deliver at the time of agreement being entered. The complaint was just a prayer made to the police for recovery of money borrowed from the appellants and for criminal action. The police does not have the power to recover money or act as a civil court for recovery of money. The act of the petitioner and transaction made between the parties cannot result in an offence of cheating and criminal breach of trust simultaneously, for the offence of cheating prior dishonest intention must exist at the inception of transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrust another with the property as per law. Hence, dishonest intention comes later. However, in the instant case, no details and particulars are given in the form of reliable documents and when and on which date and place, the threats were given without the said details and

particulars, it is apparent that this allegation of threat have been made only with an intent to activate police missionary for recovery of money.

[28] Accordingly, it is observed that it is for the respondent No. 3 to file civil suit and initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.

[29] In view of the aforesaid discussion, the present petition is allowed quashing of the FIR No. 97(7)2016 of City Police Station, Imphal, Manipur and resultant proceedings.

Accordingly, the FIR No. 97(7)2016 of City Police Station, Imphal, Manipur and its resultant proceedings are quashed.

[30] With the above finding and direction, this petition is disposed of. No order to as costs.

[31] Furnish extract copies of this order to all the parties.

JUDGE

FR/NFR

Lucy/Bipin