

Neutral Citation No. - 2024:AHC-LKO:74349-DB

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 6997 of 2022

Petitioner :- Ravi Babu And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And 26 Others

Counsel for Petitioner :- Nadeem Murtaza, Ankit Yadav, Shuchita Singh

Counsel for Respondent :- G.A., Pritish Kumar

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 5888 of 2022

Petitioner :- Joel Jean Gerard Scanu

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Others

Counsel for Petitioner :- Nadeem Murtaza, Ankit Yadav, Shuchita Singh

Counsel for Respondent :- G.A., Amal Rastogi, Pritish Kumar

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 6389 of 2022

Petitioner :- Franck Maurice Lyonel Lejeune And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Others

Counsel for Petitioner :- Nadeem Murtaza, Ankit Yadav, Shuchita Singh

Counsel for Respondent :- G.A., Amal Rastogi, Pritish Kumar

Hon'ble Vivek Chaudhary, J.

Hon'ble Om Prakash Shukla, J.

1. Heard Shri S.C. Mishra, learned Senior Advocate assisted by Shri Rajat Pradhan, Advocate, Shri Abhishek Awasthi, Advocate, Shri Ankit Yadav and Shri Nadeem Murtaza learned Counsel for the petitioner and Shri Amal Rastogi, Advocate, Shri Pritish Kumar,

learned Counsel for the private respondent, learned A.G.A. for the State-respondents and perused the material placed on record.

2. These writ petitions, have been filed seeking quashing of FIR/Case Crime No.0514/2022 dated 03.08.2022 under Sections 352/406/420/447 and 506 Indian Penal Code, 1860, registered at Police Station-Vibhuti Khand Gomti Nagar, District-Lucknow

3. As the factual matrix in the above-captioned writ petitions emancipates from the same impugned First Information Report(FIR), these petitions are being decided by this common judgment.

4. Brief facts of the case are that the FIR was registered on the basis of a written complaint by Respondent Nos. 4 to 27, in relation to a premises situated at Rohtas Presidential Arcade, No. TC-G 4/4, Vibhuti Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh ("Premises") leased by Rohtas Projects Limited ("Rohtas") in favour of Decathlon Sports India Private Limited ("Decathlon") for alleged offences committed by the petitioners. It has been alleged in the said FIR that: -

(i) The respondents had purchased the premises from Rohtas through registered sale deeds.

(ii) Prior to such purchase by the said respondents, the premises were leased to Decathlon for a period of 20 years.

(iii) Even after selling the premises to the said respondents, Rohtas used to collect rent from Decathlon and make over such rent to the said respondents.

(iv) However, since the year 2018, the Directors and employees of Rohtas became unavailable and ran away with entire money of all investors.

(v) Further, during the same time, Decathlon also stopped paying rent in respect of the Premises, despite repeated demands being made by the said Respondents.

(vi) On 15 July 2022, the said Respondents got to know from reliable sources that Decathlon had opened a new showroom in the LuLu Mall and shifted their entire goods from the Premises to the said Mall.

(vii) In such circumstances, the said Respondents found that the Premises was lying vacant and accordingly they proceeded to lock it.

(viii) According to these respondents, a sum of INR 5 Crores has become due and payable by Decathlon on account of unpaid rent from the year 2018 till July 2022.

(ix) It has been further alleged that, after these respondents had put lock on their premises, some officers of Decathlon came back to the Premises and forcefully put their own locks on the Store. Upon being opposed, the said officers of Decathlon began to assault the

said Respondents. The said representatives of Decathlon were acting on the instructions of the Petitioners and/or other accused persons named in the FIR.

(x) One of Decathlon's representatives went on to threaten the said Respondents that in the event they continued to demand the unpaid rents, they might end up losing their lives.

(xi) Thus, it has been concluded in the complaint that Decathlon's employees were planning and intended to embezzle and/or misappropriate the said sum of INR 5 Crores.

5. On the basis of the aforesaid allegations, the Vibhuti Khand Police Station, Gomti Nagar, Lucknow proceeded to register the impugned FIR for investigation into offences punishable under Sections 352/406/420/447/506 of the IPC against the Petitioners.

