HON'BLE SRI JUSTICE S.V. BHATT

CRIMINAL PETITION No.10019 OF 2017
AND
WRIT PETITION No.34934 OF 2017

COMMON ORDER:

Heard Mr.S.Niranjan Reddy, learned senior counsel for petitioners, Sri Ravi Shanker Jandhyala holding for Mr.Sridhar for *defacto* complainant/respondents 2 and 4 respectively in these two cases and the learned Assistant Government Pleader for (Home) for State.

The accused in FIR No.892 of 2017 dated 25.09.2017 on the file of Banjara Hills Police Station, Hyderabad are the petitioners in Criminal Petition No.10019 of 2017. The petitioners in Criminal Petition No.10019 of 2017 are employees of Kesoram Industries Limited/petitioners in W.P.No.34934 of 2017. The accused filed Criminal Petition No.10019 of 2017 to quash the proceedings in Crime No.892 of 2017 on the file of Banajra Hills Police Station, Hyderabad City. Kesoram Industries Limited filed the W.P. declaring the action of S.H.O., Banjara Hills Police Station and Sub Inspector, Banjara Hills Police Station/respondents 2 and 3 as part of investigation, in issuing notice dated 25.09.2017 freezing Bank Guarantee bearing No.F041BGP163400002 dated 05.12.2016 (for short B.G.) issued by respondent No.5 as arbitrary, illegal and without jurisdiction.

The counsel appearing for the parties have stated that the circumstances as stated in Criminal Petition No.10019 of 2017 can be referred for disposing of both cases.

A.Lakshminarayana/2nd respondent on 24.09.2017 filed complaint against the petitioners herein and another before Banjara Hills Police Station, Hyderabad. The complaint was registered as Crime No.892 of 2017 under Sections 420,406,409 and 418 of Indian Penal Code. The gist of the complaint and whether it constitutes an offence or not, will be taken up and considered after setting out the following circumstances.

Admittedly, on 06.05.2015, the 2nd respondent offered to undertake the work of enrichment of limestone from low grade to high grade and the offer resulted in agreement dated 13.05.2015 between Kesoram Industries Limited and respondent No.2 for enrichment of limestone from low grade to high grade at Mine Block-F at the Cement Plant of Kesoram Industries at Basanth Nagar, Karimnagar District. Kesoram Industries through letter No.KC/WS/MINE/CPD/NRP/2015-16/004 dated 13.05.2015 issued the work order in favour of 2nd respondent. The 2nd respondent claims to have invested huge money for beneficiation of limestone and also had undertaken the beneficiation work. The 2nd respondent states that Kesoram Industries Limited is to pay a sum of Rs.2,86,89,372/- for the beneficiation work executed by respondent No.2 between 31.03.2017 and 06.09.2017. The 2nd respondent as part of obligation under agreement dated 13.05.2015, furnished Bank Guarantee dated 05.12.2016 for due performance of the obligations under the agreement dated 13.05.2015. On 16.08.2017, 22.08.2017 and 26.08.2017, the 2nd respondent demanded payment of the outstanding amount towards alleged beneficiation of limestone. Kesoram Industries Limited through e-mail dated

27.07.2017, called upon respondent No.2 to stop all the activities covered by agreement or beneficiation work order, withdraw the resources deployed at site with immediate effect from 27.07.2017. On 06.09.2017, the 2nd respondent issued lawyer's notice to Kesoram Industries calling upon the Kesoram Industries to pay 2nd respondent Rs.2,86,89,372/- plus Rs.5,65,85,153/- and in the event of disagreement on the amount claimed by respondent No.2 by Kesoram Industries, respondent No.2 expresses his intention to invoke Clause 24 of agreement dated 13.05.2015 for resolution of disputes through arbitration. On 11.09.2017, Kesoram Industries through its Advocates requested 10 days time to send reply to lawyer's notice dated 06.09.2017. On 22.09.2017, Kesoram Industries Limited through its Financial Controller and General Manager addressed letter to the Manager, Karur Vysya Bank Limited, R.P. Road, Secunderabad invoking the bank guarantee dated 05.12.2016. It is, in this background , the 2nd respondent filed complaint dated 24.09.2017 against the petitioners herein. The allegations constitute the offence for filing complaint and registration of complaint as Crime No.892 of 2017 which reads thus:

> "To his shock and surprise, he has learnt that Kesoram Industries Limited have sent a letter dated 22nd September,2017, to Karur Vysya Bank of Secunderabad branch revoking the Bank Guarantee bearing No.F041BGP163400002, Dated. 05.12.2016 for Rs.1,44,70,000/- given by him in favour of Kesoram Industries Limited, towards performance guarantee for the above said contract as per clause 6 of the agreement. After the amount recovered from his payable monthly bills, the value of the said BG reduces to Rs.1,33,60,000/-. Therefore Revoking BG for Rs.1,44,70,000/- is a clear fraud and mischief. Kesoram

> Industries Limited cannot revoke the said BG, without any breach of the said agreement and it was done for wrongful gain and unlawful enrichment. Admittedly there is no such allegation against him so far about any breach of the said agreement. The said letter dated 22nd September,2017 is given with malafidely intention to defraud and cheat him. It also amounts to criminal breach of trust and mischief. The motive behind the above said revocation is to misappropriate his aid big money, without discharging his outstanding sum. With the said perpetration of conspiracy, not only him and many of his workmen with their respective families will not survive. The said action of Kesoram Industries Limited is with cruel criminal intent and the said conduct since the beginning proves that the accused have acted with dishonest intention to use him and his sources as a tool for their needs and thereafter finish him permanently. He therefore request to register a case and take immediate action against the culprits and save him.
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> Received on 24.09.2017 at 18.30 hours.
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> As per the contents of the above complaint I SI. Ch.Jithender Reddy registered a case in Cr.No.892 /2017 U/Sec.420,406,409,418 IPC and case file handed over to SI. Sri B.Dayakar Reddy for further investigation."
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> (Emphasis added)

It is matter of record and not disputed by respondent No.2 that respondent No.2 invoked the jurisdiction of civil court under Section 9 of the Arbitration and Conciliation Act for interim relief against invocation of Bank Guarantee and the 2nd respondent was not successful against invocation of Bank Guarantee by Kesoram Industries.

The Investigating Officer on registering the crime issued notice under Section 102 of Criminal Procedure Code dated 25.09.2017 calling upon the Manager, Karur Vysya Bank to freeze the Bank

Guarantee. The operative portion of letter dated 25.09.2017, reads thus:

> "During the course of investigation, examined the complainant in detailed and recorded his statement in which he corroborated the same facts of the FIR. Further he alleged that the accused company is trying to revoking the bank guarantee bearing No.F041BGP163400002 Dt. 05.12.2016 for Rs.1,44,70,000/- to cause wrongly loss to him and his company and thereby committed fraud and cheating.
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> Since the case is under investigation, it is required to freeze Bank Guarantee bearing No.F041BGP163400002 Dt.05.12.2016 for Rs.1,44,70,000/- and also furnish the certified copies of Bank Guarantee document into this case as to proceed further investigation.
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> Hence, it is request to freeze of bank guarantee bearing No.F041BGP163400002 Dt.05.12.2016 for Rs.1,44,70,000/- given in favour of Kesoram Industries Limited until the completion of investigation of this case."

