THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2728 OF 2018

ORDER:

This criminal petition is filed by the petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.853 of 2017 on the file of the Narsingi Police Station, Cyberabad Police Commissionerate registered for the offence punishable under Sections 341, 406 and 420 of Indian Penal Code (for short "I.P.C.").

The respondent No.2 is the complainant, who lodged a complaint with the police alleging that he entered into an agreement with one Sudhakar Reddy, the petitioner herein, for purchase and construction of a Villa in Grand Homes, Kokapet for an amount of Rs.2.4 crores to complete the Villa by April, 2015 and paid 85% of the contract value to the builder. So far the petitioner has not completed the Villa as per contract terms. Several times the respondent No.2 demanded the petitioner to complete his Villa and handover the house to him. The respondent No.2 alleged that the petitioner had invested the funds in another business and could not finish his Villa and obstructing him from entering into his partly constructed Villa and also disconnected the electricity supply. Thus, the petitioner/accused committed criminal breach of trust and misappropriated the funds and cheated him with dishonest intention and induced him to pay crores of rupees.

On the strength of the complaint, police registered the crime and issued F.I.R.

The present petition is filed alleging that the petitioner is one of the directors in a company by name Grand Infratech India Private Limited (for short, hereinafter referred to as "the Company"), which was registered under the Companies Act, 1956 having its registered office at Flat No.104, Aditya Hill Paradise Road No.69, Nandagiri Hills, Hyderabad. The petitioner is the brother of P.Jaya Bhaskar Reddy, Managing Director of the Company and all the activities are being undertaken by Managing Director. The company is in the business of construction of residential apartments and villas. The company entered into a Development agreement – cum – irrevocable General Power of Attorney with M/s.Mascon Engineers Private Limited, represented by Managing Directors Smt.Tatineni Sudharatnamala and Smt.Ramadevi Maganti vide registered document No.522 of 2007 dated 21.12.2006 to develop a residential villas property in an extent of Acs.3-04 guntas located at Kokapet village, Rajendranagar Mandal, Ranga Reddy District. A supplementary agreement was registered vide document No.1735/2015 dated 13.02.2015.

While the matters stood thus, the company approached the Hyderabad Metropolitan Development Authority (for short "HMDA") for permission to construct residential villas under group housing scheme (total 25 villas) having different sizes and obtained permission for the same from HMDA vide File No.1243/GHSLO/ZOSKP/PLG/HMDA/2011, dated 26.06.2012. The HMDA approved the proposed plan for construction of Villa in favour of the Company. The residential group housing scheme (gated community) Villa Project was named as "Grand Boulevard".

After obtaining permission, the company has started construction of villas and carried out other development works like laying roads and other amenities.

The petitioner is a Non Resident Indian (NRI), software professional; he is only a shareholder and director in number of companies located in India and abroad.

One Smt.Bindu Balakrishnan Kuimil, wife of the respondent No.2 approached the company to purchase Villa bearing No.16 admeasuring 344 square yards, equivalent to 287.58 square meters. The said Villa No.16 was approved for a built up area of 4064 square feet by the HMDA. An agreement of sale was entered into between the company and the said Smt.Bindu Balakrishnan Kuimil on 08.01.2013 for an amount of Rs.2,35,84,000/- (Rupees Two Crore Thirty Five Lakh and Eighty Four Thousand only). Apart from the above amount, Smt.Bindu Balakrishnan Kuimil has agreed to pay an additional amount of Rs.7,50,053/- towards the service tax, Rs.8,92,000/- towards cost of additional civil works, Rs.10,00,000/- towards the Club House charges, and Rs.10,00,000/- towards east side corner bit premium. In all, Smt.Bindu Balakrishnan Kuimil paid an amount of Rs.1,86,67,864/- (Rupees One Crore Eighty Six Lakhs Sixty Seven Thousand Eight Hundred and Sixty Four only) in installments and is still required to pay an amount of Rs.85,58,189/- (Rupees Eighty Five Lakhs Fifty Eight thousand one hundred eighty nine only) to the company. The company has completed major part of construction of the Villa No.16, the balance of works like fixing taps in bathrooms, minor works in kitchen, plumbing and internal electricity were pending. The company could not take up the minor works, as the wife of the respondent No.2 was refusing to pay the balance amount, which was substantial in nature, therefore the Company could not perform its obligation. In fact, the agreement was between the company and the said Smt.Bindu Balakrishnan Kuimil and that there was no agreement between the respondent No.2 and the petitioner herein.

