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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.613 OF 2016

Ramesh Dahyalal Shah	]	
age: 54 years,	]	
r/o 702, 7 th floor, Jay Maharashtra Vikas	]	
CHS, Gulmohar Cross Road No.5,	]	Applicant.
JVPD Scheme, Juhu,	]	
Mumbai 400 049	]	

-versus-

1. The State of Maharashtra	]	
Joint Commissioner of Police	]	
Economic Offence Wing	]	
Craford Market , Mumbai	]	
	]	
2. Senior Inspector	]	
Economic Offence Wing	]	
Crawford Market, Mumbai	]	Respondents.
	]	
3. Mr. Tushar Thakkar	]	
age:53 yrs, Occn. Denim Fabrics Dealer	]	
r/o Flat No.50, 12 th floor	]	
Utkarsh Housing Society	]	
Prabhadevi, Mumbai 400 025	]	

ALONGWITH

CRIMINAL APPLICATION NO.728 OF 2016

Yardi Prabhu Consultants & Valuers Pvt.	]	
Ltd.,	]	
Through Narsimha Kini, Sr. V.P	]	Applicant.
7/8, Samadhan Agarkar Chowk	]	
Opp. Railway Station, Andheri (E)	]	
Mumbai 400 069	]	

-versus-

- | | | |
|--|---|-------------|
| 1. The State of Maharashtra |] | |
| Economic Offence Wing |] | |
| Crawford Market, Mumbai |] | |
| |] | |
| 2. Mr. Tushar Thakkar |] | Respondents |
| r/o Flat No.50, 12 th floor |] | |
| Utkarsh Housing Society |] | |
| J.A. Marg, Prabhadevi, |] | |
| Mumbai 400 025 |] | |

**ALONGWITH
CRIMINAL APPLICATION NO.866 OF 2016**

Ashwinkumar Shetty	]	
Adult, Indian Inhabitant	]	
Aged: 59 years, Occupation: Chartered	]	
Engineer & Government Registered	]	Applicant.
Valuer, having his office at	]	
103, Navin Asha, First Floor	]	
126-A, Dadasaheb Phalke Road	]	
Dadar (East), Mumbai 400 014	]	

-versus-

- | | | |
|--|---|--------------|
| 1. The State of Maharashtra |] | |
| Through the Senior Inspector of the |] | |
| Economic Offence Wing, GV-II |] | |
| Mumbai |] | |
| |] | |
| 2. Mr. Tushar Dharamshee Thakkar |] | Respondents. |
| r/o Flat No.50, 12 th floor |] | |
| Utkarsh Housing Society |] | |
| J.A. Marg, Prabhadevi, |] | |
| Mumbai 400 025 |] | |

Mr. Vikram Choudhary, Senior Advocate a/w
Mr. Sujay Kantawala, Ms. Sophia Pinto, Mr.
Kartik Vig, a/w Mr. H. K. Sudhakara i/by
H.K.S. Legal, for applicant in Application
No.613 of 2016.

Mr. Ram Upadhyay a/w Mr. Dharmesh Singh
i/by K/s Law Competere Consultus for the

Applicant in Application No.728 of 2016.

Ms. Deepali Thakkar i/by Anandini Fernandes
for the applicant in Application No.866 of
2016.

Mr. F.R. Shaikh APP for the State.

Mr. Girish S. Godbole a/w Mr. Hitesh C. Soni,
Ms. Jia Kanade, N. Jacob, for respondent No.2
-original complainant.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

CLOSED FOR JUDGMENT ON : 23rd NOVEMBER, 2017

JUDGMENT PRONOUNCED ON : 6th DECEMBER, 2017

JUDGMENT [PER : DR. SHALINI PHANSALKAR-JOSHI, J.]

1] All these three applications are filed by three different
accused invoking extra ordinary writ jurisdiction of this Court
under Article 226 of the Constitution of India and under Section
482 of Code of Criminal Procedure Code, for quashing F.I.R.No.78
of 2016, registered with N.M. Joshi Marg, Police Station, Mumbai.
the Investigation of which is taken over by Economic Offence
Wing.

