THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.13013 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.121 of 2016 pending on the file of C.C.S Police Station, Hyderabad (erstwhile Police Station Mahankali, Hyderabad vide F.I.R No.84 of 2016) including the impugned order of reference under Section 156(3) Cr.P.C dated 18.04.2016 made in CCSR No.1321 of 2016 on the file of XI Additional Chief Metropolitan Magistrate at Secunderabad.

The facts of the case precisely are that the defacto complainant/second respondent is engaged in manufacturing, marketing, selling and trading of TMT Re-Bars in the name of MS LIFE 550, MS LIFE 500, MS START 500, MS THERMAX 500 in various sizes are also are concern of Iron, Steel and TMT Bars ETC (TMT BARS, STEEL). Further, the complainant's company had delivered required material to POSCO E&C India Pvt. Ltd. And M/s Empathy Infra and Engineering Pvt. Ltd (EIEPL) which represented by its Authorized Signatory and Directors respectively. It is the case that the complainant company had delivered the required materials on credit basis for a sum of Rs.1,30,49,851/- between July, 2015 and August, 2015 under various tax invoices and were acknowledged by Authorized Signatory, Directors and employees respectively. Though, part payment of Rs.25,00,000/- was made, there was an outstanding balance of Rs.1,05,49,851/-, agreed to pay with interest @ 36% per annum of Rs.12,43,525/- till 31.12.2015, totaling to Rs.1,17,93,376/- to be paid to the complainant company. It is stated that though the complainant company has issued notice to POSCO E&C India Pvt. Ltd. And M/s Empathy Infra and Engineering Pvt. Ltd and its Authorized Signatories and responsible officers, demanding the due amount, the said firms have not bothered to pay the amount for the products availed. The defacto complainant filed a complaint against POSCO E&C India Pvt. Ltd. And M/s Empathy Infra and Engineering Pvt. Ltd & its Authorized Signatories & responsible officers alleging that they have lured the defacto complainant company to deliver the products by promising to make payment and thereafter refused to make payment. It is also stated in the complaint that both the firms have entered into conspiracy with common intention to avoid payment for the products they availed.

Sri S. Niranjan Reddy, learned senior counsel for petitioners appearing on behalf of Sri N. Naveen Kumar raised several contentions. Firstly, the allegations made in the complaint would not attract the offence punishable under Section 420, since there is no intention and inducement at the time of entering into contract. In the absence of any intention and inducement at the time of sending e-mail, it would not constitute an offence, apart of that sale is a consensual act of both vendor and vendee.

It is also contended that the allegations made in the complaint would not constitute breach of trust, as defined under Section 405, since no trust was created between the petitioners and the second respondent and in the absence of creation of such trust, the petitioners cannot be proceeded, thereby the prosecution is groundless. It is contended that the petitioners are Directors of the company and they are not concerned with the transaction between the second respondent and A 1 to 3, no overt acts have been attributed in the entire complaint to make them liable for payment of the amount covered by alleged breach of trust. In the absence of any allegation attributing overt acts against the petitioners, question of vicarious liability for the offence punishable under I.P.C would not arise. In those circumstances, they cannot be proceeded under any criminal Court.

The amount allegedly due to the second respondent is arising out of alleged contractual obligation, when the liability is based on contract filing criminal complaint would not arise and it is nothing but abuse of process of Court, since conversion of civil remedy into criminal case amount to abuse the process of law.

Finally, it is contended that the Chief Metropolitan Magistrate did not apply its mind while referring the matter to police for investigation by exercising power under Section 156(3) and when the Court did not exercise the power with regard to the offence without following the procedure under Section 202 Cr.P.C, reference to the police for investigation under Section 156(3) Cr.P.C is erroneous.

Learned counsel for the petitioners, in support of his contention, relied on **ALPIC Finance Ltd. V. P. Sadasivan and another[1], Indian Oil Corporation v. NEPC India Ltd. And others[2], Sunil Bharti Mittal v. Central Bureau of Investigation[3], Uma Shankar Gopalika v. State of Bihar and another[4], Priyanka Srivastava and another v. State of Uttar Pradesh and others[5],**

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[1] (2001) 3 Supreme Court Cases 513
[2] (2006) 6 Supreme Court Cases 736
[3] (2015) 4 Supreme Court Cases 609
[4] (2005) 10 Supreme Court Cases 336
[5] (2015) 6 Supreme Court Cases 287

V.Y. Jose and another v. State of Gujarat and another[6] and Thermax limited and others v. K.M. Johny and others[7] and urged that, based on the law declared by the Supreme Court in the above judgments referred supra, requested to quash the proceedings against the petitioners in Crime No.121 of 2016.

