

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1047 of 2015

Arising Out of PS.Case No. - 27 Year- 2015 Thana – Kotwali District- PATNA

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Vijay L. Sonawane Son of Lakshaman Sonawane, Resident of 801, Balrama Building, Bandra Kural Complex, Bandra East, P.S. - Bandra, District - Mumbai.

.... Petitioner

Versus

1. The State of Bihar through the Superintendent of Police, Patna.
2. Inductus Consultant (P) Limited, 311, N.P. Centre, New Dak Bungalow Road, Patna through its Assistant Manager F & A, Santosh Kumar, Son of Ranbir Prasad Singh, Q. No. 94/96, L.B.S. Nagar, Patna - 800023.

.... Respondents

with

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Criminal Writ Jurisdiction Case No. 1049 of 2015

Arising Out of PS.Case No. - 27 Year- 2015 Thana – Kotwali District- PATNA

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Smaarftech Technologies (P.) Ltd. through its Director - Annand Sarnaaik, 801, Balrama Building, Bandra Kurla Complex, P.S. - Bandra (East), Mumbai - 400051

.... Petitioner

Versus

1. The State of Bihar through the Superintendent of Police, Patna.
2. Inductus Consultants (P), Limited, 311, N.P. Centre, New Dak Bungalow, Road Patna through its assistant Manager, F & A, Santosh Kumar, Son of Ranbir Prasad Singh, Qr. No. 94/96, L.b.S. Nagar, Patna 800023

.... Respondents

with

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Criminal Writ Jurisdiction Case No. 1154 of 2015

Arising Out of PS.Case No. - 27 Year- 2015 Thana – Kotwali District- PATNA

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Annand Sarnaaik Son of Madhav Rao, Director, Smaarftech Technologies (P) Ltd., Resident of Bandra East, P.S. Bandra East, District-Mumbai



.... Petitioner

Versus

- 1. The State of Bihar through the Superintendent of Police, Patna
- 2. Inductus Consultants (P) Limited, 311, N. P. Centre, New Dak Bunglow Road, Patna through its Assistant Manager, F & A, Santosh Kumar, son of Ranbir Prasad Singh, Qr. No. 94/96, L.B.S. Nagar, P.S.- Shastri Nagar, Patna- 800023

.... Respondents

with

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Criminal Writ Jurisdiction Case No. 1064 of 2015

Arising Out of PS.Case No. - 27 Year- 2015 Thana – Kotwali District- PATNA

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Amit Jaste Son of Prakash Resident of Mumbai, P.S. - Mumbai, District - Mumbai
the then Director of Smaarftech Technologies (P.) Ltd.

.... Petitioner

Versus

- 1. The State of Bihar through the Superintendent of Police, Patna.
- 2. Inducts Consultants (P) Limited, 311, N.P. Centre, New Dak Bunglow Road, Patna through its Assistant Manager F & A, Santosh Kumar son of Ranbir Prasad Singh Qr. No. 94/96, L.B.S. Nagar, Patna - 800023.

.... Respondents

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Appearance :

(In Cr. WJC No.1047 of 2015)

- For the Petitioner/s : Mr. Amish Kumar, Advocate
- For the State : Mr. Manoj Kumar Ambastha, GP-14
- For the Respondent no. 2 : Ms. Soni Srivastava, Advocate

(In Cr. WJC No.1049 of 2015)

- For the Petitioner/s : Mr. Amish Kumar, Advocate
- For the State : Mr. S. K. Sinha, GP-15
- For the Respondent no. 2 : Ms. Soni Srivastava, Advocate

(In Cr. WJC No.1154 of 2015)

- For the Petitioner/s : Mr. Amish Kumar, Advocate
- For the State : Mr. R. K. Roy, GP-18
- For the Respondent no. 2 : Ms. Soni Srivastava, Advocate

(In Cr. WJC No.1064 of 2015)

- For the Petitioner/s : Mr. Amish Kumar, Advocate
- For the State : Mr. Hrait Bhushan, AC to GP-17
- For the Respondent no. 2 : Ms. Soni Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 18-01-2017

All the aforesaid four writ petitions, filed by the respective petitioners arise out of the same first information report (hereinafter referred to as 'FIR'), therefore all of them are being disposed of by a common order.

2. The FIR is based on Complaint Case No. 26195 (C) of 2014, which was filed in the court of Chief Judicial Magistrate, Patna on 10th April, 2014 and was referred to the police for investigation vide order dated 24th November, 2014.

