IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 87 OF 2016

Sussanne Khan
Previously known as Sussanne Roshan
Age : years Occ : Interior Designer
Having office at “The Charoal Project”
Unit no. 1, Dmall, Off Veera Desai Road
Andheri West Mumbai – 400 058. … Petitioner

Versus

1. The State of Goa,
Through the Public Prosecutor,
High Court
Panaji, Goa.

2. The Police Inspector,
Panaji Police Station,
Panaji, Goa.

3. Mudhit Gupta
EMGEE Properties
603, 6th floor, City Centre,
Patto Plaza, Panaji. `… Respondents

Mr. N. N. Sardessai, Senior Advocate with Mr. Hitesh Jain and Mr. Vibhav Amonkar. Advocates for the Petitioners.

Mr. S. R. Rivankar, Public Prosecutor for the Respondent nos. 1 and 2.

Mr. Shirish Gupte, Senior Advocate with Mr. Arun Bras De Sa , Mr. Ranjit Shetty and Mr. J. P. Supekar, Advocates for the Respondent no. 3.

Coram :- **F. M. REIS, NUTAN D. SARDESSAI, JJ.**
Judgment reserved on : **11th August, 2016**
Judgment pronounced on : **25th August, 2016**

JUDGMENT *(Per F. M. Reis, J.)*

Heard Shri Nitin Sardessai, learned Senior Advocate appearing for the Petitioner, Mr. S. R. Rivankar, learned Public Prosecutor appearing for the Respondent nos. 1 and 2 and Mr. Shirish Gupte, learned Senior Advocate appearing for the Respondent no. 3.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

3. The above Petition seeks, inter alia, to quash and set aside the FIR bearing no. 119 of 2016 registered with the Panjim Police Station for offences punishable under Section 420 of the Indian Penal Code.

4. Briefly, it is the case of the Petitioner that she is the sole Proprietor of Sussanne Khan House of Design previously known as Sussanne Roshan House of Design, who has been in the business for the last fifteen years and has been engaged in several projects as a Design Company. It is further the contention of the Petitioner that the Respondent no. 3 who is the Complainant, executed a written contract with the Petitioner thereby engaging the services of the Petitioner for providing services for professional designing of certain villas to be constructed in a property at Goa. The scope of the work and the terms and conditions thereof were clearly defined in the said contract. It is further her case that the Respondent no. 3 had alleged that relying upon the representations by the Petitioner and in terms of the said contract, a sum of Rs.1,87,92,022/- was paid to the

Petitioner. It is further alleged that the Petitioner was not able to deliver the services as stipulated under the said Contract within the agreed time period , so also the services provided by her were not up to the mark and, as such, the Respondent no. 3 suspected whether the Petitioner was in fact an Architect or was trying to deceive the Respondent no. 3. It is further the case of the Petitioner that an Arbitration Petition bearing no. ARBP/1640/2015 was filed by the Petitioner against the Respondent no. 3. It is further contended that the Respondent no. 3 alleged that they repeatedly asked the Petitioner to provide her Architectural Registration Number so as to verify with the Council of Architecture whether the Petitioner was a qualified Architecture which, according to the Respondent no. 3, was not provided by the Petitioner. It is further contended that the Respondent no. 3 engaged the services of Mr. Rakesh Taneja, Advocate to inquire from the Council whether she was registered as an Architecture and by an email dated 07.09.2015, the said Advocate inquired from the concerned Department and in response to an email sent on 08.09.2015 stated that the Petitioner was not registered with the Council. It is further the contention of the Petitioner that the Respondent no. 3 filed a written complaint with the Panjim Police Station against the Petitioner of allegations of misrepresentation and cheating and alleged that the Petitioner dishonestly induced in making the payment of Rs.1,87,92,022/- to the Petitioner. It is further contended that on account of such complaint, the Respondent no. 2 served a copy of thirty six questions to the Petitioner with regard to the project together with the criminal complaint filed by the Respondent no. 3 which the Petitioner answered to all the thirty six questions and made a brief representation of the actual facts pertaining to the dispute arising out of the said contract. It is further alleged that on 30.05.2016, an FIR came to be registered with the Respondent no. 2 for offences punishable under Section 420 of the Indian Penal Code against the Petitioner. Accordingly, the Petitioner has filed the above Petition to quash such FIR.

