IN THE HIGH COURT FOR PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 04.10.2021

1. CRM-M-12681-2021 (O&M)

Ravi Bhargav

… Petitioner

Vs.

State of Punjab and others

….Respondents

2. CRM-M-12680-2021 (O&M)

Vidur Bhardwaj

… Petitioner

Vs.

State of Punjab and others

….Respondents

3. CRM-M-12818-2021 (O&M)

Sujit Kumar Singh

… Petitioner

Vs.

State of Punjab and others

….Respondents

4.. CRM-M-12708-2021 (O&M)

Nirmal Singh

… Petitioner

Vs.

State of Punjab and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Amandeep Singh, Advocate
for the petitioner (in CRM-M-12681-2021).

Mr. R.S. Rai, Senior Advocate
with Mr. Rishi K. Kapoor, Advocate
for the petitioner (in CRM-M-12680-2021).

Mr. K.S. Nalwa, Advocate
and Mr. Chakitan S. Papta, Advocate
for the petitioner (in CRM-M-12818-2021).

Mr. J.S. Bedi, Senior Advocate with
Mr. Navjot Singh, Advocate
for the petitioner (in CRM-M-12708-2021).

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate
for respondent No.4.

ARVIND SINGH SANGWAN, J.

Vide this common order, this Court shall dispose of abovementioned four petitions praying for quashing of FIR No.171 dated

28.08.2019 under Sections 420, 406, 465, 467 to 471, 120-B of the Indian Penal Code (for short 'IPC') and all the subsequent proceedings pending in pursuance thereof, being misuse of process of law.

For reference, facts are taken from CRM-M-12681-2021.

Brief facts of the case are that the FIR was registered on a complaint given by respondent-complainant Rupinder Singh Gill against 22 persons including the petitioners, in which it is stated that all the accused persons intentionally and dishonestly conspired with each other in order to induce him for believing their pre-planned and dishonest representation, which ultimately proved to be false and further by fabricating and forging various documents, have caused huge financial loss as well as have committed the offence of dishonestly cheating him. It is further stated that two accused persons namely Nirmal Singh and Vidur Bhardwaj approached him in the presence of Amarjeet Singh Chatha and some other persons number of times and represented that they are promoters of Three C Group, in the real estate sector in NOIDA, District Gautam Budh Nagar (UP) and also in Gurugram, Haryana. It was represented that since they are facing acute liquidity problem and are interested in unblocking some of their investments in certain plot/projects to raise required resources/funds and offered to the complainant good profits by giving attractive and financially viable prices. It is further stated in the FIR that the accused represented that the plots/properties offered to the complainant were free from all encumbrances like loan or lien and the complainant will be given full control and ownership of the companies, which owned the plots/properties, to which the complainant agreed to invest and in that process, the accused will not only transfer 100% equity shareholdings of those group of companies and will grant liberty/permission to the complainant to appoint Directors of his own choice, which will have majority in the Board of Directors of these group of companies. It was also verbally agreed that the amount of unsecured interest free loan from the various group companies, which is outstanding in these group companies will be returned by the complainant and his associates in a phased manner, after they started getting revenue from the floor area or built-up and developed areas by the accused on these plots/properties, in collaboration with Three C Group of Companies. The accused had shown the complainant several plots/properties, which Three C Group of Companies was keen to construct and develop and to be marketed individually by the complainant or jointly with the accused. It is further stated that six properties were shortlisted, which were owned by six different group of companies, namely Acreage Properties Pvt. Ltd., Votive Propbuild Pvt. Ltd., Hecienda Infosoftech Pvt. Ltd., Challengerz Web Solutions Pvt. Ltd., Three C City Developers Pvt. Ltd. And Acorn Soft Solutions Pvt. Ltd. The complainant further stated that initially, he was apprehensive of entering into any business relations with the accused persons, but on the persistent assurances given by them, especially the fact that Nirmal Singh personally handed over the original lease deed and original documents of five of abovementioned group of companies to examine and to re-assure about ownership of the plots/properties offered to the complainant, in a dishonest and deceitful manner, the accused induced the complainant to enter into business dealing and to win his confidence, he was inducted as Director of four, out of 06 abovementioned companies. On his recommendation, Amarjeet Singh Chatha and Deepak Khurana were also appointed as Directors in four companies, by replacing the existing Directors and Form DIR-12 was supplied by the accused persons, showing resignation of the existing Directors. Later, on 14.08.2018, an agreement to purchase shares was executed, in which the complainant was to purchase 9999 equity shares, out of 10000 equity shares, of the aforesaid company, namely Acreage Properties Pvt. Ltd. The agreement was signed by the promoters of Three C Company, namely Nirmal Singh, Vidur Bhardwaj and Supreet Singh Suri. It is further stated in the FIR that after execution of the agreement, Nirmal Singh ensured that three new bank accounts, one each for Votive Propbuild Pvt. Ltd., Hacienda Infosoftech Pvt. Ltd. And Challengerz Web Solutions Pvt. Ltd. were opened in the Bank Branch decided by the complainant, namely Bank of India, Mohali and all the documents were signed by the newly appointed Directors of these companies. Later on, AGMs of Votive Propbuild Pvt. Ltd., Hacienda

