

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 1181 Of 2011**

1. Shri Venkata Sarveasam Sastry Tejomurty, S/o Late Shri Srinivas Rao, Plot No.11, Indrapuri Railway Colony (West), Maredpally, Secunderabad – 500026.

---- Petitioner**Vs**

1. State Of Chhattisgarh, through Secretary, Home Department, DKS Bhawan, Raipur, Dist. Raipur (CG).
2. Superintendent Of Police Raigarh, Dist. Raigarh CG
3. Station House Officer Police Station Chakradhar Nagar, Distt. Raigarh, CG
4. Mr. Ajay Gautam Legal Officer, M/s Ind Synergy Village Kotmar, Distt. Raigarh, CG.

---- Respondent**And****WPCR No. 1360 Of 2011**

1. Prakash Agarwal, S/o Shri V.N. Agarwal, 5, Raja Santosh Road, Alipore, Kolkata.

---- Petitioner**Vs**

1. State Of Chhattisgarh, through Secretary, Home Department, DKS Bhawan, Raipur, Dist. Raipur (CG).
2. Superintendent Of Police Raigarh, Dist. Raigarh CG
3. Station House Officer Police Station Chakradhar Nagar, Distt. Raigarh, CG

4. Mr. Ajay Gautam Legal Officer, M/s Ind Synergy Village Kotmar, Distt. Raigarh, CG.

---- Respondent

And

WPCR No. 2916 of 2011

1. Kuldeep Kumar Dhar, S/o Late Shri M.N. Dhar, R/o 33, Akriti Apartment, Plot No.62, I.P. Extension, New Delhi.

---- Petitioner

Versus

1. State Of Chhattisgarh, through Secretary, Home Department, DKS Bhawan, Raipur, Dist. Raipur (CG).
2. Superintendent Of Police Raigarh, Dist. Raigarh CG
3. Station House Officer Police Station Chakradhar Nagar, Distt. Raigarh, CG

---- Respondent

And

CRMP No. 764 Of 2010

1. Suresh Chandra Goyal, S/o Late Shri Ratanlal Goyal, aged about 63 years, R/o B-45, Maharani Bag, New Delhi
2. Gulshan Kumar Balaya S/o Late Shri B.P. Balaya, aged about 75 years, R/o House No.960 Sector 4, Arban Estate Gurgaon, Haryana

---- Petitioner

Vs

1. State Of Chhattisgarh, through Station House Officer, Police Station Chakradhar Nagar, Raigarh, Dist. Raigarh (CG).

---- Respondent

For respective Petitioners	Shri V.G. Tamaskar, Shri Simran Mehta, Shri Rohit Ranjan, Shri Prateek Sharma & Shri Vinay Mohan Gupta, Advocates.
For Respondent State	Shri Adhiraj Surana, Dy. Govt. Advocate.
For Respondent Objector	Shri Anil Khare, Sr. Advocate with Shri Rakesh Makhija, Shri Satish Agrawal & Shri Ankit Singhal, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

01/05/2015

1. All these petitions have been heard analogously, as they arise out of First Information Report (FIR)/crime No.254/2010 for offences under Sections 406 & 420 read with Section 34 of the Indian Penal Code (for short 'the IPC') at Police Station Chakradhar Nagar, District Raigarh. During pendency of these petitions, the Police has filed the charge sheet on 15-12-2014 for offence under Sections 406, 420, 417, 467, 468, 471 & 120-B of the IPC.
2. In WP (Cr.) Nos.1360 & 1181 of 2011, the accused/petitioners have prayed for quashment of the said FIR and all the proceedings emanating therefrom including the investigation and warrants; whereas in WP (Cr.) No.2916/2011 the accused/petitioner has sought for quashment of the entire proceedings drawn by the respondent in its file in the said crime number and in Cr.M.P. No.764/2010 the accused/petitioners have prayed for quashment of

the FIR. Since all the petitioners are accused in the said common crime number/FIR, the petitions are being disposed of by this common order.

3. The subject FIR was registered on 28.07.2010 for offences under Section 406 & 420 read with Section 34 of the IPC naming the following six accused persons:-

- Sureshchandra Goyal, B-45, Maharani Bagh, New Delhi (Petitioner No.1 in Cr.M.P. No.764/2010).
- R.C. Venkata Sarvesam Sastry Tejomurty, 2-23122119, Durgabai Deshmukh Colony, Bagh Amarpot, Hyderabad (Petitioner in WP (Cr.) No.1181/2011).
- Gulshan Kumar Balaya, 960 Sector-4, Arban Estate, Gurgaon (Haryana) (Petitioner No.2 in Cr.M.P. No.764/2010).
- Prakash Agarwal, 5, Raja Santosh Road, Alipore, Kolkata (petitioner in WP (Cr.) No.1360/2011).
- M.J. Pandya, 702, 7th Floor, Little Star, Ramkrishna Santkunj, West Mumbai.
- Ved Prakash Gupta, 43, Gopal Ram Nagar Extension Delhi (petitioner No.3 in Cr.M.P. 764/2010, but later on deleted from the array of cause title on 26.11.2010).