5. The Respondent no. 2 filed their say and contended that on 09.09.2015, the Respondent no. 3 filed a complaint against the Petitioner for misrepresentation and cheating and that on 15.09.2015, the Petitioner answered a questionnaire in the context of the complaint. It is further contended that the Petitioner denied the charges against her and that the Petitioner was instructed to produce the copy of Memorandum and Articles of Association of her firm. Thereafter, an additional complaint was lodged by the Respondent no. 3 dated 10.10.2015 and that they received a notice from the Court for a say in proceedings under Section 156(3) of Cr.P.C., and, therefore, the FIR was registered for offences committed under Section 420 of the Indian Penal Code and investigation was taken up. It is contended that the accused had produced some documents through her Advocate. It is further contended that prima facie upon perusing the documents, it appears that there is an Agreement between the Complainant and the Accused-Petitioner within which the services of the Petitioner were availed for the

purpose of Architecture and designing work. It further reveals according to them that there is an Arbitration pending between the Petitioner and the Complainant and as the investigation is at preliminary stage, further probe is required in the matter.

6. The Respondent no. 3 filed their affidavit in reply, inter alia, contending that the Respondent no. 3 was deceived into executing the Agreement dated 18.09.2013 and parting of funds. It is further contended that in the absence of such cheating, the Respondent no. 3 would not have executed the said Agreement and that by an element of deception and inducement with fraudulent intention, such Agreement was obtained by the Petitioner thereby committing offences punishable under Section 420 of the Indian Penal Code. It is also contended that the FIR taken at the face value discloses a criminal offence. It is further also contended by the Respondent no. 3 that somewhere in the year 2013, the Respondent no. 3 was proposing to construct a project of twelve uniquely and highly stylized luxury villas in Goa which are supposed to be first of its kind in Goa. It is further contended that the Petitioner represented to the Respondent no. 3 in the presence of Shri Rony Caetano Fernandes that she is one of the leading names in India in the field of Architecture and interior design and she has requisite expertise and qualification to complete the said project. It is also contended that the Agreement was thereafter executed setting out the terms about Architects fees, Architect's designs, Architectural drawing, etc. It is also pointed out

that since work was getting delayed, the Respondent no. 3 inquired about her qualification as an Architect and she was evasive. It is further pointed out that on 25.07.2015, the Respondent no. 3 addressed an email to the Petitioner and pointed out the defaults committed by the Petitioner and also informed the Petitioner that he will be appointing another agency to complete the said project and that on the same day she replied to the said email and, inter alia, stated that the Project was over and out of her life and emails were thereafter exchanged. It is further pointed out that on 06.08.2015, a legal notice was addressed to the Respondent no. 3 for alleged unauthorised use of copyrights. It is further pointed out that thereafter the Petitioner on 20.08.2015 filed a Petition against the Respondent no. 3 under Section 9 of the Arbitration and Conciliation Act, 1996, (for short, 'said Arbitration Act of 1996'). It is further pointed out that the Petitioner in the proceedings had stated that she is one of the leading names in India in the field of Architecture and Interior Design and has established a well known brand name and a niche for herself in the space by creating highly unique designs. It is further stated that by an Order dated 15.10.2016, an Arbitrator was appointed to adjudicate on the dispute between the parties. It is further pointed out that Respondent no. 3 suspected that the Petitioner was not an Architect and had made a false and deliberate misrepresentation and, consequently, the Respondent no. 3 engaged the services of an Advocate to inquire from the Council of Architect whether the Petitioner was registered with the Council or not and subsequently by an email dated 07.09.2015, the information was sought and the Respondent no. 3 learnt that she was not registered with such Council. It is further pointed out that the Petitioner had deliberately and intentionally misrepresented and cheated the Respondent no. 3 that she was an Architect. It is further pointed out that the Respondent no. 3 had bonafide reasons to believe that the Petitioner alongwith her team and Lawyers attended the Goa Police Station in September and submitted her statement. It is also pointed out that the Petitioner has constantly described herself as a highly reputed and respected member of the Society. There is no whisper about her being one of the leading names in India in the field of Architecture. It is also pointed out that the Petitioner has been making defamatory statements in the media and that there is no case made out for quashing the FIR.