Infosoftech Pvt. Ltd. and Challengerz Websolutions Pvt. Ltd. was held on 29.09.2018 and AGM of Acreage Properties Pvt. Ltd. was held on 28.09.2018 at their registered offices and thereafter, three separate formal agreements to sell were executed on 08.10.2018 between the complainant and aforesaid three companies, namely Votive Propbuild Pvt. Ltd., Hacienda Infosoftech Pvt. Ltd. and Challengerz Websolutions Pvt. Ltd. and three promoters of Three C Group had signed all the agreements and it was specifically agreed that to start with, the complainant will deposit 2% of the total verbally agreed sale consideration of each plots owned by each of these three group companies and proportionately, 2% of the equity share of these companies will be transferred in the name of the complainant. Later on, the amount was deposited in the newly opened bank accounts and documents were prepared for transfer of 2% share of 200 equity shares. Thereafter, the accused started delaying execution of the securities of Transfer Forms SH-4, in a pre-meditated conspiracy and did not transfer agreed 2% equity shares of each of three companies and even management of Acreage Properties Pvt. Ltd. had noticed lots of illegalities done intentionally and dishonestly by the promoters of Three C Group of companies. When accused Nirmal Singh and his co-promoters were asked to clarify their stand, they kept on putting excuses one after another. Thereafter, sensing the dishonest and fraudulent intention of the promoters of Three C Group, the complainant started gathering information and came to know about illegal siphoning off and diversion of thousands of crores of rupees in their Sports City Project in Sector-79, NOIDA from other housing projects. Later on, the complainant came to know that the accused are in advanced stage of negotiation with Max Estates Ltd. for selling some properties, though the original documents were handed over to him by accused Nirmal Singh and this fact was concealed at the time, when the agreement to sell dated 14.08.2018 was executed. This fact itself reveals that since inception of the talks between the parties, intention of the accused persons was to commit cheating and dishonesty with the complainant.

It is further stated in the FIR that the complainant again made certain queries from the accused persons, as detailed in the FIR, however, no specific reply was given, as they had failed to get the written approvals of NOIDA Authority and the District Magistrate, Gautam Buth Nagar (UP) regarding NOC of Acreage Properties Pvt. Ltd. regarding Tower-H. It is also stated that in a pre-planned conspiracy with their employees/co-accused, the accused persons intentionally and dishonestly fabricated and forged certain documents and used the same for illegal purpose i.e. for opening three bank accounts of aforesaid three companies and then writing illegal letters regarding freezing of the accounts to the Branch Manager, Bank of India, Mohali, without informing to the complainant. Even three cheques dated 19.03.2019 issued by the authorized signatories of three companies in favour of Ragvinder Singh Gill were dishonoured by the Bank, on the pretext that the account has been suspended/freezed on the basis of letter dated 17.10.2018, written by Rajeev Baisoya and Ravi Bhargav. From the Bank, the complainant came to know about letter issued by the accused, which reflects their mind about committing intentional and fraudulent act of fabricating and forging the documents. It is further stated that sensing the criminal conspiracy hatched by the accused persons, new management of three companies, as an abundant precaution, got the amount deposited in three bank accounts in Mohali and got converted it into Fixed Deposits in the name of three respective companies. It is further stated that as a part of conspiracy, EGM was called, of aforesaid three companies and power of Directors to operate the bank accounts was withdrawn and accounts were freezed. In the communication of Ravi Bhargav and Rajeev Baisoya, it is stated that Directors of these companies have been appointed by the Boards themselves and not by the shareholders. Some details have been given in the FIR to show that in fact, the alleged EGMs dated 01.09.2018 were never held and the letters dated 17.10.2018 and emails dated 24.10.2019 and 25.10.2019 signed/sent by Ravi Bhargav and others are in fact a fraudulent act as a part of pre-planned criminal conspiracy of the accused persons with their employees. Some details of other communications between the parties are also referred to in the later part of the FIR, which are not reproduced here for the sake of brevity. It is concluded in the FIR that all the accused persons named in the FIR, since the beginning, with common intention, dishonestly, fraudulently, to cheat the complainant, have collectively fabricated and forged the various documents and misused the same to misrepresent the complainant, in achieving their illegal target, therefore, it was prayed that FIR be registered against them.