S.No.i is the Chairman and S.No.ii to vi are the Directors of Goyal MG Gases Pvt. Ltd. (for short 'MG Gases').

4. In the FIR, the Law Officer of the complainant Ind Synergy Limited (for short 'Ind Synergy'), has alleged that the Chairman and Directors of MG Gases entered into a written agreement with the complainant company for installation of Air Separation Unit (for short 'ASU') for supply of oxygen and nitrogen gases and against the terms of the contract fraudulently obtained payment of Rs.78.00 lacs and committed breach of trust. Under the terms of agreement, MG Gases was to erect the ASU plant by making available the drawing & design to Ind Synergy. The accused persons were provided 6400 square meter of land and also made available all other facilities. As per clause 9 of the agreement, the accused persons were liable to commence supply of gases within six months from the completion of civil work whereas under clause-10, time was the essence of the contract. The accused persons *mala fide*ly and to avoid the liability of supply of gases raised the plea that civil work is not completed, and as such, they failed to supply gases. One of the necessary machinery of the ASU plant, the cold box was brought by the accused persons in the month of December, 2009; and was parked in a trailer at village Loing, District Raigarh; and was brought to the plant premises in April, 2010. The delay was deliberate on the part of the accused persons on the pretext that civil work is not complete.

On inspection of the machinery, the cold box was found to be 50 years old and the complainant company got opinion that the cold box has been rejected by some industrial unit in the Burnpur district of West Bengal. The accused persons, thus, committed fraud with an intention to cheat the complainant knowing fully well that the cold box was not capable of producing gas.

5. According to the FIR, the accused persons falsely and with bad intention assured the complainant company that they are capable of erecting ASU to produce gases; made the complainant company to believe them and execute an agreement. On 30.05.2008 itself, the agreement was executed by making false promise and cheating. The agreement was for 15 years, wherein the complainant company was required to furnish interest free, returnable security deposit of Rs.78.00 lacs to MG Gases. The complainant was to furnish the security deposit in two installments, 10% at the time of agreement and the remaining 90% within 30 days of agreement. Accordingly, Ind Synergy paid Rs.7,80,000/- on 03.06.2008 and the remaining amount of Rs.70,20,000/- on 17.07.2008.
6. The FIR further states that the contract specifically mentions the duties and obligations of the accused persons, however, they failed to supply gases in terms of agreement and at the same time started presenting the cheques for encashment handed over by the complainant company to the accused persons. According to the

complainant, the accused persons have committed cheating and fraud and tried to recover the amount under the cheques without supplying gases, therefore, the complainant company had to instruct 'stop payment' to its banker. The accused persons are sending notice for dishonour of cheque, which is illegal because, they themselves are responsible for not supplying the gases and the complainant company was justified in stopping the payment of the amount under the cheques. Thus, the accused persons received payment of Rs.78.00 lacs; did not complete the work of erection of ASU Plant and sent junk cold box unit, which was about 50 years old, which shows the fraudulent intention to cheat the complainant causing them loss. The accused persons entered into the agreement knowing well that it does not have the capacity and expertise of erecting ASU unit.

7. These petitions were submitted after registration of the FIR and the investigation continued for about 4 years, as the charge sheet could be filed only on 15-12-2014/31-1-2015.

Rival contentions :

8. Learned counsel appearing for the respective petitioners would submit that :-

- Even if the FIR and the material available in the charge sheet is taken as it is, no offence is made out against the accused persons;
- The dispute between the parties is of civil nature and there is no element of any culpable criminal act;
- The agreement dated 30.05.2008 executed between Ind Synergy and MG Gases was for supply of oxygen and nitrogen gases to Ind Synergy by setting up of a 70 Tonnes Per Day (TPA) ASU on Build Own and Operate Basis (BOO Basis) and as per Clause 25 of the contract, the production facility shall at all times remains the property of the seller, removable by the seller within 12 months after expiry of the contract period, as provided in Clause 4 of the contract. Thus, the contract was not for supply of ASU but it was for supply of gases;
- Delay in installation and erection of ASU was on account of non completion of civil work by Ind Synergy and providing the clear land because, a high power transmission line was going just above the area earmarked for location of the plant;
- Ind Synergy was to give interest free, returnable security deposit of Rs.78.00 lacs to MG Gases against the bank guarantee of the same amount by MG Gases. Bank

guarantee was furnished by MG Gases to Ind Synergy on 26.06.2008, issued by the State Bank of India, New Delhi, and, thereafter, Ind Synergy furnished the balance amount of Rs.70,20,000/- on 17.07.2008; both the parties mutually accepted the schedule for completion of civil works in their meeting dated 08.08.2008, wherein Ind Synergy agreed to get the High Tension (HT) line shifted. Ind Synergy made first application for shifting of HT line to the Chhattisgarh State Power Distribution Company Limited (for short 'the CSPDCL') on 10.05.2010 i.e. after the delay of almost 2 years and the documents sought for by the CSPDCL vide its communication dated 17.05.2010 & 25.10.2010 was also not complied with by Ind Synergy;