7. Shri Nitin Sardessai, learned Senior Advocate appearing for the Petitioner, has pointed out that all the allegations made by the Respondent no. 3 in the complaint are baseless and on a bare perusal of such complaint, it clearly does not make out any case of any criminal offence. The learned Senior Advocate further submits that on a bare perusal of the Agreement between the parties, there is nothing even remotely to suggest that the Petitioner had ever represented that she was an Architect registered with the Council of Architects. It is further pointed out that the ingredients of cheating in terms of the provisions of Section 415 of the Indian Penal Code cannot at all be spelt out from the allegations made in the complaint. It is further

submitted that the Respondent no. 3 has committed default of the terms of the Agreement between the parties and has been illegally appropriating the exclusive designs prepared by the Petitioner on which count the Petitioner has served a legal notice to the Respondent no. 3. It is further pointed out that the Petitioner even filed proceedings under Section 9 of the Arbitration Act of 1996 before this Court at the Principal seat wherein an Arbitrator has already been appointed to adjudicate the dispute between the parties. It is further pointed out that only after the petitioner has put forward her legitimate claim against the Respondent no. 3 as a counter blast, the Respondent no. 3 has falsely filed a complaint on vexatious and untenable grounds. It is further submitted that there are no ingredients which can remotely suggest that the Petitioner has committed any criminal offence much less an offence of cheating punishable under Section 420 of the Indian Penal Code. It is also pointed out that filing such complaint is an abuse of the process of criminal jurisprudence which deserves to be quashed and set aside. It is further pointed out that the allegations made by the Respondent no. 3 are purely a civil dispute which cannot be led to be criminal offence as alleged by the Respondent no. 3. Learned Senior Advocate has also taken us through the different terms of the Agreement between the parties to point out that the Agreement itself contemplates that the Petitioner can in fact engage recognised Architects to perform the services to be rendered to the Respondent no. 3. It is further submitted that being a leading name in Architecture, it would naturally include services of a designer and, as such, according to him, there is nothing to suggest that the Petitioner has in any way deceived the Respondent no. 3. It is pointed out that the Agreement between the parties was in place for more than two years and the Respondent no. 3 never raised any grievance with regard to the designs which were prepared by the Petitioner for the Respondent no. 3. It is further pointed out that misrepresentation is distinct from cheating and, as such, according to him there is no misrepresentation nor any alleged cheating recorded in the complaint lodged by the Respondent no. 3. The learned Senior Advocate further pointed out that even in answer to the queries by the Respondent no. 2, it was clearly pointed out that the Petitioner never said she was an Architect and that proceedings for Arbitration were already pending and that the proceedings initiated by the Respondent no. 3 are an abuse to Court. Learned Senior Advocate further submits that the FIR be quashed and set aside.

In support of his contention, the learned Senior Advocate has relied upon the Judgments reported in ***(2000) 4 SCC 146*** in the case of ***Shiromani Gurdwara Grabandhak Committee, Amritsar vs. Som Nath Dash & Ors., (2005) 10 SCC 228*** in the case of ***Anil Mahajan vs. Bhor Indusries Ltd. & anr. (2007) 12 SCC 1*** in the case of ***Inder Mohan Goswami & anr. vs. State of Uttaranchal & Ors., (2000) 4 SCC 168*** in the case of ***Hridaya Ranjan Prasad Verma & Ors vs. State of Bihar & anr.*** and ***(1988) 1 SCC 692*** in the case of ***Madhav Rao Kiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors.***

8. On the other hand, Shri Rivankar, learned Public Prosecutor appearing for the Respondent nos. 1 and 2, has pointed out that the Petitioner had disclosed in the questionnaire about the pendency of the Arbitration proceedings as well as about the execution of the Agreement between the Petitioner and the Respondent no. 3. Learned Public Prosecutor has pointed out that as the Petitioner is not registered with the Council of Architects and as property has been parted in favour of the Petitioner by the Respondent no. 3, the FIR has been rightly registered and the investigation is in progress.