Since the fact are identical in all cases, therefore, the arguments of all learned senior counsels for the petitioners are recorded jointly.

Learned senior counsels for the petitioners have argued that in fact, it is primary a dispute of civil nature, as there was an agreement to sell between the parties and the complainant had never opted to file a civil suit for redressal of his grievance. It is further submitted that from bare perusal of the FIR, ingredients of cheating and criminal breach are not made. It is also submitted that initially, petitioner Nirmal Singh with one Deepak Khurana had approached the complainant for sale of some properties and a proposal was offered and as per understanding between the parties, the complainant with Deepak Khurana and Amarjeet Singh Chatha were appointed as Additional Directors, but in the meetings, they were not confirmed by the shareholders of their respective companies. It is next submitted that Form DIR-12 dated 16.01.2019 was fraudulently uploaded on the website exhibiting their confirmation as Directors. Similarly, Form AOC 4 and MGT 7 were also uploaded.

It is further argued that as per AGM of aforesaid three companies dated 29.09.2018, Additional Directors were not confirmed and in this regard, communication was sent to the Registrar of Companies. It is also argued that essential ingredients of offence of cheating, forgery and criminal breach of trust are not made out, as neither there is any inducement or wrongful gain to the petitioner and even there is no corresponding wrongful loss to the complainant. Learned senior counsels have relied upon a judgment of the Hon'ble Supreme Court in **Heera Lal Vs. CBI, 2003 (5) SCC 257**, in which it is held that to constitute the offence of cheating, firstly there should be fraudulent or dishonest inducement of a person by deceiving him; secondly, the person, so deceived, should be induced to deliver any property to any person or to give consent that such person shall retain any property; and thirdly, the person, so deceived, should be intentionally induced to do so or omit to do anything, which he do not do, if he was not so deceived.

It is further submitted that allegation of preparation of forged documents is also not proved, as it is held by the Hon'ble Supreme Court in **Mohd. Ibrahim and others Vs. State of Bihar and another, 2009 (8) SCC 751** that a person is said to have made or executed a document, claiming to be someone else or authorized by someone else or if there is alteration or tempering with a document or if he has obtained a document of practicing deception or a person, who is not in control of his senses.

Learned senior counsels have next argued that registration of FIR at Khanna in Punjab is a deliberate tool of harassment, as Khanna Police has no territorial jurisdiction to register the FIR. It is further submitted that no cause of action accrued regarding commission of alleged offence at Khanna, as the place of occurrence for the alleged offence, even if the FIR is taken to be correct on the face of it, would be Delhi or NCR. It is also submitted that a perusal of the FIR would show that all the six companies referred to in the FIR have its registered offices in Delhi and the accused persons are also resident of Delhi or working in Delhi/NCR. It is further submitted that three agreements dated 08.10.2018 also reflect that stamp duty is to be paid in Delhi and Extraordinary General Meetings (EGMs) and Annual General Meetings (AGMs) were also held at the registered offices of the companies in New Delhi. Even the properties are situated in Delhi NCR.

