HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRLP.Nos.10427 & 10429 OF 2017

COMMON ORDER

These two criminal petitions are filed by A1 & A2 and A3 & A4 separately under Section 482 Code of Criminal Procedure (for short 'Cr.P.C') to quash the proceedings in C.C.No.612 of 2017 on the file of the II Additional Junior Civil Judge-cum-XX Metropolitan Magistrate, Malkajgiri, Cyberabad, including the order dated 23.09.2017, whereunder cognizance was taken against A1 to A4, based on the complaint lodged by the 2nd respondent.

M/s.Shreshtha Movies (proprietory concern) was arrayed as A1, N.Sudhakar Reddy, being its proprietor, was arrayed as A2. A3-Nitin Reddy-Film Actor, is son of A2. Nikitha Reddy-A4 is daughter of A2 and sister of A3.

Originally, the complaint was filed against one N.Sridevi. But summons were sent to Nikitha Reddy-A4. There were over-writings on the summons served on A4. Now, the name of N.Sridevi was scored of and mentioned as Nikitha Reddy, D/o N.Sudhakar Reddy.

Gangadhara Satyanarayana-2nd respondent, is the complainant. He lodged a complaint against the accused-A1 to

A4 for the offences punishable under Sections 406, 420 & 506 of the Indian Penal Code (for short 'IPC') read with 34 IPC and Section 120-B IPC, alleging that A2 to A6 went to the 2nd respondent and informed that A5-Ashwin Kumar, being owner of M/s. Aakash movies, is financially very sound and invested huge amount in Akhil cinema and the said film is casted by Akkineni Akhil, who is son of top film actor, Akkineni Nagarjuna, and it is his debut movie, which was directed by a top Director V.V.Vinayak, music was composed by Taman and the movie is supposed to be scheduled with very high budget, which will be a big block buster film and ready to release shortly. It is further alleged that A1 to A4 are having distribution rights in overseas, precisely in Texas, USA and thereby, induced the complainant to invest a sum of one Crore, in the project, Akhil cinema. Believing the words of A2 to A6, the 2nd respondent arranged an amount of Rs.10,00,000/- out of his savings and arranged the balance amount of Rs.40,00,000/- from his friends and relatives. On 4.11.2015, the 2nd respondent went to the office of A2, in the presence of A3 and A4, who are the son and daughter of A2, paid an amount of Rs.50,00,000/-, and A2 issued a receipt for an amount of Rs.50,00,000/- in the presence of sons of the 2nd respondent viz., G.Srkinivasa Rao and G.Vijaya Krishna. In pursuance of the promise made by A2 to A6 in correlation of distribution of Akhil cinema in Texas, USA, the 2nd respondent went to USA on 9.11.2016 to take care of business of Akhil cinema, but to his utter surprise, Akhil movie was released through APPS Integrat in theatres of Texas, including Dallas. Then immediately, 2nd respondent contacted A6 over phone and enquired with him, who stated that "***you did not worry and he will come to Dallas, USA, personally and speak to the complainant in detail***". Thereafter, the 2nd respondent tried to contact A2 over phone, but the same was switched of. Later on, the 2nd respondent insisted A2 for repayment of the amount, A2, who is associated with some unsocial goondas, threatened to kill him in case, he again demanded for payment of the amount and thus, A1 to A6 made false promise, made to part with huge amount of Rs.50,00,000/- and thereby cheated him and threatened with dire consequences. Hence, A1 to A6 are liable for punishment for the offences punishable under Sections 406, 420, 506 read with 34 IPC and 120-B IPC.

The Magistrate, after recording the statement of the 2nd respondent-complainant in compliance of Section 200 Cr.P.C., took cognizance of the offences against all the accused for the offences punishable under Sections 406, 420, 506 read with 34 IPC and 120-B IPC.