9. Shri Shirish Gupte, learned Senior Advocate appearing for the Respondent no. 3, has strongly opposed the above Petition. Learned Senior Advocate pointed out that it is now well settled that interference of this Court in proceedings under Section 482 of Cr.P.C. for quashing the FIR are to be exercised in the rarest of rare cases and not as a matter of course. Learned Senior Advocate further pointed out that the defence of the Petitioner to the complaint registered against the Petitioner cannot be looked into as this is a matter of investigation before the Respondent no. 2. It is further pointed out that on a bare reading of the complaint, it clearly discloses all the ingredients of cheating and, as such, the registration of the FIR for the offence punishable under Section 420 of the Indian Penal Code stands justified. The learned Senior Advocate has minutely taken us through the complaint lodged

by the Respondent no. 3 to point out that all the aspects of cheating have been clearly mentioned in such complaint and, as such, the contention of the Petitioner that it does not disclose a criminal offence is totally farfetched. Learned Senior Advocate has taken us through the affidavits filed in the proceedings for Arbitration to point out that the Petitioner still insists that she is an Architect which clearly shows her malafides in deceiving the Respondent no. 3 to enter into the Agreement. Learned Senior Advocate further pointed out that in case the Petitioner was not a registered Architect, the Respondent no. 3 would not have entered into the Agreement with the Petitioner. It is further pointed out that when the Respondent no. 3 found some defects in the plans submitted by the Petitioner specially with regard to the location of the washrooms adjoining the main road, the Respondent no. 3 became suspicious about the qualification of the Petitioner which led the Respondent no. 3 to engage the services of an Advocate in Delhi to find out whether the Petitioner was registered with the Council of Architect. Learned Senior Advocate further pointed out that the Respondent no. 3 thereafter learnt that the Petitioner was not a qualified Architect and in fact the Petitioner had cheated the Respondent no. 3 from the inception that she was a qualified Architect. It is pointed out that considering the ratio laid down by the Apex Court in the Judgments relied upon by the Respondents, it clearly shows that the Petitioner is liable to be prosecuted for offences punishable under Section 420 of the Indian Penal Code.

In support of his submissions, the learned Senior Advocate has relied upon the Judgments reported in ***(2014) 15 SCC 221*** in the case of ***Teeja Devi alias Triza Devi vs. State of Rajasthan & Ors. ,*** the Judgment of the ***Gujarat High Court in Special Civil Application no. 1111 of 1999*** in the case of ***Girish Mistry Chairman Indian Institute of Architects vs. State of Gujarat, (1996) 1 SCC 542*** in the case of ***State of Maharashtra vs. Ishwar Piraji Kalpatri & Ors.,*** and ***(2015) 11 SCC 776*** in the case of ***HMT Watches Limited vs. M. A. Abida & anr.*** Learned Senior Advocate as such pointed out that the Petition be rejected.

10. We have considered the submissions of the respective learned Senior Counsel as well as with their assistance, we have also perused the records. The FIR registered by the Respondent no. 2 is for an offence punishable under Section 420 of the Indian Penal Code. Indisputably, the records reveal that there is an Agreement executed between the Petitioner and the Respondent no. 3 for rendering professional services in connection with the designing of villas to be constructed by the Respondent no. 3 in terms thereof. The records also reveal that there is a dispute between the parties in connection with the performance of the terms of such Agreement which led the Petitioner to serve a notice dated 06.08.2015 on the Respondent no. 3, inter alia, for infringement of her copyrights. Proceedings for reliefs under Section 9 of the Arbitration Act of 1996, were also initiated before this Court at its Principal Seat. An Arbitrator has also been appointed by an Order dated 15.10.2015. The complaint lodged by the Respondent no.

3 was after the dispute was raised by the Petitioner based on the said Agreement between the parties. The FIR came to be registered on 30.05.2016 after the Respondent no. 2 received a notice in proceedings initiated by the Respondent no. 3 under Section 156(3) of the Cr. P.C. Before registering the FIR, the Respondent no. 3 had before them the answers to the queries raised by the Respondent no. 2 on the Petitioner as well as the said contract between the parties. The answers clearly state that the Petitioner had not represented the Respondent no. 3 that she was a registered Architect and further informed about the pendency of the Arbitration before the Arbitrator appointed by this Court.