Per contra, learned counsel for the second respondent Sri T. Pradyumna Kumar Reddy would contend that the allegations made in the complaint would constitute an offence punishable under Sections 409, 418, 420 r/w 34 & 120-B of I.P.C, with regard to the allegations made in the complaint filed e-mails sent by the petitioners to the second respondent. On the strength of those allegations, learned counsel for the second respondent contended that the allegations made in the complaint, on its face value, accepting on its entirety would constitute a *prima facie* offence punishable under Sections 409, 418, 420 r/w 34 & 120-B of I.P.C.

It is also contended that the investigation is till at the foetus stage and at this stage, the Court cannot quash the proceedings. The investigating agency recorded the statements of the second respondent and other witnesses under Section 161(3) Cr.P.C. But, on account of the stay granted by this Court, charge sheet could not be filed by the investigating agency before the concerned Court having jurisdiction. In any view of the matter, at this stage, this Court cannot analyze the entire evidence, except for limited purpose to find out whether there exists any ground to proceed against the petitioners or not. But, it cannot appreciate the evidence at this stage to quash the proceedings, so as to stifle the legitimate prosecution

[6] (2009) 3 Supreme Court Cases 78
[7] (2011) 13 Supreme Court Cases 412

against law breakers and criminals. So far as liability of Directors of the company is concerned, there is specific allegation in the complaint that they are also responsible who are dealing with day to day affairs of the company. Therefore, they are responsible for the acts done by A-1 to A-3 and liable to be proceeded. Finally, it is contended that, at this stage, the proceedings cannot be quashed and prayed for dismissal of the criminal petition.

Considering the rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1) ***Whether there exists prima facie ground to proceed before the Criminal Court against the petitioners for the offences punishable under Sections 409, 418, 420 r/w 34 & 120-B of I.P.C and whether the proceedings are liable to be quashed in Crime No.121 of 2016.***

2) ***Whether the liability arising out of contractual obligation is amenable to breach of obligation under the contract predominantly of criminal nature. If not, whether it amounts to conversion of civil law into criminal. If so, whether the proceedings in Crime No.121 of 2016 are liable to be quashed.***

3) ***Whether the petitioners 2 to 5 being the Directors of the first petitioner company (Accused 9,10,11 & 13), are vicariously liable for the acts of A-2 to A-4 in Crime No.121 of 2016. If not, the proceedings against them are liable to be quashed for the said offences.***

POINT NOS 1 & 2

The first and foremost contention raised by the learned counsel for the petitioners is that the allegations made in the complaint would not constitute *prima facie* offence punishable under Sections 409, 418, 420 r/w 34 & 120-B of I.P.C, since the petitioners are allegedly guarantors for supply of TMT bars to M/s Empathy Infra that there was no trust between the petitioners and the second respondent. At this stage, it is relevant to refer to the specific contention of the petitioners regarding contract between the first petitioner and M/s Empathy Infra. The first petitioner being a private company limited submitted a bid to Sinew Private Limited, M/s SDPL for construction of residential plots at Kothrud, Pune for total contract value of Rs.91.7 crores (Nirvana Hills Project) and one Deepak Kushava and Deepak Saini, the Directors of M/s Empathy Infra & Engineering Private Limited approached the first petitioner, expressed their intention of interest in taking up the entire work associated with Nirvana Hills Project on a complete back to back basis under independent contract with the first petitioner. Since, the petitioner company did not know about the antecedents of M/s Empathy, the first petitioner requested M/s Empathy to establish its credentials. Accordingly, they submitted their credentials and on the basis of it, the petitioner company issued a letter of indent to M/s Empathy Infra and after negotiations between the first petitioner and M/s Empathy, represented by Ravi Kushava entered into contract and requested for mobilization advance from the petitioner's company and thereupon the petitioner insisted bank guarantee from any nationalized bank. Accordingly, M/s Empathy furnished a bank guarantee to the first petitioner issued by M/s Chartered Mercantile Bank Limited which is claimed to be an independent scheduled bank and whose bank guarantee is accepted in government and private branches in India. Additionally Ravi Kushava also submitted a solvency letter to Chartered Mercantile Bank Limited declaring M/s Empathy as solvent having turn over of Rs.123.36 crores for the period from 01.04.2014 to 31.12.2014 having balance of Rs.78.54 lakhs in its bank account as on the date. Believing the solvency and bank guarantee a contract was entered into by the first petitioner with M/s Empathy on 20.01.2015.