Learned senior counsels have next argued that the matter on civil side is subjudice before the National Company Law Tribunal, New Delhi in three Company Petitions bearing CP No.57/241-242/(PB)/2019, CP No.56/241-242/(PB)/2019 and CP No.55/241-242/(PB)/2019 titled as Three C Infratech Pvt. Ltd. Vs. Votive Propbuild Pvt. Ltd. and others, Three C Universal Developers Pvt. Ltd. Vs. Hacienda Infosoftech Pvt. Ltd.

and others and Three C Universal Developers Pvt. Ltd. Vs. Challengerz Web Solutions Pvt. Ltd. and others, respectively. It is further submitted that the reply has already been filed and vide order dated 05.04.2019, status quo has been ordered by NCLT, therefore, even on civil side, the complainant has acceded to the jurisdiction at New Delhi. It is also submitted that primarily, it is a civil dispute between the parties, which is converted into a criminal one by way of registration of FIR and this action is malafide. It is next argued that NCLT, Delhi, in the order dated 05.04.2019, had granted status quo and the reply was filed by the complainant on 28.08.2019 and only thereafter, the complaint was given to the police for registration of FIR. It is thus submitted that FIR is just a counter-blast to the proceedings initiated under Sections 241/242 of the Companies Act by way of filing company petitions.

Learned senior counsels have referred to different paragraphs of the FIR and tried to give a reply that allegations are incorrect, however, within four corners of powers under Section 482 Cr.P.C., being disputed facts, same are not considered and are not referred for the sake of brevity.

Learned senior counsels, with reference to the agreement to sell dated 08.10.2018, have argued that the same was entered into with mutual understanding of the parties, as the complainant had agreed to sell, transfer and alienate all their rights, title, interest, benefits etc. in the entire shareholding of the company, therefore, the complainant has several remedy. With reference to the reply filed before the NCLT on behalf of the complainant, it is submitted that in para No.4, it is stated that registered office of the petitioner's company is in New Delhi, however, it was stated that petition is not maintainable.

Status report by way of affidavit of Superintendent of Police (Investigation), Police District Khanna, District Ludhiana as well as reply on behalf of the respondent-complainant have been filed.

Learned State counsel, on the basis of affidavit of Superintendent of Police (Investigation), Police District Khanna, District Ludhiana, has submitted that after registration of the FIR, the police served notices under Section 41 Cr.P.C. to all the accused persons on 23.07.2019, 07.08.2019, 12.08.2019 and 17.08.2019 for associating them in the inquiry and again, on four subsequent dates, as mentioned in the affidavit, but none of them appeared before the Inquiry Officer, however, the complainant appeared and recorded his statement before the Superintendent of Police (Investigation), Khanna. It is further submitted that since the case is at the stage of investigation, the petitioners have neither applied for anticipatory bail nor have applied for regular bail, therefore, these petitions filed under Section 482 Cr.P.C. are not maintainable. A reference is made to judgment of the Hon'ble Supreme Court in **K. Jagdish Vs. Uday Kumar, 2014 (14) SCC 552**, wherein it is held that even if a civil remedy is available, a person is not precluded from setting in motion the proceedings in criminal law or continue with criminal proceedings, if already initiated, as the matter is to be determined on the facts of each case. It is further held by the Hon'ble Supreme Court that civil and criminal proceedings are maintainable in respect of same set of facts, when the offence is made out. It is also held that the High Court ordinarily would not exercise its inherent jurisdiction to quash the criminal proceedings and in particular, a First Information Report, unless the allegations contained therein, on the face value, taken to be correct, do not disclose cognizable offence and for that purpose, the Court would not look into any cognizance relied upon by the defence. It is next held by the Hon'ble Supreme Court that if the allegations disclose a civil dispute, the same itself may not be a ground to hold that criminal proceedings should not be allowed to continue.

Learned State counsel has further relied upon **Dinesh Bhai Chandu Vs. State of Gujarat, 2018 (3) SCC 104,** wherein the Hon'ble Supreme Court held that in order to examine whether the factual contents of the FIR disclose any prima facie cognizable offence or not, the High Court cannot act like an investigating agency nor can exercise powers like an appellate Court. It is also held that at the stage of investigation, the High Court could not appreciate the evidence and cannot draw its own inference from contents of the FIR and the material relied upon. It is submitted that from bare perusal of the FIR, it is apparent that intention of the petitioners/associate promoters and other accused is dishonest and under a pre-planned conspiracy, they allured the complainant/associate directors for entering into agreements to sell, though at the very inception, the accused had no intention to abide by the same, as they intentionally concealed the fact that their motive was to usurp the money and in that process, they were having talks with M/s Max Estates Ltd. for sale of the properties.