2] The said F.I.R. is registered at the instance of
respondent No.3 Mr. Tushar Thakkar, against the applicants and
other 11 accused, for the offence punishable under Sections 418,

420,465, 467, 468, 471, 477(a), 506(2) read with 120(b) of the Indian Penal Code.

3] It is stated by respondent No.3 in his complaint that he is carrying on business of fabrics and clothing through his companies namely Tushar Fabrics Pvt. Ltd and Tushar Clothing Pvt .Ltd. He was introduced to applicant Ramesh D. Shah by one Mr. Jayesh Tanna, who is contractor, in one of the companies of the applicant Ramesh Shah.

4] In pursuance of the various negotiations held between the parties, respondent No.3 agreed to invest the substantial amount of funds in the company of the applicant by accepting 45% equity share holding in ETCO Denim Pvt. Ltd. According to respondent No.3 on various representations and inducements made by the applicant Ramesh Shah, he agreed to enter into Share Holding Agreement on 12.12.2012, according to which he was to be appointed on the Board of Directors and designated as Vice Chairman of ETCO Denim on execution of agreement. Moreover, as Vice Chairman, he was to receive remuneration of Rs.2.75 lacs per month. All important decisions of the company were to be taken jointly by him and the applicant Ramesh Shah. In pursuance of the said agreement respondent No.3 invested

substantial amount through him and his companies in ETCO and thereby acquired 45% stake in the total share holding of ETCO. However, he was not called for AGM and EOGM meetings. The Directors and financiers of ETCO were neglecting and avoiding him. They also did not keep their promises like appointing him as Vice Chairman, paying remuneration of Rs.2.75 lacs per month, giving authority to sign all the cheques, inform the change in share holding to the bank, allow him to take decision of the company jointly with him etc., and thus, cheated him.

5] It is further case of respondent No.3 that the applicant Ramesh Shah has submitted project report about erection and installation of plant of ETCO at Bijapur, Karnataka and availed loan of Rs.237 crores from Corporation Bank and other four banks. However, he did not install the machinery and the plant as per project report, but installed second hand machinery from Gulf Denim of Dubai which was almost 18 years old. According to respondent No.3, applicant Ramesh Shah did this in connivance with other applicants, namely M/s Yardi Prabhu Consultants and Valuers Pvt. Ltd, Andheri (E), and also in connivance with Consortium of Govt. Banks. By this act, applicant Ramesh Shah siphoned of loan amount for his personal gain and thus, he cheated the Consortium of Government Banks. The applicants

M/s Yardi Prabhu Consultants and Valuers Pvt. Ltd and M/s A.V. Shetty and Associates, were appointed by Corporation Bank as a lead bank on the complaint of respondent No.3 for re-verification of the value of the machinery installed in the Company. However, the reports submitted by the said applicants being in connivance with the applicant Ramesh Shah, did not disclose the true state of affairs. As per respondent No.3, applicant Ramesh Shah has also over invoiced the machinery in order to get more capital subsidy and interest subsidy for the next 7 years from Textile Ministry of Government of India and thereby caused loss to the said Ministry also.

6] When respondent No.3 raised before applicant Ramesh Shah, all these issues, on 3.8.2015 he was threatened by one Mr. Santosh Sawant on behalf of applicant Ramesh Shah. It is further case of respondent No.3 that if he was given distributorship as agreed, he would have earned approximately Rs.35.40 crores. However, by denying such distributorship to him and his company, applicant Ramesh Shah caused him loss of Rs.35.40 crores. As a result, he also suffered loss in his goodwill and reputation. Thus, according to respondent No.3, applicant Ramesh Shah along with other two applicants and other accused including the various banks, in connivance with each other,

committed criminal breach of trust and cheated him to the tune of Rs.94.13 crores in respect of the investments made by him and his group companies in ETCO Denim Company.

7] It is on this complaint of the respondent No.3 that C.R. bearing No.78 of 2016 came to be registered and the investigation thereof is at present being carried out by Economic Offence Wing, Mumbai.