6. The petitioners are employees of Decathlon S.A., France and/or its subsidiaries including Decathlon, a company within the meaning of the Companies Act, 1956 (as amended from time to time) with its registered office at Survey No. 78/10 A2, Chikkajala Village, Bellary Road, Bangalore 562157, Karnataka, India. It is claimed that Decathlon is engaged in retail business of sporting goods and equipment across various cities in India and as far as the lead petition being Criminal Misc. Writ Petition No. - 6997 of 2022 is concerned, the Petitioner No. 1 is a Department Manager of Decathlon, Petitioner No. 2 is Expansion Coach of Decathlon and Petitioner No. 3 is CFO - Europe of Decathlon S.A. and formerly a Director of Decathlon.

7. It would be apt to mention herein that an interim order dated 18.08.2022 had been passed by this court in one of the connected matter's filed by Mr. Joel Jean Gerard Scanu, Chief Financial Officer and Director of Decathlon, (Criminal Misc. Writ Petition being CRLP No. 5888 of 2022), wherein this court has expressed its prima-facie view in the following words:

"Having heard the learned counsels for the parties and perused the record, we are prima facie of the opinion that as of now the proceedings are pending under Section 66 of the IBC 2016 in respect to the rent of the premises in question before the NCLT as has already been noticed while mentioning the submissions of the rival parties hereinabove and prima facie the dispute does appear to be of a civil nature. Whether the proceedings are maintainable before the NCLT or not is an issue to be raised by the private opposite parties before NCLT. The dispute is essentially regarding rent for the period 2018 and thereafter, which is precisely the issue pending before the NCLT. It is a moot point as to how far element of criminality is involved in the matter if the dispute can be raised before other forums as per law and has been raised as claimed by the petitioner.

Therefore, while investigation shall go on and the petitioner shall appear before the investigating officer to get his statement recorded, we are of the opinion that the petitioner shall not be arrested in Case Crime No.0514 of 2022, under Sections 352, 406, 420, 447, 506 I.P.C., Police Station-Gomti Nagar, Lucknow, subject to his co-operation in the investigation. The investigating officer shall also take into consideration as to whether it is primarily a civil dispute and whether any criminal offence is made out against the petitioner in this regard or not. The investigating officer shall also consider as to whether recording of statement of petitioner is possible through video conferencing, as, the petitioner is said to be stationed out of the country and if he finds that it is possible then he shall do the needful in view of the proviso to Section 161(3) Cr.P.C.

Let pleadings be exchanged between the parties within eight weeks.

List immediately thereafter."

8. Similarly, in another connected matter being Criminal Misc. Writ Petition being CRLP No. 6389 of 2022, which was preferred by three petitioners namely (i) Mr. Franck Maurice Lyonel Lejeune, Retail City Leader; (ii) Mr. Parth Nain, Store Operations Manager:

LuLu Mall; and (iii) Mr. Siddhant Agarwal, Store Leader: LuLu Mall, Lucknow of Decathlon, a similar restraint order dated 1st of September, 2022 was passed, which reads as follows:

"Accordingly, having regards to the facts and circumstances of the case, we provide that till the next date of listing, or till the filing of the police report under Section 173(2) CrPC, whichever is earlier, the Petitioners shall not be arrested in connection with the impugned FIR dated 3.8.2022.

Petitioner 1 resides outside the country and as such, the Investigating Officer would also consider as to whether it would be feasible to record his statement through video conferencing and, if so, the officer shall take appropriate step in this regard."

9. The main grounds of the petitioners for seeking quashing of the present FIR are as follows: -

(a) None of the ingredients of the alleged offences are made out in the FIR even if the contents of the FIR are deemed to be true and correct. The Petitioners have sought to explain in the present Petition how none of the penal offences mentioned in the FIR are borne out from the facts of the present case.

(b) The FIR does not even disclose commission of any offence, much less any cognizable offence, by the Petitioners even if the allegations therein are taken at face value. Thus, as per the law laid down by the Hon'ble Supreme Court of India in **State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. (AIR 1992 SC 604)**, the registration of the FIR and continuation of any proceeding pursuant thereto amounts to a gross abuse of the process of court.

