

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2017

Pronounced on : 20.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos.18099 & 19020 of 2016
and
Crl.M.P.Nos.8600, 8946 & 9161 of 2016

1.Rakesh P Sheth ... Petitioner in Crl.O.P.No.18099/2016

2.Roshni R Sheth ... Petitioner in Crl.O.P.No.18099/2016

3.Premsai Chundur ... Petitioner in Crl.O.P.No.19020/2016

Vs.

State rep. by
1. The Inspector of Police,
CCB, Vepery,
Chennai-600 007. ... Respondent-1 in Crl.O.P.No.18099/2016

1. The Inspector of Police,
CCB, EDS Team-II,
Chennai-600 007. ... Respondent -1 in Crl.O.P.No.19020/2016

2. G.Sreevidhya ... Respondent-2 in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., praying to call for the records in Cr.No.180 of 2016 dated 13.07.2016 pending on the file of the respondent police and to quash the same.

For Petitioners : Mr.AL.Somaiyaji, Sr. Counsel
in Crl.O.P.18099/16 for M/s.Nithyaesh & Vaibhav

For Petitioner : Mr.J.Jawahar

in CrI.O.P.19020/16

for Mr.K.P.Ananthakrishna

For Respondent-1
in both CrI.O.Ps.

: Mr.C.Iyyapparaj
Additional Public Prosecutor

For Respondent-2
in both CrI.O.Ps.

: Mr.AR.L.Sunderasan, Sr. Counsel
for Mrs.AL.Gandhimathi

C O M M O N O R D E R

These petitions have been filed by the petitioners challenging the FIR registered in Cr.No.180 of 2016 dated 13.07.2016 on the file of the first respondent police (in both the petitions) and to quash the same.

2.The case of the prosecution is as follows:

The second respondent herein, got acquainted with the petitioners 1 & 2 herein when they were earlier engaged for an interior design work of her apartment. When she intended to purchase a property for investment purpose, she had approached the petitioners 1 & 2 herein, along with one Mr.Premsai Chundur/third petitioner herein, who was the director of M/s.Karismaa Foundations Private Limited, in which the petitioners 1 & 2 are also the directors. On the suggestion of the petitioners 1 & 2 and Mr.Premsai Chundur, the second respondent had entered into a construction agreement on 10.11.2014 for constructing a residential house at the rate of Rs.4 Crores and accordingly, transferred a sum of Rs.1.50 Crores from her savings bank account to the account of the first petitioner herein. Since the first petitioner had advised her that the proposed property to be purchased was not worth the money and that the market conditions were not stable, the second respondent had dropped the plan. According to the second respondent, the first petitioner has assured to transfer the advance amount of Rs.1.50 Crores to her account. However, since the amount was not repaid, after repeated request, the first petitioner had paid a sum of Rs.15 lakhs alone on various dates. Since the petitioners were evading payment of the balance amount, the second respondent had given a complaint on 13.07.2016, which came to be registered in Cr.No.180 of 2017 for offences under Section 420 r/w.34 IPC. According to the prosecution, the petitioners herein had taken advantage of the second respondent's situation that she is a single woman and cheated her. The said investigation pending in Cr.No.180 of 2016, is under challenge in the present petitions.

3.Heard Mr.A.L.Somayaji, learned Senior counsel for the

petitioners in Crl.O.P.No.18099 of 2016, Mr.J.Jawahar, learned counsel for the petitioner in Crl.O.P.No.19020 of 2016 and Mr.AR.L.Sunderasan, learned Senior counsel for the second respondent in both petitions as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the first respondent in both petitions.

4.The learned Senior counsel appearing for the petitioners submitted that the entire transaction between the petitioners and the second respondent was civil in nature and therefore, there is no element of criminal act involved. Relying on the agreement dated 10.11.2014 entered into between M/s.Karismaa Foundations Private Limited and the second respondent herein, the learned Senior counsel submitted that the transaction is civil in nature and as such, the first respondent police are not justified in continuing with the investigation. By relying on Section 420 IPC, he submitted that the complaint does not disclose the basic ingredients of the offence and in the absence of any criminal acts, the FIR needs to be quashed. In support of his submissions, the learned Senior counsel relied on various judgments of the Hon'ble Apex Court as well as this Court. I have referred to these judgments in the later part of my order.