Learned State counsel has also supplied a list of some other FIRs, which are pending against the accused persons in NCR region with regard to similar allegations and submits that they are habitual of committing such offence. The detail of the criminal complaints/FIRs reads as under: -

Sr. No.	FIR No., Date and offences	Accused persons	Complainant
1.	74 dated 24.03.2018, P.S. EOW, District EOW Delhi, under Sections 420, 409, 120-B IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Ravi Bhargav 4. Hacienda Projects Pvt. Ltd. 5. Dinesh Kumar Pahwa	Balbir Singh Nagpal
2.	72 dated 19.03.2018, P.S. EOW, District EOW Delhi, under Sections 420, 406, 409, 120-B IPC	1. Ravi Bhargav 2. Three C Homes Pvt. Ltd. 3. Many others	Ankur Khurana
3.	117 dated 23.05.2018, P.S. EOW, District EOW Delhi, under Sections 420, 409, 120-B IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Ravi Bhargav 4. M/s Granite Gate Properties	Tarun Grover

		Pvt. Ltd.	
4.	6 dated 12.01.2018, P.S. Express way, District Gautam Budh Nagar, UP, under Sections 420, 406, 120-B IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Surjit Singh Suri	Vijay Tehlani
5.	137 dated 24.08.2017, P.S. EOW, District EOW Delhi, under Sections 420, 406, 467, 468, 471, 120-B IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Vijay Gupta 4. Amit Gupta 5. Supreet Singh Suri 6. Orris Infra Pvt. Ltd. 7. Three C Shelter Pvt. Ltd.	Abhishek Chandra Gupta and other complainants
6.	107 dated 15.05.2018, P.S. EOW, District EOW Delhi, under Sections 420, 406, 120-B IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Supreet Singh Suri	Yatinder Vir Singh
7.	49 dated 27.03.2019, P.S. EOW, District EOW Delhi, under Sections 420, 409, 34 IPC	1. Vidur Bhardwaj 2. Nirmal Singh 3. Surjit Kumar Singh 4. Three C Projects Pvt. Ltd. 5. Anand Ram 6. Sanjeev Kumar Patiyal	Ashish Kochhar

Learned senior counsel for respondent No.4-complainant has argued that the complainant has been cheated for an amount of Rs.104 crores, i.e. in case of Votive Propbuild Pvt. Ltd. Rs.64.34 crores, in case of Hecienda Infosoftech Pvt. Ltd. Rs.30.93 crores and in case of Challengerz Web Solutions Pvt. Ltd. Rs.10.00 crores. In reply to arguments on behalf of the petitioners that there is no territorial jurisdiction at Khanna, Punjab, it is submitted that Section 182 Cr.P.C. provides that any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction, the property was delivered to the person deceived or was received by the accused persons. It is further submitted that valuable security/property in the form of money transferred by the complainant for four agreements i.e. Acreage Properties Pvt. Ltd. and three other companies, was from the personal bank account at Khanna and can be tried at Khanna, Punjab, therefore, the police at Khanna, Punjab has jurisdiction to take cognizance of the same. It is also submitted that principle of jurisdiction in civil law i.e. place of defendant's residence or office is not applicable to the criminal proceedings and both are on different footings.

In reply to the allegations that no money has been paid by the complainant in lieu of three share purchase agreements, it is argued that the complaint and the FIR have nothing to do with whether specific performance of Agreements to Sell were executed between the complainant and Challengerz Web Solutions Pvt. Ltd., Votive Propbuild. Pvt. Ltd., Hacienda Infosoftech Pvt. Ltd. It is further submitted that the petitioners have dishonestly and wrongly claimed that they have received no money in lieu of three Agreements to Sell dated 08.10.2018. The truth is explicitly recorded in "Clause 1" of each of the respective Agreement to

Sell dated 08.10.2018, which is duly acknowledged by both promoters Nirmal Singh and Vidur Bhardwaj, by signing each of these three Agreements to Sell. The complainant was allured to purchase properties of these three companies and paid part payments on 11.09.2018. The accused persons convinced the complainant that instead of executing sale deeds of plots, it would be beneficial to take over these three companies by purchasing their entire equity shareholdings (easily doable, because each company owned just one plot each). Accordingly, about a month later, on 08.10.2018, said three Agreement(s) to Sell were executed and as per Clause 1, the above part payments were duly recorded as "part payment of the plot out of total consideration" and it was also duly acknowledged by the accused.