- The contract provided for and permitted supply of gases through an used ASU, therefore, MG Gases dismantled and shifted its existing ASU, which was operational at SAIL's (Steel Authority of India Limited) Burnpur Plant (West Bengal). The fact that the unit was operational is proved by the daily production report of SAIL Burnpur with gate pass of cold box dated 17.07.2009; the production facility could not be commenced on account of failure of Ind Synergy to fulfill its obligation under the contract and the FIR has been filed to avoid payment of fixed facility charges in terms of clause 12.4

of the contract and also to avoid criminal action on account of dishonour of cheques handed over by Ind Synergy to MG Gases;

- Allegations in the FIR are contrary to the terms of the contract inasmuch as the interest free, returnable security deposit has been referred in the FIR as advance and further it mentions that the bank guarantee was not furnished by MG Gases, which is untrue. The FIR also alleges breach of contract and the charge sheet relies on report about the cold box obtained on 05.03.2014, whereas the cold box is lying in the premises of Ind Synergy since December 2009;
- The FIR and the charge sheet uses the expression like cheating, breach of trust, dishonest intention, etc. merely to convert the civil dispute into a criminal case;
- The cold box for which an adverse report has been submitted in the charge sheet was in workable condition till July, 2009 when it was taken out in an operational condition from SAIL Burnpur (West Bengal) and the stage of erection and deciding the efficiency of the ASU at the site of Ind Synergy never occasioned, therefore, the test report conducted after 5 years of the same lying open in the premises of Ind Synergy would not by any stretch of imagination constitute dishonest intention

from the beginning. In any case, ASU is the property of MG Gases and not that of Ind Synergy;

- In absence of the company MG Gases being arrayed or charge sheeted as accused, there is no vicarious liability of the Directors for committing an offence, therefore, the FIR/ charge sheet deserves to be quashed;
- Execution of the contract would have benefited the company MG Gases @ Rs.26.00 lacs per month = Rs.3.12 crores per year = Rs.46.80 crores for the contract period of 15 years and in addition to that the company would have earned additional amount of Rs.14.58 crores as per clause 11.2 of the contract, therefore, it is unimaginable that the company would throw away such profits by indulging in the alleged act of cheating for Rs.78.00 lacs only;
- The allegation that the bank guarantee was not delivered to the complainant is wholly untrue, as the charge sheet itself contains the letter issued by Blue Dart Express Limited, wherein the bank guarantee was received by one Deepti under the seal of the complainant company. This consignment contained the bank guarantee issued by the State Bank of India, Corporate Accounts Group, Tolstoy Marg, New Delhi, in favour of Ind Synergy;

- The complainant company alleges that its employee Sanjay Mahajan colluded and conspired with the petitioner K.K. Dhar to cheat the complainant company, however, there is absolutely no material in the charge sheet as to how K.K. Dhar has been benefited. This is apart from the fact that on behalf of the complainant company the contract was signed by the Managing Director and not by its employee Sanjay Mahajan;
- Registration of FIR, the investigation and filing of charge sheet is *mala fide*, biased and unfair only to harass the petitioners. In this connection, it has been put forth that soon after lodging the FIR the concerned police attempted to illegally arrest one of the petitioner namely S.C. Goyal at Delhi without following the due process of law and by raising the false plea that a separate FIR was lodged at Delhi bearing FIR No.34/2011, however, the Additional Sessions Judge, Delhi, Shri A.K. Garg, directed an enquiry against the Investigating Officer of the present case and eventually it was found that no such incident, wherein S.C. Goyal allegedly committed offence under Section 186/353 of the IPC, has ever taken place. The Additional Sessions Judge, directed the Commissioner of Police, Delhi to carry investigation in respect of the conspiracy hatched by the present complainant to implicate S.C. Goyal and his wife;

- By order dated 2.12.2010 passed in WP (Cr.) No.6871/2010 preferred by Goal MG Gases against the order passed by the Chief Judicial Magistrate, freezing the company's bank account, this Court observed that, *prima facie*, the dispute appears to be of civil nature;
- In arbitration proceedings, the learned Arbitrator passed an order on 18.5.2013 rejecting the complainant's application under Section 17 of the Arbitration and Conciliation Act, 1996 seeking restraining the company MG Gases and its officers from presenting the cheques for encashment;
- On 21.10.2013 the District Judge, Raipur, dismissed the appeal preferred by the complainant company against this order of the Arbitrator;
- In both the orders, it has been found that the complainant company is not justified in seeking restrain order from presenting the cheque for encashment, though the order of the District Judge is under challenge in appeal before the High Court and the matter is still pending; and
- As against the complainant's allegation of cheating of Rs.78.00 lacs, it is to be seen that the MG Gases company has entrusted its equipments and machineries by bringing the same to the premises of the complainant company, which are

valued at more than Rs.15.00 crores and the same are still lying in the premises of the complainant's company.