5.Mr.AR.L.Sunderasan, learned Senior counsel on the other hand vehemently opposed the arguments and submitted that the offences of cheating, criminal breach of trust and misappropriation have been clearly made out from the statements made in the complaint. It is the submission of the learned Senior counsel that if at all, the petitioners are of the view that the ingredients of criminal offence has not been made out, it can only be elicited after a fair and impartial investigation and therefore, the present petition filed under Section 482 Cr.P.C., seeking to quash the criminal complaint is pre-mature. By placing strong reliance on the judgment of the Hon'ble Apex Court in Indian Oil Corporation V. NEPC India Ltd., and others in 2006 (4) CTC 60, the learned Senior counsel submitted that the powers under Section 482 Cr.P.C., should be exercised very sparingly and in the rarest of rare cases. Since the second respondent had entrusted the money with the petitioners herein in over draft account and the same was utilised for settling certain personal bank dues of the petitioners, this overt act not only amounts to criminal breach of trust, but is also an offence of dishonest misappropriation of property as well as cheating. According to the learned Senior counsel, the first petitioner never disclosed that his account to which the amount was requested to be transferred, was an over draft account and that the amount was transferred to meet his own personal liabilities without the knowledge of the second respondent herein. In fine, it is the submission that the entire averments in the complaint does constitute a cognizable offence and since

the matter requires a detailed investigation, this Court should not exercise its powers under Section 482 Cr.P.C., for quashing the FIR.

6.Mr.C.Iyyaparaj, learned Additional Public Prosecutor appearing for the first respondent (in both petitions) also submitted that the complaint prima facie reveals the commission of cognizable offences and therefore, the investigating officer was justified in registering the same. According to the learned Additional Public Prosecutor, the ingredients of the offence of cheating has been clearly spelt out in the complaint and that since the investigation is now pending, it would not be appropriate to interfere with the same at this pre-mature stage.

7.I have given careful consideration to the submissions made by the respective counsels.

8.The prime question that needs to be addressed in the present case is whether the ingredients of Section 420 have been made out or not. The Hon'ble Apex Court in a judgment in Hridaya Ranjan Prasad Verma V. State of Bihar reported in 2000 (4) SCC 168 had laid down the ingredients to constitute an offence under Section 420 to include deception of any persons; fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property; and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

9.Section 415 of the IPC defines "Cheating" mean:

"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".

10.The corresponding punishment Section 420 is as follows:

"420.Cheating and dishonestly inducing delivery of property:Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

In the light of the sections and the judgment of the Hon'ble Apex Court, the second respondent's complaint was examined.

11. According to the second respondent, she and the petitioners 1 & 2 were friends for the past five years, prior to entering into the construction agreement. As a matter of fact, she had engaged the services of the second petitioner as an interior designer and entrusted her work with M/s. Clover Design Studio. During the course of her acquaintance with the second petitioner, she was introduced to the first petitioner also, who is the husband of the second petitioner. The second petitioner's earlier contract for the interior design was done to her satisfaction and thereby all of them became good friends. Subsequently, when the second petitioner intended to purchase a property, she had approached the petitioners and the other named person in the FIR for constructing a residential house at the rate of Rs.4 Crores. From these facts, it is seen that when the second respondent had intended to construct a residential house, she had voluntarily engaged the services of the petitioners herein.

12. It is not the case of the second respondent that the petitioners had made a false or misleading representation for the purpose of entering into a construction agreement. When the decision to engage the services of the petitioners was taken by the second respondent, she had voluntarily entered into the construction agreement by way of contract and as per the terms of the contract, she had also paid the advance amount of Rs.1.50 Crores. Till this stage, there were neither deception nor dishonest inducement on the part of the petitioners' to make the second respondent part with her money. Therefore, it cannot be said that the petitioners had cheated the second respondent either to enter into a contract or to part with the advance amount of Rs.1.50 Crores. In the absence of such dishonest inducement, there cannot be any act of deception. Since the second respondent had voluntarily engaged the services of the petitioners herein, the ingredients to constitute the offence of cheating has not been made out.