Ravi Kushava insisted for release of substantial amount towards mobilization advance to M/s Empathy to execute the work under the contract. Upon insistence, the petitioner again requested to furnish bank guarantee and produced two bank guarantees dated 27.01.2015, each for Rs.2,66,25,000/- issued by Charmina Mercantile Bank. Accepting the said bank guarantees, the first petitioner advanced a sum of Rs.7,54,13,549/- to M/s Empathy.

While the matter stood thus, the second respondent by e-mail to the first petitioner company informed that M/s Empathy selected their company for supply of TMT bars and induced the fifth petitioner to provide a letter of assurance due to prevailing market risks. But the company/fifth petitioner fell prey to the inducement of the second respondent and vide its e-mail letter dated 26.06.2015 was constrained to write to the second respondent interalia on the following grounds:

1) That such an e-mail, as per oral assurance given by the second respondent is merely a formality of internal office record and that they understand that legally, they would only have a recourse against M/s Empathy as the second respondent and M/s Empathy have a valid contract between them.

2) That M/s Empathy's representation that it would pay the second respondent on time as it was a solvent and reputed company, which as per them was proved by the various representations and documents submitted by them and hence such an email is only a formality and is in the nature of a letter of comfort with no legal binding.

3) That the second respondent and M/s Empathy's representation that in the worst case scenario, if M/s Empathy fails to pay the second respondent, the petitioner company could encash the BGs submitted by M/s Empathy and the monies could be transferred to the second respondent.

Further, during the months of May to June, 2015, several vendors and service providers which were engaged by M/s Empathy for the Nirvana Hills Project started approaching the petitioner company directly as their payments had not been made by M/s Empathy. Moreover, M/s Empathy once again started requested the petitioner company for further mobilization advance against another fresh bank guarantee to be issued by Chartered Mercantile Bank. Since the work related to the Nirvana Hills Project had already suffered and was getting delayed, the petitioner company was not left with no option but to allow M/s Empathy to submit the fresh advance bank guarantee of Rs.2 crore as security for the additional mobilization advance of Rs.1.5 crore to be released to M/s Empathy. The said advance bank guarantee dated 17.07.2015 was accordingly submitted by M/s Empathy and the petitioner company thereafter paid an additional amount of Rs.1.47 crore to M/s Empathy as an additional mobilization advance after deducting TDS @ 2% and by adding the applicable service tax. Hence, total of three bank guarantees of Chartered Mercantile were submitted by M/s Empathy to the petitioner company and by the end of July, 2015, the petitioner company had released in an excess of Rs.9 crores to M/s Empathy relying upon the representations made by the officials and directors of M/s Empathy, three bank guarantees and the representations made by Chartered Mercantile Bank. But the entire work was not completed in time and the bank guarantees furnished by M/s Empathy are not genuine. The petitioner called up M/s Empathy to ensure that the pending payments of the vendors, including second respondent were released on timely basis. The letter dated 30.10.2015 requesting M/s Empathy to clear dues on timely manner and even a clear statement was made that if M/s Empathy does not clear the dues of the second respondent, then the petitioner company will take strict action against M/s Empathy. This letter itself clearly indicates the relationship between the petitioner and the second respondent company but M/s Empathy failed to pay the amount to the second respondent despite bonafide attempts made by the first petitioner to persuade and request M/s Empathy to pay the second respondent on time and initiate legal action against M/s Empathy in order to facilitate such payment. Letter dated 30.10.2015 was a bonafide attempt, a welfare measure and an instance of good business practice by the petitioner company.

Further, vide letter dated 05.11.2015, M/s Empathy had replied to the letter dated 30.10.2015 and assured the petitioner company that the balance payment to the second respondent will be made during the tenure of the Nirvana Hills Project and in the said letter, M/s Empathy also stated that out of outstanding payment of Rs.1.5 crore owed to the second respondent, M/s Empathy will pay Rs.10 lakhs to them from the upcoming payment and balance payment will be made via seven separate instalments of Rs.15 lakhs every month. Thus, M/s Empathy clearly accepted its responsibility about payment of dues to the second respondent and this fact is nowhere disputed by the second respondent.