3. From perusal of the order-sheet of the aforesaid Complaint Case, it would appear that on 10th April, 2014, the case was fixed for hearing on 11th April, 2014. On 11th April, 2014, neither the Complainant nor his lawyer appeared before the court and the case was adjourned to 25th April, 2014 for hearing. On 25th April, 2014, the Complainant filed his attendance as also an application under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.') wherein he made request to transmit the copy of complaint to the Kotwali Police Station for investigation. On hearing the application of the Complainant, the Court directed the lawyer appearing on behalf of the Complainant to satisfy it on the issue of jurisdiction. Thereafter, the case was fixed on different dates, i.e., 21st May, 2014, 4th June, 2014, 9th June, 2014 and 8th July, 2014, but the Complainant took time



on all the aforesaid dates on one pretext or the other. The order-sheet would further indicate that since the court became vacant as the Presiding Officer was transferred, the case was adjourned from one date to another between 19th August, 2014 and 7th November, 2014 on several occasions. Subsequently, the learned Chief Judicial Magistrate, Patna vide order dated 24th November, 2014 referred the complaint to the Kotwali Police Station in exercise of power conferred under Section 156(3) of the Cr.P.C. for investigation pursuant to which Kotwali P. S. Case No. 27 of 2015 was registered on 12th June, 2015 under Sections 420, 406 and 120-B of the Indian Penal Code (hereinafter referred to as 'IPC') and investigation was taken up.

4. The complaint was filed by one Santosh Kumar, Assistant Manager of Inductus Consultants (P) Limited (hereinafter referred to as 'Complainant'), which deals in providing manpower to various companies and carries out the works relating to form scanning and data entry of various other companies through their specialized trained staffs and for that the Complainant on such orders and requisitions enters into agreement for carrying out such work on charging fixed rates as agreeable in between the parties under the agreement.

5. It is alleged that the accused Smaarftech Technologies (Private) Ltd. (hereinafter referred to as 'Company') is



also an incorporated company under the Indian Companies Act, 1956 having its registered Head Office at Mumbai, but has a Branch Office at 403, Fourth Floor, Vashudhara Metro Maul, Boring Canal Road, Patna. The accused Company is engaged in the business of providing technology, infrastructure management services and application software services. At the relevant time, petitioners, namely, Mr. Annand Sarnaaik was Chairman-cum-Managing Director, Mr. Vijay L. Sonawane was Assistant Manager and Mr. Amit Jaste was Director of the said Company. It is alleged that the aforesaid three petitioners approached the officials of the Complainant and presented that the Company has been awarded the project from the Government of Bihar for managing and maintaining technology infrastructure for issue of smart cards and other related aspects for rural masses to be employed under the NREGS Project. Since the Company is executing the said order, therefore, they requested the Complainant to carry out the part of the work on behalf of the Company on payment of requisite charges. After due negotiation and consultation, an agreement was reached and subsequently executed in between the Complainant and the Company on 23rd May, 2011.

6. According to the said agreement it was agreed that the Company, in consideration of performing the work diligently and to the satisfaction of the Company shall pay to the Complainant on the invoice raised on regular basis at the rate of Rs.3.25 per form payable



for every form's data entry from scanning & data validation. The Complainant in turn of the stipulation and assurances, as duly incorporated in the agreement also carried out the entire order to the satisfaction of the accused and thereafter raised invoices from 22nd June, 2011 to 14th January, 2012 for a sum of rupees twenty seven lac sixteen thousand two hundred fifty seven only. The said invoice contained the bills relating to the performance and completion of the work as per the order of the accused Company. The Complainant after submitting invoices, asked the Company to make payment and after great persuasion and follow up in the matter the Company made payment to the tune of rupees sixteen lac ninety one thousand seven hundred forty eight only till 6th June, 2013.

7. It is alleged that for the remaining amount the Complainant regularly reminded the accused persons to clear entire payment, but on each occasion the accused went on assuring but without complying with the promise made in this regard. Ultimately, the Complainant, on finding evasive tendency on the part of the accused officials of the Company, sent legal notices, apprising therein that the past reminders were never carried out, but the legal notices also failed to yield any result.

8. It is further alleged that from the act of omission and commission the Complainant became amply sure that the officials of the Company are simply giving false assurance without any



intention to comply with the same.

9. Heard Mr. Amish Kumar, learned counsel for the petitioners, Mr. Manoj Kumar Ambastha, learned Government Pleader for the State in Cr. WJC No. 1047 of 2015 and Ms. Soni Srivastava, learned counsel for respondent no. 2. Other learned counsel appearing on behalf of the State in different writ petitions have adopted the submission made by Mr. Ambastha.

10. It is contended by Mr. Amish Kumar, learned counsel for the petitioners that from perusal of the complaint petition, which culminated in institution of Kotwali P. S. Case No. 27 of 2015, it is apparent that no prior application under Section 154(1) or 154(3) of the Cr.P.C. before filing an application under Section 156(3) of the Cr.P.C. was filed by the Complainant. He contended that the FIR in question has been registered in complete violation to the mandate of the Supreme Court in **Priyanka Srivastava and Anr. vs. State of U.P. and Ors.**, reported in (2015) 6 SCC 287.