Learned counsel appearing on behalf of petitioners-A3 and A4 submits that A3 and A4, who are son and daughter of A2, are no way concerned with the business of M/s.Shreshtha Movies, merely because they are children of A2, they cannot be arrayed as accused for the offences punishable under Sections 406, 420 & 506 IPC, and filing of the private complaint against them is nothing but abuse of process of law and thereby, sought to quash the proceedings against them. Learned counsel further submits that the alleged payment was made by the 2nd respondent-*de facto* complainant to A2 on 4.11.2015 in the presence of A3 and A4 and whatever overt act attributed is against only A2 and that A3 and A4 is not liable for the said offences. In fact, even according to E-mail filed along with the complaint by the 2nd respondent did not disclose about the payment of the said amount to A2 for granting distribution rights of Akhil cinema in Texas & Dallas, USA and the said E-mail address would show that the amount was received by A2 and not by A3 and A4 and that except making a bald allegation that A3 and A4 also made a representation to the 2nd respondent, there was no intention to show that A3 & A4 deceived the 2nd respondent to part with any property. Therefore, in view of the inconsistency in the allegations made in the complaint, none of the petitioners can be proceeded for the offences punishable under Sections 406,420 and 506 IPC.

The dispute is purely civil in nature at best. The alleged act of the accused may constitute breach of trust, in the absence of any inducement to any of the accused. Further, the allegations made in the complaint would not constitute an offence punishable under Section 420 IPC, as there was no allegation in the entire complaint that A2 to A4 induced the 2nd respondent with dishonest intention to part with any amount. In the absence of any allegation that A2 to A4 intentionally made dishonest misrepresentation to cheat the 2nd respondent, they are not liable for any offences. Hence, A2 to A4 cannot be proceeded further for the offences punishable under Sections 406,420 & 506 IPC. At the same time, the alleged threat to kill the 2nd respondent was not attributed to A3 and A4 and thereby, they cannot be proceeded for the offence punishable under Section 506 IPC also. On consideration of the entire material, it is clear that there was no intention to establish any of the three offences. But, the Court below did not consider the material produced along with the complaint and come to the conclusion that the accused have committed the offences punishable under Sections 406 & 506 IPC, and thereby, the order passed by the Magistrate on 23.09.2017 is illegal and prayed to quash the proceedings.

During hearing, learned Senior Counsel Sri S.Niranjan Reddy, would contend that even if the allegations made in the complaint have taken into consideration, on its face value, those allegations would not attract the offences punishable under Sections 506, 406 & 420 IPC, because A3 and A4 are no way concerned with the business transaction of A1 viz., Shreshtha movies, since it is only a proprietory concern and Shreshtha movies is represented by its proprietor-A2-N.Sudhakar Reddy, who filed his income tax returns in his individual capacity as proprietor of Shresta Movies and thereby, the alleged representation made by A3 and A4 is nothing but a concoction for the purpose of this complaint. At best, the alleged non-payment of the amount, invested by A2 may give rise to cause of action for recovery of amount by filing a suit, but it would not constitute an offence punishable under Sections 406,420 & 506 IPC. Hence, filing of the complaint against A3 and A4 and taking cognizance of the offences by the Magistrate, is without application of mind, which is a serious illegality and the Court cannot proceed against the accused for the offences stated above. In support of his contention, he placed reliance on the judgments of the Apex Court in ***Mehmood Ul Rehman vs Khazir Mohammad Tunda and others***[1] & ***Mahendra Singh Dhone vs. Yerraguntla Shyamsundar and another.***[2]

Though the 2nd respondent did not file his counter, he advanced argument in support of the complaint filed against the accused and others.

It is the contention of the 2nd respondent that A3 and A4 who are son and daughter of A2, made representation and induced to part with an amount of Rs.50,00,000/- for granting distribution rights in Texas and Dallas, USA, but A2 did not keep up his promise, released the Akhil movie through APPS Integrat. Merely because the act done by A2 is civil in nature, it cannot be quashed. When a particular act done by the accused constitute both civil wrong and criminal offence, it is for the aggrieved person to proceed against them either in criminal Court or civil Court for redressal of his grievance and when the act committed by the accused constitutes an offence punishable under Section 406 IPC, it would give rise to a cause of action

[1] (2015) 12 SCC 420
[2] (2017) 7 Supreme Court Cases 760

for filing complaint in criminal Court. Apart from that, at the stage of deciding the applications under Section 482 Cr.P.C, the Court is required to verify the allegations made in the complaint, but cannot appreciate the material and other evidence available on record. If the material and the allegations made in the complaint, on its face value constitute an offence under any of the penal provisions, the Court cannot quash the proceedings at this stage. It is further contended that A2 issued receipt, but failed to repay the amount and committed criminal breach of trust and therefore, it would constitute a serious offence punishable under Section 420 IPC and simultaneously, A2 threatened the 2nd respondent with dire consequences when he demanded for repayment of the amount, it would constitute an offence punishable under Section 506 IPC and prayed to dismiss the petition.