It is further argued that the case set up by the accused that money is not paid to share owner of the Company, but to the company itself, is false and an afterthought. In fact, it was the part payment of the plot out of total consideration already made almost a month ago, which was duly acknowledged in Clause 1 of each of these Agreement(s) to Sell and it was to be transferred to the respective parent company simultaneously, with the transfer of proportionate 2% equity shares by the parent company to the complainant. However, the parent company itself, at the instance of the accused/promoters, did not sign the duly stamped and completed Forms No.SH-4 for transfer of 2% equity shares in the name of the complainant. The accused instead, as a counter blast to his letter dated 17.10.2018, requested not to execute any sale deed with MAX Estates Limited regarding the commercial Floor-13, Tower-H, owned by Acreage Properties Pvt. Ltd. of the complainant, got the Bank Accounts of these 03 companies, Votive Propbuild, Hacienda Infosoftech & Challengerz Web Solutions, in Bank of India, Phase-9, Mohali, Punjab, frozen through their fraudulent 03 letters dated 17.12.2018, addressed to the Bank. In these letters dated 17.12.2018, the accused had intentionally and dishonestly referred to some EGMs, purportedly held on 01.09.2018. Thus, conspiracy and fraud are evident from the fact that admittedly EGM for freezing accounts was held on 01.09.2018, on a date, the Bank Accounts, purportedly decided to be frozen did not even exist.

It is further submitted that even today money has not been offered, though Clause 2 of all three Agreements to Sell explicitly provides that the accused persons would get prior requisite approvals from NOIDA and other authorities in 11 months and only when permissions are procured, payments are to be made by complainant. Because the total efforts of the accused right since 17.10.2018 have been to somehow grab back these 03 companies and their plots, they have till today not even applied for getting the statutory approvals from the Income Tax Department, regarding the fair market values of the entire equity shares of these 03 companies; for getting the mandatory time extension permissions from NOIDA Authority to the already expired time limits for making the projects on these plots functional after paying the statutorily leviable extension charges, the up-to-date no dues certificate etc; from the Collector, Gautam Budh Nagar regarding the applicability of stamp duty on the transfer of these equity shares etc.

It is further argued that the fraud, cheating and criminal conspiracy committed by the accused persons is also evident from the fact that they dishonestly made one of their Three C Group company, Three C Builders Pvt. Ltd. and wrote a totally fraudulent letter dated 25.10.2018 to the Collector, Gautam Budh Nagar mischievously claiming that there are sale considerations to be received from the complainant by them for the sales of plots of Votive Propbuild Pvt. Ltd. and Hacienda Infosoftech Pvt. Ltd. and got these plots attached through fraudulent misrepresentations. The complainant and these two companies, Votive Propbuild and Hacienda Infosoftech had to file Writ Petitions in Allahabad High Court, in which Collector, Gautam Budh Nagar was directed to personally appear on 30.01.2019 and vide its order dated 31.01.2019, the Hon'ble Allahabad High Court directed the Collector to pass detailed and reasoned order, strictly as per law, on the representations of the complainant and these two companies. The matter is still pending before the Collector and resultantly, two plots owned by these two companies continue to be encumbered till date. Moreover, before this Court, the accused persons set up a case that if money is paid, they will hand over unencumbered property, but in all other litigations including before the Hon'ble Allahabad High Court and before SDM, Gautam Budh Nagar, they fight tooth and nail that properties are correctly attached. The accused themselves filed Company Petitions under Sections 241/242 of the Companies Act before the NCLT, New Delhi, by misusing forged documents, with dishonest intentions to snatch the control of the Boards of Directors from the complainant, but once the complainant drew the attention of NCLT to the various forged documents used by the accused, in its order dated 05.04.2019, the NCLT was pleased to order *"….6. ….It is made further clear that the petitioner shall not deal with the assets of the respondent company…"*

It is thus submitted that that the accused cunningly and dishonestly taken different stands before different statutory authorities, as per their convenience and selfish interests. It is further submitted that the money paid has never been taken back by the complainant, but has been converted into FDR and kept safe for payment to share owner companies, as and when the accused persons perform their part of the obligations, as per Clause 2 of the Agreement to Sell and procure and deliver to the complainant the hereinabove mentioned "requisite approvals".