The petitioner company did not furnish any bank guarantee for payments to the second respondent and it is only a business contract. Therefore, it is not legally binding and such issuance of letters would not saddle with any criminal liability. Therefore, for non-payment of the amount due to the second respondent based on the e-mail letter, the second respondent alleged that the petitioner committed breach of trust and fraud and filed a complaint.

According to the petitioner, there was no breach of trust between the petitioner and second respondent and in the absence of any allegation regarding relationship of trustee and beneficiary, investigation cannot be proceeded against the petitioners. A breach of contract is distinguishable from breach trust. A similar question came up before the Apex Court in **Indian Oil Corporation**[2] case, where the Apex Court discussed when breach of trust amounts to offence. The Supreme Court further held that criminal breach of trust involves the following ingredients:

a) a person should have been entrusted with property, or entrusted with dominion over property;

b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under Section 405 where there is 'entrustment' :

> (i) An 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.
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> (ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.
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> (iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.
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> (iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.
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> (v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
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> (vi) A servant or agent with reference to the property of the master or principal.
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> (vii) A pledgee with reference to the goods pledged by the owner/borrower.
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> (viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor).

But, the present case would not fall within the 8 examples under Section 405 referred above.

In **Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin**[8], the Apex Court held as follows:

> "to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.
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> It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."

In **Jaswantrai Manilal Akhaney v. State of Bombay**[9], the Apex Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment' and held as follows:

> ".. S. 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

Here, in this case, TMT iron bars were sold on credit basis and it is a transaction of sale within the definition of 'Sale' under Section 4 of the Sale of Goods Act, 1930. When the property is transferred on credit basis i.e. goods are sold, the ownership is deemed to have transferred and in the present facts, TMT iron bars were sold on credit basis for utilizing those goods in construction of Nirvana Hills

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[8] AIR 1953 SC 478
[9] AIR 1956 SC 575

Project at Pune by M/s Empathy Infra, the sub-contractor of the first petitioner company and there was no direction that the goods shall not be used till payment of the value of the goods supplied and that the goods are required to be returned after completion of the purpose for which it was given. In fact, it is an outright sale of goods which is governed by the provisions of Sale of Goods Act and no trust is created and thereby criminal breach of trust would not arise. Even otherwise, to constitute such an offence, there must be a breach with dishonest intention. Otherwise, it would not fall within the ambit of Section 406 I.P.C. Here, there was absolutely no allegation in the complaint that the goods were supplied on sale to the petitioners on any terms and conditions, except for payment of the amount. In the entire private complaint filed before the Court, there is no allegation that there was a trust or direction for using the goods supplied till payment is made.

For better appreciation of facts, it is apt to extract paragraph 16 of the complaint, which reads as follows:

> "This complainant submits that, by seeing the act of Accused 9 to 15 & Accused 17 to 23, particularly all of the accused had meetings in person or over phone, emails and accused no.9,13,15 & 17 to 22 had also consented the entire deal with complainant company by using their official position of accused no.1 to 8, thereby, played deceit, in conspiracy, against complainant company in order to deliver the products as stated supra to accused no.2 and accused no.9, 13, 15 and accused no.17 to 22 used to have telephonic conversation physical meets and also email communication and also have acknowledged the receiving of delivery made by complainant company, to cause wrongful loss to complainant company and wrongful gain to accused no.1 to 3. Complainant company further to state that the accused no.1 to 3 represented by accused no.4 to 23 used to have telephonic conversation in person with complainant company and further used to advise complainant company to speak to accused no.9, 13, 15, 17 to 22 as by saying that as accused no.9,13, 15 & accused no.17 to 22 are taking the entire deal of accused no.3 for A-2 (Nirvana Project) to proceed with complainant company."

At best, the information disclosed in paragraph 16 of the private complaint is not sufficient to establish creation of any trust and criminal breach of trust, as defined under Section 405 of I.P.C, which is punishable under Section 406 of I.P.C. Using the words '**played deceit', 'in conspiracy'**, against complainant company by telling one another through telephone would not be sufficient to constitute an offence punishable under Section 406 I.P.C.

In **Nagawwa v. Veeranna Shivalingappa Kojalgi**[10], the Apex Court held that the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation, it would not attract offence punishable under Section 420 I.P.C.