The main ground urged in the petition is that the petitioner was falsely implicated in the above crime and no notice was issued under Section 41-A of Cr.P.C. as on today and that he is not the director, who is regularly participating in day to day affairs of the company and being Non Resident Indian, he cannot be prosecuted for the offence punishable under Sections 341, 406 and 420 of I.P.C.

The allegations made in the complaint do not made out any case against the petitioner and based on mere allegation that the petitioner entered into agreement with the respondent No.2, police registered crime, arrested the petitioner and released on bail. The petitioner is no way concerned with the alleged agreement and the agreement was only between the company represented by P.Jaya Bhasker Reddy, who is the Managing Director and Smt.Bindu Balakrishnan Kuimil, but not between the respondent No.2 and the petitioner herein, and as such very registration of crime and arrest of the accused is a serious illegality committed by the police.

It is also contended that the investigation done so far did not disclose commission of offence, but the remand report disclosed as follows:

> "L.W.1 is the complainant and the victim, respondent No.2 hserein. L.W.2 - Smt.Bindu Balakrishnan Kuimil is the

> circumstantial witness. L.W.1 entered into agreement with one Jaya Bhasker Reddy to complete the construction of Villa No.16, Grand Boulevard in Grand Homes, Kokapet village with an amount of Rs.2.4 crores to complete the Villa by April, 2015 and he paid 85% of the contract value to the builder."

The above extracted sentence in the remand report is sufficient to conclude that the dispute is purely civil in nature and there was no contract between the petitioner and Smt.Bindu Balakrishnan Kuimil or her husband, respondent No.2 herein. In such case, criminal liability cannot be fastened against the petitioner. Finally, it is contended that the dispute is purely civil in nature, when a civil dispute is given flavour of criminal, which is the subject matter of suits O.S.No.247 of 2018 pending on the file of the Court of VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar and O.S.No.164 of 2018 pending on the file of the Court of the Principal District Judge, Ranga Reddy District at L.B.Nagar, registration of crime and proceeding against the petitioner is a matter of serious concern. The allegations made in the complaint would not constitute any offence as the civil dispute was converted into criminal, hence, the Court can exercise power under Section 482 of Cr.P.C. and requested to allow the petition.

Dr.J.Vijayalaxmi, learned counsel for the petitioner, reiterated the contentions urged in the petition while submitting that if for any reason the petitioner failed to perform his part of obligation under agreement, the remedy available to the petitioner is to approach the Civil Court as it amounts to breach of terms and conditions of the contract. Lodging of report with the police and proceeding against the petitioner is an abuse of process of law with a view to wreck vengeance against the petitioner, who is unconcerned with the agreement. Therefore, the proceedings against the petitioner are liable to be quashed, since, he is not the managing director taking part in day to day affairs of the company and requested to quash the proceedings.

Sri D.Madhava Rao, learned counsel for the respondent No.2 contended that utilizing amount of the respondent No.2 by the petitioner for other purpose not only amounts to breach of contract, but also amounts to criminal breach of trust and failure to construct a Villa as agreed inducing respondent No.2 to part with huge amount in the name of construction of villa constitute a serious offence punishable under Section 420 of I.P.C. and material collected so far disclosed that the petitioner is also responsible for performance of obligation under contract and there are no grounds to quash the proceedings at this stage when the investigation is not completed and prayed to dismiss the petition.

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

(1) ***Whether the petitioner being one of the directors of Grand Infratech India Private Limited participating in day to day affairs of the company actively is liable for criminal acts of company, if any?***

(2) ***Whether the allegations made in the F.I.R. constitute offence prima facie punishable under Sections 341, 406 and 420 of I.P.C., if not, whether the proceedings in Crime No.853 of 2017***

on the file of the Narsingi Police Station, Cyberabad are liable to be quashed?