It is next argued that the accused persons have set up a case that the AGM minutes and notices, Minutes and agenda of EGM are under consideration by the NCLT in three company petitions filed by the holding companies of Votive Propbuild, Hacienda Infosoftech and Challengerz Web Solutions, however, criminality of the intentional and dishonest actions of the accuse, forging and backdating documents and misusing these against the complainant, cannot be considered in the said Company Petitions, filed under Sections 241 & 242 of the Companies Act, 2013. The main issue before the NCLT is to ascertain who are the duly appointed directors of these companies, whereas in investigation by the Khanna Police, the commission of offence by the accused, which are punishable under Sections 420, 406, 465, 467, 468, 469, 470, 471 & 120-B IPC is to be seen. It is further submitted that the criminality of actions of the accused persons, including forgery of documents, is found in investigation by the police.

Learned senior counsel has further submitted that not only the accused persons intentionally forged and backdated the documents attached to the email dated 14.01.2019, sent by Sh. Gopal Krishanan Ramachandran of MAX Estates Limited to the complainant, but the accused persons, in conspiracy with others, made further serious efforts to execute criminal conspiracy to defraud the complainant, out of the valuable commercial property, Floor 13, Tower H, Delhi, One Project, Sector 16B, Noida, owned by him through Acreage Properties Pvt. Ltd. The WhatsApp chats between accused Vidur Bhardwaj, the officers of MAX Estates Limited and others, from 02.11.2018 to 08.09.2019, confirm beyond an iota of doubt, an unequivocal admission by the accused persons that till this time, no “No Objection Certificate” had ever been issued by Acreage Properties Pvt. Ltd. regarding surrendering of its said property Floor 13, Tower-H, Delhi One Project. This fact proves that all so called Agreements for surrender dated 21.05.2018; No Objection Certificate dated 21.05.2018 of Acreage Properties Pvt. Ltd. and the various other Board Resolutions etc. of May 2018, were intentionally and dishonestly forged by the accused, with the common dishonest intention to defraud the complainant and cause him wrongful loss and to cause themselves dishonest and wrongful gains.

It is further submitted that the accused persons are personally aware that they had forged and backdated these documents and in investigations by the Police, it will be established. Therefore, the accused persons are trying to mislead this Hon'ble Court, by referring to the purely civil proceedings under Sections 241 & 242 of the Companies Act, 2013, before the Hon'ble NCLT, in the company petitions filed by them only.

Learned senior counsel has referred to the status report filed by Superintendent of Police (Inv.), Police District Khanna, District Ludhiana and submitted that in this affidavit, the list of documents has been given, which have been found forged by the accused persons. This status report also points out the intentional non-cooperation by the accused in this on-going Police Investigation and there is sufficient prima facie evidence that proves complicity of the petitioners and their co-accused persons, in the present matter and there is need for recovery of various forged documents, which are within the special knowledge of the accused, but because of the interim protection granted by this Court to the accused persons, the SIT has not been able to do so, so far.

List of forged documents, copies of which were attached to the complaints, dated 02.07.2019 and 05.07.2019 filed with the police and during the subsequent statements recorded by the Investigating Officer, which need thorough investigation by Police is as under: -

i) Two different sets of Balance Sheets, as on 31.3.2018, of Votive Propbuild, Hacienda Infosoftech and Challengerz Websolutions, misused by the accused to intentionally and dishonestly mislead different statutory authorities, namely, ROC, SSP Gautam Budh Nagar, District Magistrate Gautam Budh Nagar and NCLT New Delhi.

ii) Two different and forged/backdated sets of Notices for alleged AGMs, dated 29.09.2018 and their Agendas, dated 19.07.2018 and the other undated and one set of minutes of the alleged AGM, allegedly held on 29.09.2018, which have been misused by the accused to intentionally and dishonestly mislead different statutory authorities, namely, ROC, SSP Gautam Budh Nagar, District Magistrate Gautam Budh Nagar and NCLT New Delhi.

iii) Documents regarding the alleged EGMs dated 01.09.2018 of Votive Propbuild, Hacienda Infosoftech and Challengerz Websolutions, referred to in the fraudulent letters dated 17.10.2018, written by the accused persons to the Branch Manager, Bank of India, Phase-9, Mohali, for getting the Bank accounts, opened on 11.09.2018, frozen.