9. In support of the aforesaid contention, learned counsel appearing for the petitioners would rely upon the decisions rendered in **Ajay Mitra v. State of M.P. and Others¹**, **G. Sagar Suri and Another v. State of U.P. and Others²**, **M/s Pepsi Foods Ltd. and another v. Special Judicial Magistrate and Others³**, **Ashok Chaturvedi and Others v. Shitul H. Chanchani and Another⁴**, **Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others⁵**, **Inder Mohan Goswami and Another v. State of Uttaranchal and Others⁶**, **Joseph Salvaraj A. v. State of Gujarat and Others⁷**, **Indian Oil Corpn. v. NEPC India Ltd and Others⁸**, **Chandran Ratnaswami v. K.C. Palanisamy and Others⁹**, **All Cargo Movers (India) Private Limited and Others v. Dhanesh Badarmal Jain and Another¹⁰**, **Suneet Gupta v. Anil Triloknath Sharma and Others¹¹**, **GHCL Employees Stock Option Trust v. India Infoline Limited¹²**, **Maksud Saiyed v. State of Gujarat and**

1 (2003) 3 SCC 11

2 (2000) 2 SCC 636

3 AIR 1998 SC 128

4 (1998) 7 SCC 698

5 (1988) 1 SCC 692

6 (2007) 12 SCC 1

7 (2011) 7 SCC 59

8 (2006) 6 SCC 736

9 (2013) 6 SCC 740

10 (2007) 14 SCC 776

11 (2008) 11 SCC 670

12 (2013) 4 SCC 505

Others¹³, S.K. Alagh v. State of Uttar Pradesh and Others¹⁴, Maharashtra State Electricity Distribution Company Limited and Another v. Datar Switchgear Limited and Others¹⁵, Harishchandra Prasad Mani and Others v. State of Jharkhand and Another¹⁶, Dalip Kaur and Others v. Jagnar Singh and Another¹⁷, Uma Shankar Gopalika v. State of Bihar and Another¹⁸, Hridaya Ranjan Prasad Verma and Others v. State of Bihar and Another¹⁹, S.W. Palanitkar and Others. v. State of Bihar and Another²⁰, Alpica Finance Ltd. v. P. Sadasivan and Another²¹ and Vir Prakash Sharma v. Anil Kumar Agarwal and Another²².

10. Per contra, learned counsel appearing for the respondent-State and the complainant-objector would make the following submissions :

- Petitions for quashing of the FIR are not maintainable after filing of the charge sheet;
- While dismissing the anticipatory bail application in M.Cr.C. (A) No.814/2010 on 15.12.2010, this Court has repelled the similar submissions made by the petitioners;

13 (2008) 5 SCC 668

14 (2008) 5 SCC 662

15 (2010) 10 SCC 479

16 (2007) 15 SCC 494

17 (2009) 14 SCC 696

18 (2005) 10 SCC 336

19 (2000) 4 SCC 168

20 (2002) 1 SCC 241

21 (2001) 3 SCC 513

22 (2007) 7 SCC 373

- The accused persons had fraudulent intention from the beginning to cheat the complainant company by encashing the advance payment made by the complainant company by issuing Post Dated Cheques;
- In a matter arising out of contract, civil as well as criminal proceedings can go on depending upon the nature of allegations and the impugned FIR/charge sheet may not be quashed on the ground that it only constitutes civil wrong;
- Referring to the report of Visvesvaraya National Institute of Technology, Nagpur (for short 'VNIT'), concerning the cold box, which is a part of the charge sheet, it has been urged that the report is an evidence to prove that the cold box, which is an essential and important part of the ASU plant, was not workable and it was not more than a junk, therefore, the intention to cheat was present from the very beginning;
- Civil work was already completed by the complainant company, therefore, failure to establish/erect the ASU plant by the MG Gases is indicative of its fraudulent intention; and
- Considering the voluminous charge sheet, it is not a case where there is not an iota of evidence.

11. In support of the aforesaid contention, learned counsel appearing for the respondent and the complainant/objector would rely upon the decisions rendered in **Ram Pal Yadav and others v. State of U.P.**

and others²³, Bhagvat Din v. State of U.P. and another²⁴, Monoranjan Mondal v. Union of India and others²⁵, Lal Kamendra Pratap Singh v. State of Uttar Pradesh and Others²⁶, Vijayander Kumar and Others v. State of Rajasthan and Another²⁷, N. Soundaram v. P.K. Pounraj and Another²⁸, State of Orissa and Another v. Saroj Kumar Sahoo²⁹, M/s Medchl Chemicals and Pharma Pvt. Ltd. v. M/s Biological E. Ltd. and others³⁰, Arun Bhandari v. State of Uttar Pradesh and Others³¹, Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi and others³², Lee Kun Hee, President, Samsung Corporation, South Korea and Others v. State of Uttar Pradesh and Others³³, Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another³⁴, Trisuns Chemical Industry v. Rajesh Agarwal and others³⁵ and State of Orissa and Others v. Ujjal Kumar Burdhan³⁶.