In the present case also, except using the word '**deceit**' and '**in conspiracy**', no material is brought on record about establishing criminal breach of trust as defined under Section 405 of I.P.C to convict the petitioners for the offences punishable under Section 406 of I.P.C. In the absence of any *prima facie* material supporting before this Court, regarding the words 'deceit' and 'in conspiracy', which are mentioned in the private complaint, the proceedings against the petitioners for the offences under Section 406 of I.P.C cannot be continued.

The other offence allegedly committed by the petitioners is punishable under Section 420 of I.P.C i.e. Cheating and dishonestly inducing delivery of property. But, the word 'cheating' is defined under Section 415 of I.P.C as follows"

> "Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any

[10] (1976) 3 SCC 736

> 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""

The explanation to Section 415 of I.P.C specifies that a dishonest concealment of facts is a deception within the meaning of this section. Hence, to constitute an offence punishable under Section 420 of I.P.C, there must be a dishonest intention.

Learned counsel for the petitioners while contending that there must be an intention at the initial stage to make such an inducement with such fraudulent intention to part with any property. Otherwise, it would not fall within the ambit of Section 420 of I.P.C and placed reliance on the **ALPIC Finance Ltd[1] and V.Y. Jose[6]** cases.

In **ALPIC Finance Ltd[1]** case, the Supreme Court reiterated the ingredients of the offences punishable under Section 420 I.P.C and held in paragraph 10 as follows:

> "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. <u>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</u>. 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."

In **V.Y. Jose**[6] case, the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 I.P.C in paragraph 14 and they are as follows:

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> i) deception of a person either by making a false or misleading representation or by other action or omission;
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
> (iii) 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.
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> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

The Apex Court in **V.Y. Jose**[6] case concluded that there exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure. Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

Thus, the Court can exercise its inherent power when the case on hand is purely a civil in nature and quash the proceedings to avoid harassment of the parties insisting their attendance before the Court on every dates of adjournment before the Court for years together.

In a similar situation the Supreme Court in **Thermax Ltd**[7] case, held as follows:

> "34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.
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> 42. We have already noted that the offence alleged in the criminal complaint filed by Respondent No. 1 is under Sections 405 and 420 IPC where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Appellant No. 1-Company can be prosecuted under the alleged complaint.
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> 49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the Appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No. 1 herein is quashed."

An identical question came up before the Apex Court in **Anil Mahajan v. Bhor Industries**[11], where the parties entered into Memorandum of Understanding for supply of steel grip tapes stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods in pursuance of the Memorandum of Understanding, the complainant delivered. In the said case, the complainant delivered 56,94,120 reels of steel grip tapes valued at Rs. 3,38,62,860 to the accused during the period 19-8-2000 to 20-11-2000 and out of this amount, the accused made only part payment of Rs. 3,05,39,086 leaving balance amount of Rs. 33,23,774. The accused did not make further payment despite repeated demands and started giving reasons such as cash flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. Based on the contents of the Memorandum of Understanding, the company filed a complaint against the petitioner for the offences punishable under Sections 415, 418 & 420 I.P.C and the Court took cognizance of it and the same is challenged before the Court.

In paragraphs 6,7 & 8 of the said judgment, the Court held as under:

> "Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. 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.

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[11] 2005 (10) SCC 228

> 7. The order of the learned Additional Sessions Judge has been set aside by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.
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> 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. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defense 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.

In the present case also except exchange of emails for supply of TMT bars, there is no averment in the complaint regarding inducement to supply TMT iron bars. Further, the complaint did not disclose anything about dishonest inducement or making fraudulent misrepresentation to part with the goods at the time of entering into a contract i.e. for supply of TMT iron bars. In the absence of those allegations which are *sine quo non* to constitute an offence, the petitioners cannot be proceeded for the said offences.

In **Pratibha Rani v. Suraj Kumar**[12] the question arose that when the civil as well as criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the Stridhan property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her

[12] (1985) 2 SCC 370

jewellery and other valuable articles entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the Criminal proceedings and the High Court quashed the same. The accused contended that the dispute was of a civil nature and no criminal prosecution would lie. Under that circumstance, the Supreme Court held that there are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.