Considering the rival submissions, the points that arise for consideration are as follows:

> ***(1) Whether A3 and A4 are partners of A1-Shreshtha Movies (proprietory concern), if so, whether they induced the 2nd respondent by making a false representation with dishonest intention to part with huge amount of Rs.50,00,000/- promising to vest distribution rights for release of cinema Akhil in Texas and Dallas, USA, if so, are they liable for the***

> ***offences punishable under Sections 406, 420 and 506 IPC.***
>
> ***(2) Whether A1- Shreshtha Movies, which is the proprietory concern, represented by A2, being its proprietor, can be proceeded by taking cognizance for the offences punishable under Sections 406, 420 & 506 IPC.***

POINT No.1:

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In ***State of Haryana v. Bhajan Lal***[3] this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their

[3] 1992 Supp. (1) SCC 335

face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no 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 ***(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others***[4], the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

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

[4] AIR 1990 SC 494

In ***Mukesh and others v. State for NCT of Delhi and others***[5], the Supreme Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused.

In ***State of Haryana** v. **Bhajan Lal***[6] this Court considered in detail the scope of provisions of 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

[5] (2017) 6 SCC 1

[6] 1992 Supp. (1) SCC 335

following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint which are mentioned supra.

In ***R.P. Kapur v. State of Punjab***[7], the Apex Court held as follows:

> (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.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law.

Therefore, when the allegations made in the charge sheet disclosed commission of an offence punishable under the

[7] AIR 1960 SC 866

provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

The Court can evaluate the material and documents on record, but it cannot appreciate evidence. The Court can not record evidence to conclude whether the material produced is sufficient or not for convincing the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion, to proceeding against the accused for the alleged offence committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

The main allegations in the complaint against A1 to A4 are that they induced the 2nd respondent with a dishonest intention to part with huge amount of Rs.50,00,000/- for vesting or granting distribution rights of Akhil cinema in Texas and Dallas, but failed to vest any distributory rights of the said cinema and thus, it would constitute an offence punishable under Section 420 IPC.

There is a specific allegation in the complaint that A2 to A4 along with A5 & A6 made the 2nd respondent to believe that the distribution rights in Texas and Dallas for release of akhil cinema, would be vested on him.

It is also contended that A2 issued a receipt dated 4.11.2015 acknowledging the receipt for an amount of Rs.50,00,000/- from the 2nd respondent and the basis for the entire complaint is the said receipt dated 4.11.2015 and E-mail message dated 1st August, 2017. A bare look of contents of receipt, it discloses that it was issued by A2, who is the proprietor of Shreshtha movies-A1, which is not a partnership firm and therefore, the 2nd respondent is aware that the receipt issued by A1, which is a proprietory concern, but the 2nd respondent conveniently impleaded A3, who is a film actor/director, and none other than son of A2 and A4, who is daughter of A2. The basis for making such an allegation is that they made a false representation. The Court below has taken cognizance against the accused for the offence punishable under Section 406 IPC, criminal breach of trust. The offence criminal breach of trust is defined under Section 405 IPC, which reads as follows:

> 405 Criminal Breach of Trust: Whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the

> discharge of such trust, or wilfully suffers any other person so to do, commits "criminal beach of trust".

To constitute an offence punishable under Section 406 IPC, the 2nd respondent-*de facto* complainant has to satisfy the following ingredients.

(i) Entrustment (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it, *vide* judgment reported in ***Sadhupati Nageswara Rao V. State of Andhra Pradesh***[8]

In view of the basic requirements to constitute an offence punishable under Section 406 IPC, there must be an entrustment.