8] According to learned counsel for the applicants, even the bare perusal of this complaint is more than sufficient to reveal that the entire dispute is arising out of the Share Holding Agreement entered into between the parties and therefore, this dispute is predominantly of a civil nature and hence availing criminal remedy to settle the same is totally a gross abuse and misuse of the law. It is further submitted by learned counsel for the applicants that respondent No.3 has already availed civil remedies, including the remedy before the Company Law Board and also the Arbitration Proceeding. Respondent No.3 has also filed suits for recovery of this amount which are pending in the Court. Only after he failed to get the reliefs in other forums, in order to recover the amount which he could not do in civil proceeding, Respondent No.3 has resorted to criminal process. It

is urged that none of the ingredients of the offence alleged being made out and launch of the criminal process being malafide, the F.I.R. needs to be quashed and set aside.

9] Per contra, according to learned counsel for respondent No.3, the contents of the F.I.R. clearly reveal commission of cognizable offences like cheating, fabrication of accounts etc., and hence merely because civil proceedings are also resorted to, the complaint cannot be quashed at the threshold itself. It is submitted that the acts of applicants are not only causing loss and cheating to respondent No.3, but also to the Government machinery and the concerned Consortium of banks. In such situation, this Court should be slow in invoking its extraordinary jurisdiction to quash the complaint under Section 482 of the Code of Criminal Procedure, which jurisdiction is to be invoked only in rare and in exceptional cases.

10] In support of their respective submissions, learned counsel for both parties have relied upon various Judgments of the Hon'ble Supreme Court to explain the contours of the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, for quashing the complaint at the initial stage itself. Learned counsel for both the parties have also relied upon

various case laws in support of their rival submissions as to when the resort to criminal prosecution can be taken, even when the dispute is arising out of the agreement entered into by the parties.

11] The moot question, therefore, arising for our consideration in these applications is whether the dispute between the parties is of predominantly civil nature which is tried to be converted to the criminal nature so as to recover the amount which respondent No.3 is claiming as due from the applicant Ramesh Shah?

12] After hearing learned counsel for the parties and after going through the allegations contained in the complaint and the material on record, we are of the firm conclusion that the matter entirely pertains to civil jurisdiction and not even prima facie case is made out in the complaint for the offence punishable under Sections 418, 420, 465, 467, 468, 471, 477(a), 506(2) read with 120(b) of the Indian Penal Code. In our opinion, even if the allegations contained in the complaint are taken to be true on their face value, complaint gives a clear impression that it is primarily a case where respondent No.3 is alleging breach of the terms and conditions of the Share Holding Agreement executed

between the parties on the ground that the applicant Ramesh Shah is not acting in accordance therewith and not making the payments as demanded by respondent No.3.

13] It is a common ground between the parties that Share Holding Agreement was entered into between the applicant Ramesh Shah and respondent No.3 on 12th December, 2012, a copy of which is produced at Exhibit "A". Clause (D), (E) and (F) of the Agreement reads as under :-

"D. That Shareholder No.3 (Respondent No.3) is one of the leading and renowned distributors of the Denim Fabric in India and is well versed with the market conditions. Shareholder No.3 is also the Chairman and equity Shareholder in another two companies i.e. Tushar Clothing Private Limited and Tushar Fabrics Private Limited. Share holder No.3 has shown interest in the business of the Company and accordingly approached Shareholder No.1 (Applicant Ramesh Shah), to buy the Shares of the Company either by self and or his nominees.

(emphasis supplied)

E. The Shareholder Nos.1 have clearly informed Shareholder No.3 the intention behind selling the equity Shares is to sustain profit to the Company at least for a period of five years as mentioned in para C hereinabove mentioned.

F. The Shareholder No.3 has accordingly agreed to buy the product of the Company that is to the limit of 40 million meter of Fabric as a Sole Distributor either through his company i.e.

