

Neutral Citation No. - 2024:AHC-LKO:9370

Reserved On:-01.11.2023

Delivered On:-01.02.2024

Court No. - 19

Case :- APPLICATION U/S 482 No. - 6409 of 2022

Applicant :- Harish Gulla And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Dr. Pooja Singh, Abhinav Trivedi, Lalita Prasad Misra

Counsel for Opposite Party :- G.A., Pranjal Krishna

Hon'ble Shree Prakash Singh, J.

1). Heard Sri L.P. Mishra assisted by Sri Abhinav Narayan Trivedi, learned counsel for the applicants, Sri Pranjal Krishna for the opposite party no. 2 and Sri Aniruddh Kumar Singh, learned AGA-I for the state.

2). By means of the instant application, prayer has been made for quashing the impugned charge sheet dated 19.12.2019, in Case Crime No. 878 of 2017, under Sections 419, 420, 467, 468, 504, 506 of IPC at Police Station- P.G.I, District Lucknow and further the summoning order dated 24.12.2019 has also been assailed.

3). Factual matrix of the case is that the UP Government has formulated Hi-Tech Township Policy, 2003 for planned development in the State of UP on 23.08.2003 and after promulgation of the policy, M/s Ansal Properties and Infrastructure Ltd., being eligible for undertaking township, applied for and was granted Hi-Tech Township licence on 26.11.2005 and it took shape in the name and style of 'Sushant Golf City Lucknow'. The Hi-Tech Township Policy, 2003 was amended time to time and other Hi-Tech Township Policy, 2007 was promulgated on 7th September 2007 while superseding the Hi-Tech Township Policy, 2003 and at the same time it was provided that the existing licences, granted

earlier vide Policy 2003, shall remain continue. On 27 January 2010, a Government Order was issued whereby the Hi-Tech Township Policies, 2003 and 2007 were brought to an end, though it was provided that Hi-Tech Township Projects shall continue till it's conclusion and this was informed to the Chairman of various development authorities throughout the State of UP vide Government Order dated 7.04.2021. Having at a glance of the government orders dated 23.08.2003, 17.09.2007 and 7.04.2021, it is apparent that the Government of UP had to facilitate the availability of land to the developers by way of acquisition and payment of compensation and the government land like pathway, land of reserve category, Gaon Sabha land, chakroad, canal, etc. was to be exchanged in favour of the developers and thus, it was incumbent upon the State Government to make procurement of land which was a continuous process and at the same time, it was also provided that State shall take care so as to ensure that no harassment could be caused to the developer and if any complaint is made against the developer, the action may be taken only after approval of High Power Committee, under the chairmanship of the chief secretary of State of UP.

4). Once the Hi-Tech Township Project in the name of Sushant Golf City, Lucknow was allotted to M/s Ansal Properties and Infrastructures Ltd., as per the eligibility criterion, the opposite party no. 2 and his wife namely, Mrs Sunita Agarwal expressed their desire for booking several plots, flats and villas etc. both in their individual names and also on behalf of their respective companies, for which 11 MoUs were executed in between 2011 to 2012, vide the same, the plots etc. were sought to be booked with the condition of timely payment, as per schedule.

5). Procurement of land bank was a continuous process, therefore, 11 MoUs could not be performed, within time, in favour of the complainant, his wife or any of the company represented by them. Further there is one hurdle of clause (u) which says that the 'second party cannot sell/transfer his right in the FSI, either in full or part, to any third-party without the prior written consent of the first party, which the first party at its sole

discretion may allow or deny such transfer, and in case the first party allows such transfer then it will charge the administrative charges for the same. The MoU was to be followed by booking of respective flats/villas/plots etc. and resultantly, the allotment letters were issued and followed by execution of sale deeds and due to all these, certain dispute arose between M/s Ansal Properties and Infrastrucure Ltd. and opposite party no. 2 and her husband and therefore, the opposite party no. 2 instituted an application under Section 156(3) of the Criminal Procedural Code (hereinafter referred as 'Code') and thereafter, an FIR was lodged bearing no. 878 of 2017. As per the content of First Information Report, the complainant, i.e., the opposite party no. 2 met with Director of the company, namely, M/s Ansal API and on assurance given by them regarding the return on the investment, he started investing in the project of Sushant Golf City, Lucknow but various lands and plots, which were initially allotted to him, were not provided and thus, it has been alleged that cheat and fraud has been committed by the applicants.

