

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2906 OF 2017

Hasmukh Tarachand Sheth & Ors.] ... Petitioners

Versus

State of Maharashtra & Anr.] ... Respondents

Mr. Mahesh Jethmalani, Senior Advocate i/b Ms. Gunjan Mangla for Petitioners.

Mrs. M. M. Deshmukh, Addl. P. P. for State - Respondent No.1.

Mr. A. H. Ponda a/w Mr. N. S. Mundargi for Respondent No.2.

**CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.**

DATE :- 03 APRIL, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. Rule, having regard to the relief sought, made returnable forthwith and heard by the consent of the learned Counsel for the parties.

2. The Petitioners have filed this Petition for quashing of the FIR being C.R.No.58 of 2016 registered with the Economic Offences Wing (for short, 'EOW') under Sections 406, 409, 418, 420, 465, 467,

468, 471 and 474 read with Section 120B of the IPC. The said FIR was lodged by the Respondent No.2 Sumit Nikunj Shah in his capacity as the Head of Operations of M/s. Shambhulal A. Shah & Co., which is a partnership firm. The first informant's father and two uncles are the partners of the said firm.

3. The Petitioner Nos.1 to 4 are brothers. The Petitioner No.5 is the son of the Petitioner No.2 and the Petitioner No.6 is the son of the Petitioner No.1. The subject-matter of the FIR is the transaction between the first informant's firm and the 3 entities namely M/s. Sharp Industries Ltd., M/s. Lalit Polyester Pvt. Ltd. and M/s. Ridhi Petrochem Pvt. Ltd. It is the Petitioners' case that the Petitioner Nos.1 and 2 resigned from the Directorship of Sharp Industries Ltd. from 06/12/2010. The Petitioner Nos.3 and 4 similarly resigned from being Directors of Sharp Industries Ltd. from 21/03/2015 and 24/12/2013 respectively. The Petitioner No.5 was a Director of M/s. Lalit Polyester Pvt. Ltd. and resigned on 27/01/2014. The Petitioner No.6 is the Director of M/s. Ridhi Petrochem Pvt. Ltd. since 20/03/2010.

4. According to the Petitioners, the aforementioned 3 companies purchased Chromo Paper from the first informant's firm worth Rs.17,01,73,377/- during the period from March 2012 up to July 2012 and that the total amount of Rs.11,47,04,308/- was paid and the balance amount of Rs.5,54,69,069/- remained to be paid. According to the Petitioners, 9 cheques were given to the Respondent No.2 in the year 2011 towards security deposit; which were used by the Respondent No.2 to launch false proceedings under Section 138 read with Section 141 of the Negotiable Instrument Act (for short, 'NI Act').

5. In the Petition, the Petitioners have enumerated the litigation which is pending between the parties. These proceedings are initiated either by the firm of the Respondent No.2 or the partners of the firm against the aforementioned entities connected with the Petitioners and the Petitioners themselves, though different proceedings are filed against different Petitioners. These proceedings are as follows :-

(i) CC No.4780/SS/2015,

(ii) CC No.4784/SS/2015,

(iii) CC No.1087/SS/2015,

(iv) CC No.1088/SS/2015,

(v) CC No.37/MISE/2016,

All these cases are pending before the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai and in all these cases different Petitioners are made accused.

Apart from these Court proceedings, Summary Suit No.867 of 2015, Summary Suit No.872 of 2015 and Company Petition No.1059 of 2015 are pending before this Court on the Original Side.

6. The main contention of the Petitioners is that, this being a transaction which is purely civil in nature, the Respondent No.2 could not have lodged the FIR. In the FIR, there is no mention of any of the pending proceedings.

7. We have heard Mr. Mahesh Jethmalani, learned Senior Advocate instructed by Ms. Gunjan Mangla for the Petitioners, Mrs. M. M. Deshmukh, learned Addl. P. P. for State - Respondent No.1 and Mr.Aabad Ponda instructed by Mr. Niranjana Mundargi for the Respondent No.2.