In **Trisuns Chemical Industry vs. Rajesh Agarwal and Other**[13], the complainant company had alleged that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The Complainant Company had to pay the price in advance as demanded by the accused company. Complainant paid the amount through cheques. However, the

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[13] 1999(8) SCC 686

accused supplied the commodity, which was of most inferior and sub-standard quality and the complainant suffered a loss of Rs. 17 lakhs. The Complainant alleged that he was induced to pay the price on the representation that the best quality commodity would be supplied. A criminal complaint was filed alleging commission of the offence punishable under Section 420-A. The Magistrate forwarded the complaint for investigation under Section 156(3) Cr. PC. The accused directors moved the High Court for quashing the complaint alleging that the dispute was purely of a civil nature and hence no prosecution should have been permitted. The High Court accepted this plea and the complaint was quashed. But the Supreme Court held in para 8 and 9 of the judgment as follows:

> ".........merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. .... We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases."

In **ALPIC Finance Ltd**[1] case, this Court highlighted the grounds on which criminal proceedings are to be quashed under Section 482 of the Code and noted the ingredients of Section 420 IPC. In that case, the appellant was a registered company having its head office at Mumbai. It was a non-banking financial institution functioning under the regulations of Reserve Bank of India. It was carrying on business, *inter alia*, of leasing and hire purchase. The first respondent therein was the Chairman and founder-trustee of a trust by name "Visveswaraya Education Trust". The second respondent was wife of the first respondent, and was also a Trustee. The Trust runs a dental college by name Rajiv Gandhi Dental College. The respondents therein entered into an agreement with the appellant-Company therein whereby the appellant agreed to finance the purchase of 100 hydraulically-operated dental chairs. The total cost of the chairs was around Rs.92,50,000/-. The appellant-Company agreed to finance the respondents for the purchase of these chairs through a lease agreement and as per the agreement, the respondents were liable to pay rentals quarterly. The respondents agreed to pay quarterly a sum of Rs 7,50,000/- for the first year; Rs 12,50,000/- for the second year; Rs 8,00,000/- for the third year and Rs 6,25,000/- for the fourth year. As per the agreement, the appellant-Company, the lessors would have sole and exclusive right, title and interest in the dental chairs supplied till the entire hire-purchase amount was paid. In accordance with the agreement, the appellant made payments to M/s United Medico Dental Equipments and they delivered the dental chairs to the respondents. The appellant-Company alleged that the respondents were not regular in making the payments and committed default in payment of the instalments and that the bank had dishonoured certain cheques issued by the respondents. The appellant-Company also alleged that on physical verification, certain chairs were found missing from the premises of the respondents and thus they have committed cheating and caused misappropriation of the property belonging to the appellant. The appellant- company filed a private complaint under Section 200 of the Code before the Chief Metropolitan Magistrate, Bangalore alleging that the respondents had committed offences under Sections 420, 406 and 423 read with Section 120-B IPC. In that proceeding, the appellant-Company moved an application under Section 93 of the Code to issue a search warrant to seize the property in dispute and also to hand over these items to the complainant. The Magistrate took cognizance of the alleged complaint and issued summons to the respondents and passed an order on the application filed under Section 93 of the Code to have a search at the premises of the respondents and to take possession of the properties involved in the case. These proceedings were challenged by the respondents under Section 482 of the Code before the learned Single Judge of the Karnataka High Court at Bangalore. The learned Single Judge was pleased to quash the entire proceedings and directed the appellant-Company to return all the properties seized by the police pursuant to the warrant issued by the Magistrate. Thus, the order of the Magistrate taking cognizance and issuing process to the respondents as well as the order of search and the direction for restoration of the property to the appellant Company were set aside. Aggrieved by the same, the appellant-Company preferred appeal before Apex Court. It was contended on behalf of the appellant that the learned Single Judge has seriously erred in quashing the proceedings under Section 482 of the Code. It was further contended that the allegations in the complaint clearly made out offences punishable under Sections 420, 406, 423, 424 read with Section 120-B IPC. On behalf of the respondents, it was contended that the complaint was filed only to harass the respondents and it was motivated by malafide intention. It was further argued that the entire transaction was of civil nature and that the respondents have made a substantial payment as per the hire-purchase agreement and the default, if any, was not willful and there was no element of misappropriation or cheating. The respondents also denied having removed any of the items of the disputed property clandestinely to defeat the interest of the appellant. After considering the scope of inherent power under Section 482 of the Code and adverting to series of decisions quashed the proceedings.

