THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6170 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.119 of 2018 pending on the file of Abids Road Police Station, Hyderabad City, for the offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC & Section 156(3) Cr.P.C.

The second respondent filed a private complaint before the II Additional Chief Metropolitan Magistrate, Hyderabad on 23.05.2018 and the same was referred to the police by exercising power under Section 156(3) Cr.P.C.

The facts of the case in brief are that, the petitioners herein/A-1 & A-2 are the wife and husband. The second respondent/complainant who is the landlord of commercial space portion admeasuring 3493 sq.ft of second floor of Indraprastha Building bearing M.No.8-2-681/7, Road No.12, Banjara Hills, Hyderabad, lodged a complaint against A-1 to A-3 stating that the A-1 to A-3 approached the complainant and introduced themselves as a bonafide entrepreneurs and used to deal in modern Ultra Luxe Saloon/SPA having vast experience and good financial background. Further, it is alleged that A-1 to A-3 induced and pursued the complainant to lease out commercial space portion second floor to A-1 on monthly rent of Rs.1,60,000/- per month, exclusive of all taxes, while agreeing to pay a sum of Rs.9,60,000/- towards interest & security deposit and Rs.2,00,000/- towards additional security. That on persuasion and inducement of A-1 to A-3, the second respondent along with other co-owners being joint owners have entrusted and delivered commercial space portion admeasuring 3493 sq.ft of second floor of Indraprastha Building bearing M.No.8-2-681/7, Road No.12, Banjara Hills, Hyderabad, on 22.02.2017 under a registered lease deed vide document No.1042 of 2017 for a period of 5 years. Further, A-1 to A-3 carried on business under the name and style of Glaze & Gloss for the Royal Glitterati of Ultra-Luxe Salon/SP and have paid a sum of Rs.6,40,000/- towards the interest free security deposit and undertaken to pay the balance amount of Rs.3,20,000/- immediately after nine months from the date of execution of the said lease deed and with a fond hope that the accused would pay the balance amount of Rs.3,20,000/- immediately after nine months. But, the accused have fraudulently failed to pay the said amounts as agreed, including monthly rent and other charges and wrongfully procrastinated and protracted the matter on one pretext or the other and turned hostile, thereby cheated the second respondent. Hence, the second respondent prayed to take necessary action against the petitioners.

It is the specific case of the second respondent that, he is the owner of commercial space portion admeasuring 3493 sq.ft of second floor of Indraprastha Building bearing M.No.8-2-681/7, Road No.12, Banjara Hills, Hyderabad, which was leased out to A-1 on monthly rent of Rs.1,60,000/- per month, exclusive of electricity charges, service tax, TDS as per law and other incidental charges initially. The accused have also greed for enhancement of monthly rent @ 5% per annum every year on the existing monthly rent and so also agreed to pay a sum of Rs.9,60,000/- towards interest free security deposit apart from Rs.2,00,000/- towards additional facility. It is averred in the complaint that the accused stated that they are having strong roots in the market and abundant good-will in the business in making punctual payments and positive compliances and further affirmed and assured that they would be regularly and punctually making the payments of all agreed monthly rents, taxes, electricity, maintenance and other charges, including security deposit.

On the persuasion and inducement of the accused, the second respondent along with other co-owners being joint owners have entrusted and delivered commercial space portion admeasuring 3493 sq.ft of second floor of Indraprastha Building bearing M.No.8-2-681/7, Road No.12, Banjara Hills, Hyderabad, on 22.02.2017 under a registered lease deed vide document No.1042 of 2017 for a period of five years. Further, the petitioners/A-1 to A-3 carried on business under the name and style of Glaze & Gloss for the Royal Glitterati of Ultra-Luxe Salon/SP and have paid a sum of Rs.6,40,000/- towards the interest free security deposit and undertaken to pay the balance amount of Rs.3,20,000/- immediately after nine months from the date of execution of the said lease deed and with a fond hope that the accused would pay the balance amount of Rs.3,20,000/- immediately after nine months. But, the accused have fraudulently failed to pay the said amounts as agreed, including monthly rents and other charges and wrongfully procrastinated and protracted the matter on one pretext or the other and turned hostile, thereby cheated the second respondent.