Admittedly, the 2nd respondent did not entrust any amount to A3 and A4, but allegedly paid Rs.50,00,000/- to A2 *vide* receipt dated 4.11.2015. In the absence of any entrustment, A3 and A4 cannot be proceeded for the offence punishable under Section 406 IPC.

Even if the allegations made in the complaint are accepted on its face value, *prima facie,* there is no material to establish any entrustment to A3 and A4 and they appropriated or converted the amount for their own use. In the absence of

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[8] AIR 2012 SC 3242

any entrustment, appropriation or conversion as required under Section 405 IPC, taking cognizance against A3 and A4 for the offence punishable under Section 406 IPC is a serious illegality committed by the Court below.

The second allegation made against A3 and A4 is that they also made a false representation along with the other accused to part with or invest huge amount to vest distributory rights of Akhil cinema in Texas and Dallas, USA.

To constitute an offence punishable under Section 420 IPC, there must be a cheating and dishonest intention to deliver any property. The word 'cheating' is defined under Section 415 of IPC and it reads as follows:

> Section 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 main ingredients to constitute an offence punishable under Section 420 IPC are that there should be dishonest intention from the very beginning, which is *sine qua non* , to hold the accused guilty for commission of the said offence punishable *vide* judgment reported in ***Joseph Salvaraj v. State of Gujarat***[9]

Even to constitute the offence punishable under Section 420 IPC, there prosecution has to establish the following ingredients.

(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***[10] 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:

[9] AIR 2011 SC 2258
[10] (2009) 3 SCC 78

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

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

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

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."

Here, in this case, even the if the allegations made in the complaint, if taken on its face value as true, A3 and A4 allegedly made a representation to invest certain amount for vesting rights of Akhil cinema in Texas and Dallas, USA. The complaint is silent with regard to cheating and dishonest intention of inducement to part with Rs.50,00,000/-. Nothing was paid to A3 and A4. Mere making a representation allegedly by A3 and A4 to the 2nd respondent to part with huge amount, it would not constitute an offence punishable under Section 420 IPC.

It is not the case of the 2nd respondent that he paid any amount to A3 and A4 in pursuance of cheating, dishonest intention and inducement to part with any property. In the absence of any payment to A3 and A4, it is difficult to accept that there is *prima facie* material to proceed against them further for the offence punishable under Section 420 IPC. The other offence allegedly committed by A3 and A4 is punishable under Section 506 IPC i.e., punishment for criminal intimidation. The word 'criminal intimidation' is defined under Section 503 IPC. Ingredients of Section 503 IPC are as follows:

> (1) Threatening by one person to the other with an injury to his person, reputation or property;
> (2) to do any act which he is not legally bound to do;
> (3) to omit to do any act which that person is legally entitled to do.

Here, in this case, in paragraph No.7 of the complaint, a specific allegation is made that on 25.7.2017, when the 2nd respondent went to the office of A2 and insisted for re-payment of the amount, A2, who is associated with some goondas, threatened the 2nd respondent not to visit the offence in connection with repayment of money and for any other reason; that they would kill him and wrongfully restrained the 2nd respondent in their office for a couple of hours and pulled him using muscle power.

This allegation, at best, constitute an offence punishable under Section 506 IPC against the person, who allegedly threatened to kill him, in case he visits the office for demanding the amount. There is absolutely no allegation that A3 and A4 also participated in the said incident of threatening to kill him in the event of his visiting again the office of A2. In the absence of any allegation, A3 and A4 cannot be punished for the offence punishable under Section 506 IPC.

<u>POINT No.2</u>: The allegation made against A2 is that he committed criminal breach of trust. The criminal breach of trust is defined under Section 405 IPC as mentioned in the earlier paras and present facts of the case, A2 allegedly received Rs.,50,00,000/- on 4.11.2015 and the same was acknowledged

by A2 on the letter head of Sreshtha movies being the proprietor of A1. The letter head reads as under:

"Sreshth Movies

Date: 19.8.2015

Thanks received Rs.50,00,000/- (fifty lakhs only) from G.satyanarayana Hyderabad (on A/c of Subba Rao) for Texas State of USA, towards "Akhil" Telugu movie distribution.