In view of the law declared by the Apex Court, to constitute an offence punishable under Section 420 of I.P.C, there must be a specific allegation and *prima facie* material in support of it that the accused/petitioners herein made a dishonest misrepresentation willfully to the second respondent induced to part with any property or security or entrusted any domain over the property and the same is punishable under Section 420 of I.P.C. Here, the dispute is only non-payment of price of goods and failed to discharge contractual obligation that payment of value of the goods supplied i.e. TMT iron bars and it is predominantly a case of civil nature, but filed criminal complaint before the Magistrate who referred the same under Section 156(3) of Cr.P.C for investigation and filed report. Moreover, there are no allegations in the complaint to constitute an offence punishable under Sections 415 or 420 I.P.C. In the absence of those allegations, as discussed in the earlier paragraphs, it can safely be concluded that the dispute is purely and predominantly of civil nature. Instead of resorting to civil disputes for the recovery of amount due for sale of goods, i.e. TMT iron bars, the second respondent is resorting to criminal litigation converting a predominant civil litigation into criminal litigation, as an arm twisting method somehow to subject the petitioner to harassment and to avoid long delay in disposal of civil disputes by the Civil Courts.

In **State of Haryana** v. **Bhajan Lal**[14] this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

[14] 1992 Supp. (1) SCC 335

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance by abuse of process of the law and moreover, a civil remedy is available even according to the allegations made in the complaint, as the second respondent reserves his right to approach appropriate Courts. Accordingly points 1 and 2 are answered.

POINT NO.3

The third contention raised before this Court is that the Magistrate has not applied his mind to find out whether the petitioners being the Directors of the company are vicariously liable. The petitioners are undisputedly the Directors. But, their vicarious liability would arise in certain circumstances, more particularly when they are directly involved in the offence or whether they are attending to day-to-day affairs of the company regularly. When the complaint did not disclose anything about their involvement directly in the day-to-day affairs, the Court cannot saddle with any criminal liability against the Directors. In the present case, except making a bald allegation about their role by emails, nothing is alleged regarding attending day-to-day affairs of the company.

The Supreme Court in **Thermax Ltd** case, discussed the concept of vicarious liability in paragraph 21 and held as follows:

> "21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the Appellant-Company."

In **Standard Chartered Bank v. Directorate of Enforcement**[15], Constitution Bench of five Judges dealt with the question as to whether a company could be prosecuted for an offence which requires *mens rea*. The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite *mens rea* to prove the guilt. Para 8 reads as under:

> "8. It is only in a case requiring *mens rea*, a question arises whether a corporation could be attributed with requisite *mens rea* to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."
>
> In Iridium India (supra), the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires *mens rea* and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit,

[15] (2005) 4 SCC 530

> we will reproduce paras 59, 60, 61, 62, 63 and 64 herein: "59. The Courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.
>
> No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.
>
> Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision. When the company is the offendor, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881."

The principle laid down in the above judgment is based on attributability. When act is done by a company or its officer, it can be attributable to the Directors, if the statute permits such attributability based on the principle of 'alter ego'. Here, there is absolutely nothing that the Directors of the company are effectively participating in the day-to-day affairs of the company, muchless, *prima facie* material to show their participation in the day-to-day affairs of the company. In such a case, it is difficult to hold that the Directors are also responsible for such offences. On the other hand, the complaint lodged before the police is only an outcome of contractual obligation which is purely civil in nature and governed by the provisions of Sale of Goods Act. When the liability arises out of such contractual obligation, the Directors of the company may be liable for civil liability, but not criminal liability applying doctrine of vicarious liability. Therefore, I am of the considered view that the Directors of the company are not liable for the alleged omissions or commissions of the company.

In view of the law declared by the Apex Court in the above judgment, it is difficult to hold that the petitioners *prima facie* guilty for the offences referred above, based on the principle of vicarious liability. This Court can exercise its inherent jurisdiction under Section 482 Cr.P.C when the allegations made in the complaint would not directly constitute an offence punishable under Sections 420 & 120-B I.P.C.

Learned counsel for the petitioner has drawn attention of this Court to **Uma Shankar Gopalika**[4] case. In paragraph 7 of the said judgment, the Supreme Court held as follows:

> "7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

In "***Sunil Bharti Mittal v. CBI", "Thermax Ltd. v. K.M.Johny" and "SMS Pharmaceuticals Ltd. v. Neeta Bhalla"*** the Supreme Court discussed about the vicarious liability of the directors in the absence of any specific provisions of Indian Penal Code when the offences committed by the Company. In all the above judgments, the Supreme Court concluded that if there is any specific provision in the special enactment to attribute liability to the directors subject to other conditions regarding their participation in day to day affairs of the company, vicarious liability can be accepted by virtue of attributability.