11. In the background of some of these admitted facts we shall now proceed to examine whether the complaint lodged by the Respondent no. 3 discloses the commission of an offence punishable under Section 420 of the Indian Penal Code. Section 415 of the Indian Penal Code provides thus :

> "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".

> Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

12. Before examining the complaint to ascertain whether the ingredients of an offence of cheating stand satisfied based on the allegations therein, we shall examine the said Agreement to find out the nature of the services sought from the Petitioner by the Respondent no. 3. On perusal of the Agreement dated 18.09.2013, it clearly shows that the Respondent no. 3 confirmed of availing services of Sussanne Roshan House of Design, Ms. Sussanne Roshan and Ms. Gauri Khan, for providing professional designing services as mentioned therein for villas in Goa. The name of the proprietorship concern of the Petitioner itself suggest that it was a house of designs. Clause (2) thereof stipulates the detailed designs which would include providing of Architect's designs of villas. The fees as well as the mode of payment for the designing fees are clearly specified therein. The Agreement also provides for cases when the designs are executed by the EMGEE Properties/the Respondent no. 3 herein or any other contractor hired by the Respondent no. 3 not using Sussanne Roshan House of Design, Contractor and Design. The note therein also stipulates that all intellectual property rights in the design work and related creative work shall belong to Sussanne Roshan House of Design and the design, after being approved by the Respondent no. 3 shall be implemented/executed only through Sussanne Roshan House of Designs. It also provides that the said

House of Design shall procure services of qualified professionals for execution of the project including the services of Ms. Sussanne Roshan and Ms. Gauri Khan. The sole responsibility for obtaining any permission relating to Municipal, Heritage, etc., was of the Respondent no. 3. The clauses referred to herein above clearly suggest that the main thrust of the contract shows that the Petitioner was engaged to carry out the work of designing. There is nothing therein which would remotely suggest that the Petitioner had represented that she was personally an Architect who was registered with the Council of Architects. On the contrary, the Agreement provides that the said House of Design could procure qualified professionals to perform the work. This will have to be borne in mind while examining the complaint lodged by the Respondent no. 3.

13. On a plain reading of the compliant, it alleges that the Petitioner was engaged for providing the Respondent no. 3 with Architectural designing services. It further states that when the Petitioner was not able to render the services within the time period as stipulated in the said contract, the Respondent no. 3 became suspicious. It further states that when the Petitioner avoided to furnish information about her registration with the Council of Architects to their utter shock, the Counsel engaged by the Respondent no. 3 informed that the Petitioner is not registered with the Council of Architects. It further states that it fortified the doubts that the Petitioner is not an Architect by profession and by such misrepresentation

induced the Respondent no. 3 to enter into the said contract and thus dishonestly induced the Respondent no. 3 to make a payment of Rs.1,87,92,022/-. It also records that the complaint is not with regard to the breach of contract dated 18.09.2013.

14. It is also pertinent to note that in the present case, the Petitioner had answered the queries submitted by the Respondent no. 2 wherein there were disclosures about the contract between the parties and their relationship. Without adverting to any of such material, the Respondent no. 2 proceeded to register the FIR. Though the powers of police to investigate a cognizable offence are unlimited such powers during investigation must be exercised strictly within the limitations prescribed in the Code of Criminal Procedure so that such power may not result in destroying the personal freedom as a citizen.

15. On going through the said complaint, there are no allegations therein that from the inception when the dealings between them were negotiated, the Petitioner had deceived or informed the Respondent no. 3 that she was a registered Architect with the Council of Architects. The allegations may at the most be of misrepresentation as there is a distinct difference between misrepresentation and cheating which would depend upon the facts of each case. The dishonest intention to meet the ingredients of cheating in terms of Section 415 of the Indian Penal Code has to be from