For Sreshth Movies
(proprietor)
(N.Sudhakar Reddy)"

The contents of acknowledgment of Rs.50,00,000/- from the 2nd respondent would show that Rs.50,00,000/- was received on 4.11.2015 by A2. The said acknowledgment clearly discloses the intention of A2 i.e., he received Rs.50,00,000/- from G.Satyanarayana through account of Subba Rao for conferring or vesting distribution rights of Akhil cinema in Texas, State of USA. The said fact is also confirmed by E-mail, dated 1st August, 2017 sent by Subba Rao-A6 through the 2nd respondent.

It is the case of the 2nd respondent that he paid Rs.50,00,000/- directly and received a receipt dated 4.11.2015, but it is contrary to the E-mail and acknowledgment issued by A2. However, the contents of both the documents would disclose that A2 received Rs.50,00,000/- from the 2nd respondent through the account of Subba Rao, proprietor of

'Crown movies', who is arrayed as A6. The allegation against A2, being the proprietor of A1-Shreshtha Movies, is that he received the amount for allotment of distribution rights for Akhil cinema in Texas and Dallas, USA, but neither he vested the distribution rights of Akhil cinema nor repaid the amount, but converted or misappropriated the said amount for himself. When the 2nd respondent demanded for repayment of the amount, A2 threatened him with dire consequences. Therefore, the allegations made in the complaint clearly show that A2 being the proprietor of A1-Sreshtha Movies, received Rs.50,00,000/- for vesting the distribution rights of Akhil cinema in Texas, but he did not keep up his promise and vested the distribution rights on some other agency viz., APPS Integrats and converted the amount for his own purpose. *Prima facie*, such allegation would constitute an offence punishable under Section 406 IPC.

The other offence allegedly committed by A2 is for the offence punishable under Section 420 IPC, as discussed in the earlier paras. A2 having received Rs.50,00,000/- through A6 for conferring or vesting the distribution rights on the 2nd respondent for Akhil cinema in Texas and Dallas, USA, did not keep up his promise and conferred the rights on some other agency i.e., APPS Integrats,

Confirming or vesting of rights on APPS Integrats, is not in dispute. The dispute is with regard to collection of amount of Rs.50,00,000/- promising to vest the distribution rights on the 2nd respondent, which is a purely a question of fact.

As discussed in the above paras, to constitute an offence punishable under Section 420 IPC, the 2nd respondent has to satisfy those ingredients to proceed with against the accused. *Prima facie*, it is the contention of the 2nd respondent that A1 and A2 had no intention initially to deceive him and absolutely, there is no allegation in support of it. But, the complaint itself is bereft of such allegation i.e., dishonest intention at the inception. Though the complaint did not disclose the factum of making dishonest representation at the inception, but it discloses that A2 fraudulently induced the 2nd respondent to part with huge amount which itself suffice to constitute an offence punishable under Section 420 IPC, *prima facie,* subject to proof of the same, by adducing evidence during the trial. If those allegations are taken into consideration on its face value, the same would constitute an offence punishable under Section 420 IPC.

The other offence allegedly committed by A1 and A2 is punishable under Section 506 IPC. To constitute an offence punishable under Section 506 IPC, the 2nd respondent has to establish the ingredients of Section 503 IPC. Here, in this case, A2, being the proprietor of A1, with the assistance of goondas, threatened to kill the 2nd respondent when he approached the office demanded for repayment of the amount of Rs.50,00,000/-, pulled his mobile, and wrongfully confined him for couple of hours. This allegation would constitute an offence punishable under Section 506 IPC on its face value.

Learned counsel appearing for the petitioners-accused mainly contended that the allegations mentioned in the complaint would not constitute any of the offences. The Magistrate ought not to have taken cognizance of the offences and thereby. taking cognizance of the offences punishable under Sections 406, 420 and 506 IPC, *prima facie,* is a serious illegality and he placed reliance on the judgment of the Apex Court in ***Mahendra Singh Dhoni*** (referred to supra(2). The Apex Court discussed about the obligation of the Magistrate while taking cognizance.