P O I N T No.1:

It is an undisputed fact that the petitioner is one of the directors of the company, but the Managing Director of the company is P.Jaya Bhaskar Reddy. The remand report filed along with the petition also disclosed that the respondent No.2 entered into agreement with the company represented by its managing partner. The relevant paragraph in the remand report is extracted hereunder:

> "Investigation done so far in this case, it is well established that the L.W.1 is complainant and victim. LW-2 is cir. Witness. The Lw-1 entered into agreement with one Jaya Bhaskar Reddy to complete the construction Villa No-16, Grand Boulevard in Grand Homes, Kokapet Village with an amount of Rs.2.4 crores to complete the Villa up to April – 2015 and he paid 85% of the contract value to the builder. But so far he did not complete Villa as per contract terms. Several times the complainant asked the accused to complete Villa and release his house to him. The accused had invested the funds of this village in another business and could not finish this village project. Further he has obstructed the complainant from not enter into his Villa which are attending personally by the complainant and also stopped the electricity connection and obstructing the works. Thus the accused committed criminal breach of trust and misappropriated the funds and cheated him by dishonestly induced the complainant by the accused for the payment of Rs.1,86,67,864/- towards construction charges without construct Villa. Thus, the accused Sudhakar Reddy Panga is liable to be punished for the offence U/sec 341, 406, 420 IPC."

In view of the allegations made in the remand report extracted above, the agreement was only with the Company represented by its Managing Partner P.Jaya Bhaskar Reddy, who agreed to complete the construction of Villa No.16 in villa project named and styled as “Grand Boulevard”, in Kokapet village and the petitioner is not a party to the contract, which is placed on record and the agreement was duly signed by Grand Infratech India Private Limited represented by its Managing Partner P.Jaya Bhaskar Reddy and Smt.Bindu Balakrishnan Kuimil, wife of respondent No.2. Thus, there is no privity of contract between the respondent No.2 and the petitioner herein and between the Smt.Bindu Balakrishnan Kuimil, wife of the respondent No.2 and the petitioner, but a complaint is lodged against the petitioner as if he entered into agreement with the respondent No.2, but this allegation is false on the face of record in view of specific paragraph in the remand report extracted above.

It is not the case of the respondent No.2 that the petitioner is one of the directors participating in day to day affairs of the company. The complaint is totally silent as to the active participation of the petitioner in day to day affairs of the company, but invented a different story that the petitioner himself entered into a contract with the respondent No.2 and received 85% of the contract value of Rs.2.4 crores approximately. This allegation is false on the face of the record in view of the specific allegations made in the remand report extracted above. When the petitioner is not participating actively in day to day affairs of the company, no criminal liability is fastened to the petitioner as the question of vicarious liability would not arise.

The Apex Court time and again discussed about the liability of the directors, who did not participate in the day to day affairs of the Company.

In ***"Sunil Bharti Mittal v. CBI[1]" "Thermax Ltd. v. K.M.Johny[2]" "SMS Pharmaceuticals Ltd. v. Neeta Bhalla[3]",*** 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.

In ***"Standard Chartered Bank v. Directorate of Enforcement[4]"***, 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

[1] (2015) 4 SCC 609
[2] (2011) 13 SCC 412
[3] (2005) 8 SCC 89
[4] (2005) 4 SCC 530

> 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, 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. <u>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.</u>
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> 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.
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> 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 to show that the petitioner is effectively participating in the day-to-day affairs of the company, much less, *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 petitioner is responsible for such offences. 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.