It is also alleged that, as per the terms and conditions, A-1 was required to pay the monthly rent @ Rs.1,60,000/- subject to deduction of TDS as applicable on or before 5th of every succeeding month and apart from the above, payment of maintenance charges @ Rs.25,000/- per month with regard to the above leased property to the complainant. Further, it is asserted that, A-1 in collusion and connivance with A-2 & A-3 being her husband and father respectively, deliberately defaulted payment of monthly rent and enjoying the said property without paying agreed rent and so also Service Tax/GST Tax, TDS as applicable in respect of leased property to the second respondent. A-1 has wrongfully withheld initially the payment of monthly rent for the period from April 2017 to November 2017 @ Rs.1,60,000/- totally amounting to Rs.12,80,000/- and so also maintenance charges since March 2017 @ Rs.25,000/- per month, totally amounting to Rs.2,25,000/- to the said property and as GST brought in existence, she also became due of said GST as applicable for the month of October of November 2017 amounting to Rs.43,200/- and similarly for subsequent months.

It is further contended that, there was registered correspondence between the parties for demanding payment of the amount and denying the liability to pay the same. But, non-payment of the amount, as agreed under the lease deed would constitute offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC. But, due to reference to the police by exercising power under Section 156(3) Cr.P.C, conferred on the Court, the police registered crime and issued F.I.R and took up investigation.

The present petition is filed challenging the registration of F.I.R based on the allegations made in the complaint, which is sought to be quashed on various grounds.

The main ground urged in the petition is that the complaint is frivolous, untenable and very registration of F.I.R is beyond the jurisdiction of the first respondent, as the premises is situated within the jurisdictional limits of Banjara Hills Police Station. Failure to perform the obligation under the lease agreement does not constitute any offence and at best, it would give rise to cause of action for filing civil suit. apart from that, the very reference under Section 156(3) Cr.P.C by II Additional Chief Metropolitan Magistrate, Hyderabad, without applying his mind and without any reasoned order is a grave error committed by the Magistrate and therefore, giving colour to the civil litigation as criminal offence would amount to abuse of process of law and sought to quash proceedings.

During hearing, Sri V. Hari Haran, learned counsel for the petitioners contended that, in the absence of any allegation about existence of fraudulent intention at the time of alleged inducement, it would not constitute an offence punishable under Section 420

IPC. Non-payment of rent as agreed under the lease agreement and other charges may give rise to cause of action for civil suit but not any criminal offence. When the second respondent gave flavour of criminal offence to civil litigation, the proceedings cannot be continued, as it is an abuse of process of law. Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in **Uma Shankar Gopalika v. State of Bihar[1] and Indian Oil Corporation v. NEPC India Ltd. And others[2]**, and on the strength of the principles laid down in the above judgments, the alleged acts committed the petitioners would constitute any offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC & Section 156(3) Cr.P.C and prayed to allow the petition by quashing the proceedings in Crime No.119 of 2018 pending on the file of Abids Road Police Station, Hyderabad City.

Whereas, learned counsel for the second respondent Sri Pramod Kumar Kedia contended that the dispute is not only civil, but also gave rise to cause of action for criminal offence, as the petitioners induced the second respondent to part with the property on payment of agreed rent and other charges and enjoying the property without payment of rent may also constitute offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC & Section 156(3) Cr.P.C and prayed to dismiss the pettion, while directing the Station House Officer, Abids to complete the investigation in Crime No.119 of 2018 and take further steps.

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[1] (2005) 10 SCC 336
[2] (2006) 6 SCC 736

Considering rival contentions, perusing the material available on record, the point that arose for consideration is:

"whether the allegations made in the complaint which was referred under Section 156(3) Cr.P.C to the first respondent against the first respondent would constitute offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC & Section 156(3) Cr.P.C. If not the proceedings for Crime No.119 of 2018 on the file of Abids Police Station, Hyderabad are liable to be quashed?."

P O I N T:

The facts narrated in the earlier paragraphs clearly disclosed that the first petitioner and the second respondent entered into an agreement of lease, while agreeing to pay a sum of Rs.9,60,000/-, equivalent to six months rent, which would be interest free security deposit and Rs.25,000/- per month towards maintenance charges. As the first petitioner paid only Rs.6,40,000/- out of Rs.9,60,000/-, he committed default in paying monthly rents from April 2017 to November 2017 @ Rs.1,60,000/- totally amounting to Rs.12,80,000/- and committed default even in payment of maintenance charges. Thus, a total amount due by the date of lodging report was Rs.14,75,049/-. Therefore, the relationship between the first petitioner and the second respondent is tenant and landlord. The first petitioner is only wife of the second petitioner is not concerned with the lease agreement, except approaching the second respondent to let out the property on agreed terms. Therefore, her presence at the time of entering into lease agreement on agreed terms and persuasion of the second respondent to let out the property. Therefore, mere persuasion to lease out the property do not constitute an offence, as it is only a request made by the first petitioner herein to the second respondent to let-out the premises. Admittedly, the second petitioner paid Rs.6,40,000/- out of Rs.9,60,000/-, while agreeing to pay balance of Rs.3,20,000/- and also failed to pay monthly rent and other charges as agreed. Therefore, it is evident from the allegations made in the complaint itself that the petitioners did not cheat and induce the second respondent with dishonest intention to part with any amount or immovable property. therefore, the role played by the first petitioner is nothing and she cannot be proceeded for any of the offences.