The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C, followed by Section 204 Cr.P.C. should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would prima facie, make the accused answerable before the Court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C, if any, the accused is answerable before the criminal Court, there is ground for proceeding against the accused under Section 204

Cr.P.C. by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.PC, the High Court under Section 482 Cr.P.C is bound to invoke its inherent power in order to prevent abuse of the power of the criminal Court. To be called to appear before the criminal Court as an accused is a serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal Court shall not be made a weapon of harassment.

In the case on hand, the Magistrate issued process and passed a detailed order on 23.09.2017 by taking cognizance against all the accused. The Magistrate did not assess the role of A3 and A4, and mechanically, took cognizance against A3 and A4, based on the documents i.e., acknowledgment of receipt of Rs.50,00,000/- from the 2nd respondent for conferring or vesting distribution rights of Akhil Cinema in Texas and Dallas, USA and E-mail addressed by A6 to the 2nd respondent. Since those two documents and the allegations made in the complaint did not disclose any entrustment of amount to A3 and A4 and that they misappropriated or converted the same for their own use and threatened to kill the 2nd respondent. Thus, without applying mind to the facts of the case, and without considering the ingredients to constitute the offences punishable under Sections 420, 406 & 506 IPC, the Court below took cognizance against A3 and A4. In ***Mahendra Singh Dhoni*'s** case (referred to supra), the Apex Court held that the Magistrates who have been conferred with power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the Court issuing process.

If these principles are applied to the present facts and circumstances of the case, taking cognizance against A3 and A4 for the offences punishable under Sections 406, 420 and 506 IPC, is a serious illegality committed by the Court below. As there is no *prima facie* material against A3 and A4 to proceed against them, on this ground alone, Crl.P.No.10429 of 2017 is liable to be allowed.

Learned counsel appearing for the petitioners-A3 and A4 would contend that at the stage of deciding the proceedings under Section 482 Cr.P.C, the Court has to consider only the allegations made in the complaint and the material produced along with it, and in view of arbitration clause, proceedings are not maintainable, but this contention is unsustainable in view of judgment of the Apex Court in ***Lalmuni Devi vs State of Bihar & ors (SLP No (Crl) No.701 of 2000)***, wherein, it was held that merely because there was an arbitration, the Court cannot quash the proceedings. The Apex Court placing reliance on ***State of Haryana v. Bhajan Lal***[11] ***& Mr K.Ramakrishna & Ors v. State of Bihar & Anr***[12] concluded that inherent powers can be exercised to quash proceedings prevent abuse of the process of law and to secure ends of justice. It has been held that where the allegations in the FIR do not constitute the alleged offence or where the offence is not disclosed in the complaint or the FIR is frivolous criminal litigation could be quashed. However, the 2nd respondent counsel contended that it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. On this strength of principles, it is contended that the alleged overact attributed against the accused attracts civil liability and at the same time, it constitutes criminal offences, in such cases,

[11] 1992 Supp(SCC 335)
[12] JT 2000 (Supp 1) SC 53

this Court cannot exercise its jurisdiction, but in the present facts, the 2nd respondent admittedly did not entrust any amount to A3 and A4, thereby, the question of misappropriation or converting the amount for their own purpose does not arise. At the same time, though they allegedly made a false representation to part with an amount of Rs.50,00,000/-, the same is not supported by any piece of evidence. On the other hand, the receipt dated 4.11.2015 on which the 2nd respondent relied discloses that A2, being the proprietor of Shreshtha Movies-A1, acknowledged the receipt of Rs.50,00,000/- through account of A6 through the 2nd respondent and thereby, parted with the said amount, at best, A3 and A4 did not commit any offence, but A1 and A2 prima facie committed offences.