Further, as seen from the allegations made in O.S.No.247 of 2018 pending on the file of VII Senior Civil Judge, Ranga Reddy District at L.B.Nagar filed by the Company against Smt.Bindu Balakrishnan Kuimil, wife of the respondent and O.S.No.164 of 2018 pending on the file of Principal District Judge, Ranga Reddy District, at L.B.Nagar filed by Smt.Bindu Balakrishnan Kuimil against the Company, it is clear that there was no agreement between the petitioner and the respondent No.2 herein, but the alleged agreement was between the company represented by its Managing Partner – P.Jaya Bhaskar Reddy and Smt.Bindu Balakrishnan Kuimil, wife of respondent No.1. Both parties filed petition under Order 39 Rule 1 and 2 of C.P.C. against one another for grant of temporary injunction restraining one another from interfering with their possession. Thus, both parties i.e. Company and Smt.Bindu Balakrishnan Kuimil are claiming to be in possession of the property i.e. Villa. These facts would disclose that there was absolutely no contractual relationship between the petitioner and the respondent No.2, but the contractual relationship was between the company represented by its Managing Partner – P.Jaya Bhaskar Reddy and the wife of the respondent No.2, but ignoring those suits pending before the Court, respondent No.2 lodged report against the petitioner as if he committed the offences without explaining as to how the petitioner is participating in day to day affairs of the company being one of the directors. In the absence of any specific allegation, a director who is not participating in day to day affairs of the company cannot be made vicariously liable for the criminal acts of the company in view of the judgments referred above. On this ground the complaint against the petitioner is liable to be quashed. Accordingly, point No.1 is answered in favour of the petitioner and against the respondent No.2.

P O I N T No.2:

The facts narrated above disclosed that the respondent No.2 allegedly purchased Villa No.16 in "Grand Boulevard" at Kokapet Village for an amount of Rs.2.4 Crores and the Company agreed to complete its construction by April, 2015 and allegedly paid 85% of the value to the builder. But the Company failed to complete construction despite payment of 85% of the value of the Villa and failed to deliver possession of the property within the time agreed and that the amount allegedly paid by the respondent No.2 was misappropriated for his own purpose by the petitioner herein.

The contention of the petitioner before this Court is that he never entered into any agreement with the respondent No.2 or his wife though he is one of the directors of the company, but P.Jaya Bhasker Reddy is the Managing Director of the company entered into agreement with the wife of the respondent No.2. Wife of the respondent No.2 filed O.S.No.164 of 2018 pending on the file of the Principal District Judge, Ranga Reddy District, at L.B.Nagar against M/s Grand Infratech Private Limited for various reliefs and also filed an application under Order 39 Rule 1 and 2 of C.P.C. in I.A.No.339 of 2018 in O.S.No.164 of 2018 for grant of temporary injunction restraining the M/s Grand Infratech Private Limited and others, their men, assignees, agents and persons claiming through them from cutting/interfering with the supply of electricity or any other utility services to the schedule premises i.e. Villa/House NO.16 in “Grand Boulevard”, Kokapet, Rajendra Nagar, Ranga Reddy District within the following boundaries.

North : 40’ feet road

South: Plot/Villa No.15

East : 30’ feet road

West : 30’ feet road.

In the affidavit filed by Smt.Bindu Balakrishnan Kuimil she asserted that she approached the defendant No.1 company and agreed to purchase Villa No.16 and paid part of the consideration for completion of the construction, but the project was delayed due to negligence and inefficiency of development company and its men and even by the date of filing suit in the month of February, 2018 the construction was not completed. But the defendant No.1 company represented by Sudhakar Reddy admitted that clear delay and breach of complying with the terms of the agreement by the Developer and therefore informed the plaintiff therein i.e. Smt.Bindu Balakrishnan Kuimil to carryon the works on their own and agreed to refund/adjust for all such works completed by the plaintiff on behalf of the defendant. She also asserted in paragraph No.9 of the affidavit that flooring tiles, false ceiling, electrical works, doors/frames/windows and Granite works (exterior/interior) are completed and internal painting is nearing completion and carpentry is underway. But the defendant No.1 failed to provide a cellar in the said Villa, for an additional cost which was included in the total cost of the Villa. The defendant accordingly dug up the cellar and a shell with base concrete work was completed and handed over to the plaintiff therein i.e. Smt.Bindu Balakrishnan Kuimil. While the matter stood thus, the defendants therein threatened the plaintiff in the said suit i.e. Smt.Bindu Balakrishnan Kuimil with dire consequences directing to report the matter to whom she wishes. It is also contended in paragraph No.13 that the defendants during the night of 09.02.2018 around 10.00 p.m. took up the most brazen and mind-less act of illegally and forcefully trespassing into the plaintiff's Villa with labour and machinery, and without the plaintiff's permission/consent poured concrete into the cellar of the plaintiff's house, thereby totally covering the entire cellar/basement. The defendants therein have taken up this stupid act in their bid to threaten the plaintiff to get the money demanded. Due to the illegal act of filling with cement concrete (ready mix) more than 80% of the entire cellar area has been covered. Thus, the Company being represented by the petitioner trespassed into Villa and caused damage to the flooring of cellar.