8. Before referring to the submissions made by the parties, it is necessary to advert to the contents of the FIR. The FIR was initially registered on 15/06/2016 with Marine Drive Police Station vide C.R.No.195 of 2015 for the offences punishable under Sections 406, 418 and 420 read with Section 120B of the IPC and thereafter was transferred to EOW where it was registered as C.R.No.58 of 2016 under Sections 406, 409, 418, 420, 465, 467, 468, 471 and 474 read with Section 120B of the IPC. The Respondent No.2, in his FIR, has stated that their firm was a distributor of Ballarpur Industries Ltd. and Bilt Graphic Paper Products Ltd., Delhi. Around March 2011, the Petitioner No.1 contacted the Respondent No.2 and told him that he was the Managing Director of M/s. Sharp Industries Ltd. and they were in need of Chromo Paper for packaging. The Petitioner No.1 visited the Respondent No.2's office at Nariman Point, Mumbai and informed him that M/s. Sharp Industries Ltd. used to supply packaging material to various 'gutkha' companies and their business was growing. The Petitioner No.1 invited the Respondent No.2 to his office for discussion for purchase of Chromo Paper. Accordingly, the Respondent No.2 visited the Petitioner No.1's office. The Petitioner No.1 told the Respondent No.2 that their company was in need of 500

Metric Tonne (MT) of Chromo Paper. On 05/04/2011, the Respondent No.2 received an email sent by the Petitioner No.4 placing a trial order of 3 MT of Chromo Paper. In the said email, it was mentioned that the Petitioner No.1 was the Managing Director of the said company. The Respondent No.2 supplied the material and the bill was promptly paid on that occasion. In December 2011, the Petitioner Nos.1, 2, 3 and 5 met the Respondent No.2 and his uncle in the presence of the officers of the aforementioned Ballarpur Industries. In the meeting, the Petitioner No.1 told the Respondent No.2 that they wanted 1000 MT paper worth Rs.10 Crores. The Petitioner No.1 also assured of prompt payment. From February 2012, the Petitioner No.1 started placing big orders and also requested to supply paper to other two companies i.e. M/s. Lalit Polyester Pvt. Ltd. and M/s. Ridhi Petrochem Pvt. Ltd. as well. Between March 2012 to July 2012, the Chromo Paper worth about Rs.8 Crores was supplied by the Respondent No.2's firm. However, the payment was not made by the Petitioners and their companies. It is further mentioned in the FIR that the Petitioner No.1 started avoiding the Respondent No.2 and even changed his office without informing the Respondent No.2. The Respondent No.2 found out the

new office of the Petitioner No.1 and again asked for his outstanding dues. Even at that time, further assurance was given to him but the amount was not paid. It is further mentioned in the FIR that the Petitioner Nos.1 and 4 issued 9 cheques of Punjab National Bank and Federal Bank amounting to Rs.4,66,12,785/-. However, these cheques were dishonoured. Therefore, the Respondent No.2 sent a statutory notice under the Negotiable Instruments Act to M/s. Sharp Industries Ltd. and its Directors. At that time, the Respondent No.2 was informed that the Petitioner Nos.1 and 4 were not the Directors of M/s. Sharp Industries Ltd. Thereafter, the Respondent No.2 was convinced that the Petitioners had no intention to make the payment of the dues and were cheating him. According to the Respondent No.2, the Petitioner No.1 falsely represented that he was the Managing Director of M/s. Sharp Industries Ltd. when he had already resigned. According to the Respondent No.2, all the Petitioners made false representations, induced the Respondent No.2 to supply huge quantity of Chromo Paper, made false representation, deliberately gave cheques which were not honoured and thus caused wrongful loss to the tune of Rs.7,17,09,029/-.

9. In the grounds taken in the Petition, particularly from (f) to (j), the Petitioners have contended that none of the offences alleged against them was made out in the FIR. Mr. Jethmalani, learned Senior Advocate appearing for the Petitioners, submitted that it was a pure and simple sale transaction which was exclusively civil in nature and there was no element of any criminal offence involved in it. He submitted that the FIR was filed as a pressurizing tactics to recover the amount and it was filed after the Respondent No.2 had failed to secure any urgent relief in any of the proceedings. He further submitted that there was no misrepresentation whatsoever and the Respondent No.2 had supplied the material purely by way of business transaction. Mr. Jethmalani submitted that the proceedings filed against the Petitioners under Section 138 read with Section 141 of the NI Act show that the similar allegations were made in those complaints but the Courts in question have not taken cognizance of any of the offences under the IPC. According to Mr. Jethmalani, therefore, it was not open for the Respondent No.2 to lodge this FIR, particularly in view of the fact that no steps were pursued in those Courts to get the process issued under various sections of the IPC. Mr. Jethmalani further submitted that after having restricted their

relief for the offences under the NI Act, the Respondent No.2 was not right in filing the FIR and therefore the FIR was liable to be quashed.