11. It is contended that in terms of the agreement the Complainant was required to give minimum output of five lakh data entry and scanning work per month. It was required to give 99.6 per cent accuracy in the proof reading and document management of the forms. However, the performance level of the Complainant was far below this bench mark and several errors were detected during the course of work. Therefore, there was substandard performance level



by Complainant. The Complainant also failed to submit the necessary reports on the agreed frequency to the Company and the default continued for a long period of time. In view of these errors and failure to submit the report, the Company's work had suffered a lot and the Government of Bihar (acting through Beltron) imposed penalties on the Company on various quarterly payments. A portion of the same was pertaining to the deficiency in work performed by the Complainant.

12. It is contended that a total sum of Rs.91.53 lakh penalty during the financial year 2011-2012 and thereafter till mid of 2012 was imposed by the Government of Bihar and 15 per cent of which pertains to the work of the Complainant. In view of performance and other issues, the Company had approved the partial bills raised by the Complainant to the extent of Rs.16,91,748/-, which was the final amount payable to the Complainant in terms of the agreement and the Company was legally entitled not to pay the remaining amount of Rs.13.73 lakh.

13. Mr. Amish Kumar, learned counsel for the petitioners contended that *prima facie* no criminal offence against the petitioners is made out and the present prosecution has been instituted with *mala fide* intention for the purpose of harassment. He further contended that the dispute, if any, between the parties is purely of civil nature, which has been deliberately converted into a criminal



case with a view to put pressure upon the petitioners. He contended that the allegations levelled against the petitioners, at best, be termed as breach of contract for which the appropriate remedy would be before the civil court. It is further contended that even if the uncontroverted allegations made in the complaint are to be read as a whole and accepted in their entirety as true, no case would be made out against the petitioners and allowing the prosecution to continue any more would be nothing, but an abuse of the process of court.

14. In support of the aforesaid submissions, learned counsel for the petitioners has placed reliance upon the following decisions of the Supreme Court :-

- (i) **State of Kerala vs. A. Pareed Pillai and Anr.**
reported in (1972) 3 SCC 661
- (ii) **State of Haryana & Ors. Vs. Bhajan Lal and Ors.,** reported in 1992 Supp (1) SCC 335
- (iii) **Hridaya Ranjan Prasad Verma and Ors. vs. State of Bihar and Anr.,** reported in (2000) 4 SCC 168
- (iv) **Alpic Finance Ltd. vs. P. Sadasivan and Anr.,**
reported in (2001) 3 SCC 513
- (v) **S. W. Palanitkar and Ors. vs. State of Bihar and Anr.,** reported in (2002) 1 SCC 241
- (vi) **Anil Mahajan vs. Bhor Industries Ltd. and Anr,**



reported in (2005) 10 SCC 228

(vii) **Indian Oil Corporation vs. NEPC India Ltd. and Ors.**, reported in (2006) 6 SCC 736

(viii) **Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.**, reported in (2009) 14 SCC 696

15. On the Contrary, Ms. Soni Srivastava, learned counsel for the Complainant would submit that the writ petitions filed for quashing the FIR of Kotwali P. S. Case No. 27 of 2015 are not maintainable inasmuch as they have been filed hastily without waiting for the investigation to complete. She would submit that the petitioners have chosen to delay the proceedings before the court below by filing frivolous applications and as such the applications do not deserve any consideration. She would further contend that merely because there is civil remedy available to the Complainant, there is no impediment in continuation of criminal proceedings and the submission of the petitioners in this regard has got no merit as civil / commercial transactions may also involve acts, which have sufficient ingredients of cheating and as such the same would need to be dealt in accordance with law separately in a properly instituted criminal proceeding.

16. In support of her submission, she would place reliance on the decision of the Supreme Court in the case of **Trisuns Chemical Industry vs. Rajesh Agarwal and Ors.**, reported in 1999



(2) **PCCR 188** in which it held as under :-

“We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by the breach of agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement....”

17. She would also place reliance on the decision of the Supreme Court in the matter of **Rajesh Bajaj vs. State, NCT of Delhi & Ors.**, reported in **(1999) 3 SCC 259** in which it held as under:-

“It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent....”

18. Mr. Manoj Kumar Ambastha, learned Government Pleader appearing for the State would submit that to hold investigation into a cognizable offence is statutory duty of the police and at this stage the Court has no role to play. He would contend that since criminal case has been instituted pursuant to the direction given by the court of Magistrate, it would not be proper for this Court to interfere with the investigation of the case. According to him, once the investigation would be over it would be open for the court either to



proceed with the matter or drop the proceeding. He would contend that in given set of facts alleged in the complaint both civil wrong and criminal offence are made out and in view of the law laid down by the Supreme Court in **Indian Oil Corporation** (supra), if the commercial transaction or contractual dispute, apart from furnishing a cause of action to seek remedy of civil law, involves a criminal offence, quashing of the complaint at the initial stage of investigation would not be proper.

19. I have heard learned counsel for the parties and perused the records.

20. In view of the arguments advanced by the learned counsel for the parties, two questions arise for determination in the present case. The first question is whether or not the Chief Judicial Magistrate, Patna was justified in sending the complaint to the police under Section 156(3) of the Cr.P.C. for investigation and the second question is whether or not the allegations levelled in the complaint leading to institution of the FIR make out a criminal offence warranting investigation.