6.) After the aforesaid FIR, the applicants were arrested by investigating agencies and charge sheet was filed against them and the Chief Judicial Magistrate passed the summoning order, vide the same, the applicants were summoned.

7). In the meantime, a development took place, where the complainant and the petitioners entered into a settlement deed dated 28.12.2019, whereby all the dispute relating to investments and properties amongst each other, were settled amicably. The applicants were granted bail vide orders dated 07.12.2019 and 06.02.2020 and while granting the bail, the court has also taken note of the compromise entered into between the parties.

8). Once the matter was amicably settled, out of the Court, on 28.12.2019, a petition under Section 482 was filed bearing no.1766 of 2021 (Pranav Ansal and others Vs. State of U.P. and another) for quashing of the impugned charge-sheet as well as the summoning orders

but the same was withdrawn by the applicants with liberty to file afresh vide the order dated 19.08.2021. Thereafter, various negotiations by way of communication were done and the parties came to understanding and recorded the same in the addendum dated 14.07.2022 to the settlement deed dated 28.12.2019 which shows that the opposite party no. 2 does not want to prosecute anyone in Case Crime No. 878 of 2017 and all the disputes were resolved, whereas the compliance of the terms and condition in addendum dated 14.07.2022, became delayed and therefore, the opposite party no. 2 is still pressing the prosecution against the applicants though the case of the applicant is that they are still ready to perform the terms and conditions as per the addendum dated 14.07.2022, but due to certain steps to resolve the problem, on the part of the State Government, is in the way of the performance of the addendum/settlement and therefore, the same is still waiting for its compliance, and thus, there is no mens rea of the applicants for committing any cheat, fraud or any kind of fabrication in the documents as is alleged in the First Information Report.

9). Fact remains that showing the bonafide and the honest performance of the addendum of settlement dated 14.07.2022, out of eight properties, which are in dispute, four were transferred through registered sale deed, i.e., dated 19th July 2022, 16th July 2022, 18th July 2022 and 27th July 2023. So far as the fifth plot is concerned, allotment letter is issued and due to non-availability of the opposite party no. 2, the registered sale deed could not be executed, and so far as the other three disputed properties are concerned, the allotment letters and the transfer of title are issued, which are waiting for compliance vide executing registered sale deed.

10). Now vide order dated 19.06.2023, Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred as 'UPRERA') issued the notice while directing the M/s Ansal Properties not to transfer any property unless a particular amount is deposited to UPRERA and

therefore, the further compliance is said to be stopped as per the order of UPRERA.

11). Counsel appearing for applicant contended that in fact by way of a MoU between the M/s Ansal Properties and Infrastructure Ltd. and the opposite party no. 2 an amount of Rs. ₹42,56,97,041 was paid till 2014, which is an admitted fact, but thereafter the terms and condition as per the MoUs between the parties could not be honoured timely because of the reasons, which are not in the approach of the applicants and thereafter the First Information Report was lodged by the opposite party no. 2, under misconception that the present applicants have committed cheat and fraud with him. He submits that once the First Information Report was lodged, the applicants tried to make understand the opposite party no. 2 that since the Hi-Tech Township area, wherein the government land, canals, chakroads etc. could not be exchanged as per the policy of 2003 to 2010, which is the part of the compliance of the State Government and as soon as the same would be settled, the MoU entered in between the parties shall be followed and therefore, the parties entered into between the agreement on 28.12.2019 and further an addendum dated 14.07.2022 to the settlement deed dated 28.12.2019 was also signed by the parties wherein the eight properties were categorized, in dispute, which are mentioned in paragraph 30 of the supplementary affidavit dated 18.09.2023 filed on behalf of the applicants. He added that properties are marked as A, B, C, D, E, F, G and H, wherein the property number A, B, C and D is transferred to the opposite party no. 2 vide registered sale deeds dated 16 July 2022, 18 July 2022, 19 July 2022 and 27 April 2023, respectively and the fifth property that is 'E', allotment letter is issued, but the registered sale deed could not be executed due to non-availability of opposite party no. 2 and so far as property number F to H are concerned, the allotment number and transfer of title were issued in favour of the opposite party no. 2, but unfortunately, the UPRERA has issued a notice in pursuant to it's meeting dated 19.06.2023 and

therefore, the rest of the properties are waiting for its transfer and thus, there is no fault on the part of the applicants.