Mr.S.Niranjan Reddy contends that the complaint dated 24.09.2017 or the allegations in Crime No.892 of 2017 even if are assumed to be correct do not constitute commissioning an offence by the petitioners herein. According to him, Kesoram Industries Limited and A.Lakshminarayana/respondent No.2 entered into agreement dated 13.05.2015 for beneficiation of limestone. The parties to the agreement, have accepted the terms and conditions together with discharging reciprocal obligations under the agreement. The parties in furtherance of the obligations under the agreement have taken a few steps such as Kesoram Industries Limited allowing respondent No.2 to establish plant, machinery and deployment of work force and machinery for beneficiation of limestone at Block-F. Likewise, the 2nd respondent claims to have executed the work under agreement dated 13.05.2015. During and in the course of performance of obligations differences have arisen either in beneficiation of limestone, mode and manner in executing the beneficiation of limestone, safety measures adopted by respondent No.2 etc. on the one hand and on the other belated payment or non-payment of amount for the work executed by respondent No.2. Respondent No.2 issued legal notice dated 06.09.2017. The company issued preliminary reply dated 22.09.2017 and the final reply dated 05.10.2017 to respondent No.2. In the interregnum period, the company encashed the Bank Guarantee vide letter dated 25.09.2017 for the alleged breach of obligation by respondent No.2 under the agreement. The agreement is terminated and the 2nd respondent was called upon to withdraw men and machinery from the site. These circumstances either taken together or alone do not constitute an offence for registering crime on the complaint dated 25.09.2017 filed by respondent No.2. The termination of contract by Kesoram Industries, invocation of Bank Guarantee etc. are pure and simple civil disputes between the parties under the agreement dated 13.05.2015. According to him, the registration of complaint under Section 406 read with 405, 409 and 418 and 420 IPC is illegal and the registration of crime does not satisfy the basic ingredients of the Sections referred to above for registering a crime. According to him, the allegation in the complaint for invoking the criminal remedy is that "the invocation of Bank Guarantee for Rs.1,44,70,000/- is a clear fraud and mischief. Kesoram Industries Limited cannot invoke the said Bank Guarantee without any breach of said agreement and it was done for wrongful gain and unlawful enrichment. The invocation of Bank Guarantee without breach of obligation by respondent No.2 is alleged in the complaint. The letter dated 22.09.2017 is given with *malafide* intention to defraud and cheat respondent No.2. The invocation of Bank Guarantee amounts to criminal breach of trust and mischief. The motive in invoking Bank Guarantee is to misappropriate the amount covered by Bank Guarantee without discharging the outstanding sum to respondent No.2". He contends that though the first information report is registered as crime, still in the circumstances of the case on hand, the registration of crime in the background of allegations stated in the complaint dated 25.09.2017 amount to abuse of process of Court and the FIR is required to be quashed to secure the ends of justice. He places strong reliance on the decisions in R.P.Kapur v. State of Punjab[1], State of Karnataka v. Muniswamy[2], G.Sagar Suri v. State of U.P.[3], Joseph Salvaraja v. State of Gujarat[4], Rukmini Narvekar v. Vijaya Satardekar[5], Alpic Finance Ltd. v. P.Sadasivan[6], Y.V.Jose v. State of Gujarat[7], Indian Oil Corporation v. NEPC India Ltd.[8] Sunil Bharti Mittal v. CBI[9], S.N.Palanitkar v. State of Bihar[10], L.Dhanya Naik v.

[1] AIR 1960 SC 866
[2] (1977) 2 SCC 699
[3] (2000) 2 SCC 636
[4] (2011) 7 SCC 59
[5] (2008) 14 SCC 1
[6] (2001) 3 SCC 513
[7] (2009) 3 SCC 78
[8] (2006) 6 SCC 736
[9] (2015) 4 SCC 609
[10] 2001 Crl.L.J.4765

State[11],Sheonarayan Jaiswal v. State of Bihar[12] and Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre[13].

Mr.Ravi Shanker Jandyala appearing for complainant contends that the breach of an undertaking or obligation and likewise either commission of an act or omission to act under agreement could attract both the civil and criminal law consequences. In the case on hand, he contends that Kesoram Industries Limited instead of paying the amount due for the beneficiation completed by 2nd respondent, terminated the agreement dated 13.05.2015 and encashed the Bank Guarantee without a breach of obligation by 2nd respondent. According to him, the petitioners have not made out a case for quashing FIR No.892 of 2017. The allegations in the FIR, according to him, constitute the offence under Sections 405 read with 406,409,418 and 420 of IPC. He contends that the application filed under Section 9 of the Arbitration and Conciliation Act is an additional measure to which respondent No.2 is entitled in law, from preventing Kesoram industries encashing the Bank Guarantee. According to him, even assuming that the arbitration clause is already invoked by the parties to the agreement dated 13.05.2015, the filing of complaint and registration of Crime No.892 of 2017 is sustainable in law. On the power and jurisdiction of Investigating Officer to direct freezing Bank Guarantee he relies on decision in

[11] 1977 Crl.L.J.654
[12] AIR 1953 Patna 225
[13] (1988) 1 SCC 692

State of Maharastra v.Tapas D.Neogy[14]. He prays for dismissing the Criminal Petition and also the Writ Petition.

The Assistant Government Pleader reads the operative portion which is excerpted above and contends the Station House Officer was satisfied that a crime under Sections 420, 406, 409 and 418 IPC is made out and accordingly the complaint is registered as Crime No.892 of 2017. He submits that matter is at the stage of investigation and there is no need for quashing Crime No.892 of 2017.