12. In the light of aforesaid rival contentions, the following issues arise for determination :

23 1989 Cri.L.J. 1013

24 2003 Cri.L.J. 2281

25 2005 Cri.L.J. 1098

26 (2009) 4 SCC 437

27 (2014) 3 SCC 389

28 (2014) 10 SCC 616

29 (2005) 13 SCC 540

30 2000 Cr.L.J. 1487

31 (2013) 2 SCC 801

32 AIR 1996 SC 2982

33 (2012) 3 SCC 132

34 (2005) 4 SCC 370

35 1999 Cr.L.J. 4325

36 (2012) 4 SCC 547

Issues for determination :

- Maintainability of petition for quashing FIR after filing of the charge sheet because the accused would get chance to argue at the stage of framing of charge and when the act constitutes both civil and criminal wrong, when the criminal action should not be allowed to continue.
- Quashing of FIR/charge sheet in cases where the acts done in performance of contract; continuation of criminal proceeding when the act constitutes both civil and criminal wrong.
- Permissibility of FIR/charge sheet/criminal proceeding against the directors, wherein the company is not an accused.

13. Before proceeding to dwell on the above issues and deal with the facts of this case, this Court deems apt to consider the principles laid down by the Supreme Court in matters concerning power and limits of jurisdiction under Section 482 of the Cr.P.C. and under Article 226/227 of the Constitution of India in matters relating to quashment of criminal proceedings or FIR.

14. In **Ashok Chaturvedi** (supra) a complaint was filed against the accused persons alleging commission of offence under Sections 406, 467, 468 & 120-B of the IPC in respect of transfer of shares to a public limited company. The Magistrate examined the complainant and witnesses, took cognizance of the offences and directed issuance of process. The petition under Section 482 of the Cr.P.C.

for quashing the complaint was dismissed by the High Court on the ground that the allegation of forgery could be substantiated only during trial. The accused persons were the Chairman and the Directors of the company. Allowing the appeal preferred by the accused persons, the Supreme Court held that merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Cr.P.C., the petition for quashing the complaint cannot be thrown out because allowing the criminal proceeding to continue even where the allegations in the complaint do not make out any offence would be tantamount to an abuse of the process of the Court, and therefore, there cannot be any dispute that in such cases power under Section 482 of the Cr.P.C. can be exercised. The Supreme Court having found that the complaint does not disclose any offence quashed the complaint not only against the accused who approached the Supreme Court but against other accused persons also, who were not before the Court on the ground that it would be futile to allow continuance of the criminal proceedings against them.

15. In **M/s. Pepsi Foods Ltd.** (supra), the Supreme Court held that High Court can exercise its power of judicial review in criminal matters. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction. If in a case the Court finds that the appellants could not invoke its

jurisdiction under Article 226 of the Constitution of India, the Court can certainly treat the petition one under Article 227 of the Constitution of India or under Section 482 of the Cr.P.C. It is further held that the order of Magistrate summoning the accused must reflect application of mind and he has to examine the nature of allegations made in the complaint and the evidence both oral and documentary. No doubt the Magistrate can discharge the accused at any stage of trial but that does not mean that the accused cannot approach the High Court under Section 482 of the Cr.P.C. or Article 227 of the Constitution of India to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. The Supreme Court also observed that it is no comfortable thought for the appellants to be told that they could appear before the Court, which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245 (2) of the Cr.P.C. or to face trial. In the present case, the accused persons are residing at Delhi, Gurgaon, Hyderabad, Kolkota & Mumbai and the FIR/charge sheet is filed at Raigarh (Chhattisgarh).

16. In **G. Sagar Suri** (supra), the Supreme Court held thus;

“7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of

Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate and Ashok Chaturvedi v. Shitul H. Chanchani wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. 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.”

(Emphasis supplied)

Thus, the Supreme Court did not accede the argument that once charge sheet is filed and the accused would get a chance to argue on charge, jurisdiction under Section 482 of the Cr.P.C. or Article 227 of the Constitution of India cannot be exercised.

17. In **Lal Kamlendra Pratap Singh vs. State of Uttar Pradesh and others**³⁷ the Supreme Court had an occasion to specifically deal with an argument that once the charge sheet is filed, power of quashing the FIR/charge sheet should not be exercised, however, the Supreme Court proceeded to examine the merits on the basis of materials in the charge sheet without holding that the petition for quashing FIR is not maintainable after filing of the charge sheet. The Supreme Court ultimately found that the charge sheet, *prima facie*, discloses commission of an offence.