the inception at the very time when the Petitioner made a promise to render services to the Respondent no. 3. On the contrary, as pointed out herein above, the Agreement itself contemplates that the Petitioner could procure the services of qualified professionals which itself shows that the Petitioner could avail of services of persons who are qualified Architects. The Petitioner has clearly stated in answer to the queries that she had employees who are professional Architects in assisting the designing services. Architectural and design services are closely related whereas Architecture faces towards strategy, structure and purpose towards the abstract; design faces towards implementation and practice towards the concrete. Most Designers and Architects do both types of work but most will describe themselves as either a Designer or an Architect according to which they must often face. Architects and Designers render services of designing but, however, all Designers are not necessarily Architects. In the present case, the petitioner described her concern as the '*House of Designs*'. Even assuming there was a representation as alleged by the Respondent no. 3 which is found to be thereafter false it would not amount to cheating as it is further required to establish that the representation was false to the knowledge of the Accused and was made in order to deceive the Complainant. Unless such allegations are spelt out in the complaint, a person cannot be foisted with a criminal liability as the only right that the Complainant can acquire in such circumstances is a remedy for breach of the contract in the Civil Court. Mere breach of a contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

16. In the present case, as pointed out herein above, the proceedings initiated by the Petitioner under Section 9 of the Arbitration Act of 1996, were in fact pending when the complaint was lodged by the Respondent no. 3. The Petitioner raised claims against the Respondent no. 3, inter alia, for breach of the contract and infringement of the copyrights. By an analysis of the terms and conditions of the Agreement executed between the parties, the dispute between the parties appear to be purely of a civil nature. It is a well settled legal proposition that criminal liability should not be imposed in disputes of a civil nature. No doubt, the inherent jurisdiction of the High Court under Section 482 of Cr.P.C. should not be exercised to stifle a legitimate prosecution but, however, the High Court's inherent powers be it in civil or criminal matters, are designed to achieve a salutary public purpose so that a court proceeding should not be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the Court would be justified in quashing the proceedings in the interest of justice. As already pointed out herein above, in the present case, the Complaint does not disclose any criminal intention on the part of the Petitioner. It is also not disputed that during the subsistence of the Agreement for nearly two years, the projects were initiated by the Respondent no.3 based on the designs submitted by

the Petitioner. The complaint does not disclose that there were any defects noticed on such designs or that any objections were raised by the statutory authorities on the ground that the plans were not prepared by a registered Architect. In such circumstances, we find that the filing of the complaint itself by the Respondent no. 3 is an abuse of the criminal process initiated by the Respondent no. 3. In order to bring a case for an offence of cheating, it is not merely sufficient to prove that a false representation was made, but, it is further necessary to establish that the representation was false to the knowledge of the accused and was made in order to deceive the Complainant. As pointed out herein above, the allegations in the complaint do not disclose the commission of an offence punishable under Section 420 of the Indian Penal Code. The Apex Court in the Judgment reported in ***2016 (1) SCC 348*** in the case of ***ARCI v. Nimra Cerglass Technics (P) Ltd.,*** has observed at Para 22 and 23 thus :

> "22. By an analysis of the terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is a settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In *Anil Mahajan* v. *Bhor Industries Ltd.*, this Court held as under: (SCC p. 231, paras 6-7)
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> > "*6.* … A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The

subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

* * *

8. 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. … 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 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."

23. In *Indian Oil Corpn.* v. *NEPC India Ltd.*, this Court observed that civil liability cannot be converted into criminal liability and held as under: (SCC pp. 748-49, paras 13-14)

"*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)

> '*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.'

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 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

17. It is to be noted that in the present case merely stating that the Petitioner deceived the Respondent no. 3 would itself not suffice the requirements that a case of cheating has been spelt out in the complaint when there is no averment about the deceit of cheating or fraudulent intention of the Petitioner at the time of entering into the Agreement where from it can be inferred that the Petitioner had the intention to deceive the Respondent no. 3 from the inception that she was a professional Architect registered with the Council. The averments in the complaint lodged by the Respondent no. 3 attributed to the Petitioner apparently have been made only to foster criminal liability on the Petitioner by covering a purely civil dispute into a criminal act alleged to have been committed by the Petitioner. Reading the contract executed between the parties, as referred to herein above, the alleged representation that the Petitioner was a professional Architect duly registered, appears to be obscure on the face of it. These

allegations exfacie cannot be accepted. The fact that the dispute involved between the parties is purely civil in nature, considering the averments therein that such complaint had nothing to do with the dispute of the breach of the contract between the parties, though the terms therein are relied upon to initiate a criminal prosecution on vexatious and erroneous allegations.