(c) The present case is a fit case for quashing as the falsity of the FIR is also borne out of the fact that the FIR does not even state any date of alleged occurrence and/or commission of any of the alleged offences stated therein, and is completely bereft of such particulars and therefore, vague and unreliable.

(d) The purported disputes, if any, between the parties are commercial and/or civil in nature as also prima facie found by this Hon'ble Court in its order dated 18.08.2022 passed in Criminal Misc. Writ Petition CRLP No. 5888 of 2022.

(e) The Respondent Nos. 4 to 27 have filed a false complaint against the Petitioners in order to give a colour of criminality to the purported disputes in an attempt to coerce, harass and intimidate the Petitioners to extort monies which the said Respondents have no right to receive and which in any event, is secured by way of the FD created in terms of the Ld. NCLT's order dated 22 August 2022 passed in IA No. 3851 of 2022 in Company Petition No. (IB) 1022 (ND) of 2018.

(f) The registration of the FIR is in clear violation and derogation of the well settled principles of criminal law as laid down by the Hon'ble Supreme Court in a catena of judgments, including in **Randheer Singh v. State of U.P. and Ors. (2021 SCC OnLine SC 942)** and **Mitesh Kumar J. Sha v. State of Karnataka and Ors. (2021 SCC OnLine SC 976)**, wherein it has been held that criminal proceedings must not be used as instruments of harassment in an abuse of the process of law and

should be quashed when a dispute of a civil nature has been given colour of a criminal offence.

(g) The FIR is registered as a counterblast to an unfavourable outcome of an arbitration proceeding initiated by Respondent Nos. 6 to 27 wherein similar frivolous and baseless allegations and claims were made against Decathlon, and the said arbitration proceeding has since been terminated by an order dated 15 July 2022 passed by the Arbitral Tribunal.

(h) The allegations in the FIR are false, vindictive, frivolous, malicious, untenable in law and made with a mala fide intent and an ulterior motive only for wreaking vengeance on the Petitioners and Decathlon.

10. Learned Sr. Counsel for the petitioners giving a background of the present case, which eventually culminated into the registration of the impugned FIR, would submit that Decathlon faced numerous issues due to Rohtas' failure to fulfil obligations under the Lease Deed dated 07.04.2017, affecting the operation of Decathlon's store. Despite repeated requests from Decathlon, Rohtas failed to address these issues, including those related to repair, maintenance, power backup, payment of taxes, water charges, and common area maintenance. As a result, Decathlon incurred substantial costs to maintain its operations and avoid business disruption in Lucknow, after having been made significant investments in the business. From July 2017 onwards, Decathlon noticed that a part of the rent it paid was being returned to its account. Furthermore, by June 2018, Decathlon stopped receiving

the mandatory monthly invoices from Rohtas, hindering its ability to make rental payments under the Lease Deed. In response to Rohtas' continued failures and breaches under the aforesaid Lease Deed dated 17.04.2017, Decathlon issued a notice on 16 August 2018, highlighting the breaches and exercising its right to withhold rent under Clause 4.11 of the Lease Deed until Rohtas remedied the issues. Despite this, Rohtas failed to remedy the breaches, and its personnel became untraceable.

11. Learned Sr. Counsel for the petitioners has brought to the notice of this court the factum of Corporate Insolvency Resolution Process (for short '**CIRP**') having been initiated by the Ld. National Company Law Tribunal, New Delhi (hereinafter referred to as "**NCLT**") against Rohtas vide an order dated 30 September 2019, whereinafter the management of the said company has now come to be vested with Interim Resolution Professional (for short '**IRP**') for conduct of the CIRP under the provisions of Insolvency & Bankruptcy Code, 2016. It is the submission of the learned Counsel that during the said process, the IRP communicated with Decathlon, demanding payment of rent under the aforesaid Lease Deed, with the threat of lease termination if payment was not made. Decathlon engaged with the IRP, informing it of the operational issues arising from Rohtas' continuous defaults and also requested the IRP to provide appropriate remedy for Rohtas' breaches and take steps to protect Decathlon's interests in ongoing legal proceedings. Despite assurances from the IRP, no action was taken, and Decathlon was left with unresolved operational challenges.