The learned counsel appearing for the parties have stated that the outcome of notice issued under Section 102 of Criminal Procedure Code is to be considered subject to the outcome of W.P.No.34934 of 2017 where Criminal Petition No.10019 of 2017 is challenged.

The points for consideration are:

(i) Whether the registration of complaint dated 25.09.2017 as Crime No.892 of 2017 amounts to abuse of process of Court and Crime No.892 of 2017 is quashed to prevent abuse of process or secure the ends of justice?

(ii) Whether the notice dated 25.09.2017 freezing Bank Guarantee is valid and within the powers of I.O. under Section 102 of Criminal Procedure Code?

Let me at the outset refer to the precedents on the scope of jurisdiction under Section 482, ingredients of Section 405, 409 and 420 of IPC and whether the complaint dated 25.09.2017 as made

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14 (1999 (7) SCC 685

out satisfies the requirements of these sections for continuing the investigation etc.?

In R.P.Kapur v. State of Punjab on the scope and ambit of jurisdiction under Section 482 (1 supra), it is held as follows:

> "Cases may be also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.."

On the same principle of law under Section 482, in State of Karnataka v. Muniswamy (2 supra), it held as under:

> " In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution."

In G.Sagar Suri v. State of U.P. (supra 3), it is held as under:

> "Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a

criminal court has to exercise a great deal of caution. For the accused, it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

In Joseph Salvaraja v. State of Gujarat (supra 4) on quashing FIR on dealing with a civil dispute, it is held as follows:

"In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v. State of U.P. relevant part thereof is reproduced hereinbelow:

" ..A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

In Rukmini Narvekar v. Vijaya Satardekar (supra 5), it is held as under:

"In order to identify the parameters of the questions referred to it, the larger Bench observed that in the case before it the question involved was not about the jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but it is about the right claimed by the accused to produce material at the stage of framing charge.

"While deciding the questions referred to it, the larger Bench made a conscious distinction between a proceeding under Section 227 Cr.PC before the trial court and a proceeding under Section 482 CrPC and made a reference to the court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 Cr.P.C.

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However, in paras 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

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However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained."

In Alpic Finance Ltd. v. P.Sadasivan (supra 6), it is held as under:

"The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

In V.Y.Jose v. State of Gujarat (supra 7), on the requirements of cheating, it is held as under:

"An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied :

"i) deception of a person either by making a false or misleading representation or by other action or omission;

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

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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We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

Once again to the same effect in Indian Oil Corporation v. NEPC India Ltd., (supra 8) on the facets of cheating, it is held as under:

"A careful reading of the section shows that a criminal breach of trust involves the following ingredients : (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under section 405) where there is 'entrustment' :

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

(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 pledgee 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)."

In Sunil Bharti Mittal v. CBI (supra 9), it is held as under:

"No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

When the company is the offender, 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. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. This very principle is elaborated in various other judgments. We have already taken note of Maharashtra State Electricity Distribution Co. Ltd. (supra) and S.K. Alagh (supra)."

In S.N.Palanitkar v. State of Bihar (supra 10), it is held as under:

"..The High Court dismissed the petition filed under Section 482 Cr.P.C. by the impugned order placing reliance, in particular, on two decisions of this Court, one Trisuns Chemical Industry (supra) and Medchi Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. & Ors., [2000] 3 SCC 269. In the first case, this Court held that the exercise of inherent power should be limited to very extreme exceptions. Further it was held that referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. It may be noted that the said judgment gets attracted only when the disputed act is an offence, which the High Court has failed to notice. No doubt, exercise of inherent power under Section 482 Cr.P.C. by High Court should be limited to very extreme exceptions but in a case where ingredients of alleged offences are not satisfied even prima facie, it cannot be said that power under Section 482 Cr.P.C. should not be exercised to quash the process issued by a Magistrate. In the case of Smt. Nagawwa (supra), it is laid down that in such a case, power under section 482 Cr.P.C. can be exercised to quash the process issued by a Magistrate.

In the second case also, this Court has expressed that "exercise of jurisdiction under the inherent power as envisaged under Section 482 Cr.P.C. to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. In the event, however, the court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law." Even from this case also, it is clear that if no offence is made out from the allegations made in the complaint, there should be no hesitation in exercising power under Section 482 Cr.P.C. to pass appropriate order.