13. In order to constitute the criminal offence of cheating as defined under Section 415 IPC, it has to be clearly established that from the inception of the transaction itself, the petitioners had a fraudulent or dishonest intention to cheat the second respondent. There is nothing on record to show that there was an ulterior motive on the part of the petitioners to enter into a contract and thereby misappropriating the advance

amount. Hence, it can only be said that the facts of the case leading to entering into a contractual terms with the petitioners was done by and between all the parties, with an intention of concluding the terms of the contract.

14. Pursuant to the execution of the construction agreement, it is alleged by the second respondent that the proposed purchase of the property was dropped on the advice of the petitioners herein. I am unable to comprehend as to how this act would again constitute a criminal offence. What needs to be kept in mind at this point of time when the decision was taken to drop the proposed purchase of property, is that, the petitioners 1 & 2 and the second respondent were good friends and the earlier interior design work was also completed by the second petitioner, admittedly to the satisfaction of the second respondent herein. When the parties were in a cordial relationship, there could have been a possibility that such an advice to drop the deal could have been suggested with a good and bona-fide intention. It is not the case of the second respondent that the purchase of proposed property for construction was advised to be dropped by the petitioners 1 & 2, was for the purpose of misappropriation of the advance amount. None of the averments in the complaint, suggests so.

15. The real grievance of the second respondent commences after dropping the idea of construction of the proposed property and when the petitioners failed to return the advance amount of Rs.1.5 Crores. What had transpired thereafter is that, on the request of the second respondent, the first petitioner had repaid a sum of Rs.15 lakhs and subsequently, handed over the cheque for the balance amount of Rs.1.35 Crores. Since the said cheque came to be dishonoured on 22.09.2015, the first petitioner had given four more cheques which also were dishonoured on 29.10.2015 and 30.10.2015. From these developments, it is seen that the transaction was purely a breach of the terms of the agreement, since the advance amount paid under the construction agreement was required to be refunded in view of the construction of proposed property is being dropped. Though the second respondent has made various allegations against the petitioners in her complaint, her main grievance was that the petitioners were evading and delaying the payments. However, the fact remains that the petitioners had indeed acknowledged their liability and handed over the aforesaid cheques for the amount claimed by the second respondent. Here again, the ingredients of offence of cheating is conspicuously absent.

16. The learned Senior counsel for the second respondent submitted that since the cheques given by the petitioners were dishonoured, the offence of Section 420 is made out. It would

not be out of place to mention here that pursuant to the dishonour of the cheques, the second respondent had issued a statutory notice dated 05.10.2015 under Section 138 of the Negotiable Instruments Act, 1881 as well as for prosecuting the petitioners for an offence under Sections 420 and 415 IPC. The averments made in the said notice has been reiterated in the second respondent's complaint. On receipt of the notice, the petitioners herein had given a reply dated 19.10.2015, wherein they had categorically denied their liability to pay Rs.1.35 Crores. On the other hand, the circumstance under which the cheques for Rs.1.35 Crores was issued has been substantiated as one under coercion and duress. As a matter of fact, the reply notice also had a counter claim against the second respondent in connection with the dues of M/s.Clover Design. I do not intend to go into the averments made in the notices exchanged between the parties.

17.It is made clear that I have not expressed any of my views with regard to the validity of the claims and counter claims made therein. What would be relevant for the purpose of this case is that, the liability and the quantum is under dispute. I am unable to appreciate as to how the investigating officer can go into this mixed set of facts over claims and counter claims and file a final report based on the statements of witnesses or other evidences. It would be pertinent to mention here that the petitioners herein had also sent an e-mail on 11.08.2015 to the second respondent informing her that their cheque for Rs.1.35 Crores would no longer be valid in the light of the earlier cheques issued to her. After the e-mail, the cheque came to be deposited on 22.09.2015 and the notice of dishonour was sent on 05.10.2015. Incidentally, no complaint under Section 138 of the Negotiable Instruments Act was filed. Subsequently, the second respondent had chosen to wait for almost one year and thereafter preferred the present criminal complaint before the first respondent police. These facts needs to be necessarily proved after due trial by a civil Court by letting in oral and documentary evidence and by no stretch of imagination, can the investigating officer render a finding on such mixed question of facts and breach of contractual terms. As such, the ingredients of cheating as defined under Section 415 IPC is conspicuously absent in the complaint. In the result, it is held that the criminal offence of cheating under Section 420 has not been made out from the averments made in the complaint.