21. In order to adjudicate the aforementioned issues, at this stage, it would be pertinent to note that while issuing notices to the Complainant respondent no. 2, this Court after hearing learned counsel for the petitioners and learned counsel for the State recorded in its order dated 04th December, 2015 as under :



“By way of the present writ petition, the petitioners seek quashing of the first information report of Kotwali, P.S. Case No. 27 of 2015 registered under Sections 406, 420 and 120B of the Indian Penal Code.

It has been contended that the FIR in question has been registered in complete violation to the judgment of the Hon'ble Supreme Court rendered in the matter of Priyanka Srivastava and another vs. State of U.P. and others, 2015 (3) Supreme 152.

Issue notice to the respondent no. 2 both by registered cover with A/D as well as ordinary process for which requisites etc. must be filed within two weeks from today failing which the application shall stand rejected without further reference to a Bench.

Rule is made returnable within three months from today.

In the mean time, further proceedings in Kotwali P.S. Case No. 27 of 2015 pending in the Court of Chief Judicial Magistrate, Patna, shall remain stayed. Learned counsel for the State may seek instructions and file counter affidavit in the matter, in the meantime.”

22. After receipt of the notices issued in these four writ petitions, the Complainant filed counter-affidavit in Cr.WJC No. 1154 of 2015 stating therein that there are three other similar writ petitions and in all these petitions identical issues have been raised by the petitioners therein. Hence, for the sake of convenience and avoiding repetition, the reply in CrWJC No. 1154 of 2015 be considered as reply in other three writ petitions as well.

23. On perusal of the counter affidavit, I find that despite having due knowledge of the grounds raised in these writ petitions, the Complainant has chosen not to respond to the specific



plea of the petitioners that the FIR has been registered in complete violation of the law laid down by the Supreme Court in **Priyanka Srivastava's** case.

24. In **Priyanka Srivastava** (supra), the Supreme Court considered the scope of exercise of power by the Magistrate under Section 156(3) of the Cr.P.C.. It also considered the earlier decisions in this regard in paras 20 to 25, which are extracted hereinbelow :-

“20. The learned Magistrate, as we find, while exercising the power under Section 156 (3) Cr PC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156 (3) Cr PC, cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. Police officer's power to investigate cognizable case.-

(1) Any officer in charge of a Police Station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a Police Officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli



Lakshminarayana Reddy v. V. Narayana Reddy (1976) 3 SCC 252, had to express thus: (SCC p. 258, para 17)

“17. ... It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173.”

22. In Anil Kumar v. M K Aiyappa (2013) 10 SCC 705, the two-Judge Bench had to say this: (SCC p. 711, para 11)

“11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed v. state of Gujarat (2008) 5 SCC 668 examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156 (3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156 (3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156 (3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

23. In Dilawar Singh v. State of Delhi, (2007) 12 SCC 641, this Court ruled thus: (SCC p 647, para 18)

“18. ...11. The clear position therefore is



that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156 (3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156 (3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

24. In *CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.*, (2005) 7 SCC 467, the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156 (3) of the Code of Criminal Procedure. And again: (*Madhao v. State of Maharashtra*, (2013) 5 SCC 615, SCC pp. 620-21, para 18).

“18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156 (3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance



of the offence itself. As said earlier, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1) (a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156 (3)."

25. Recently, in *Ramdev Food Products (P) Ltd v. State of Gujarat*, (2015) 6 SCC 439, while dealing with the exercise of power under section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, para 22)

"22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed"."

25. After analyzing the statutory provisions of the Cr.P.C. and the earlier decisions of the Supreme Court as stated hereinabove, the Court observed in paras 27 to 31 as under :

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons



are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156 (3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institution Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating “as per the application” to lodged an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156 (3) CrPC is a simple application to the court for issue of a



direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154 (3), indicating it has been sent to Superintendent of Police concerned.

29. At this stage it is seemly to state that power under Section 156 (3) CrPC warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim can not invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156 (3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the frame work of the said Act or under Article 226 of the Constitution of India. But it can not be done to take undue advantage in a criminal court as if some body is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154 (1) and 154 (3) while filing a petition under Section 156 (3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect



shall be filed. The warrant for giving a direction that an application under Section 156 (3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of the allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/ family dispute, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalit Kumari vs. State of U.P., (2014) 2 SCC 1 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

26. There is no reference in the complaint petition that the Complainant did approach the Officer-in-Charge of the police station for recording information disclosing commission of a cognizable offence and on refusal to register the FIR, the Complainant sent substance of such information in writing and by post to the Superintendent of Police under Section 154(3) of the Cr.P.C.. On query made by the Court, learned counsel for the Complainant conceded that there is nothing on record on the basis of which it can be said that the Complainant ever approached the police for institution of the FIR before filing the Complaint. Thus, admitted position is that before filing the complaint, the Complainant did not take any action



either under Section 154(1) or under Section 154(3) of the Cr.P.C..