Turning to the allegations made against the second petitioner, he is only a tenant in occupation of the premises, who failed to comply his obligations in terms of lease deed document No.1042 of 2017. Therefore, certainly it gives rise to a cause of action for filing a suit. The lease deed is also placed on record and the registered correspondence through Sri Pramod Kumar Kedia, learned counsel, between the first petitioner and the second respondent also disclosed the relationship of landlord and tenant. Notice dated 04.05.2018 was issued, calling upon the petitioners to vacate and hand over the physical possession of the property by 31.05.2018 and also to pay sum of Rs.15,17,059/- towards dues of rents due and clear up to date all electricity charges, water charges, maintenance charges etc, and also to remit a sum of Rs.25,000/- towards the charges of the notice. This itself indicates that the dispute is purely civil in nature. The reply notice dated 22.05.2018 got issued by the petitioners also disclosed the cause of action for civil dispute and the petitioners demanded Rs.50,00,000/- along with Rs.20,000/- towards charges of the reply notice, complaining that, on account of failure to get the building repaired by the second respondent, the building got damaged. Therefore, the correspondence also at best gives rise to cause of action for civil dispute.

Leave alone the correspondence. Even if the allegations made in the complaint, if accepted on its face value, it would give rise to cause of action for filing civil suit, but no criminal offence is made out to proceed against these petitioners. The II Additional Chief Metropolitan Magistrate, Hyderabad, without applying his/her mind referred the complaint to the Station House Officer/ first respondent by exercising power under Section 156(3) Cr.P.C, who in-turn registered Crime No.119 of 2018 against the petitioners. The very reference of complaint by the Magistrate to the police is without any application of mind. In any view of the matter, the Station House Officer registered crime against these petitioners for the offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC.

The Supreme Court held that "Summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." (Vide "***Pepsi Foods Limited v. Special Judicial Magistrate***[3]"

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.

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[3] 1998 (5) SCC 749

But, here, the relationship between the first petitioner and the second respondent is only 'tenant' and 'landlord'. Tenant is allowed to occupy the premises and use for intended purpose as agreed, in terms of lease deed. It is not the case of the second respondent that he committed breach of trust, appropriating the premises for himself/herself or any other purpose, as directed in the lease deed does not arise. Mere continuing in possession till the petitioners are evicted or failure to pay rent as agreed does not constitute an offence punishable under Section 406 IPC, in view of the ingredients of the offence stated supra. Therefore, it is clear that the F.I.R did not disclose commission of an offence *prima facie* punishable under Section 406 IPC.

The other offence allegedly committed by the petitioners is punishable under Section 420 IPC. 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.

Adverting to the facts of the present case, in view of the lease agreement between the first petitioner and the second respondent, the relationship is only tenant and landlord. The tenant was required to pay the monthly rent @ Rs.1,60,000/- subject to deduction of TDS as applicable on or before 5th of every succeeding month and apart from the above, payment of maintenance charges @ Rs.25,000/- per month with regard to the above leased property to the complainant and paid a sum of Rs.6,40,000/- towards the interest free security deposit and undertaken to pay the balance amount of Rs.3,20,000/-, but, the first petitioner failed to pay the agreed amount. But, that does not amount to constitute any offence punishable under Section 420 IPC, since the complaint is bereft of any allegation that the petitioners had no intention at the inception to induce the second respondent or to part with the property, which is *sine quo non* to proceed against these petitioners for the offence punishable under Section 420 IPC.

In ***V.Y.Jose v. State of Gujarat***[4] 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.
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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.
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> 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;

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[4] (2009) 3 SCC 78

(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***[5]" 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 negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***[6]" 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***

[5] AIR 2000 SC 2341
[6] 1992 Supp (1) SCC 335

(Mrs.) v. Kanwar Pal Singh Gill[7]", "***Rajesh Bajaj v. State NCT of Delhi***[8]" and "***State of Kerala v. O.C. Kuttan***[9]" 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 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

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[7] AIR 1996 SC 309
[8] (1999) 3 SCC 259
[9] AIR 1999 SC 1044

> 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.