12. It has been submitted that subsequently, on the IRP's assurance that the operational issues would be resolved, Decathlon made a payment of Rs 25,96,784 (Rupees Twenty Five Lakhs Ninety Six Thousand Seven Hundred Eighty Four Only) towards part of the rent for the period from 1 October 2019 to 30 November 2020. Although, this payment was made on a without-prejudice basis, subject to the IRP's resolution of Decathlon's issues and involvement in the legal proceedings, however the IRP failed to take necessary steps, and no further resolution was achieved.

13. It has been further submitted by the learned Sr. Counsel that in the interregnum, certain respondents began claiming to be allottees or owners of various parts of the Premises in possession of decathlon, started demanding rent and/or possession of the premises. These respondents, who were not even parties to the aforesaid Lease Deed dated 17.04.2017, based their claims on purported transactions with Rohtas regarding the Premises. According to him, these respondents made inconsistent and contradictory assertions as is apparent from the fact that some of the respondents, claimed to be Rohtas' successors and permitted assignee's under the Lease Deed, whereas some claimed that Rohtas acted as an agent and that the rent was collected by Rohtas on their behalf. Again, some respondents even contended that Rohtas was their predecessor-in-interest and that the Lease Deed created a joint tenancy in their favor.

14. That being the contradictory stand of the respondents and Decathlon being faced with the aforesaid issues which went to the root of the controversy between the parties relating to payment of

rents and/or ownership of the premises, it has been further submitted by the Ld. Senior counsel that subsequent to filing of the Writ Petition CRLP No. 5888 of 2022, an order dated 22 August 2022 came to be passed by the Ld. National Company Law Tribunal, New Delhi ("NCLT") in IA No. 3851 of 2022, which was filed by Decathlon in Company Petition No. (IB) 1022 (ND) of 2018. In the said I.A, the learned NCLT not only permitted Decathlon to deposit Rs. 5,04,53,593 (Five Crores Four Lakhs Fifty Three Thousand Five Hundred Ninety Three Only) towards unpaid rent for the Premises under the aforesaid Lease Deed dated 17.04.2017 for the period from 1 January 2018 to 15 July 2022, with the Registry of the NCLT, New Delhi, but also directed that the said amount deposited by Decathlon be not withdrawn without the leave of the learned NCLT. It has been further submitted that Decathlon promptly in compliance to the orders of NCLT, created a fixed deposit under Fixed Deposit Account No. 071-809404-051 on 29 August 2022 for INR 5,04,53,593 issued by The Hongkong and Shanghai Banking Corporation(HSBC) Limited, India, M.G. Road, Bangalore Branch," which is valid for a tenure of 365 days ("FD") & is subject to renewal upon maturity and the said FD is under lien (pledged) in favour of Drawing and Disbursing Officer, NCLT, New Delhi.

15. Thus, it has been submitted that the FIR in question is merely an attempt to intimidate the petitioners for payment of rent, which is basically a civil dispute. Reliance has been placed on Mitesh Kumar J. SHA v. The State of Karnataka, 2021 SCC OnLine SC 976, whereby the Hon'ble Apex Court inter alia observed as under:

"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."

16. Ld. Sr. Counsel submitted that besides the fact that the impugned FIR in essence is a civil dispute and gives merely overtures of a criminal offence, it is also imperative to examine that none of the ingredients of the penal provisions invoked in the FIR have been made out or established. He further, refers to the seminal judgement in *State of Haryana v. Bhajal Lal & Ors.*, AIR 1992 SC 81, whereby the Hon'ble Apex Court highlighted the following illustrative categories wherein the power under Section 482 of the Cr.P.C. ought to be exercised by the High Courts to prevent the abuse of process of law and to secure the ends of justice:

"102.(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)....

(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) ...

(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) ...

(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."

17. According to him, the present case is squarely covered by the above illustrations contained in 1, 3, 5 & 7 of **Bhajan Lal (supra)** and that the continuation of the impugned criminal proceedings would be

an abuse of the process of law. Thus, the petitioner seeks quashing of the present FIR.