Tushar Fabrics Private Limited and/or through other companies brought in by Shareholder no.3 at the cost of sales (fixed cost+variable cost) +fixed profit of Rs.8 per meter, irrespective of the market conditions prevailing then. If the fabric is sold by Shareholder No.3 at a profit of less than R.8 per meter, then the amount of loss will be debited to Shareholder No.3 or his company, i.e. Tushar Fabric Private Limited. Similarly, if the fabric is sold by Shareholder No.3 at a profit of more than Rs.8 per meter, the excess profit will be credited to Shareholder No.3 or his company i.e. Tushar Fabrics Private Limited”

14] These clauses in the Agreement make it clear that it was respondent No.3 Tushar Thakkar, who has shown interest in the business of the applicant Ramesh Shah's company and accordingly approached the applicant Ramesh Shah to buy shares of the company either by self or by his nominees. The applicant Ramesh Shah has clearly informed the respondent No.3 that the intention behind selling equity shares was to sustain profit to the company at least for a period of five years and accordingly it was agreed between the parties that respondent No.3 would buy product of the company i.e. upto the limit of 40 million meter of fabric as a sole distributor. at the cost of sales plus fixed profit of Rs.8 per meter irrespective of market condition prevailing then.

15] Clause No.2.3 of the Agreement states that the

company of applicant Ramesh Shah has already taken credit loan upto Rs.237 crores from various financial institutions in consortium for which he has furnished guarantee to the value of the said amount by pledging 55% shares held by him.

16] Further clauses of the Agreement provide for the appointment of respondent No.3 on the Board of Directors as Vice Chairman, with remuneration of Rs.2.75 lacs per month.

17] In pursuance of the said Agreement, respondent No.3 has invested total amount of Rs.49.83 crores. The first grievance of respondent No.3 is that applicant Ramesh Shah has not acted in accordance with this Agreement and thereby caused substantial financial loss to him. The crux of this complaint can be found in the specific averments made in the complaint as follows :-

“The initial investment made by me and my group companies with ETCO was Rs.49.83 Crores. Taking into consideration aforesaid basic investment, Ramesh Shah and ETCO Denim Pvt. Ltd, are bound to pay the interest amount of Rs.29.35 crores to me and my group companies. Similarly, Ramesh Shah and ETCO Denim Pvt. Ltd were bound to give me and my companies exclusive distributorship of Denim Fabrics to be manufactured by ETCO Denim Pvt. Ltd., from May 2013 onwards. If they had given this distributorship to me and my companies, we

could have earned approximately Rs.35.40 crores as on today. Ramesh Shah and ETCO Denim Pvt. Ltd, by denying this distributorship to us, have caused loss of approx. Rs.35.40 crores to me and our companies. Due to this, we have also sustained heavy loss as far as goodwill and/or reputation of our companies in the market is concerned. I say that Ramesh Shah owes us 1) Rs.29.38 crores against our unsecured loan and security deposit by TCPL and TFPL, 2) Interest amount of Rs.29.35 crores against our unsecured loan and security deposit and 3) Rs.35.40 crores due to failure to supply denim fabrics by him. Ramesh Shah also along with others has, thereby cheated me and my companies to the tune of Rs.94.13 crores”.

18] Thus, the case made out in the complaint of respondent No.3 is to the effect that by avoiding to pay this amount which, according to him was due to him, applicant Ramesh Shah and his company has cheated him and his company to the tune of Rs.94.13 crores.

19] Now in respect of the offence of cheating, the law is fairly well settled in various judgments of the Apex Court, some of which are relied upon by learned counsel for the applicants like **Hridaya Ranjan Prasad Verma & ors -vs Stat of Bihar and anr (2000) 4 SCC 168**; wherein it was observed that,

“It is held time and again that the distinction between mere breach of contract and the offence of cheating is a fine one.

It would depend 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 transaction that is the time when the offence is said to have been committed. Therefore, it is the intention which is 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 an culpable intention right at the beginning that is when he made the promise cannot be presumed”

20] Here in the case, it is nowhere alleged in the complaint, even for the sake of it, that since beginning the applicant Ramesh Shah had dishonest or fraudulent intention of cheating the respondent No.3. Conversely, both the parties are having their respective rival contentions for not fulfilling the terms of the Share Holding Agreement. Hence, it is apparent that the grievance is against subsequent non-fulfillment of terms and conditions of the Agreement and not of applicant Ramesh Shah having such intention of cheating since beginning.