10. In support of his contentions, Mr. Jethmalani relied on various Judgments of the Hon'ble Supreme Court. He, first, relied on the Judgment of the Hon'ble Supreme Court in the case of ***State of Gujarat Vs. Jaswantlal Nathalal***¹ wherein it was held that the term '*entrusted*' found in Section 405 IPC governed not only the words '*with the property*' immediately following it but also the words '*or with any dominion over the property*' occurring thereafter. The expression '*entrustment*' carried with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continued to be its owner. Therefore, a mere transaction of sale would not amount to an entrustment.

Taking support from these observations, Mr. Jethmalani submitted that once the Chromo Paper was delivered by the Respondent No.2's firm by way of a sale, there was no question of any entrustment by the Respondent No.2 to any of the Petitioners and therefore, there could not be any criminal breach of trust.

¹ AIR 1968 SC 700

11. Mr. Jethmalani then relied on the observations of the Hon'ble Supreme Court in the case of *Vir Prakash Sharma Vs. Anil Kumar Agarwal and Another*². In the said Judgment, the Hon'ble Supreme Court considered the other Judgments laying down the requirements in exercising the power under Section 482 of the Cr.P.C. In that case, it was held in the facts relating to that case, that, the dispute between the parties was essentially a civil dispute. It was observed that non-payment or under-payment of the price of the goods by itself did not amount to commission of offence of cheating or criminal breach of trust. In the said Judgment, the case of *Hridaya Ranjan Prasad Vs. State of Bihar*³ was considered wherein it was held that in determining the question, it had to be kept in mind that the distinction between a mere breach of contract and the offence of cheating was a fine one and that it depended upon the intention of the accused at the time of inducement which could be judged by his subsequent conduct, though, the subsequent conduct was not the sole test. It was held that mere breach of contract could not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention was shown right at the beginning of the transaction. It was

² (2007) 7 Supreme Court Cases 373

³ (2000) 4 SCC 168 : 2000 SCC (Cri) 786

further held that it was necessary to show that the accused 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, when the promise was made, could not be presumed. In para 15 of the *Vir Pratap Sharma's* (*supra*) Judgment, the Hon'ble Supreme Court further held that only because the accused had issued cheques which were dishonoured, the same, by itself, would not mean that he had cheated the complainant.

Taking help of these observations, Mr. Jethmalani contended that mere inability to make payment of the remaining due amount would, therefore, not fall within the purview of any of the offences alleged by the Respondent No.2.

12. Mr. Jethmalani then relied on the Judgment passed by the Hon'ble Supreme Court in the case of *G. Sagar Suri and Another Vs. State of U. P. and Others*⁴. In the said case, a complaint under Section 138 of the NI Act had already been filed by the complainant. It was observed by the Hon'ble Supreme Court that it was not explained by the complainant as to why offences punishable under

4 (2000) 2 Supreme Court Cases 636

Sections 406/420 of the IPC were not added in the complaint filed under Section 138 of the NI Act and it was not explained as to why a separate FIR was filed. In those circumstances, the Hon'ble Supreme Court had held that the accused would suffer consequences if the offence punishable under Section 138 of the NI Act was proved but in any case, there was no occasion for the complainant to prosecute the accused under Sections 406/420 of the IPC as it would be clearly an abuse of the process of law. The Hon'ble Supreme Court had quashed the prosecution against the Appellants in that case.

Mr. Jethmalani submitted that in the present case also the complaints under Section 138 of the NI Act were pending and without pursuing the issuance of process and consequent proceedings under Sections 406/420 or any other offences under the IPC, the Respondent No.2 had resorted to filing the FIR in question. Thus, according to Mr. Jethmalani, the observation made in the said case of **G. Sagar Suri** (*supra*) were squarely applicable to the facts of the present case and therefore, the FIR in the present case was liable to be quashed.