18. Learned Sr. Counsel for the petitioners has further submitted that the allegations made in the FIR, apart from failing to make out any case punishable under Sections 352/406/420/447/506 of the IPC, are wholly incorrect and the Petitioners have briefly set out the reasons in support of the averments and submissions that none of the offences mentioned in the FIR have been committed even if the allegations contained therein are taken on face value, inasmuch as the ingredients of none of these offences are made out. It has been submitted that the present FIR has been filed maliciously to give a purely civil and contractual dispute a criminal colour. The Ld. Sr. Counsel submits that the Respondent No. 4 to 27 under the garb of criminal proceedings sought recovery proceedings against the petitioners by coercing them to recover amounts paid by them in the company under insolvency. A bare perusal of the present complaint/ FIR, and the facts as detailed above, is sufficient to reveal that the dispute is of a civil nature and resorting to criminal justice system to settle the same is gross abuse and misuse of the law. With respect to the effect of the Final report having been filed, Ld. Counsel for the petitioner submits that the Final Report in the present case was filed on 18.07.2023, after the filing of the present quashing petition and Ld. Senior Counsel relies on the judgement in **Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706**, and submits that there is no bar to quash the proceedings even after the Final Report has been filed.

19. Concluding their arguments, learned Counsels for the petitioners finally submitted that the petitioners have no involvement in the purported dispute of unpaid rents with the Respondents. Petitioner No. 2 in the lead petition is a permanent residents of the Russian Federation and was not even employed by Decathlon when the alleged offences in the FIR are alleged to have been committed by them. Petitioner No. 1 in the lead petition is a Department Manager of Decathlon and is not empowered to deal with or engage himself with the day to day affairs of the business carried out at Decathlon's store. Further, a bare perusal of Petitioner No. 3's Passport would reveal that he has not even been in India since 15 June 2022. Thus, according to ld. Counsel the only purpose of roping in high ranking officials and employees of Decathlon in the present case is to create undue pressure upon Decathlon to concede to the unjust and wrongful demands of the relevant respondents and the sequence of events narrated hereinabove would amply demonstrate that the FIR is aimed and devised only with the above ulterior objective and unfortunately, the State machinery is being misused for that illegal purpose and as such this Court's intervention for quashing of the impugned FIR is imminent to avoid any miscarriage of justice.

20. On the other hand, learned Counsel for the private respondents and learned A.G.A. for the State-respondents would submit that the FIR discloses specific criminal offenses under the Indian Penal Code (IPC), particularly regarding allegations of fraud, misrepresentation, criminal breach of trust, and dishonest misappropriation of property. The FIR is grounded in clear allegations of criminal conduct,

Decathlon's unlawful withholding of rent, failure to fulfil its contractual obligations, and misappropriation of funds. Such allegations require the attention of law enforcement and should not be dismissed prematurely. Further submission is that the FIR is not a frivolous or baseless claim and is not meant to be an encyclopaedia of all the facts. Rather, it is a legitimate exercise of the respondents' rights to seek legal redress for the financial and reputational harm caused by Decathlon's actions. The FIR sets in motion a police investigation that is necessary to determine the veracity of the allegations and to bring the alleged perpetrators to justice.

21. Further they submit that the petitioner's plea overlooks the fact that criminal and civil claims can exist independently. The petitioner may be involved in ongoing civil litigation and corporate insolvency resolution processes (**CIRP**) related to the lease dispute, but these civil issues do not preclude the criminal nature of the allegations at hand. The FIR filed is based on clear and direct criminal allegations that cannot be ignored merely because there is an existing civil dispute between the parties and mere existence of a civil dispute or the pendency of the **CIRP** does not bar the initiation or continuation of criminal proceedings. If criminal offenses are made out, they should be prosecuted, irrespective of ongoing civil proceedings. The judicial system provides distinct remedies for civil disputes and criminal offenses, and both processes can, and should, proceed simultaneously. It has been admitted that a Final Report for closure of the impugned FIR has been submitted by the investigating agency in

the learned Trial Court on 18.07.2023, however it has been submitted that the matter is pending consideration as per law.