27. Further, it would be evident from the order-sheet of the court of Chief Judicial Magistrate that the complaint petition was filed in the court of Chief Judicial Magistrate, Patna on 10th April, 2014. Thereafter, on 25th April, 2014, the Complainant filed an application for sending the complaint to the Kotwali Police Station for investigation under Section 156(3) of the Cr.P.C. whereafter on 24th November, 2014, the learned Chief Judicial Magistrate allowed the prayer of the Complainant and directed the complaint to be sent to Kotwali Police Station for investigation pursuant to which the FIR was registered.

28. Apparently, the complaint was referred to the police under Section 156(3) of the Cr.P.C. on mere asking of the Complainant and the learned Chief Judicial Magistrate did not apply his judicial mind at the time of exercise of power conferred under Section 156(3) of the Cr.P.C..

29. In view of the discussions made, hereinabove, I am of the opinion that sending the complaint to the police under Section 156(3) of the Cr.P.C. by the learned Chief Judicial Magistrate, Patna was not justified at all in view of the ratio laid down by the Supreme Court in the matter of **Priyanka Srivastava** (supra).

30. Coming back to the second question involved in the present case, let it be noted first that works agreement dated 23rd



May, 2011 entered into between the petitioners and the Complainant, has been made a part of the FIR as contained in Annexure- 1 to the writ petitions. Clauses 3.2, 10, 13, 15, 16.c, 21 and 22 of the aforesaid works agreement dated 23rd May, 2011 are extracted hereinbelow :

“3.2 GENERAL TERMS:

- *The CONTRACTOR shall give a minimum output of 5,00,000 data entry and form scanning per month.*
- *The CONTRACTOR shall abide by the quality standards as has been described in the Scope of Work as elaborated in Annexure –I of this agreement and as revised time to time by the COMPANY.*
- *The CONTRACTOR shall prepare the reports pertaining to the project most earnestly and will submit them as and when specified by the COMPANY.*

10. PENALTY : The CONTRACTOR shall be liable to pay penalty to the COMPANY in following cases:

- *If cases of error in the entered data, the CONTRACTOR will have to correct it and will also have to pay INR. 10.00 per such form.*
- *If any form is lost, the CONTRACTOR will have to pay INR 150.00 per lost form.*
- *If the CONTRACTOR is unable to fulfill the commitment of minimum output of data entry shortfall (number of entries less than 1,50,000 per month) as agreed under the said agreement, a penalty of INR 1 per would be levied.*
- *Failure to submit the task & quality report or any report as may be instructed by the COMPANY shall attract a penalty of Rs.1000 per day of delay in respect of each report.*
- *Penalty clauses and penalties, which are imposed by GOB shall be also imposed on back-to-back basis to the CONTRACTOR and CONTRACTOR shall be liable to pay the same to the COMPANY.*
- *At least 15% of the filled forms chosen through*



sampling must be verified to ensure the quality of Data. THE COMPANY can deduct the payment of all improperly filled in forms due to non compliance of the minimum set standards.

13. LIMITATION OF LIABILITY

(i) The CONTRACTOR shall be liable to the COMPANY for any and all losses and expenses of any nature whatsoever arising directly or indirectly from any wrongful, dishonest, criminal or fraudulent act of any of the representative, agents and / or employees engaged a providing services under/ pursuant to this Agreement.

(ii) The COMPANY shall have no liability whatsoever for any injury to the CONTRACTOR's employees, agents or representatives suffered while on the COMPANY premises or anywhere else, and including, without limitation, any liability for any damages suffered by reason of malfunction of any equipment.

15. INDEMNITY

CONTRACTOR hereby indemnifies and holds the COMPANY harmless against all costs, charges , expenses, claims, liabilities, losses, damages and proceedings which may be caused to or suffered by or made or taken against the COMPANY (including without limitation, any claims or proceedings by any customer (s) against the COMPANY directly or indirectly arising out of breach of this Agreement by the CONTRACTOR or of any improper or negligent performance, work, service , acts of omission or commission by CONTRACTOR, of any theft, robbery, fraud or other wrongful act by the CONTRACTOR or by any of its employees, agents, representatives or other persons controlled by CONTRACTOR for whose acts the CONTRACTOR is responsible.

CONTRACTOR further indemnifies and holds harmless the COMPANY from and against any and all claims arising from the death or personal injury of any Director, officer, employee



or agent of CONTRACTOR in the course of providing the services or performance of this agreement.

Without prejudice to the generality of the foregoing CONTRACTOR shall maintain and show the COMPANY the proof, of sufficient workmen's compensation insurance or similar insurance with a reputable insurer.

CONTRACTOR shall also maintain sufficient liability insurance and show proof of the same to the COMPANY, with a reputable insurer to protect the COMPANY from all customer claims arising directly or indirectly out of acts, omissions or misrepresentations of CONTRACTOR.

CONTRACTOR also indemnifies and holds harmless the COMPANY against any liability whatsoever that may be incurred by the COMPANY on account of any violation of the relevant and applicable labour laws by CONTRACTOR and against any claim made against the COMPANY by any employee, representative or agent of CONTRACTOR.