13. Mr. Jethmalani then relied on the observations made by the Hon'ble Supreme Court in the case of *All Cargo Movers (India) Private Limited and Others Vs. Dhanesh Badarmal Jain and Another*⁵. It was observed that the ingredients of the offence were not averred in the criminal complaint which was filed one year after the civil suit. In the civil suit, the allegations were of negligence and breach of contract and it was held in that case that breach of contract simplicitor did not constitute an offence.

Mr. Jethmalani, thereafter, referred to two more cases viz. *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*⁶ and *V. Y. Jose and Another Vs. State of Gujarat and Another*⁷. In both these cases, the scope of powers under Section 482 of the Cr.P.C. was discussed. In *V. Y. Jose's* case (*supra*), it was held that the matter which was essentially of civil nature, should not be allowed to become subject-matter of criminal proceedings.

14. As against this, Mr. Ponda, the learned Counsel for the Respondent No.2, supported his case by making submissions on facts

⁵ (2007) 14 Supreme Court Cases 776

⁶ (2007) 12 Supreme Court Cases 1

⁷ (2009) 3 Supreme Court Cases 78

as well as on law. Mr. Ponda submitted that the ingredients of the offences alleged were clearly made out from the FIR. He submitted that the allegations in the FIR deserved proper investigation and the FIR could not be quashed at the threshold. He submitted that the Judgments relied on by Mr. Jethmalani were not applicable to the facts of the present case.

15. Mr. Ponda invited our attention to the Consent Terms dated 07/03/2017 wherein the Petitioners had agreed to settle all the outstanding disputes by making payment of the agreed amount mentioned in the Consent Terms. The said Consent Terms mention the litigation between the parties including the present C.R.No.58 of 2016 registered with the EOW. Mr. Ponda submitted that in spite of entering into the Consent Terms, the Petitioners have not fulfilled their obligation; which shows their conduct. He further submitted that there is only a passing reference in the Petition to the said Consent Terms in para 6 of the Petition which reads thus :

“6. *The Petitioners belong to a reputed family they were influenced and / or coerced to entire (sic.) into consent terms with Respondent No.2. Thus, consent Terms were duly executed by the Petitioners.*”

16. Mr. Ponda invited our attention to the order dated 08/03/2017 whereby the learned Additional Chief Metropolitan Magistrate granted bail to the Petitioner No.1. In para 5 of the said order, it was observed thus :

“5. By going through the record, it is accepted by the complainant and the accused that the settlement took place between them. In such circumstances, it is proper to release the applicant on bail.”

Similar orders were passed in respect of the Petitioner Nos.5 and 6 by the same learned Magistrate on the same day.

Mr. Ponda submitted that, the Petitioners have obtained orders from the Court based on the Consent Terms accepting their liability and thereafter they resiled from their commitment and they are pursuing the present Writ Petition for quashing of the FIR. According to Mr. Ponda, this conduct on the part of the Petitioners not only shows that the offence was committed but their conduct disentitles them from seeking any relief from this Court in its writ jurisdiction.

17. Mr. Ponda submitted that, this was not a case of mere breach of contract but the ingredients of all the offences alleged were clearly made out. He invited our attention to the email sent by the Petitioner No.4 to the Respondent No.2 on 05/04/2011 wherein a purchase order for the Chromo Art Paper for trial was placed with the Respondent No.2. The purchase order was placed on behalf of M/s. Sharp Industries Ltd. In the said email, it was clearly mentioned that the email was sent with reference to the visit at the Respondent No.2's office by the Petitioner No.1. Significantly, the Petitioner No.1 was described as 'our Managing Director'. Mr. Ponda submitted that even as per the case of the Petitioners, the Petitioner No.1 had resigned from M/s. Sharp Industries Ltd. before that and yet he was described as the 'Managing Director' of the said company. According to Mr.Ponda, this fortifies the submission of the Respondent No.2 that he was misled because of the misrepresentation right at the inception that the Petitioner No.1 was the Managing Director of M/s. Sharp Industries Ltd. Mr. Ponda invited our attention to the email dated 06/04/2011 which was sent by the Petitioner No.1 himself for placing the purchase order for 65 GSM Chromo Art Paper. After the first trial order was fulfilled by the Respondent No.2's firm, the Petitioners

placed huge orders when they had no intention to make the full payment in respect of the same. This, according to Mr. Ponda, was a clear inducement amounting to cheating.