Even if these allegations are accepted on their face value, the construction of Villa was not competed, but the Company with a view to complete construction of cellar, took steps by filling the cellar with ready mix cement, that act would not amounts to criminal trespass. Moreover, the Company itself filed another suit O.S.No.247 of 2018 pending on the file of VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar to restrain the wife of the respondent No.2 herein i.e. Smt.Bindu Balakrishnan Kuimil, her men from interfering with the possession and enjoyment of the Villa. Thus, there is a dispute with regard to delivery of possession of Villa to the purchaser i.e. Smt.Bindu Balakrishnan Kuimil, wife of the respondent No.2 as per the agreement. When two civil suits are pending, the respondent No.2 resorted to this criminal litigation making serious allegations.

Undisputedly, the relationship between the respondent No.2 and Smt.Bindu Balakrishnan Kuimil is husband and wife and when the wife of the respondent No.2 entered into agreement to purchase property i.e. Village No.16 from the Company entering into agreement, she is entitled to lodge a written report with the police complaining any criminal acts of the Company or its Managing Director or any other director, who is directly participating in day to day affairs of the company, but the respondent No.2, who is a 3rd party has nothing to do with the property, more particularly with regard to contractual relationship, the same is between the Company and Smt.Bindu Balakrishnan Kuimil, wife of the respondent No.2. If for any reason, the amount paid by the wife of the respondent No.2 is misappropriated or she was cheated by the Company represented by its Managing Director or any of the directors, who is directly participating in day to day affairs of the company, Smt.Bindu Balakrishnan Kuimil is competent to complain the same having filed a suit O.S.No.164 of 2018 pending before the Court of Principal District Judge, Ranga Reddy District at L.B.Nagar and the same is pending for adjudication. Instead of initiating proceedings by Smt.Bindu Balakrishnan Kuimil, the respondent No.2 lodged report with the police as if he entered into agreement with the company. Therefore, there is absolutely no basis for the claim made by the respondent No.2 to investigate into the offences allegedly committed by the petitioner, by the police. Even otherwise, if the allegations made in O.S.164 of 2018 are accepted, the construction was completed except laying flooring in the Cellar portion and making preparation for completion of flooring by placing ready mix do not constitute any offence punishable under Section 447 of I.P.C.

Police registered a crime for the offence punishable under Sections 341, 406 and 420 of I.P.C.

Section 420 of I.P.C. deals with punishment for the offence of 'cheating'.

Cheating is defined under Section 415 of I.P.C and it is as follows:

> **"415. Cheating:-** Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients to constitute the offence of cheating are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In ***V.Y.Jose v. State of Gujarat***[5] the Apex Court laid down following ingredients to constitute cheating.

> "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;
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> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
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> (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.

[5] (2009) 3 SCC 78

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.

An offence of cheating may consist of two classes of cases: (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

In "***Hridya Rajan Pd. Verma and Ors. v. State of Bihar and another***[6]" the Apex Court discussed about the offence of 'cheating'. In the facts of the above judgment, a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced the complainant to enter into

[6] AIR 2000 SC 2341

negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***[7]" wherein the Apex Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code of Criminal Procedure could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to the decisions in "***Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill***[8]", "***Rajesh Bajaj v. State NCT of Delhi***[9]" and "***State of Kerala v. O.C. Kuttan***[10]" wherein the principle laid down in Bhajan Lal (supra) was reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in Bhajan Lal (supra) and whether the allegations made in the FIR or the complaint if accepted in entirety did make out a case against the accused-Appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable Under Section 420 of the Indian Penal Code. Scanning the definition of 'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second

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[7] 1992 Supp (1) SCC 335
[8] AIR 1996 SC 309
[9] (1999) 3 SCC 259
[10] AIR 1999 SC 1044

class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:

> "16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

After laying down the principle the Bench referred to the complaint and opined that reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No.2 therein had alleged against the appellants therein was that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No.2 part with property was not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent No. 2 was not made out even accepting all the averments in the complaint on their face value and, accordingly, ruled that in such a situation continuing the criminal proceeding against the accused would be an abuse of process of the Court.