18. In **Ajay Mitra** (supra), the Supreme Court held thus;

19. The High Court has held that the petitions filed by the appellants for quashing the complaint and the FIRs registered against them are premature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage. This question was examined by this Court in *State of W.B. v. Swapan Kumar Guha* and it was held that the first information report which does not allege or disclose that the essential requirements of the penal provision are *prima facie* satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in *State of Haryana v. Bhajan Lal* and after considering all

³⁷ (2009) 4 SCC 437

the earlier decisions, the category of cases, in which the court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC either to prevent abuse of the process of any court or to secure the ends of justice, were summarised in AIR para 108 of the Report and sub-paras (1) to (3) thereof are being reproduced hereinbelow: (SCC p. 378, para 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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section .156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

Civil/criminal wrong

19. It is the settled position of law that the case of breach of contract or breach of trust including allegation of fraud and cheating in course of execution of contract may involve a civil wrong and a criminal offence at the same time, however, where the allegations contained in the charge sheet do not involve commission of a criminal offence

or predominantly of civil nature, the complaint/FIR/criminal proceeding can be quashed in appropriate cases.

20. In **Madhavrao Jiwajirao Scindia** (supra) the Supreme Court held thus :

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.
8. Mr Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued.

(Emphasis supplied)

21. In **Indian Oil Corpn.** (supra) the Supreme Court held that in a dispute arising from breach of contract wherein civil remedy has been availed by a party, the remedy in criminal law is not barred, if the allegation discloses a criminal offence, however, the Supreme Court has held that a purely civil dispute cannot be permitted to be converted into a criminal offence. Referring to **G Sagar Suri** (supra) the Supreme Court held thus in para 13 :

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 breakdown 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 v. State of U.P. this Court observed: (SCC p. 643, para 8)

“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.”

(Emphasis supplied)

22. The Supreme Court in **Zandu Pharmaceutical Works Ltd. and Others v. Mohd. Sharaful Haque and Another**³⁸, in para 8, held thus :

8.....It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

(Emphasis supplied)

23. In **Inder Mohan Goswami** (supra) the Supreme Court referred to its earlier judgment rendered in the matter of **Janata Dal v. H.S. Chowdhary and Others**³⁹, to observe that inherent power should be exercised in appropriate cases, *ex debito justitiae*. In **Inder Mohan Goswami** (supra) the Supreme Court, in paras 28, 33 & 46, held thus :

³⁸ (2005) 1 SCC 122

³⁹ (1992) 4 SCC 305

28. This Court in State of Karnataka v. L. Muniswamy observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when 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 High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

33. This Court in Janata Dal v. H.S. Chowdhary observed thus: (SCC p. 355, para 132)

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.”

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the

aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

(Emphasis supplied)

24. In **Anil Mahajan v. Bhor Industries Ltd. and Another**⁴⁰, the Supreme Court has held that *'in a case for quashing of the criminal complaint, the substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores*

40 (2005) 10 SCC 228

was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.'

25. In **Hira Lal Hari Lal Bhagwati v. CBI, New Delhi**⁴¹, the Supreme Court has held that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. In this case, the Supreme Court referred to its earlier decision rendered in **Suresh v. Mahadevappa Shivappa Danannava and another**⁴².
26. The aforesaid legal position has been reiterated by the Supreme Court in **All Cargo Movers (India) Private Limited** (supra).
27. In **Suneet Gupta** (supra) the Supreme Court quashed the FIR for the reason that the dispute was of purely civil nature.
28. In **Vijayander Kumar** (supra), the Supreme Court held that a given set of facts may make out a civil wrong as also a criminal offence, therefore, the real test is whether allegations in the compliant disclose a criminal offence or not.

⁴¹ (2003) 5 SCC 257

⁴² (2005) 3 SCC 670

29. The Supreme Court in **N. Soundaram** (supra), held that criminal proceedings should be quashed only when taking the allegations and complaint as they were, without adding or subtracting anything, no offence is made out.
30. In **Saroj Kumar Sahoo** (supra), the Supreme Court held that inherent jurisdiction under the Cr.P.C. is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Court exists. The Court would be justified in quashing any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice, however, it should not be exercised to stifle a legitimate prosecution.
31. This view has been reiterated by the Supreme Court in **Arun Bhandari** (supra), **Lee Kun Hee** (supra) and **Ujjal Kumar Burdhan** (supra).
32. In **Chandran Ratnaswami** (supra) the Supreme Court referred several English decisions i.e. **Connelly v. Director of Public Prosecutions**⁴³, **Hui Chi-ming v. R.**⁴⁴, **R. v. Horseferry Road Magistrates' Court, ex p Bennett**⁴⁵, **R. v. Derby Crown Court, ex p Brooks**⁴⁶ and **R. v. Beckford (Anthony)**⁴⁷ to reiterate the

43 1964 AC 1254

44 (1992) 1 AC 34

45 (1994) 1 AC 42

46 (1984) 80 Cr App R 164 (DC)

47 (1996) 1 Cr App R 94

principles therein that a Court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction and a Court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process and to control its own procedure must in a criminal court which include a power to safeguard an accused person from oppression or prejudice. Whenever an abuse of process occur in a criminal proceeding, the Court is empowered to refuse to allow the indictment to proceed to trial.