In the case on hand, we have already stated above that except against the appellant no. 7, no offence was made out against the remaining appellants as the ingredients of offences alleged against them were not satisfied. Unfortunately, the High Court failed to exercise jurisdiction under Section 482 Cr.P.C. to correct manifest error committed by the learned Magistrate in issuing process against the appellants 1-6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter IV of Cr.P.C., having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Cr.P.C. the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the

High Court to give effect to any order under the Cr.P.C., or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Cr.P.C. should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 Cr.P.C. to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

In L.Dhanya Naik v. State (supra 11) it is held as under:

"In order to bring home the charge of criminal breach of trust by a public servant, there have to be an entrustment, thereafter misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract and finally the misappropriation or conversion or disposal must be with a dishonest intention.

As such, every offence of criminal breach of trust though it involves a civil wrong in respect of which the complainant may seek a Civil redress for damages in Civil Court, yet every breach of trust in absence of mens rea or criminal intention cannot legally justify criminal prosecution, criminal intention is the gist of offence under criminal breach of trust, forgery, or making of false document. "

In Sheonarayan Jaiswal v. State of Bihar (supra 12), it is held as under:

"13. The offence of criminal breach of trust, is defined in Section 405, Penal Code. One of the essential conditions is that the property which is the subject-matter of the offence must have been entrusted to a person : a trust of some kind is necessary, and the property in respect of which criminal breach of trust can be committed must be either the property of some person other than the person accused, or the beneficial interest in or ownership of it must be in some other person and the offender must hold such property on trust for such other person or in some way for his benefit. In all the cases given in the illustrations to Section 405 in which a person is said to have committed the offence, the property in respect of which it is said to have been committed is the property of another person or property of which the offender was not the beneficial owner, although in one case, that of the executor, he had the legal title.

I fail to see how it can be alleged in this case that the molasses which the distilleries had purchased were the property of any person other than the distillers themselves. I doubt if the Commissioner of Excise had any beneficial interest in the molasses, though he may have such interest in the spirit if and when such spirit is manufactured from the molasses. I have already referred to the terms of the licenses, which say nothing about raw materials for the manufacture of spirit. The permits, it may be stated, do not attach any obligation to the ownership of molasses : they relate merely to 'movement or transport' of molasses from one place to another, as contemplated by Section 4, Bihar Molasses (Control) Act.

Therefore, I do not think that it can be said that any obligation was attached to the ownership of molasses, such as would constitute a "trust" within the meaning of Section 405, Penal Code, either by reason of the terms of the licenses or permits. The express conditions of the permits would be fulfilled as soon as the molasses were moved from one place to another as stated in the permits -- whether the molasses be used for liquor or not. If it be assumed that it was an implied condition of the grant of permits that the molasses would be used 'only' for the manufacture of liquor -- it is difficult to assume that as an implied condition when both parties knew or intended that the molasses would be sold in the black market -- I am by no means satisfied that a violation of that condition would be anything more than a mere breach of contract.

It may be that the permit holders contravened a particular direction or order of the Excise Commissioner. If they did so, they would be liable under Clause 9 of the Ordinance or Section 10, Bihar Molasses (Control) Act, 1947. That, however, is not the charge against the petitioners, and no evidence was brought to my notice relating to the contravention of a particular order or direction of the Commissioner. A case of such contravention, if any, will be triable by the Magistrate and not by the Court of Session. The charge against the petitioners, is that they entered into a conspiracy to commit criminal breach of trust : that charge, in my opinion, is not sustainable on the evidence given in the case. A mere breach of contract or a breach of the conditions of a permit is not necessarily synonymous with criminal breach of trust. I may here give details of one of the permits, as an example."

In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (supra 13), it is held as under:

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into

> consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.
>
> Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued.