12). Adding his argument, he submits that this Hon'ble Court vide order dated 29.03.2023, directed the parties to appear before the Senior Registrar of this Court on 12.04.2023 and the Senior Registrar was directed to verify the compromise in presence and participation of both the parties, but due to non-appearance of opposite party no. 2, the verification could not be done. It shows that the opposite party no. 2 herself is not serious about the compliance of the compromise and she is intends to harass the applicants by way of pressing the prosecution of Case Crime No. 878 of 2017.

13). Further submission is that in fact, the main issue is regarding non-execution of the sale deed as well as not handing over the possession of certain properties to the opposite party no. 2, but there is express legal bar by virtue of notice issued in a meeting dated 19.06.2023 of UPRERA, on the properties which are mentioned in the addendum of settlement agreement and therefore, there are efficacious remedy to the opposite party no. 2 to approach UPRERA, Civil Court or any other forum of a civil competence. He also added that properties which are under dispute between the parties mentioned in paragraph 30 of the supplementary affidavit, are the admitted fact between the parties as no rebuttal has been filed by the opposite party no. 2.

14). Next submission of the counsel for the applicants is that mens rea is absent in the instant matter as there is no intention of the company or applicants to commit any fraud or misrepresentation with the opposite party no. 2 and the applicants who were the responsible persons, employed in the management of the company, never committed any offence, as is alleged in the First Information Report. He submits that the ingredient of offences charged against the applicants do not attract as the matter is purely civil in nature, which is being given the colour of

criminality and it is the best example of arm twisting by the opposite party no. 2.

15). Adding his arguments he submits that the applicants are innocent and law abiding citizens and have not committed any offence and the story which is narrated in the First Information Report, is false and concocted.

16). Concluding his argument, he has submitted that in fact, the circumstances which are not under the control of the applicants, are the reasons of the dispute, as there was a delay on the part of the State Government to hand over the property in question to the applicants and there was certain dispute regarding the government land including the chakroads, canals etc. which are still to be exchanged as per the terms and conditions given in the Hi-Tech Township Policy promulgated time to time. He submits that from the first day, the applicants are ready to transfer the plots, land etc. as per the MoU to the opposite party no. 2 and it is apparent from the paragraph 30 of the supplementary affidavit that applicants have transferred four properties vide the registered sale deed in favour of the opposite party no. 2, out of eight disputed properties, for which the transfer of title and settlement has also been issued and the applicants undertake with full responsibility that as soon the UPRERA will lift the ban, the rest of the properties immediately shall be transferred to the opposite party no. 2. Further the transfer of the properties which was done in favour of the opposite party no. 2, are not disputed and therefore, looking to the whole scenario, no offence is committed as is alleged in the First Information Report.

17). In support of his contention, counsel for the applicants has placed reliance on a judgement of state of State of Haryana Vs. Bhajan Lal reported in (1992) SUPP 1 SCC 335 and has referred paragraph 6 of the guidelines issued by the Apex Court.

Paragraph 6 of the guidelines of the judgement is reproduced hereinunder:-

“(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/of where there is a specific provision in the Code or the concerned Act, providing efficacious redress fro the grievance of the aggrieved party.”

18). Referring the aforesaid, he submits that legal bar arose vide the notice issued by UPRERA, for putting ban on the transfer of the property in question and therefore the efficacious remedy for redressal of the grievance of the parties is to approach the proper forum.

19). He again referred the case reported in (2014) 15 SCC 235, Gold Quest International Private Limited Vs. State of Tamil Nadu and has referred paragraph 8 of the aforesaid judgement.

Paragraph 8 of the judgement is reproduced hereinunder:-

“8. In view of the principle laid down by this Court in the aforesaid cases, we are of the view in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity, cases under Prevention of Corruption Act, cases under Narcotic Drugs and Psychotropic Substances Act and other similar kind of offences in which punishment of life imprisonment or death can be awarded. After considering the facts and circumstances of the present case, we are of the view that learned Single Judge did not commit any error of law in quashing the FIR after not only the complainant and the appellant settled their money dispute but also the other alleged sufferers entered into an agreement with the appellant, and as such, they too settled their claims.”