33. In this case i.e. **Chandran Ratnaswami** (supra), the Supreme Court after examining various proceedings between the parties either pending or decided in company Courts concluded that the dispute which are of civil nature should not be allowed to be converted and continue as a criminal proceeding and thereafter held in para 60 that *'allowing the criminal proceedings arising out of FIR No.7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed.'* Thus, in this case the Supreme Court quashed the criminal proceedings pending before the Magistrate emanated from the FIR.

34. In an extremely recent case in **Rajib Ranjan and others v. R. Vijaykumar**⁴⁸, the Supreme Court held that '*if one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified. However, a little deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that the allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with the sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature.*'

After referring to several of its earlier decisions including **State of Haryana and others v. Bhajan Lal and others**⁴⁹ and **Indian Oil Corpn.** (supra) the Supreme Court held that the respondent has attempted to convert the case of civil nature into a criminal prosecution and the High Court would have been justified in quashing the proceedings in exercise of its inherent powers.

35. In **GHCL Employees Stock Option Trust** (supra), in paras 12, 13 & 17, the Supreme Court held thus :

12. From a bare perusal of the complaint and the allegations made therein, we do not find in any of

⁴⁸ (2015) 1 SCC 513

⁴⁹ 1992 Supp (1) SCC 335

the paragraphs that the complainant has made specific allegations against Respondents 2 to 7. In Para 2 of the complaint, it is alleged that Respondents 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorised representative interacted has also not been specified. Although in Para 11 of the complaint it is alleged that the complainant on numerous occasions met Accused 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in Para 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated the debit note. In the entire complaint there are bald and vague allegations against Respondents 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

17. In *Maksud Saiyed v. State of Gujarat*, this Court while discussing vicarious liability observed as under: (SCC p. 674, para 13)

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing

Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

(Emphasis supplied)

The Supreme Court, thus, found that in a criminal case specific allegations against the company, its Directors and other officers is necessary to be mentioned *vis-a-vis* the role played by each one of them, as there is no vicarious liability in criminal matters.

36. The Supreme Court in **S.K. Alagh** (supra), in paras 16 & 19, held thus :

16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya.)

(Emphasis supplied)

37. Similarly, in **Maksud Saiyed** (supra) the Supreme Court once again considered the principles of vicarious liability of Directors for the charges levelled against the company to hold that the IPC does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company.
38. The same principles have been reiterated by the Supreme Court in **Maharashtra State Electricity Distribution Company Limited** (supra) and in **Sunil Bharti Mittal v. Central Bureau Investigation**⁵⁰.
39. In view of the legal position enunciated by the Supreme Court in the above referred matters, it is explicit that in appropriate cases, High Court can exercise its inherent powers under Section 482 of the Cr.P.C. or under Article 226/227 of the Constitution of India to quash the FIR and the criminal proceedings. The power has to be exercised sparingly in rare cases after examining the issue threadbare to test whether lodging of an FIR and initiation of a criminal proceeding is a camouflage to convert a civil dispute into a criminal proceeding or it is an issue which involves civil as well as criminal wrong and the obtaining facts permit initiation of both the proceedings by the victim. The Supreme Court has quashed the criminal proceedings emanating from the FIR, therefore, it cannot be said that once the charge sheet has been filed and the criminal proceeding has begun,

⁵⁰ 2015 (1) SCALE 140

the same cannot be quashed merely on the ground that the accused would get an opportunity before the trial Court to argue at the stage of framing of charge.

40. The law is settled that if a criminal trial is an abuse of process of the Court, the High Court has to step in *ex debito justitiae* to grant relief to a person instead of compelling him to face a criminal trial, which would otherwise amount to his oppression and harassment. It has also been held that under the IPC, the Managing Director or the Directors or the Chairman of a company cannot be made accused on the principles of vicarious liability because there is no such provision available therein. In a criminal case, allegation against each of the accused person has to be specific, attributing particular role played by each one of them so as to constitute an offence against them. A civil dispute should not be permitted to be converted into a criminal action because permitting the same would amount to clothing the complaint with a weapon to wreck vengeance or to coerce the accused, to do something for which the complainant has remedy in civil law or he has otherwise failed to extract in a civil case.
41. It is equally settled that mere use of the words 'fraud', 'cheating', 'dishonest intention' would not suffice to attract penal provision and it is the duty of the Court to examine as to whether the case involves bad intention *ab initio* in view of the fact that mere failure to keep

promise cannot lead to an inference or presumption of bad intention from the beginning.