22. This court after hearing the rival submissions by the parties and on a thorough examination of the facts, legal arguments, and documents referred by both parties, Court finds that the basic dispute between the parties relates to payment of unpaid rent and wrongful occupation of the premises located at Rohtas Presidential Arcade, Vibhuti Khand, Gomti Nagar, Lucknow. Based on the said allegations, it is the case of the complainant that the petitioners have allegedly cheated the complainant of the unpaid rent and have allegedly criminally misappropriated the said amounts and also trespassed the said premises.

23. Apparently, the dispute at hand is fundamentally of a civil and commercial nature, revolving around unpaid rent, non-fulfilment of contractual obligations, and related issues arising from the Lease Deed between the Petitioners (Decathlon) and Respondent Nos. 4 to 27 (Rohtas and their affiliates). The machinery of the criminal justice system should not be wielded as an instrument of intimidation and harassment. These issues are primarily contractual in nature and more appropriately addressed through civil remedies, rather than being pursued as criminal matters. The Petitioners have maintained that their actions were driven by operational exigencies and financial concerns related to the business's continuity, which were exacerbated by Rohtas' failure to fulfil its obligations under the Lease Deed.

24. The Hon'ble Apex Court in **R. Nagender Yadav v. State of Telangana, (2023) 2 SCC 195**, relating to quashing of FIR having criminal texture propounded the law in the following words:

"19. While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court."

25. This court cannot be oblivious of the fact that in the recent past there has been a growing trend in lodging of frivolous FIR's by giving civil disputes the garb of criminal matters in order to harass and intimidate the accused. It is settled law that to remedy the fate of lodging such frivolous FIR's and setting the criminal justice into motion, this Court in its exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India can quash such FIR's in justifiable cases in order to prevent the abuse of the process of the courts or to secure the ends of justice.

26. Thus, applying the above principles to present case, makes it manifestly clear that the present dispute is predominantly of a civil commercial nature and has been given the garb of criminal case by filing of the present FIR. This court finds substantial force in the contentions of Ld. Senior counsel for the petitioners that certain facts reveal a malafide intention to give a criminal colour to a purely civil commercial dispute. The fact that the respondents came into picture

only after execution of the lease deed dated 17.04.2017 and there had been an existing dispute between rohta's and decathlon relating to the upkeepment & maintenance of the premises is well documented. It is trite law that while considering a plea for quashing of FIR, it will not be just enough for this Court to look into the averments made in the FIR alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. This was held by the Apex Court in **Mahmood Ali & Ors. Vs. State of U.P & Ors.[(2023) SCC online 950]**

27. Further, it is also a matter of record that the unpaid rent of over Rs. 5 Crores of the Respondents stands deposited before the NCLT, New Delhi, as the lessor/ Rohta's according to the learned counsel is under the corporate insolvency resolution process. It is also a matter of fact that decathlon had legally taken the possession of the premises vide lease deed dated 17.04.2017 and there is no material to show that the possession had been handed over by decathlon to the private respondents. Further, the present FIR came to be lodged only after certain respondents were unsuccessful in their pursuit to recover rent under the Arbitration Proceedings. These all factors when weighed in the balance of its proprietary clearly shows that no offence of cheating or breach of trust or trespass is made out against the petitioners, in view of the following:

- **Section 406 (Criminal Breach of Trust):** The allegations in the FIR do not demonstrate any entrustment of property to the Petitioners, nor any dishonest misappropriation.
- **Section 420 (Cheating):** There is no indication in the FIR of any deception or inducement by the Petitioners to defraud the Respondents. No dishonest inducement or fraudulent act is outlined to support the charge of cheating.
- **Section 447 (Criminal Trespass):** The Petitioners were legally in possession of the premises under a valid lease agreement and were not trespassers. There is no valid claim of assault or unlawful entry by the Petitioners. In any case, the Petitioners' presence on the premises was lawful, pursuant to the Lease Deed, negating any trespass allegations.
- **Section 506 (Criminal Intimidation):** The FIR does not allege any specific threat or act of intimidation by the Petitioners.