In the absence of intentional deception on the part of the accused at the beginning of negotiations, the police cannot proceed to investigate into the offence punishable under Section 420 of I.P.C.

In "***Murari Lal Gupta v. Gopi Singh***[11]" the Apex Court while dealing with the similar case for the offence punishable under Section 406 and 420 of I.P.C. held as follows:

> "The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the Petitioner pursuant to which the Respondent parted with the money. It is not the case of the Respondent that the Petitioner does not have the property or that the Petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the Respondent. Merely because an agreement to sell was entered into which agreement the Petitioner failed to honour, it cannot be said that the Petitioner has cheated the Respondent. No case for prosecution Under Section 420 or Section 406 Indian Penal Code is made out even prima facie. The complaint filed by the Respondent and that too at Madhepura against the Petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the Petitioner for coming to terms with the Respondent."

[11] (2006) 2 SCC (Cri) 430

In "***B.Suresh Yadav v. Sharifa Bee and Another***[12]" the Apex Court held that the complainant, who was defendant in the suit, had filed a written statement from which it was manifest that she at all material times was aware of the purported demolition of the rooms standing on the suit property. It was contended in the written statement that the suit properties were different from the subject-matter of the deed of sale. After filing the written statement the Respondent had filed the complaint Under Section 420 of the Indian Penal Code. The Court took note of the fact that there existed a dispute as to whether the property whereupon the said two rooms were allegedly situated was the same property forming the subject-matter of the deed of sale or not and a civil suit had already been filed pertaining to the said dispute. The Court also took note of the fact that at the time of execution of the sale deed the accused had not made any false or misleading representation and there was no omission on his part to do anything which he could have done. Under these circumstances, the Court opined that the dispute between the parties was basically a civil dispute. It is apt to note here that the Court also opined that when a stand had been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, the same assumes significance and had there been an allegation that the accused got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter would have been different. Being of this view, the Apex Court quashed

[12] (2007) 13 SCC 107

the criminal proceeding as that did amount to abuse of the process of the court.

In "***G.V. Rao v. L.H.V. Prasad and Others.***[13]", the Apex Court has held thus:

> "As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney v. State of Bombay [AIR 1956 SC 575] a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B. [AIR 1954 SC 724] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

In "***S.N. Palanitkar and Ors. v. State of Bihar and Another***[14]", it has been laid down by the Apex Court that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.

An identical question came up before the Apex Court in "***Anil Mahajan v. Bhor Industries***[15]**"**, where the parties entered

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[13] (2000) 3 SCC 693
[14] AIR 2001 SC 2960
[15] 2005 (10) SCC 228

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 19.08.2000 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 therein 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:

> "6.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.
>
> 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.
>
> 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 view of the law declared by the Apex Court in various judgments referred supra, the allegations in the complaint lodged with the police do not constitute any offence punishable under Section 420 of I.P.C. Moreover, *prima facie* there is no allegation of dishonest inducement by the petitioner to part with any amount by the respondent No.2.

Section 406 of I.P.C. deals with the punishment for criminal breach of trust. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

In the present facts of the case, Smt.Bindu Balakrishnan Kuimil allegedly paid the amount towards cost of Villa and construction is almost completed by the company and allegedly took possession of the same; filed civil suit claiming exclusive possession over the property, sought interim injunction against company and others. When she paid price of Villa, took delivery allegedly, question of criminal breach of trust does not arise. Even otherwise, the respondent No.2 had not paid anything to the company or to the petitioner herein, in such case, mulcting the petitioner with criminal liability is an abuse of process of law. Law does not permit any person to abuse process of Court or law converting civil litigation into criminal or vice versa.

In "***Mohammed Ibrahim and Ors. v. State of Bihar and another***[16]" the Apex Court held as follows:

> "This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 and Indian Oil Corp. v. NEPC India Ltd. (2006) 6 SCC 736)"

In "***All Cargo Movers (India) Pvt. Ltd. v. Dhanesh Badarmal Jain and Another***[17]" the Apex Court held as follows:

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[16] (2009) 8 SCC 751
[17] AIR 2008 SC 247

> "…..Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondence exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior Courts while exercising this power should also strive to serve the ends of justice."