18.Mr.AR.L.Sundaresan, learned Senior counsel for the second respondent submitted that apart from the offence of cheating, there is also ingredients of the offences of criminal breach of trust and misappropriation.

19.For the sake of brevity, those sections are extracted

hereunder:

"403.Dishonest misappropriation of property:Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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

In both the aforesaid Sections, the vital ingredients to constitute an offence is that there must be a dishonest intention for the purpose of misappropriating the money. As discussed in the earlier paragraphs, the complaint does not disclose or suggests that there was a dishonesty in the course of the transaction.

20.The arguments advanced by the learned Senior counsel for the second respondent was that the petitioners had diverted the funds transferred through RTGS to meet their personal liabilities and therefore, it amounts to misappropriation is also unfounded. The terms of the construction agreement does not spell out as to for what purpose the advance amount of Rs.1.50 Crores had to be utilised by the petitioners. Assuming for a moment, the petitioners have utilized the funds to meet their personal liabilities, it may not amount to misappropriation as such. What was required in the construction agreement was that the petitioners had to complete the construction within the agreed time-frame. Hence there is no illegality amounting to a criminal offence from the alleged conduct of the petitioners herein. In the absence of the ingredients of dishonest intention and misappropriation, the offence of misappropriation punishable under Section 403 cannot be made out.

21.Likewise, in order to constitute the offence of criminal breach of trust, one of the ingredients is that the person should be entrusted with the property or any dominion over the property. The contract agreement does not speak about refundable advance. On the other hand, since the amount of Rs.1.5 Crores has been termed as an advance, it can only be

deemed to be an advance paid. While that being so, the payment of this advance amount cannot be said to have been entrusted with the petitioners herein.

22. The other ingredients to constitute an offence of criminal breach of trust is again dishonest intention and misappropriation. I have elaborately discussed that the complaint does not make out the ingredients of dishonest intention, misappropriation or entrustment and therefore, none of the provisions would constitute the criminal offence of misappropriation, criminal breach of trust or cheating. Hence, it can only be concluded that the second respondent's complaint manifestly discloses the entire transaction to be purely civil in nature and the first respondent police may not be justified in investigating into a civil transaction.

23. I shall now discuss the various judgments referred to by the respective counsels.

a) In one of the earliest judgments of the Hon'ble Supreme Court in Hari Prasad Chamaria V. Bishun Kumar Surekha and others reported in 1973 (2) SCC 823, had found that a mere breach of contract cannot give rise to criminal prosecution since the remedy is before the Civil Court.

"3. The complaint came up for hearing before the Subdivisional Magistrate Samastipur and on August 6, 1968 he took cognizance of the offence under Section 420 Indian Penal Code. It was directed that the process should issue against the respondents. The respondents thereafter approached the High Court under Section 561A of the Code, of Criminal Procedure. The High Court was of the view that the case of the appellant was based upon contract. Mere breach of contract, in the opinion of the High Court, could not give rise to criminal prosecution. The appellant, it was further observed, had a remedy in the Civil Court and he could not be allowed to fight the matter in Criminal Court. In the result, the criminal proceedings against the respondents were quashed.

4. We have heard Mr. Mafte-shwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we

find that the complaint does not disclose the commission. of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

b)The same proposition has been reiterated in the following judgments also:

i)In Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another reported in 2000 (4) SCC 168, the relevant portion of the judgment is as under:

"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 to 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."

ii) In *Alpic Finance Ltd., Vs. P.Sadasivan and another* reported in 2001 (3) SCC 513, the relevant portion of the decision is as follows:

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved

in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

iii) In Indian Oil Corporation Vs. NEPC India Ltd., and others reported in 2006 (6) SCC 736, wherein it has held as under:

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

"It is to be seen if a matter, which is essentially of 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 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 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

c) While refusing to interfere with the judgment in quashing an FIR, the Hon'ble Apex Court in R.Kalyani Vs. Janak C. Mehta and others reported in 2009 (1) SCC 516 held as follows:

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

d) In N.Anbuselvam, G.A.Poongodi, M.Gokulapriya and G.A.Pavithra Vs. State by Inspector of Police, Thudiyalur Police Station, Coimbatore District and V.Selvam reported in 2015 (1) MWN (Cr.) 147, this Court has held as under:

"10. The learned counsel for the petitioners also relied on the judgment of the Hon'ble Supreme Court reported in (2000) 4 SCC 168 (Hridaya Ranjan Prasad Verma and others v. State of Bihar and another), wherein, the Apex Court is pleased to hold that there is fine distinction between mere breach of contract and the offence of cheating and it depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct and 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 and therefore, it is the intention, which is the gist of the offence and 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.

11. Such observation of the Hon'ble Supreme Court is squarely applicable to the facts of the present case, wherein, there is nothing to show that the petitioners have had any fraudulent or dishonest intention at the inception and with such intention induced the defacto complainant to part with money. On other hand, the conduct of the petitioners would show that the first petitioner has genuinely repaid the amount in all the possible means and his failure to make to pay the entire amount will amount to mere failure to keep up his promise and nothing more, as such, the petitioners has no intention of cheating, which is manifest by the subsequent conduct of the parties in repaying the amount, as held by the learned brother judge of this Court in the decision reported in 2001 (1) MWN (Cr.) 191 (Dr.K.Jagadeesan and another v. Inspector of Police, Central Crime Branch, Egmore, Chennai-8).

12. Thus, considering the nature of the transactions between the parties and subsequent conduct of the parties, this Court is of the firm view that the allegations raised in the FIR would disclose that the dispute between the parties is more of civil in nature and there is no fraudulent or dishonest intention on the part of the petitioners to attract the offences under sections 420 and 406 IPC.

e) In the well laid down judgment of the Hon'ble Apex Court in the State of Haryana Vs. Bhajan Lal and others [1992 Supp (1) SCC 335], it was held that the inherent powers under Section 482 Cr.P.C., is for the purpose of meeting the ends of justice. The learned Senior counsel for the respondent by relying on a judgment in Indian Oil Corporation Vs. NEPC India Ltd., and others reported in 2006 (4) CTC 60 submitted that just because the complaint relates to a commercial transaction or breach of contract or civil remedy is available, the same may not be itself be a ground to quash the criminal proceedings. The relevant portion of the Hon'ble Supreme Court is as follows:

"(v) A given set of facts may make out :

(a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a

contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

The aforesaid extract is a portion of the principles laid down by the Hon'ble Supreme Court in various judgments which came to be considered in the judgment cited by the learned Senior counsel for the respondent. When these principles that came to be analysed in the said judgments is read in toto, it may not be of much help to the respondent since these principles also indicates that when the complaint does not prima facie constitute any offence or where it is the clear abuse of process of Court or it is a purely a civil wrong, the same can be quashed. What is applicable to a complaint will also be equally applicable to an FIR. The following paragraphs of the said judgment of the Hon'ble Supreme Court is extracted hereunder:

"9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandroji Rao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupam Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

24. In the light of the aforesaid judgments, it can only be held that whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of this Court under Section 482 Cr.P.C., can be invoked. Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint.

25. In view of the foregoing reasonings, I do not find any justification to permit the first respondent police to continue with the investigation. In the result, the Criminal Original Petitions stand allowed. Consequently, the investigation in Cr.No.180 of 2016 dated 13.07.2016 on the file of the first respondent police is quashed. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Inspector of Police,
CCB, Vepery,
Chennai-600 007.

2. The Inspector of Police,
CCB, EDS Team-II,
Chennai-600 007.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.P.Ananthakrishna, Advocate, S.R.No.83066
+1cc to Mrs.AL.Gandhimathi, Advocate, S.R.No.82368

CrI.O.P.Nos.18099 & 19020 of 2016
and

CrI.M.P.Nos.8600, 8946 & 9161 of 2016

mg(co)
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