16. INSPECTION AND RIGHT TO AUDIT

c. The Company shall also have the right to set off/ deduct any of its dues against such amount due from it to CONTRACTOR.

21. JURISDICTION

The parties hereto irrevocably submit to the exclusive jurisdiction of the courts at Mumbai.

22.. ARBITRATION

In the event of any disputes, differences or claims arising between the parties arising out or in connection with or incidental to this agreement or the construction or interpretation of any of the clauses hereof or anything done or omitted to be done pursuant hereto, the parties shall first endeavour to amicably settle such disputes, differences or claims, failing which the same shall be referred to the arbitration of a sole arbitrator to be jointly appointed by both the parties. The arbitration proceedings shall be held in



Mumbai in accordance with the Arbitration & Conciliation Act, 1996.”

31. In terms of Clause 3.2, the Complainant was required to give a minimum output of five lakh data entry and form scanning per month. In terms of the agreement, the Complainant was required to give 99.6 per cent accuracy in proof reading and document management opening forms. In terms of Clause 10 of the agreement, the Complainant was liable to pay penalty at the rate of Rs.10/- per form for every error data. Furthermore, there were penalties of Rs.150/- per form in case of loss of any form, Rs.1/- for failure to submit task and quality report or any other report. In terms of Clause 15 of the agreement, the Complainant had agreed to indemnify the Company against any costs, expenses, losses, claims etc. suffered by or made or taken against the Company directly or indirectly arising out of breach of the agreement by the Complainant or any improper or negligent performance, work, service or act of omission or commission etc. In terms of Clause 16 of the agreement, the Company had a right to set off or deduct any of its dues against such amount due from the Complainant. In terms of Clause 21, the parties irrevocably submitted themselves to the exclusive jurisdiction of the courts at Mumbai and in terms of Clause 22, the parties had resolved that in the event of any disputes, differences or claims arising between the parties arising out or in connection with the agreement, they shall first



endeavour to amicably settle such disputes, differences or claims, failing which the same shall be referred to the arbitration by a sole arbitrator to be jointly appointed by the parties.

32. The contention of the petitioners is that in view of the deficiency of service and performance level issues as also failure to comply with various clauses of the agreement, the Complainant was liable to pay Rs.13.73 lakhs to the Company as part of the penalties imposed by Government of Bihar and attributable to the Complainant. Hence, the Company only approved the partial bills raised by the Complainant and in view of the same and also in view of the penalties payable by the Complainant, the Company had paid a sum of Rs.16,91,748/- to the Complainant, which was final amount payable to the Complainant.

33. In view of the allegations made in the Complaint and the defence taken by the petitioners relating to the terms of agreement, which forms part of the FIR, it is to be seen whether or not the ingredients of the offences alleged under Sections 406, 420 and 120-B of the IPC are attracted to the facts of the present case.

34. Section 406 of the IPC prescribes the punishment for the offence of '**criminal breach of trust**'. The offence of '**criminal breach of trust**' has been defined under Section 405 of the IPC, which is extracted hereinbelow :-

“405. Criminal breach of trust —Whoever, being in any manner entrusted with property, or



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

35. From a reading of Section 405 of the IPC it would be evident that a '**criminal breach of trust**' involves following ingredients; (a) a person should be entrusted with property or with any dominion over property; (b) that person should dishonestly misappropriate or convert that property to his own use; or dishonestly uses or disposes of that property or willfully suffers any other person so to do; (c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or any of legal contract which person has made touching the discharge of such trust.

36. In **S. W. Palanitkar and Ors. vs. State of Bihar and Anr. (supra)**, the Supreme Court while dealing with ingredients of the '**criminal breach of trust**' held in para 9 as under :-

"9. The ingredients in order to constitute a criminal breach of trust are: (1) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be



discharged (ii) of any legal contract made, touching the discharge of such trust.”

37. So far as Section 420 of the IPC is concerned, the same prescribes punishment for the offence of ‘**cheating**’, which is defined under Section 415 of the IPC. It reads as under :-

*“415. **Cheating** — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “**cheat**”.”*

38. The Section consists of two distinct parts, each part dealing with one way of cheating, (i) the first part contemplates where by deception practiced upon a person the accused dishonestly or fraudulently induces that person to deliver a property to any person or to consent that any person shall retain any property; (ii) the second part envisages where by deception practiced upon a person the accused intentionally induces that person to do or omit to do so, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

39. The offence punishable under section 420 IPC



reads as under :-

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

40. It would be evident from combined reading of Sections 415 and 420 of the IPC that the essential ingredients of Section 420 IPC are:

- (i) cheating;
- (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything, which is sealed or signed or is capable of being converted into a valuable security; and
- (iii) mens rea of the accused at the time of making the inducement.