Learned counsel for the petitioner further contended that the Magistrate did not apply its mind to refer the complaint to police by exercising jurisdiction under Section 156(3) Cr.P.C and the Court on careful perusal of the complaint filed along with the petition, concluded not sufficient to exercise power under Section 156(3) and the order passed by the Court would disclose what weighed the Court to pass such an order, which would provide a guidance to the upper Court.

Learned counsel for the petitioner placed reliance on the judgment of **Priyanka Srivastava[5]** case, where the Apex Court while considering the legality of the order passed under Section 156(3) of Cr.P.C, discussed the scope of various provisions of Cr.P.C and held as follows:

> "Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."

While exercising power under Section 156(3), the Court must record its satisfaction as to what weighed the Magistrate to pass such an order which reflects the application of mind to the facts of the case in its entirety so as to enable the Higher Court to form an opinion.

The Supreme Court in **Ramdev Food Products Private Limited v State of Gujarat**[16], while dealing with the powers of Section 156(3) of Cr.P.C held as follows:

> "Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed".

In view of the principle laid down in the above judgment, it is clear that it is the prime duty of the Magistrate to apply its mind while passing such an order and the Court must be vigilant as to nature of allegations and not to issue direction without proper application of mind, after verifying the veracity of the allegations having regard to their nature thereof. Thus, it is mandatory to make such reference under Section 156(3) of Cr.P.C when the complainant must approach the Court with clean hands and then the Magistrate shall apply its mind to the facts and find out whether the cognizable case is made out. Then only, such power has to be exercised. Such mechanical reference of the matter to police under Section 156(3) Cr.P.C is an abuse of process of the Court.

When a remedy under special enactment is available to the bank to recover the amount and filing complaint against them by the

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[16] (2015) 6 SCC 439

borrower, resorting to the recourse of reference to the police under Section 156(3) indirectly denied the authorities to recover the amount, in view of filing complaint by abuse of process of the Court and direction issued by the Magistrate under Section 156(3) Cr.P.C, directing the police concerned for registration of F.I.R against the employees of the bank without application of mind is a clear abuse of process of the Court. In such a case, the Court has to exercise its inherent jurisdiction and quash the proceedings under Section 482 Cr.P.C.

The present facts of the case are almost identical, more particularly with regard to availability of an effective remedy of recovery of amount of filing a civil suit, since the liability arises out of contractual obligations governed by the provisions of Sale of Goods Act. But, instead of resorting to such procedure, the second respondent adopted an arm twisting method to bring the petitioners to terms of the second respondent, which act directly amounts to abuse of process of the Court.

In ***R.P. Kapur*** v. ***State of Punjab***[17], this Court laid down the following principles:

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
>
> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
>
> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

[17] AIR 1960 SC 866

In **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others**[18], the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

> "Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

In ***State of Karnataka*** v. ***L. Muniswamy and Ors.***[19], the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

[18] AIR 1990 SC 494
[19] AIR 1977 SC 1489

Learned counsel for the second respondent would contend that the allegations made in the complaint are sufficient to constitute an offence punishable under Section 420 I.P.C, since the Court can presume the dishonest intention as on the date of commencement of entering into agreement of sale of TMT iron bars and used M/s Empathy as a tool in the process of defrauding the second respondent. A specific allegation is made in the complaint to that effect. Undoubtedly, there is an allegation to constitute an offence, incorporating all the ingredients would not serve any purpose and clever drafting of a complaint by itself would not give rise to crime to proceed against the petitioners under criminal law. When the allegations in the complaint would not constitute an offence on its face value, the Court can exercise its inherent jurisdiction and quash the proceedings. Accordingly point no.3 is answered.

In view of the aforesaid discussion, the criminal petition is allowed by quashing the proceedings in Crime No.121 of 2016 pending on the file of C.C.S Police Station, Hyderabad (erstwhile Police Station Mahankali, Hyderabad vide F.I.R No.84 of 2016) including the impugned order of reference under Section 156(3) Cr.P.C dated 18.04.2016 made in CCSR No.1321 of 2016 on the file of XI Additional Chief Metropolitan Magistrate at Secunderabad, leaving it open to the petitioners to recover the amount, if any due, subject to entitlement in appropriate proceedings.

Consequently, miscellaneous applications pending if any shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 06.01.2017
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