21] Even the recitals in the Agreement reveal that it was the respondent No.3 who has approached the applicant Ramesh Shah for making investment in the company of the applicant.

Paragraph (d) of the Agreement, as referred above, makes it clear that it was respondent No.3, who has shown interest in the business of the applicant's company and accordingly approached the applicant Ramesh Shah to buy shares of the company. The Agreement was, therefore, executed at the instance of respondent No.3 and hence the question of applicant inducing the respondent No.3 to enter into such an agreement, with fraudulent intention of cheating him since beginning does not arise. Therefore, apparently the dispute appears to be in respect of breach of the Agreement, which may be on account of subsequent developments, in respect of which allegations and counter allegations are made by the parties against each other. On the basis of mere breach of Agreement, it would not be possible to hold that applicant Ramesh Shah, had since beginning dishonest or fraudulent intention of cheating respondent No.3.

22] This inference that dispute appears to be of a predominantly civil nature can be drawn also from the fact that the dispute was first taken before the Company Law Board, Mumbai Bench, Mumbai, by respondent No.3 himself. Copy of the judgment delivered in the Company Petition No.28 of 2014 on 30.4.2015 is produced on record and it shows that in paragraph No.83, Company Law board was pleased to observe that:-

“83. In the early stage of hearing, learned counsel for the petitioner (respondent No.3 herein) had proposed on their behalf that if the Respondents agree to pay back their contribution towards the equity as its face value per share and the amount of the unsecured loan advanced to the Company, the Petitioners would withdraw the petition.”

23] Thus, the main demand and the grievance of the respondent No.3 appears to be for the return of the amount invested by him in the applicant's company.

24] In paragraph No.84 of the judgment, it was further held that;

“84. Upon critical analysis of the facts and circumstances of the case, it is established that both the groups cannot jointly participate in the management of the company. It is further evident that the two groups of shareholders, lack confidence and mutual trust in each other. It is also clear that the two groups cannot run the management of the company together and the company cannot function smoothly by these two rival groups.”.

25] Therefore, finding is arrived at in the judgment that on account of disputes between the parties over the financial

matters, they have to part the company.

26] The allegations which are made in the present complaint, that of mismanagement of the company by the applicant Ramesh Shah were also raised in the Company Petition and in paragraph No.78, of the judgment, the Company Law Board was pleased to observe that:-

“78. In the facts of the present case, there are no circumstances suggesting that the Respondents in the formation of the Company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the Company or any of its members; or that the members of the Company have not been given all the information with respect to its affairs, which they might reasonably expect. Therefore, to my mind, an order for an investigation would be unjust and improper. Further, an investigation may seriously damage the reputation of a Company and should not be ordered without proper material gathered in the manner provided in law.”

(emphasis supplied)

27] Thus, a clear finding is arrived at, about the allegations made in the complaint, by the Company Law Board totally ruling out mismanagement of the affairs of the company or any fraudulent intention. It was also held that there was no mismanagement and siphoning of funds. The allegations of illegal alteration of share holding and denial of information to the

complainant were also negated.

28] It is also pertinent to note that two Summery Suits for recovery of the amounts bearing COMS/188/2016 and COMS/222/2016, respectively, are pending in the Court which are filed by Respondent No.3 Company M/s Tushar Fabrics. The applicant's company Denim Private Limited has also filed Summery Suit No.COMSL/257/2016 for recovery of Rs.124 crores towards loss and damages for non lifting of denim by Respondent No.3. Arbitration Petition No. ARBP/262/2017 under Section 14 has also been filed by the applicant Ramesh Shah against Respondent No.3.