In "***Murari Lal Gupta v. Gopi Singh***[10]" 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

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[10] (2006) 2 SCC (Cri) 430

> 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."

In "***B.Suresh Yadav v. Sharifa Bee and Another***[11]" 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

[11] (2007) 13 SCC 107

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 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.***[12]", 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***[13]", 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

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[12] (2000) 3 SCC 693
[13] AIR 2001 SC 2960

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***[14]", 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 19.08.2000 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:

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[14] 2005 (10) SCC 228

> "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.
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> 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 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 petitioners to part with any amount by the respondent No.2.

The main endeavour of the learned counsel for the petitioners is that, when the relationship between the first petitioner and second respondent is 'tenant' and 'landlord', the second respondent may get the petitioners evicted by filing private complaint and reference to the police is abuse of process of the court.

In **Uma Shankar Gopalika v. State of Bihar** (referred supra), the Supreme Court held that, the law as well settled, every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the said case, it was nowhere stated that, at the very inception there was any intention on behalf of the accused persons to cheat which is condition precedent for an offence under Section 420 IPC. Mere making an allegation that the petitioners cheated the second respondent is not sufficient to constitute an offence.

In view of the law declared by the Apex Court in the judgments referred supra, the allegations made in the complaint do not constitute an offence punishable under Section 420 IPC, even if the allegations in the complaint are accepted as true on its face value and 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, **Indian Oil Corporation v. NEPC India Ltd. And others** (referred supra), the Apex Court discussed that what amounts to an offence of breach of trust and it was further observed as under:

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 discharge, or of any legal contract which the person has made, touching the discharge of such trust. The following the examples (which include illustrations under Section 405 where there is 'entrustment':

(i) Án 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.

(ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.

(iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.

(iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.

(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.

(vi) A servant or agent with reference to the property of the master or principal.

(vii) A pledge with reference to the goods pledged by the owner/borrower.

(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)."

(emphasis supplied)

Section 421 IPC deals with dishonest or fraudulent removal or concealment of property to prevent distribution among creditor and according to it, whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. But in the facts of the present case, no such fraudulent removal or concealment of property to prevent distribution among creditors had taken place. Hence, proceedings are liable to be quashed.

When civil dispute is given colour of criminal offence, the Court can exercise inherent jurisdiction under Section 482 Cr.P.C. The power under Section 482 Cr.P.C is limited and the Court can exercise such power in rarest of the rare cases, to give effect to the orders passed under the Code or to prevent abuse of process of the Court or to secure ends of justice. Law does not permit any person to abuse process of Court or law converting civil litigation into criminal or vice versa.

In "***All Cargo Movers (India) Pvt. Ltd. v. Dhanesh Badarmal Jain and Another***[15]" the Apex Court held as follows:

> ".....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

[15] AIR 2008 SC 247

> 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."

Therefore, by applying the principles laid down in the above judgments, it is difficult to accept the contention of the second respondent that the allegations made in the complaint gave rise to cause of action to criminal complaint. It is apparent from the record that, in view of subsisting relationship of landlord and tenant between the second respondent and the second petitioner, the petitioners converted the civil litigation into criminal to settle the score.

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***[16]", 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
>
> (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 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

[16] AIR 1960 SC 866

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[17]"***

In **State of Haryana v. Bhajan Lal[18]** this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme 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

[17] AIR 1990 SC 494
[18] 1992 Supp. (1) SCC 335

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.

The guidelines laid down by the Apex Court made it clear that, when the allegations made in the F.I.R or charge sheet, on its face value would not constitute an offence, the Court can exercise its inherent jurisdiction and quash the proceedings. Similarly, when the complaint was lodged as an abuse of process of the court, the Court can exercise its inherent jurisdiction and quash the proceedings.

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

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[19] (2012) 10 SCC 303

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 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.

In view of the law declared by the Apex Court in various judgments referred supra, it is evident that the second respondent gave colour of criminal offence to civil litigation from the property leased out to him, circumventing the law and to wreck vengeance against the petitioners. If, the principles laid down in **State of Haryana v. Bhajan Lal** (referred supra) are applied to the present facts of the case, the proceedings in Crime No.119 of 2018, as the second respondent gave colour of criminal offence to civil dispute and the allegations made in the private complaint, even if accepted on its face value, do not constitute offences punishable under Sections 120b, 406, 420, 421 r/w 34 IPC. Therefore, I find that it is a fit case to quash the proceedings in Crime No.119 of 2018 by exercising power under Section 482 Cr.P.C.

In the result, the criminal petition is allowed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 20.07.2018

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