18. In the case of ***Hridaya Ranjan Prasad Verma & Ors vs. State of Bihar & anr.,*** (supra), the Apex Court has considered the ingredients necessary to make a case of cheating by observing at Paras 15 and 16 thus :

> "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.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in *State of Haryana* v. *Bhajan Lal* and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information

was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same."

19. In the case of ***Inder Mohan Goswami & anr. vs. State of Uttaranchal & Ors.,*** (supra), considering the power to be exercised under Section 482 of the Cr.P. C., has noted at Paras 23, 24 and 46 thus :

"23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(*i*) to give effect to an order under the Code;
(*ii*) to prevent abuse of the process of court, and

(*iii*) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

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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."

20. In the Judgment reported in ***(2014) 7 SCC 215*** in the case of ***Rishipal Singh vs. State of uttar Pradesh & anr.,*** it has been observed at Para 13 thus :

> "13. What emerges from the above judgments is 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 in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."

21. In the backdrop of the legal position, well settled by the Apex

Court in the Judgments referred to herein above, we find that the complaint lodged by the Respondent no. 3 does not disclose the commission of an offence punishable under Section 420 of the Indian Penal Code. The Respondent no. 2 proceeded to register the FIR despite all the queries and the documents produced by the Petitioner which were not at all considered whilst registering the FIR thereby exceeding its powers and destroying the freedom of the Petitioner. The uncontroverted allegations in the complaint do not suggest that the ingredients required for commission of an offence punishable under Section 420 of the Indian Penal Code have been spelt out in the complaint. The complaint itself was lodged when the proceedings for arbitration were already initiated by the Petitioner. During the subsistence of the Agreement, for nearly two years, there is nothing disclosed in the complaint which could even remotely suggest that the Petitioner had deceived the Respondent no. 3 with a criminal intention to part with any amounts as alleged. The dispute appears to be a breach of the contract and there is no criminal liability which could suggest that the ingredients of cheating in terms of Section 415 of the Indian Penal Code have been made out.

22. In such circumstances, we find that the FIR registered is an abuse of the process of law initiated by the Respondent no. 3 on the basis of a purely alleged misrepresentation which cannot by any stretch of imagination meet the requirements of cheating as provided under Section

415 of the Indian Penal Code. Allowing such FIR to be registered would be an abuse of process of law and something unfair and wrong that the Court should not allow a procedure to proceed which is in all other respects a purely civil case. The Respondent no. 3 wants to somehow entangle the Petitioner in criminal prosecution to get an unfair advantage in pending civil proceedings. A veiled attempt by the Respondent no.1 to initiate a lame prosecution by filing the subject complaint, cannot be permitted and, as such, the FIR deserves to be quashed and set aside, as criminal prosecution is unwarranted in the facts of the present case.

23. The Judgment in the case of ***Teeja Devi alias Triza Devi vs. State of Rajasthan & Ors.*** (supra) is not applicable to the facts of the present case taking note of the view herein above that the FIR, prima facie, does not disclose a cognizable offence.

24. The Judgment in the case of ***Girish Mistry Chairman Indian Institute of Architects vs. State of Gujarat*** (supra), of the Gujarat High Court, is also not applicable to the facts of the case as the subject condition of the advertisement was to employ a panel of Architectural Consultancy Firm.

25. The Judgment in the case of ***State of Maharashtra vs. Ishwar Piraji Kalpatri & Ors.*** (supra) is also not applicable considering that we have

found, that the allegation in the complaint did not spell out the ingredients of a cognizable offence of cheating.

26. The Judgment in the case of ***HMT Watches Limited vs. M. A. Abida & anr.*** (supra), is in the context that the defence of the Accused cannot be considered to exercise inherent powers even though found plausible and as such is also not applicable to the facts of the present case as we have not considered the defence of the Petitioner but only proceeded based on the allegations in the complaint and the admitted documents which were available before the Respondent no. 2 before registering the FIR.

27. In view of the above, we find that the complaint filed by the Respondent no. 3 is an abuse of criminal process initiated by the Respondent no. 3 and, consequently, for the reasons stated herein above, the impugned FIR bearing no. 119 of 2016 dated 30.05.2016 is quashed and set aside.

28. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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