29] As to the allegations of respondent No.3 made in the complaint that applicant Ramesh Shah has over-invoiced for availing loan of Rs.237 crores from Corporation bank and four banks and he did not install the machinery in the plant as per project report, but installed second hand machinery from Gulf Denim Company, which was 18 years old; it is again a matter of record that the applicant M/s Yardi Prabhu Consultants and Valuers Pvt. Ltd., was appointed for the purpose of verification of the same. Thereafter the matter was even referred to the applicant M/s A.V. Shetty and Associates, which was appointed by

the Corporation Bank. Both of them have also submitted their project reports negating the allegations made to that effect in the complaint. The Company Law Board has effectively dealt with these allegations in its judgment in paragraph No.77 as follows :-

“77. It is a matter of record that after receipt of various complaints from the Petitioners (the present respondent No.3), the consortium of banks passed an order for conducting special audit of the company. In addition, an independent Engineer was deputed to verify the facts of the complaint. However, after verification as per reports, the banks did not find any substance in the complaints of the Petitioners. It has been rightly contended by Mr. Zal Andhyarujina that the Banks normally do not conduct a forensic audit and they, based on the existence financials of the Company, give their report. Further, the engineer deputed by the Banks also only verified the invoice value and did not enter into the investigation as to the correct market value of the machineries. I also agree that no Bank would invite any adverse report to their own project report prepared by their officers during the time, they decide to advance loans to a Company. However, in absence of any corroborative material, the onus of which was on the Petitioners, there is no reason to disbelieve that reports of independent persons which are in favour of the Respondents”.

(emphasis supplied)

30] Thus, as rightly held by the Company Law Board, the banks would not invite any adverse report to their own project

report prepared by their officers during the time, they decide to advance loans to a company. However, in absence of any corroborative material, it becomes difficult to disbelieve the reports of these independent persons merely because they are favouring to applicant Ramesh Shah or to infer connivance between them and applicant so as to implead them also along with consortium of banks as accused in the case.

31] With regard to the complaint made by respondent No.3 to the Corporation Bank, in this respect, the bank has in its meeting dated 27.3.2014, specifically held that :-

“With regard to valuation of machineries and end use of the loan amount, it was observed that a Competent LIE i.e. M/s Yardi Prabhu from the panel of Lead Bank, was appointed, who has made six visits to the site from time to time. LIE reports and CA's certificates were duly requisitioned at regular intervals for monitoring of the project. On completion of the project, another LIE i.e. M/s A.V. Shetty & Associates from Lead Bank's panel list was also engaged. The fresh valuations have been carried out by M/s A.V. Shetty & Associates and they have already submitted their report wherein the valuation of machinery and the project on the whole have been found to be satisfactory. The report concludes as under:-

“After inspection and verification of the cost of the project based on the data provided by the Company and market information based on

primary and secondary research and analysis of the comparative cost estimates of reputed suppliers (domestic & international) for plant and machinery purchased and installed by the Company the costs incurred by the Company are reasonable and fair and in line with the market norms taking into account the specification/configuration and suitability for the project”.

Hence the reports furnished by both LIE's are satisfactory”.

32] As regards the allegations of applicant Ramesh Shah indulging in money laundering or over invoicing and therefore, being black listed for a period of five years and two years respectively, by SEBI, it is pointed out by learned counsel for the applicant Ramesh Shah that the said order of the SEBI has already been set aside on 07.07.2004 by Securities Appellate Board Appellate, Mumbai , in Appeal bearing No.118 of 2003.

33] Thus, it is apparent that respondent No.3 has approached every forum available to him to raise his grievances and after being unsuccessful there, now he is giving the colour of criminal offence to this civil dispute by filing the subject complaint and levelling the same allegations. After realising that the banks are also not supporting him, he has implicated the Consortium of Banks also as accused in the case alongwith the

valuers namely the applicants M/s Yardi Prabhu and M/s M.A.Shetty, thereby trying to disrepute and discredit the verification of the machinery conducted by them also. The intention of the respondent No.3, therefore, appears to be to use the police machinery with mala fide intention to recover the amounts which he is unable to recover by civil mode. Therefore, it is sheer abuse of the process of law.