41. In **Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.** (supra), the question for determination before the Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under Section 406 or Section 420 of the IPC. After examining the fact of the case and relevant Sections of the IPC, the



Supreme Court held that an offence of '**cheating**' would be constituted when the accused has fraudulent or dishonest intention at the time of making of promise or representation. A pure and simple breach of contract does not constitute the offence of '**cheating**'. It further held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants for non-refunding the amount of advance, the same would not constitute an offence of '**cheating**' or '**criminal breach of trust**'.

42. In **Alpic Finance Ltd. vs. P. Sadasivan and Anr.**, (supra), the Supreme Court highlighted the grounds on which criminal proceedings are to be quashed under Section 482 of the Cr.P.C. and noted the ingredients of Section 420 of the IPC. In that case, the appellant was a registered company having its head office at Mumbai. It was carrying business, *inter alia*, of leasing and hire purchase. The first respondent therein was the Chairman and founder-trustee of a trust. The second respondent was also a trustee. The Trust was running a dental college in the name and style of Rajiv Gandhi Dental College. The respondents therein entered into agreement with the appellant Company therein whereby the appellant had agreed to finance the purchase of 100 hydraulically-operated dental chairs of which cost was around Rs.92,50,000/-. The appellant Company agreed to finance the respondents for the purchase of chairs through a lease agreement and as per the agreement. The respondents were



liable to pay rentals. The respondents agreed to pay quarterly the sum of Rs.7,50,000/- for the first year, Rs.12,50,000/- for the second year, Rs.8,00,000/- for the third year and Rs.6,25,000/- for the fourth year. In accordance with the agreement, the appellant made payments to M/s United Medico Dental Equipments and they delivered the dental chairs to the respondents. The appellant Company alleged that the respondents were not regular in making payments and committed default in payment of the installments and that the bank had dishonoured certain cheques issued by the respondents. The appellant Company also alleged that on physical verification, certain chairs were found missing from the premises of the respondents and thus they committed cheating and caused misappropriation of the property belonging to the appellant. The appellant Company filed a complaint under Section 200 of the Cr.P.C. before the Chief Metropolitan Magistrate, Bangalore alleging that the respondents had committed offences under Sections 420, 406 and 423 read with Section 120-B of the IPC. The Magistrate took cognizance of the alleged offence under Section 190 of the Cr.P.C. and issued summons to the respondents. The order taking cognizance was challenged by the respondents by filing an application under Section 482 of the Cr.P.C. before the Karnataka High Court. The High Court quashed the entire proceedings. Being aggrieved, the appellant Company preferred appeal before the Supreme Court. It was contended on behalf of the



appellant in that case that the High Court had seriously erred in quashing of the proceedings under Section 482 of the Cr.P.C.. It also contended that allegation in the complaint clearly made out offences punishable under Sections 420, 406, 423, 424 read with Section 120-B of the IPC. It was contended on behalf of the respondents that the complaint was filed only to harass the respondents and it was motivated by *mala fide* intention. It was argued that the entire transaction was of civil nature and that the respondents have made a substantial payment as per the hire-purchase agreement and the default, if any, was not willful and there was no element of misappropriation or cheating.

43. After considering the power under Section 482 of the Cr.P.C. and the facts and law involved in the case, the Supreme Court dismissed the appeal and concluded that the learned Judge of the High Court was perfectly justified in quashing the proceedings. It held in para 10 as under :-

“10. ... The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420, I.P.C. and the case of the appellant is that respondents have cheated him and thereby



dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”

44. In **Anil Mahajan vs. Bhor Industries Ltd. and Anr.** (supra), a three-judge Bench of the Supreme Court considered a case relating to the issuance of process for the offence punishable under Sections 415, 418 and 420 of the IPC. In that case also, the Bench analyzed the difference between ‘**breach of contract**’ and ‘**cheating**’. The appellant therein was the accused in complaint filed against him by the respondent company for the offence punishable under Sections 418 and 420 of the IPC. On the basis of the allegations made in the complaint, the Magistrate issued the process against the accused. The order of Magistrate would demonstrate that the complainant had filed documents on record to show that the accused promised to pay the amount, but he did not pay the same with



the intent to deceive the complainant. Therefore, the Magistrate held that the complainant had been able to make out a case to issue process against the accused under Sections 415, 418 and 420 of the IPC.

45. The said order of the Magistrate was challenged before the court of sessions. The learned Additional Sessions Judge, who heard the matter, set aside the order of Magistrate issuing process. The order of the learned Additional Sessions Judge was set aside by the High Court.

46. The order of the High Court was challenged by the appellant before the Supreme Court. After analyzing the provisions of the IPC under which the complaint was filed and the allegation made in the complaint, the Court observed that it was a simple case of civil dispute between the parties. It held that requisite averments so as to make out a case of '**cheating**' are absolutely absent. It further held that the principles laid down in **Alpic Finance Ltd. vs. P. Sadasivan and Anr.**, (supra) were rightly applied by learned Additional Sessions Judge while setting aside the order of the Magistrate issuing process to the appellant.