Let me now, keeping in view the precedents excerpted above, refer to the allegations in Crime No.892 of 2017. Paragraph 1 of Crime No.892 of 2017 refers to the circumstances or events happening up to the issue of lawyer's notice dated 06.09.2017. The lawyer's notice, it is relevant to note, does not refer to either the termination of agreement or non-payment of amounts due to 2nd respondent as a dispute coming under Clause 24 of agreement dated 13.05.2015. On 27.07.2017, Kesoram Industries called upon 2nd respondent to stop the activities and vacate the site handed over to him for beneficiation of limestone. Therefore, the 2nd respondent at this stage does not treat the steps taken by Kesoram Industries as coming under Section 405 etc of IPC. On the contrary, reserves right to work out the remedies under Clause 24 of the agreement dated 13.05.2015. While matters stood thus, Kesoram Industries through letter dated 22.09.2017 invoked the Performance Bank Guarantee, given by respondent No.2. The invocation of Bank

Guarantee is complained in the instant case as commissioning of an offence by the petitioners herein and at the cost of repetition, the operative portion of the complaint is reproduced:

> "To his shock and surprise, he have learnt that Kesoram Industries Limited have sent a letter dated 22nd September,2017, to Karur Vysya Bank of Secunderabad branch revoking the Bank Guarantee bearing No.F041BGP163400002, Dated. 05.12.2016 for Rs.1,44,70,000/- given by him in favour of Kesoram Industries Limited, towards performance guarantee for the above said contract as per clause 6 of the agreement. After the amount recovered from his payable monthly bills, the value of the said BG reduces to Rs.1,33,60,000/-. Therefore Revoking BG for Rs.1,44,70,000/- is a clear fraud and mischief. Kesoram Industries Limited cannot revoke the said BG, without any breach of the said agreement and it was done for wrongful gain and unlawful enrichment. Admittedly there is no such allegation against him so far about any breach of the said agreement. The said letter dated 22nd September,2017 is given with malafidely intention to defraud and cheat him. It also amounts to criminal breach of trust and mischief. The motive behind the above said revocation is to misappropriate his aid big money, without discharging his outstanding sum. With the said perpetration of conspiracy, not only him and many of his workmen with their respective families will not survive. The said action of Kesoram Industries Limited is with cruel criminal intent and the said conduct since the beginning proves that the accused have acted with dishonest intention to use him and his sources as a tool for their needs and thereafter finish him permanently. He therefore request to register a case and take immediate action against the culprits and save him."

From the above, it is clear that the 2nd respondent does not allege either commission or omission of an act at the inception of relationship between them pursuant to 2nd respondent's offer letter dated 06.05.2015, the work order issued by Kesoram Industries dated 13.05.2015 and the issue of Bank Guarantee dated 05.12.2016. But invocation of Bank Guarantee after terminating the agreement is complained.

The invocation of Bank Guarantee in the considered view of this Court cannot be treated as amounting to fraud, breach of trust or cheating. The Bank Guarantee is furnished by 2nd respondent for due performance of obligations under agreement dated 13.05.2015. Assuming without recording a finding on whether the invocation *per se* is illegal or not, this Court is of the view that the remedy of 2nd respondent against invocation of Bank Guarantee in the admitted circumstances is both for recovery of amounts due to him including the amount covered by Bank Guarantee and damages if any suffered on account of alleged illegal termination of agreement. The parties have entered into an agreement, the agreement deals with reciprocal promises, obligations, during the execution of agreement differences have arisen resulting in termination of agreement, invoking the arbitration clause and working out the remedies before the Forum agreed between the parties. The complaint registered as Crime No.892 of 2017 does not satisfy the ingredients of Sections under which the crime is registered, and the considered view of this Court by applying view of the Apex Court is that a civil dispute is converted into a complaint by registering crime and the crime is registered in a mechanical way by Banjara Hills Police Station without *prima facie* examination of allegations and the Sections under which offence is alleged. For the above reasons, this Court is satisfied that case under Section 482 of Cr.P.C. is made out and accordingly Crime No.892 of 2017 is quashed as amounting to abuse of process of Court and also to secure the ends of justice. The Criminal Petition is allowed as prayed for. Consequent to quashing the Crime, the notice under Section 102 of Cr.P.C. is held as illegal and for the same reasons notice dated 25.09.2017 is set aside. The Criminal Petition and the Writ Petition are allowed. No order as to costs.

The consideration of the disputes between the parties by this Court, is limited to the extent of registration of Crime No.892 of 2017 and whether the further investigation is required or not. It shall not be understood by the result of these cases, as this Court expressing a view on the disputes which are pending before the Arbitral Tribunal constituted under Clause 24 of the agreement dated 13.05.2015.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 19.01.2018

<u>Note</u>:

C.C. forthwith.

B/o.

Stp