34] Here is thus a case which is predominantly of civil nature and which has been given the robe of criminal offence that too, after availing civil remedies. Therefore, as held by the Apex Court in the case of **State of Haryana and others -vs- Bhajan Lal and others** 1992 Supp (1) SCC 335, where a criminal proceeding is manifestly attended with mala fide intention and/or the proceeding is maliciously instituted with object to serve the oblique purpose of recovering the amount, such proceeding needs to be quashed and set aside. The allegations made in the present complaint, even after taken, as they are, also do not make out ingredients of the criminal offence, though at the most they may attract civil dispute, for which respondent No.3 has already taken recourse to the civil law and therefore, on this count also, complaint needs to be quashed and set aside.

35] In this respect, one can safely place reliance on the observations of the Apex Court in the case of **Chandran Ratnaswami -vs- K.C. Palanisamy and ors (2013) 6 SCC 740**, relied upon by learned counsel for applicant, wherein it was held that, when the disputes are of civil nature and finally adjudicated by the competent authority, as in the present case, by the Company Law Board and the disputes are arising out of alleged breach of joint venture agreement and when such disputes have been finally resolved by the Court of competent jurisdiction, then it is apparent that complainant wants to manipulate and misuse the process of Court. In this judgment, it was held that, it would be unfair if the applicants are to be tried in such criminal proceeding arising out of the alleged breach of a Joint Venture Agreement. It was further held that the wholesome power under Section 482 of Code of Criminal Procedure entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed.

36] As a matter of fact in the case in **Indian Oil Corpn -vs- NEPC India Ltd and ors, 2006 (3) SCC Cri 736**, the Apex Court was pleased to caution about the growing tendency in

business circles to convert purely civil disputes into criminal cases. It was observed that:-

“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”

37] Learned counsel for applicant has also relied upon the judgment of Hon'ble Supreme Court in the case of **V.Y. Jose and anr -vs- State of Gujarat (2009) 3 SCC 78**, wherein the Apex Court was once again pleased to observe that:-

“Section 482 serves a salutary purpose that a person should not undergo harassment litigation, even though no case has been made out against him. A matter which essentially involves disputes of civil nature, should not be allowed to be subject matter of a criminal offence, the latter being a shortcut of executing a decree which is non-existent”.

38] As regards the authorities relied upon by learned counsel for respondent No.3, they pertain to different facts and circumstances. For example, in the case of **M. Viswanathan -vs- S.K. Tiles and Potteries Private Ltd and ors, (2008) 16 SCC 390**, it was found that the issues raised in the complaint were not adjudicable solely by Civil Court or Company Law Board and hence quashing of the complaint by High Court under Section 482

was not upheld.

39] In the latest judgment of Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhhbai Karmur and ors -vs- State of Gujarat and anr, in Criminal Appeal No.1723 of 2017 dated 4th October, 2017**; also as it was found that the case involves allegations of extortion, forgery, fabrication of documents, utilization of those documents to effectuate transfers of title before registering authorities and the deprivation of the complainant of his interest in land on the basis of fabricated power of attorney. Hence, it was held that such allegations in the F.I.R., cannot be construed to be of a merely private or civil dispute. They implicate serious offence having a bearing on a vital societal interest and therefore, it was held that the High Court was justified in declining to quash the F.I.R., though the matter was amicably settled between the private parties.

40] In the case of **State of Maharashtra and ors -vs- Arun Gulab Gawali, (2009) 9 SCC 701**, relied upon by learned counsel for respondent No.3, Court has explained the parameters and ambit of section 482 of the Code of Criminal Procedure, in the light of decision of Apex Court, in case of **State of Haryana -vs- Bhajanlal**. Applying those very parameters,

here in the case we find that allowing prosecution to continue when the dispute is of civil nature and does not disclose commission of cognizable offence, would be an abuse of process of law as the complaint is filed to recover only funds from applicant Ramesh Shah for which respondent No.3 has already filed civil suit.

41] Hence, we allow all these three applications and hereby quash and set aside the F.I.R.No.78 of 2016, registered with N.M. Joshi Marg, Police Station; the Investigation of which is taken over by Economic Offence Wing.

42] Rule is made absolute in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]