47. In **Hridaya Ranjan Prasad Verma and Ors. vs. State of Bihar and Anr.** (supra), the Supreme Court while dealing with a case in which FIR was instituted under Sections 418, 420, 423, 504 and 120-B of the IPC held in paras 14 and 15 as under :-

“14. On a reading of the section it is manifest that in the definition there are set-forth two



separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

48. In **S. W. Palanitkar and Ors. vs. State of Bihar and Anr.** (supra), it has been held by the Supreme Court in para 21 as under :-

“21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulently or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”



49. In State of Kerala vs. A. Pareed Pillai and Anr.

(supra), the Supreme Court held in para 16 as under :-

“16. ... To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.”

50. In Indian Oil Corporation vs. NEPC India Ltd.

and Ors. (supra), it has been held by the Supreme Court in para 13 as under :-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

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



to prevent abuse of the process of any court or otherwise to secure the ends of justice."

51. The Court further held in para 14 as under :-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

52. In **Rajesh Bajaj vs. State, NCT of Delhi and**

Ors. (supra), the Supreme Court held in para 11 as under :-

"11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

53. Coming to the facts of this case, what has been alleged by the Complainant in his complaint is that for the remaining amount, the Complainant regularly reminded the accused persons to



clear the entire payment, but on each occasion the accused went on assuring but without complying with the promises made and on finding evasive tendency on the part of the accused officials the Complainant sent legal notices and repeated reminders, but they failed to yield any result. Looking to the allegations in the complaint, on the face of it, there is no element of '**cheating**' or dishonest intention of the accused persons in retaining money in order to give wrongful loss to the Complainant from the very beginning. Except the bald allegation that the accused did not make payment of part of the dues to the Complainant, there is no iota of allegation, i.e., dishonest intention in misappropriating the property. On the contrary, the admitted case of the Complainant is that the accused Company has already made a payment of rupees sixteen lakh ninety one thousand and seven hundred forty eight to the Complainant against the invoices raised by it for the work executed.

54. As seen above, to make out a case of '**criminal breach of trust**', it is not sufficient to show that money has been retained by the accused persons, but must also be shown that accused person dishonestly disposed of the same or dishonestly retained the same. The mere fact that the accused persons did not pay money to the Complainant does not amount to '**criminal breach of trust**'.

55. Thus, I am of the view that even if all the allegations in the present FIR arising out of complaint are accepted to



be true, the essential ingredients of misappropriation of money are completely missing. Even if all the allegations made in the complaint are taken at their face value as true no case of ‘**criminal breach of trust**’ or **cheating**’ as defined under Sections 405 and 415 of the IPC is made out, as against the petitioners.

56. The only other section alleged in the complaint is Section 120-B of the IPC, which prescribes punishment of ‘**criminal conspiracy**’. The offence of ‘**criminal conspiracy**’ has been defined under Section 120-A of the IPC which reads as under :-

“120A. Definition of criminal conspiracy —
When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

57. The offence of ‘**criminal conspiracy**’ becomes complete as soon as the agreement to commit the offence is made. In the present case, I have already held that there is complete lack of evidence to constitute the ingredients of the offence of **cheating**’ or ‘**criminal breach of trust**’. In the absence of any allegation to break the law, I am of the opinion that the offence punishable under Section 120-B of the IPC cannot be attracted against the petitioners.

58. The claim made by the Complainant is essentially



of civil nature, which has been a cloak of criminal offence. It is well settled that criminal proceedings are not a short cut of other remedies available in law. This Court further finds that a plausible explanation has been given by the petitioners for retaining the part of the dues of the Complainant in view of the express clauses of agreement entered into between the parties, which have been noticed by this Court, hereinabove.

59. There is no conflict with the ratio laid down by the Supreme Court in **Trisuns Chemical Industry vs. Rajesh Agarwal** and **Rajesh Bajaj vs. State, NCT of Delhi** (supra). However, in the considered opinion of this Court, the said ratio would have no application to the facts alleged in the complaint giving rise to these four petitions.

60. On the facts of the present case, as also on the principle laid down by the Supreme Court, in various decisions noticed above, I am of the opinion that filing of the complaint itself was *mala fide* and unwarranted. The remedy of the Complainant lies only in civil law and institution of criminal case is nothing but an abuse of the process of the court.

61. In the matter of **State of Haryana & Ors. Vs. Bhajan Lal and Ors.** (supra), the Supreme Court laid down the principles on which the Court can quash the criminal proceedings under Article 226 of the Constitution of India or under Section 482 of



the Cr.P.C.. These are as under :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or



complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the 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.”

62. I am of the opinion that the principles 3, 5, 6 and 7 enumerated in **Bhajan Lal** (supra) are clearly attracted in the present case. In that view of the matter, the FIR of Kotwali P. S. Case No. 27 of 2015 and its investigation is liable to be quashed. As a consequence, I allow these writ petitions and quash the FIR of Kotwali P. S. Case No. 27 of 2015 and its investigation. Parties to bear their respective costs.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	AFR
CAV DATE	04.08.2016
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