In "***Rajesh Bajaj v. State NCT of Delhi and Others***[18]", the Apex Court while dealing with a case where the High Court had quashed an F.I.R., opined that the facts narrated in the complaint petition may reveal a commercial transaction or a money transaction, but that is hardly a reason for holding that the offence of cheating would elude from such a transaction. Proceeding further, the Bench observed thus:

> "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 the 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 the Respondent after receiving the goods had 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."

If the principles laid down in the above judgments are applied to the present facts of the case, the allegations made in the written report, at best amounts to breach of contract, but the respondent No.2 who has nothing to do with the agreement

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[18] AIR 1999 SC 1216

with the company gave flavour of criminal offence to the civil litigation having filed suit O.S.No.164 of 2018 pending on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar, by his wife Smt.Bindu Balakrishnan Kuimil. Suit was filed by the wife and written report was lodged by the husband, the assertion of both that they entered into agreement for construction of Villa No.16 with the Company is neither believable nor acceptable. For one reason or the other, respondent No.2 lodged report with the police though he is conscious that his wife filed suit O.S.No.164 of 2018 claiming that she entered into agreement with the company. Filing of suit by the wife of respondent No.2 and complaint by the respondent No.2 against the petitioner and others, who are unconcerned with the agreement is nothing but abuse of process of Court and unless the Court exercises its power under Section 482 of Cr.P.C., it amounts encouraging the parties to convert civil litigation into Criminal in view of the dictum laid down by the Apex Court in "***All Cargo Movers (India) Pvt. Ltd. V. Dhanesh Badarmal Jain***" (referred above). Even in "***Gian Singh V. State of Punjab***[19]", a three-Judge Bench of the Apex Court held that "in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorized, and especially if, as a matter

[19] (2012) 10 SCC 303

of duty, required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."

If this principle is applied to the facts of the present case, it is clear that certainly civil litigation is given cloak of criminal offence and such practice cannot be encouraged by the Court.

Section 341 of I.P.C. deals with punishment for wrongful restraint.

'Wrongful restraint' is defined under Section 339 of I.P.C and it is as follows:

> "339. Wrongful restraint:- Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

As discussed in the earlier paragraphs, the petitioner did not prevent the respondent No.2 from proceeding in any direction in which he has a right to proceed. Hence, the allegations made in the complaint do not constitute any offence punishable under Section 341 of I.P.C.

Section 482 of Cr.P.C saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

In "***R.P. Kapur v. State of Punjab***[20]", the Apex 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
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> (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.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the

[20] AIR 1960 SC 866

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 as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar[21]"***

In "***State of Haryana v. Bhajan Lal***" (referred supra) the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex 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

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[21] AIR 1990 SC 494

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 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 guideline No.7, where as 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 out of private and personal grudge, the Court can exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings. Similarly, as per guideline No.5 if the allegations made in the F.I.R. do not constitute any offence, the Court may exercise the power under Section 482 of Cr.P.C.

In view of the law declared by the Apex Court in the judgments referred supra, when the allegations made in the complaint do not constitute any offence punishable under Section 341, 406 and 420 of I.P.C., this Court can exercise inherent power under Section 482 of Cr.P.C.

Therefore, I have no hesitation to hold that the respondent No.2 converted a civil litigation into criminal having allowed his wife to file suit against the Company and others including the petitioner herein, resorted to the present litigation as an arm twisting method to bring the Company and others to his terms though there was no privity of contract between the petitioner and respondent No.2 herein as they are not parties to the agreement in view of the allegations made in I.A.No.339 of 2018 in O.S.No.164 of 2018 pending on the file of the Principal District Judge, Ranga Reddy District, at L.B.Nagar. Therefore, I find that it is a fit case to quash the proceedings in Crime No.853 of 2017 on the file of the Narsingi Police Station, Cyberabad Police Commissionerate against the petitioner herein. The point No.2 is answered accordingly.

In the result, the criminal petition is allowed. The proceedings in Crime No.853 of 2017 on the file of the Narsingi Police Station, Cyberabad Police Commissionerate, are hereby quashed against the petitioner herein. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

18.07.2018
Ksp