20). Referring the aforesaid, he submits that it has been held that ‘a dispute which are substantially matrimonial in nature or civil property dispute with criminal facet, if the parties have entered into settlement and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceeding under Section 482 of CrPC.’ He submits that there is civil property dispute with some criminal angle wherein the parties entered into a settlement in which the first party is ready to comply, subject to condition of lifting the ban of transfer of the property by UPRERA, and therefore, the criminal proceeding is proper.

21). Placing reliance on a judgement reported in (2017) 9 SCC 641, Parbatbahi Ahir @ Parbhatbhai Bhimsinghbhai Karmur and others Vs. State of Gujarat, he referred paragraph 16.8 of the above said judgement.

Paragraph 16.8 of the judgement is quoted hereinunder:-

“16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any Court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inherein the High Court”

22). Again, referred the judgement reported in 2021 SCC OnLine SC 976, Mitesh Kumar Jha Vs. State of Karnataka and others and a judgement reported in 2023 SCC OnLine SC 603, Gulam Mustafa Vs. State of Karnataka and Another and has placed reliance on paragraph 47 and 36 respectively, which are reproduced hereinunder:-

“47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

“36. What is evincible from the extant case-law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and/or money are given the colour

of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the court. In the present case, there is a huge, and quite frankly, unexplained delay of over 60 years in initiating dispute with regard to the ownership of the land in question, and the criminal case has been lodged only after failure to obtain relief in the civil suits, coupled with denial of relief in the interim therein to the respondent no. 2/her family members. It is evident that resort was now being had to criminal proceedings which, in the considered opinion of this Court, is with ulterior motives, for oblique reasons and is a clear case of vengeance.”

23). Quoting the aforesaid judgement, he submits that the case of the present applicants are squarely covered with the ratio of the judgement and therefore, submission is that the criminal proceeding against the applicants may quashed.

24). On the other hand, learned counsel appearing for the opposite party no. 2 has vehemently opposed the contentions aforesaid and submits that the applicants have committed cheat, and fraud as well as criminal intimidation and therefore, the First Information Report was lodged as Case Crime No. 878 of 2017 at Police Station- PGI, Lucknow and thereafter chargesheet was filed against the applicants on 19.12.2019 and they were taken into custody. So far as the present case is concerned, when the applicants were in custody, they entered into a settlement agreement on 28.12.2019 and the Hon'ble Court enlarged the applicants on bail with an implied condition that they will honour their obligation under the settlement agreement. But once the applicants were released, they deliberately violated the settlement agreement and thereafter the opposite party no. 2 moved cancellation of bail and thereafter they approached the Apex Court, wherein the notices were issued to the applicants. Again the applicants approached the opposite party no. 2 and the addendum to the settlement agreement was entered into between the parties on 14.07.2022, whereafter the applicants executed three properties

in favour of the opposite party no. 2 and under the impression that the applicants are intended to honour the addendum settlement, withdrew the Special Leave to Appeal (Crl) No. 1621 of 2022 on 30.08.2022 but the applicants are not with the clean hands and the good intentions and therefore, as soon as the above said Special Leave to Appeal (Crl) was withdrawn, they started dishonoring the addendum to the settlement thereby not transferring the other properties. The UPRERA has imposed the ban on transfer of the properties, for which, the applicants are directly responsible.

25). Pointing out about the transferred properties, he submits that the Plot no. H/05, allotted to the opposite party no. 2 by the above mentioned addendum, has deliberately been allotted as Khasra no. 76, is a disputed land and case for the same is subjudice before the District Magistrate Lucknow, who affixed the board on the side of the plot, mentioning the details of the dispute, and with the instruction that no sale/purchase can be made with respect to the said plot. He further submits that the plots which are proposed to be given to the opposite party no. 2 exists on the land of canal, which was to be exchanged by the M/s Ansal company, while paying certain amount to the State government, but in case of non-payment on the part of M/s Ansal, the said land is also disputed and thus the land which has already been transferred through registered sale deed or proposed to be transferred are the disputed lands, either in between the M/s Ansal Company and the state or with the private parties, which clearly shows the intention of the applicants.

26). Referring the judgement of the coordinate bench of this Court he pointed out that in Writ A No. 7254 of 2022, Director CBI was directed to constitute an SIT and SIT will submit its progress report on or before 24.05.2023, before the High Court and the final report is required to be submitted on 22.08.2023.