Learned counsel appearing for the petitioners placed reliance on the judgment of the Apex Court in ***Kamaladevi Agarwal vs State of West Bengal and Ors***[13], & and also judgment of this Court in ***N.Gurucharanam vs. State of Andhra Pradesh*** (Crl.P.No.1618 of 2009), contended that it is necessary to show that at the time of making promise, the accused had fraudulent or dishonest intention to deceive or to

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[13] AIR 2001 SC 3846

induce person so deceived to do something which he would not otherwise do and such a culpable intention to write at the time of entering into an agreement cannot be presumed merely from his failure to keep up the promise subsequently. There is no dispute about this concept. At the same time, it is also to be considered that just on the basis of what has taken place at the inception of transaction it is always not possible to ascertain whether the ingredients of cheating are satisfied or not for which subsequent conduct of the party concerned may also be necessarily taken into consideration. In other words, the totality of the circumstances of the case is to be taken into consideration for properly appreciating the matter. Subject to the ascertainment of the authority of the accused withdrawing the amount by misrepresentation and deceit definitely attracts the ingredients of cheating. Learned counsel for respondent No.2 also placed reliance on the judgment of the Apex Court in ***M/s.Medchl Chemicals & Pharma P vs. M/s Biological E. Ltd & Ors*** (SLP (Crl) 1971 of 1999), wherein it is held that the ingredients of the offences punishable under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. Whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal Law and civil law remedy can be pursued in diverse situations. As a matter of fact they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrong does in cases like arson, accidents etc.

Therefore, by applying principles laid down in all the judgments referred to above, the absence of a specific allegation that the accused had no intention at the inception to deceive the 2nd respondent, cannot be a ground to quash the proceedings. The conduct of the parties has to be taken into consideration whether the accused committed the offence or not. The remedy available to the parties is both civil and criminal i.e., for recovery of amount and damages for breach of promise in order to proceed against A1 and A2 for the offences punishable under Sections 406, 420 and 506 IPC. But there is no substitute civil remedy for the offence of criminal intimidation. Therefore, mere availability of civil remedy would not preclude the 2nd respondent from proceeding against A1 and A2 for the offences punishable under Sections 406, 420 & 506 IPC.

Even according to the principles and guidelines of the Apex Court as discussed in the earlier paras, the scope of jurisdiction of this Court is limited and this Court can exercise the inherent powers under Section 482 Cr.P.C. only to prevent abuse of process of Courts and to secure ends of justice. Keeping in mind the scope of Section 482 Cr.P.C, the Apex Court in ***State of Haryana v Bhajan Lal***[14], held that if the allegations made in the complaint if taken on its face value would not constitute any offence, the Court can exercise powers and quash such proceedings. But, herein, in this case, the allegations against A1 and A2 would constitute prima facie an offence punishable under Sections 420, 406 and 506 IPC. But, none of the allegations made against A3 and A4 do not disclose prima facie material that they committed an offence,

[14] 1992 Supp (1) SCC 335

much less the offences punishable under Sections 420, 406 and 506 IPC. Hence, considering the entire material including the order passed by the Magistrate taking cognizance of the offence punishable under Sections 420, 406 and 506 IPC against A3 and A4, which is erroneous and will have a serious consequences, and in view of the judgment of the Apex Court in ***Mehmood UL Rehman vs. Khazir Mohammad Tunda and others***[15], and the material on record, the allegations made in the complaint acknowledging the receipt dated 4.11.2015 and Email discloses that the 2nd respondent paid Rs.50,00,000/- through A6, on receipt of the same, A2, representing A1 being the proprietor of Sreshtha Movies for conferring or vesting of distribution rights of Akhil Cinema in Texas and Dallas and misappropriated or converted for his own benefit while denying to repay the amount, threatening to kill him in case the 2nd respondent again visits the office, would constitute *prima facie* offence punishable under Sections 406,420 & 506 IPC.

Thus, the Court below took cognizance of the offences punishable under Sections 406,420 & 506 IPC against A1 and A2 rightly, but committed an error in taking cognizance against A3 and A4. Therefore, the order passed by the Court below

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[15] (2015) 12 SCC 420

against A3 and A4 taking cognizance for the offences punishable under Sections 406,420 & 506 IPC is set aside while sustaining the part of the order taking cognizance of the offences punishable under Sections 406,420 & 506 IPC against A1 and A2.

Accordingly, Crl.P.No.10429 of 2017 is allowed and Crl.P.No.10427 of 2017 is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 5.1.2018
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