18. Mr. Ponda further submitted that certain false emails and placing purchase orders when the Petitioner No.1 was not in-charge of affairs of M/s.Sharp Industries Ltd. amounted to forgery of documents and using such documents for the purpose of cheating. Therefore, according to Mr. Ponda, all the cognizable offences were clearly made out from the FIR. Therefore, the said FIR could not be quashed.

19. In support of his submissions, Mr. Ponda relied on a few Judgments. He first referred to the observations of the Hon'ble Supreme Court in the case of *Rajesh Bajaj Vs. State NCT of Delhi and others*⁸. In the said case, the complainant had supplied goods to the accused. The purchase price promised by the accused was not paid to the complainant. It was alleged in the said complaint that the accused had induced the complainant to believe that he was a genuine dealer but his intentions were not clear. In that case also, the

⁸ AIR 1999 SUPREME COURT 1216 (1)

argument was advanced that it was purely a commercial transaction and no offence was made out. The Hon'ble Supreme Court dealt with the submissions in paragraph nos.10 to 13 of the Judgment thus :

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations 'f') is worthy of notice now :

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415, IPC. Such an endeavour may be

justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved.

13. The appellant is, therefore, right in contending that the FIR should not have been quashed in this case and the investigation should have been allowed to proceed.”

Mr. Ponda submitted that the facts in the present case are very similar to the fact of the case of **Rajesh Bajaj** (*supra*) and therefore applying the ratio of the Hon'ble Supreme Court, the present FIR could not be quashed.

20. Mr. Ponda then relied on the case of **Central Bank of India and another Vs. Saxons Farms and others**⁹. The Hon'ble Supreme Court, in paragraph no. 13 of the said Judgment, held thus :

“13. Under Section 142 of the Act, the court can take cognizance of an offence punishable under Section 138 only on a complaint in writing made by the payee. Therefore, the police could not have started investigation under Section 138 of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various Sections of the Indian Penal Code which are cognizable and police could take up investigation. What was indicated in the notice was that in addition to the legal action by the appellant Bank under the Act, option was kept open for taking action

⁹ 2000 (1) Mh.L.J. 366

against the respondents under the provisions of Indian Penal Code by informing the police. Therefore, the contention of learned counsel for the respondents has no force.”

Thus, according to Mr. Ponda, the separate FIR under the various sections of the IPC was perfectly maintainable in respect of the earlier pending complaints under Section 138 of the NI Act.

21. Mr. Ponda then relied on the Judgment in the case of ***Sesami Chemicals Private Limited Vs. State of Meghalaya and Another***¹⁰. In the said case, the complainant had filed FIR under Sections 120B, 418 and 420 of the IPC and thereafter had also filed criminal proceedings in respect of dishonour of a cheque. The Hon'ble Supreme Court has held that when the facts were seriously disputed, neither of the proceedings could be quashed.

22. Mr. Ponda then referred to the case of ***Dalip Singh Vs. State of Uttar Pradesh and Others***¹¹ wherein it was held that the dishonest litigants are not entitled for any relief. Mr. Ponda submitted that the Petitioners, as demonstrated above, have not approached this Court with clean hands and therefore, they do not deserve any relief.

¹⁰ (2014) 16 Supreme Court Cases 711

¹¹ (2010) 2 Supreme Court Cases 114

23. Mr. Ponda emphasized that all the Judgments cited by Mr.Jethmalani were in respect of the facts of those cases which were quite different from the facts of the present case. According to Mr.Ponda, the ingredients of the offences were clearly made out. He submitted that in the case of **G. Sagar Suri** (*supra*), the complaint under Section 138 of the NI Act did not mention any allegation of any corrupt practice by any of the accused. Thus, according to Mr.Ponda, in that case, the FIR was an afterthought with new allegations. However in the present case, the complaint under Section 138 of the NI Act already mentions as to how the Respondent No.2's firm was cheated and how the offences were committed. Mr. Ponda submitted that there was no bar for lodging the present FIR even in the background of the earlier pending litigation.