27). Concluding his arguments, he submits that the law is very clear that fraud or cheat shall be looked into on the first date of the offence alleged

to be committed and in the instant matter, fraud has been committed by applicants and the First Information Report was lodged, and after thorough investigation, it was found that applicants have committed offence. Therefore, at the later stage when the parties entered into agreement, though failed later on, it cannot be said that no offence was committed by the applicants and therefore, submission is that there is no force in the contention of the learned counsel for the applicants and thus the instant application is liable to be dismissed.

28). Per contra the learned AGA appearing for the State has also vehemently opposed the contention of the learned counsel for the applicants, while supporting the version of the counsel for the opposite party no. 2 and submitted that once the First Information Report was lodged, it was thoroughly investigated by the Investigating Officer and it was found that the applicants are involved in committing offence and therefore Trial Court after application of mind, took cognizance of the offence and issued summons and therefore, there is no ambiguity or unlawfulness in the charge-sheet filed by the Investigating Officer or the summoning order passed by the trial Court.

29). Having heard the counsels for the parties and after perusal of the material placed on record, it transpires that the State Government promulgated Hi-Tech Township Policy in the year 2003, wherein the company M/s Ansal API succeeded to get the Hi-Tech Township City Project, which is named as Sushant Golf City Lucknow. This policy was replaced by the another policy of the year 2007 and 2010, but as per the version of the applicants, the property which was to be handed over to the company, namely, M/s Ansal, could not succeed, due to certain reasons and there is still dispute regarding the exchange of the lands pertaining to chak marg, canal and some other state land etc.

30). It so happened that the opposite party no. 2 who also represents a developer firm entered into an MoU with the company, namely M/s Ansal to which the present applicants are leading as the high

administrative authority and thereafter, certain amount was also deposited with the company which is an admitted fact. But as per the allegations of the complainant, the MoU was not honoured by the applicants and their company as the plots/apartments/lands which were to be transferred, could not be complied with and therefore, the opposite party no. 2 lodged the First Information Report against the applicants and the husband of the opposite party no. 2 also moved an application under Section 156(3) of the Code wherein on the direction of the Magistrate the First Information Report was lodged as case crime number 878 of 2017, whereafter investigation was done and the charge-sheet was filed under Sections 419, 420, 467, 468, 504, 506 of IPC at Police Station- P.G.I, District Lucknow and the Magistrate took cognizance and issued summons, which are under challenge by way of the instant application.

31). When this Court examined the contentions of the learned counsel for the parties as well as the law points, it emerges that the dispute between the parties is with respect to non-transfer of certain land in lieu of the amount deposited before the company, namely M/s Ansal as well as the non-compliance of the terms and condition existed in the MoU between the parties. After the First Information Report was lodged, the applicants were arrested and thereafter, a settlement was done in between the parties by way of reducing the compromise deed in writing on 28.12.2019, whereafter the applicants were released on bail and the terms and conditions are mentioned in the bail orders regarding the amicable settlement between the parties thereafter, in case of non-performance of the terms and conditions of the agreement dated 28.12.2019, opposite party no. 2 moved cancellation of bail and later on, approached to the Apex Court, wherein, notice was issued and thereafter, the addendum dated 14.07.2022 to settlement agreement was entered into between the parties and the admitted dispute of eight properties is mentioned, disclosure of the same has been given in paragraph 30 of the supplementary affidavit in connected Application u/s 482 No. 6922 of 2022 filed by the counsel for the applicants, whereafter, out of eight

properties, four properties were transferred vide registered sale deed in favour of the opposite party no. 2 and her company and the rest of the four properties are also proposed to be transferred, though in the meantime i.e, on 19.06.2023, UPRERA in its meeting, took decision to make a ban over the transfer of the property of the M/s Ansal Company which is an admitted fact and the same is in the knowledge of the opposite party no. 2, as mentioned paragraph 8 of the short counter affidavit filed on his behalf. After the aforesaid ban was imposed, the property which was proposed to be transferred, for which the allotment letters and the transfer of title was also issued, could not be executed.

32). From perusal of the addendum settlement agreement as well as the notice issued by the UPRERA indicates that the dispute is relating to the plots/houses between the parties for which time and again they agreed to amicably settle the issue and the settlement agreement was also honoured to some extent, upto the UPRERA imposed the ban. It has also been admitted and undertaken by the applicants that they are still ready to transfer the rest of the property in favour of the opposite party no. 2 or her company and they are trying to get the ban lifted by the UPRERA.