42. Examining the above stated settled legal position in the facts of the case, allegations in the FIR and charge sheet, without adding or subtracting anything, are that petitioner – Sureshchandra Goyal is the Chairman of the company residing at Delhi whereas other petitioners are the Directors of the company residing at Hyderabad, Gurgaon, Kolkata & Mumbai. The agreement was executed between two companies namely; Goyal MG Gases Pvt. Ltd. and Ind Synergy Limited (complainant) for supply of oxygen and nitrogen gases by setting up of a 70 tonnes per day Air Separation Unit on Build Own and Operate Basis. The complainant company paid interest free returnable security deposit of Rs.78.00 lacs termed in the FIR as advance against which MG Gases had to supply bank guarantee of Rs.78.00 lacs, but the same was not complied. MG Gases in breach of its contractual obligations, failed to set up ASU and commence supply of gas. MG Gases brought one cold box for establishing ASU at the premises of the complainant company, which turned out to be a junk cold box and unsuitable for erection of ASU. Thus, MG Gases/petitioners had the intention to commit cheating, breach of trust, forgery, etc. from the beginning, therefore, on the pretext of complainant company not completing the civil work, it did not establish the ASU and failed to supply gases, however, it

tried to encash the Post Dated Cheques by submitting the same to its banker and the complainant had to instruct 'stop payment'. At a later stage name of Shri V.P. Gupta was dropped from the FIR and in his place name of petitioner K.K. Dhar, who was not named in the original FIR was added subsequently.

The company namely; Goyal MG Gases Pvt. Ltd. has not been made as accused and the FIR or the charge sheet does not specifically attribute or elaborate the role played by each of the petitioners or the evidence of conspiracy hatched by the petitioners amongst themselves and in furtherance thereof the offence was committed. The charge sheet contains one report of VNIT, who examined the cold box and submitted that the cold box is corroded and it does not seem to be fit for operation.

43. Thus, it is found from the material available on record that there exists a contract between the parties wherein MG Gases was to install ASU in the premises of the complainant company for supply of oxygen and nitrogen, however, as per the terms of contract, ASU would remain the property of MG Gases. The contract was for supply of oxygen and nitrogen for 15 years. Bank Guarantee dated 26-6-2008 was submitted by MG Gases to Ind Synergy for a sum of Rs.78.00 lacs. There was a HT line just above the land over which the ASU was to be installed. Ind Synergy was required to take steps by writing letters to CSPDCL for shifting of the HT line.

Admittedly, such shifting had not taken place at the time of lodging of FIR.

44. There is material on record that the cold box brought by MG Gases to the premises of the complainant company was installed and operative in the plant of SAIL, Burnpur (West Bengal). There are materials to indicate production of oxygen from this plant and removal of ASU/cold box from the said plant 2-3 months prior to its arrival at the complainant's premises. The report of VNIT is based on inspection carried out in the month of March, 2014 i.e. after about 5 years from the period it was brought to the premises of the complainant. It is also not in dispute that the cold box is lying open in the premises of the complainant company for the last about 5 years.
45. Apart from the above, it has been put forth by the petitioners that the plants and machinery valued at Rs.15.00 crores have been unloaded for assembling ASU and the same is still lying in the premises of the complainant company. It is also stated that had the plant been erected MG Gases would have earned huge amount running into Rs.46.80 crores during the contract period of 15 years. The arbitration dispute has already been initiated and the same is pending before the Arbitration Court.

46. From the above, it appears, the dispute emanates from breach of contract and is purely of civil nature. It is not a case where MG Gases did not at all initiate or made any effort for installation of ASU and straightaway tried to encash the cheque worth Rs.78.00 lacs. The charge sheet contains materials to indicate that the bank guarantee was delivered by MG Gases to the complainant company, theretofore, the necessary ingredients of presence of intention to cheat *ab initio* is absolutely lacking. This is more so because, once again, there are materials that the cold box brought by MG Gases to the premises of the complainant was functional/operational at SAIL, Burnpur. There is no material as to hatching conspiracy or meeting of mind between the accused persons, who are the Chairman and Directors of the company residing separately from each of them at far away places like Delhi, Hyderabad, Gurgaon, Kolkata and Mumbai and the company itself is not an accused in the instant case.
47. For the foregoing, this Court is of the considered opinion that the FIR/charge sheet do not disclose offence under Sections 406, 420, 417, 467, 468, 471 & 120-B of the IPC against the petitioners, therefore, the FIR and the criminal proceedings emanating therefrom deserve to be and are hereby quashed.

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48. In Cr.M.P. No.764 of 2010 the petitioners have prayed for quashment of the FIR and not any further proceedings, however, in view of the Supreme Court decision in **Ashok Chaturvedi** (supra), since the proceedings emanated from the FIR are quashed in respect of other petitioners, the same is quashed for these petitioners too.

49. As a sequel, all the petitions are allowed, leaving the parties to bear their own costs.

Gowri

Sd/-
Prashant Kumar Mishra
Judge



सत्यमेव जयते