**IN THE HIGH COURT OF PUNJAB AND HARYANA**
**AT CHANDIGARH**

**CRM-M No.12408 of 2015**

Date of decision: 4th May, 2015

Vatika Limited and others

… Petitioners

Versus

State of Haryana and another

… Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. A.S. Narang, Advocate
for the petitioners.

**FATEH DEEP SINGH, J.**

The petitioner No.1 Vatika Limited Company having its Corporate Office at Gurgaon through one of its Directors Mr. Gaurav Bhalla has invoked the jurisdiction of this Court by way of petition under Section 482 Cr.P.C. seeking quashing of First Information Report (Annexure P15) registered under Section 420 etc. IPC with Police Station Gurgaon Sadar against the petitioner Company on the strength of grounds canvassed in the petition.

The essential factual matrix as is highlighted by the petitioners is that the petitioner Company which is dabbling in the real estate sector, had come up with a commercial colony under the name of 'Vatika Business Park' situated in the revenue estate of village Badshahpur, Tehsil and District Gurgaon. Petitioner No.2 entered into an agreement dated 06.11.2007 with the petitioner No.1 Company (which two are headed by the same person) for the construction of this complex. For the purchase of 3458.22 sq. ft. super area on 7th floor of the building, respondent No.2 submitted an application dated 04.07.2011 (Annexure P2) to petitioner No.1, for which allotment letter dated 25.08.2011 (Annexure P3) containing terms and conditions was issued leading to execution of agreement to sell (Annexure P4) on 27.08.2011. Entire sale price of this unit stood paid by respondent No.2. The unit in question was offered for possession to respondent No.2 on 16.04.2012 vide Annexure P6 as per the stand of the petitioners. It is inter alia alleged that respondent No.2 failed to execute a separate maintenance contract in spite of request by way of communication dated 10.02.2012 (Annexure P5) and thus the possession could not be handed over to respondent No.2.

It is thereafter over this when the petitioner No.1 failed to hand over the possession, respondent No.2 made a complaint to Economic Offences Wing alleging that the accused petitioners have acted in a dishonest manner and even after receiving full payment of the premises refused to hand over its possession and thus, have dishonestly and malafidely cheated her, leading to registration of the case on 23.02.2015, for the quashment of which the petitioners have impugned.

Heard Mr. A.S. Narang, Advocate for the petitioners.

From the forceful and lengthy arguments of the petitioners' counsel the very ambit of Section 482 Cr.P.C. and scope of inherent powers of the High Court are the main pivot. Though there has been inconsistencies throughout on that point of law as in **'Madhavrao Jiwajirao Scinida v. Sambhajirao Chandrojirao Angre' (1988) 1 SCC 692**, it was laid down that such inherent powers of High Court extend to a case where in regard to the special features of a case it was inexpedient in the interest of justice to permit a prosecution to continue. However, in another view in the case of **'State of Orissa v. Ganesh Chandra Jew' AIR 2004 SC 2179** and a subsequent view in **'State of Haryana v. Bhajan Lal' (1992) SCC (Crl.) 622** it has been held that exercise of inherent powers under Section 482 Cr.P.C. to quash a criminal case should be resorted to only 'sparingly with circumspection in the rarest of rare cases'. In another view of the Hon'ble Apex Court in **'State of MP v. Awadh Kishore Gupta and others' 2003 AIR SCW 6501** had held that it was impermissible for the Court to look into the material produced, acceptability of which was essentially a matter for consideration at trial.

In the case in hand, what is for consideration prima facie at this stage is not whether ingredients of the offences alleged in the stand of prosecution were made out or not but whether allegations disclosed any offence at all.

In the light of what has been argued before this Court by the petitioners' counsel that it is only a civil dispute are matters which cannot be gone into at this juncture and is to be adjudged after the parties adduce their evidence. Rather the allegations prima facie show that on their assurance and promise having received full payment the petitioners who are accused have failed to hand over the premises harbour around dishonesty, malafide and cheating and thus, no element of necessity to secure ends of justice stand out.

Though reliance is sought to be made on **(2013)11 SCC 130 'Lokesh Kumar Jain v. State of Rajasthan'; 'Nirmal Singh v. State of Punjab'** of this Court decided on 11.05.2001; **(1982)1 SCC 561 'State of West Bengal and others v. Swapan Kumar Gupta and others'; and 2015 AIR SCW 948 'Manik Taneja v. State of Karnataka and another'**. However, having regard to the own stand of the petitioners that the investigations are still underway and seemingly whatever evidence might be available is yet to be gathered and ultimate outcome would be determined only by the final report to be submitted under Section 173 Cr.P.C. Even thereafter, the petitioners' right to move the trial Court for their discharge and in not framing charges still subsist leaves no scope for this Court to show any indulgence, that too, when there are prima facie allegations of commission of a cognizable offence. This Court seeks support from **1974 AIR SC 1146 'Jehan Singh v. Delhi Administration' and 1960 AIR (SC) 866 'R.P.Kapur v. State of Punjab'** to hold this view as neither at this stage it can be termed as abuse of the process or is necessary to secure ends of justice and cannot be resorted to scuttle fair investigations.

In the totality of this situation, the petitioners' case does not calls for any indulgence and deserves dismissal at this threshold.

**(FATEH DEEP SINGH)**
**JUDGE**

**May 4, 2015**
*rps*