33). This court has also noticed the fact that it is not the case where the property in question was on the first day of MoU, was in the possession or ownership of the company, namely M/s Ansal and there was also certain terms and conditions in the policy regarding the handing over the land to the M/s Ansal Company, subject to exchange of certain lands, canals, chak-marg, etc. and after it was decided that the M/s Ansal succeeded to have the Hi-Tech Township in the name of Sushant Golf City Lucknow, the dispute with respect to exchange of public utility lands were creeping in, throughout years and if an MoU was signed in between the M/s Ansal Company as well as the opposite party no. 2 and its company, then certainly the same would have been with implied condition or circumstances, which would arise subsequently and more particularly, where the intent of committing cheat and fraud is under question. It is not understandable that how a company or person can

imagine that certain dispute would arise in future, which will create a hurdle for the subsequent performance of an MoU. Might be that there is some recklessness or letharginess on the part of the M/s Ansal Company and its authority to get decide the matter, but ultimately that cannot be termed as an offence, particularly with respect to execution of the MoU between the applicants and the opposite party no. 2.

34). Regarding contention of counsel for the opposite party that fraud or cheat shall be looked into on the first date of occurrence of the offence, it is correct but so far as the case in hand is concerned, it is very clear that on the date of MoU between the complaint and the applicants and company, no offence was committed alleged on the date of occurrence of the offence as the issue of non performance of the MoU came later, when certain issues arose between State and the applicants company and as result, the MoU could not be honoured and the bonafide of the company and applicants is apparent that they tried to resolve the issue by entering into further settlement and addendum settlement and those were honoured to the extent of the decision taken by UPRERA, thus this Court is of considered opinion that the dispute is of commercial between the parties. So far as any other investigation/enquiry said to be completed against the applicants, that can not be intermingled with the instant matter and that will be investigated and examined, separately.

35). It's trite law that mens rea is an essential ingredient for composition of offence and all civil wrongs can not be termed as an offence. The facts of each and every case are to be examined while reaching to the conclusion that whether, a wrong act comes under the purview of offence? So far as the present matter is concerned, while examining the facts of the case, it emerges that mens rea is missing.

36). This court is also not unmindful to the ratio of the judgement and orders rendered in cases, namely *State of Haryana Vs. Bhajan Lal* (1992) SUPP 1 SCC 335, *Gian Singh Vs. State of Punjab* (2012) 10 SCC 303, *Gold Quest International Private Limited Vs. State of Tamil Nadu* (2014)

15 SCC 235, Parbatbahi Aahir @ Parbhatbhai Bhimsinghbhai Karmur and others Vs. State of Gujrat (2017) 9 SCC 641, Mitesh Kumar Jha Vs. State of Karnataka; (2021) SCC OnLine SCC 976, Gulam Mustafa Vs. State of Karnataka and another (2023) SCC OnLine SC 603, Inder Mohan Goswami and anr. Vs. State of Uttarakhand (2007) 12 SCC 1 and Syed Yaseer Ibrahim Vs. State of Uttar Pradesh (2022) SCC OnLine SC 271.

37). Admittedly, after the violation of terms of MoU, the parties have entered into settlement and the addendum settlement and that has been performed and honoured to some extent and which further could not be performed for the circumstances, which are not under control of the applicants. Further, if the Complainant has any grievance for non compliance of the MoU or breach of the terms and conditions of the MoU, it is always open to raise it before the court of civil competence.

38). This court has also taken note of the undertaking of the applicants that they are still ready to perform addendum dated 14.07.2022 to the settlement agreement and therefore this court is of opinion that allowing the further criminal proceeding would amount to harassment of the applicants and therefore the criminal proceedings against the applicants are abuse of process of law.

39). Consequently, the impugned summoning order dated 24.12.2019 is hereby set aside and the criminal proceedings arising out of Case Crime No. 878 of 2017 u/S 419,420,467,468, 504, 506 of IPC, Police Station- P.G.I., District- Lucknow, are hereby quashed.

40). The application is **allowed** accordingly.

41). Office is directed to communicate this order to the trial Court concerned.

Order Date :- 01.02.2024

Anurag