24. Having considered the rival submissions, we are of the opinion that the present FIR does not pertain to a purely civil transaction. The false representation and inducement is very clear from the email sent to the Respondent No.2 for placing the purchase order for trial. Though it was clearly mentioned in the email that the Petitioner No.1 was the Managing Director of M/s. Sharp Industries

Ltd., the Petitioner No.1 had already resigned from the Directorship of the said company. Placing the first purchase order on the trial basis was clearly a ploy to induce the Respondent No.2's firm to enter into bigger transaction. The subsequent conduct of the Petitioners shows that they had no intention of making the full payment. Thus, the inducement is apparent right from the inception of the business relationship between the parties. As mentioned earlier, the email contained false information and therefore, the offence of forgery with cheating is also made out. The subsequent conduct of surreptitiously changing the office and avoiding to meet the Respondent No.2, shows the dishonest intention on the part of the Petitioners. In any case, it cannot be said that no cognizable offence is made out from the allegations in the FIR.

25. The submission of Mr. Jethmalani that once the proceedings under Section 138 of the NI Act were initiated mentioning the alleged cheating, and once the Magistrate had taken cognizance only under Section 138 of the NI Act, the FIR could not be lodged under various sections of the IPC; cannot be accepted. Taking into account the ratio laid down by the Hon'ble Supreme Court in the

cases of *G. Sagar Suri (supra)*, *Central Bank of India and another (supra)* and *Sesami Chemicals Private Limited (supra)*, we are of the opinion that the complainant can approach the police and lodge his FIR irrespective of the fact that he is entitled to file a separate private complaint under Section 138 of the NI Act. However, we make it clear that filing of the complaint under Section 138 of the NI Act will not automatically entitle the complainant to lodge the FIR. The complainant, in such cases, will have to make out a case of commission of a cognizable offence or cognizable offences which is the *sine qua non* for registration of any FIR.

26. The NI Act provides for the procedure for filing a complaint under Section 138 of the NI Act. The object behind such proceedings is to bring relief to the litigants in a summary manner if the complainant is able to establish his case. Furthermore, such prosecution is maintainable only against the persons referred to in Sections 138 and 141 of the NI Act. The Act also provides for the period of limitation for the complainant to complete the procedural formalities and to approach the Court. Whereas if the transaction is attended by other serious offences under the IPC, in a given case the

investigation is necessary; particularly when many accused are involved and the evidence can be collected only by an investigating agency. In such cases, it would not be proper to relegate the complainant only to the remedy of the prosecution under the NI Act which he can take recourse to by way of filing a private complaint. In such cases, the complainant's right to approach the police and get the offences investigated by them, cannot be scuttled.

27. It has to be noted that the Petitioner No.1 had entered into the Consent Terms with the Respondent No.2's firm accepting their liability and making commitment of fulfilling the same. There is considerable force in the submission of Mr. Ponda that the Petitioners have dishonestly resiled from their commitment. It cannot be lost sight of the fact that some of the Petitioners were granted bail by the learned Magistrate based on the submission made by the parties that the matter was settled i.e. on the basis of the Consent Terms. Such bail orders were not passed based on consideration of the merits of the case.

28. After considering the allegations in the FIR, we are of the view that right from the inception, the Petitioners had induced the Respondent No.2 in parting with huge quantity of Chromo Paper. The Petitioners' conduct right from the beginning till their default in the payment and till executing the Consent Terms shows that they never intended to make the full payment. Looking at the allegations in the FIR, we are unable to hold that no cognizable offence is made out against the Petitioners. Therefore, it is not possible to quash the said FIR. We do not find it to be a fit case to exercise our powers under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India to quash the C.R.No.58 of 2016 registered with the EOW. The Petition to accordingly stand dismissed. Rule discharged with no order as to costs.

29. At the conclusion of the arguments, the learned Senior Advocate Mr. Jethmalani prayed that the stay which was operating in favour of the Petitioners be continued for a period of four weeks, if this Court was inclined to dismiss the above Petition. Considering the request, we are inclined to extend the ad-interim relief granted to the Petitioners by the previous order. Hence, the ad-interim order dated

14/08/2017 which is operating in favour of the Petitioners, would continue for a period of four weeks from 03/04/2018.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)