28. Further, the Hon'ble Supreme Court in the case of **Hridaya Ranjan Prasad Verma vs. State of Bihar; (2000) 4 SCC 168** has observed 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, when any promise is made. (**also see**

Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360) 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.

29. Furthermore, the allegations in the FIR appears to be vague and do not meet the requisite legal thresholds to constitute criminal offences, thereby rendering the case inappropriate for criminal prosecution. This Court, in connected writ petitions (CRLP Nos. 5888/2022 and 6389/2022), has previously held that the nature of the dispute between the parties is commercial and civil, not criminal. The Court has recognized that such disputes should be resolved through civil proceedings, and has, in the past, directed the continuation of investigations without coercive action against the accused, reinforcing the petitioners' position in this case.

30. Further, the petitioners are actively involved in proceedings before the Hon'ble National Company Law Tribunal (NCLT), where a corporate insolvency resolution process (CIRP) has been initiated against Rohtas. In compliance with the NCLT's orders, Decathlon has already deposited Rs. 5.04 crore as part of an ongoing effort to resolve the rent-related disputes. The existence of parallel civil proceedings under the NCLT further underscores the civil nature of the dispute and calls into question the propriety of initiating criminal proceedings at this juncture.

31. In any case, this Court finds that the FIR fails to satisfy the essential ingredients required to establish the criminal offences under

Sections 352, 406, 420, 447, and 506 IPC and does not meet the prima facie criteria required to sustain criminal charges against the Petitioners, which infact has also resulted in filing of the Final Report dated 18.07.2023 for closure of the case against the petitioners by the Investigating agency. Although, a question arises as to when the police have already filed a Closure report, whether this court can still quash the FIR. This court may not be baulked any further, as there are various precedents on the subject that on receipt of such a closure report, the learned Trial Court can adopt one of the three courses i.e. (1) he may accept the report and drop the proceedings or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police. It is trite law that an FIR or any proceedings can be quashed at any stage provided this court feels the justifiable reasons for doing so and can quash even an FIR even after filing of the Final report as if, the FIR itself is quashed, all the consequent proceedings emanating therefrom will de facto be impugned. It is the bounden duty of the Court to exercise its inherent jurisdiction in order to prevent the abuse of the process of the court or to secure the ends of justice. Thus, this court finds that there is no legal impediment in considering the present writ petitions.

32. The Hon'ble Supreme Court in the case of **Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673**, distinctly held that if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal

proceedings to prevent abuse of process of the court. Further, relying on the decision in **Paramjeet Batra (supra)**, the Apex Court in **Randheer Singh v. State of U.P. (2021) 14 SCC 626**, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment and in **Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90**, it was again echoed by the Apex Court that where a dispute which is essentially of a civil nature and is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers by this court.

33. It is necessary here to remember the words of the Hon'ble Supreme Court in the celebrated judgment of **State of Karnataka v. L. Muniswamy [State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 : 1977 SCC (Cri) 404]** which read as follows : (SCC p. 703, para 7), wherein it was held

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

34. Given the civil nature of the dispute, the lack of any cognizable criminal offence, the ongoing proceedings before the NCLT, and the malafide intent behind the FIR, this court feels that continuation of the FIR and the associated criminal proceedings would result in undue harassment, and an abuse of the criminal justice system. Furthermore,

since the civil proceedings are already ongoing, criminal proceedings would be an inappropriate forum for resolving a contractual dispute that is more suitably addressed through civil litigation.

35. As a *sequitur* to the above observations and discussions and in the peculiar facts of the present case, all the writ petitions are **allowed** and as such the impugned FIR and all proceedings arising out of the said impugned FIR/Case Crime No.0514/2022 dated 03.08.2022 under Sections 352/406/420/447 and 506 Indian Penal Code, 1860, registered at Police Station-Vibhuti Khand Gomti Nagar, District-Lucknow are hereby **quashed**. In the facts of the case, there shall be no orders as to cost.

[Om Prakash Shukla, J.] [Vivek Chaudhary, J.]

Order Date :- 11.11.2024

Piyush/-