iv) The following documents attached with the email dated 14.01.2019 of MAX Estates Limited to the complainant:-

a) The so called Agreement for surrender of Area, dated 21.05.2018 by Acreage Properties Pvt. Ltd. and others;
b) The so called No Objection Certificate, dated 21.05.2018, signed on behalf of Acreage Properties Pvt. Ltd. and others;
c) The so called true copy of the Board Resolution, dated 15.05.2018 of Acreage Properties Pvt. Ltd.;
d) The so called true copy of the Board Resolution, dated 19.05.2018 of Acreage Properties Pvt. Ltd.;
e) The so called true copy of the Board Resolution, dated 12.05.2018 of Devika Promoters and Builders Pvt. Ltd.;
f) The so called true copy of the Board Resolution, dated 11.05.2018 of Boulevard Projects Pvt. Ltd.;
g) The so called true copy of the Board Resolution, dated 15.05.2018 of Boulevard Projects Pvt. Ltd.;
h) The back dated letter dated 10.01.2019 (wrongly mentioned as 10.01.2018) written by accused Ravi Bhargav, as Authorized signatory/director of Boulevard Projects Pvt. Ltd. to MAX Estates Limited;

Learned senior counsel has thus submitted that all these factors and status report filed by the State establish a clear case for an investigation, however, not letting an investigation to continue is clear display of guilt by the accused persons, as many FIRs are pending against accused persons in various jurisdictions and they are repeated offenders, therefore, interference by this Court before challan is presented will act as a serious impediment to the ascertainment of truth and collection of evidence.

Learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, Law Finder Doc Id #1830709,** wherein the following guidelines were issued: -

> *"i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
>
> *ii) Courts would not thwart any investigation into the cognizable offences;*
>
> *iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
>
> *iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
>
> *v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no *substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

It is thus submitted that since the petitioners have neither applied for anticipatory bail nor joined the investigation in pursuance to the notice issued and have even not applied for regular bail, therefore, in exercise of powers under Section 482 Cr.P.C., at the stage of investigation, the FIR cannot be quashed, as it raises disputed questions of facts.

It is further argued that the complainant has disputed all the documents relied upon by the petitioners and thus, the same cannot be termed as documents of unimpeachable character, except the agreements to sell, which are admitted by both the parties. Learned senior counsel has further relied upon a judgment in **State of Telangana Vs. Habib Abdullah Jeelani and others, Law Finder Doc ID#821613,** wherein the Hon'ble Supreme Court held that the High Court has no power to direct that accused be not arrested during the investigation or if the accused surrenders, he be enlarged on bail, while deciding a petition under Section 482 Cr.P.C, as such direction would not commend acceptance, because they neither come within the sweep of Article 226 of the Constitution of India nor Section 482 Cr.P.C. or Section 438 Cr.P.C. Learned senior counsel referred to judgment of the Hon'ble Supreme Court in **Kaptan Singh Vs. State of Uttar Pradesh and others, 2021 SCC Online SC 580**, wherein the order quashing the FIR passed by the High Court, at the stage of investigation, exercising the powers under Section 482 Cr.P.C., was set aside. Learned senior counsel has next relied upon **State of Madhya Pradesh Vs. Yogendra Singh Jadon and another, Law Finder Doc Id# 1676624**, wherein the Hon'ble Supreme Court held that the powers under Section 482 Cr.P.C. cannot be exercised, when the allegations are required to be proved in the Court of law. It is thus argued that the petitioners have approached this Court at the very initial stage, when the matter is under investigation by an SIT constituted by the State of Punjab and therefore, this Court should not quash the FIR.

In reply, learned senior counsel for the petitioner in CRM-M-12680-2021 has argued that the dispute is subject matter before the NCLT, New Delhi, therefore, the FIR, which is registered subsequently, is not sustainable. It is also submitted that in pursuance of the order of NCLT, a Resolution Professional has already been appointed and the claim is pending there. Learned senior counsel has referred to the reply filed before the NCLT, to submit that complainant admitted that jurisdiction is at New Delhi.

Learned senior counsel for the petitioner in CRM-M-12708-2021 has additionally argued that from bare perusal of the FIR, no inducement is made out to make out an offence under Section 420 IPC and even no forgery is made out.

Learned counsel for the petitioner in CRM-M-12818-2021 has argued that the petitioner is only a Company Secretary and is not a signatory of the bank account or agreements to sell, therefore, he has no role in the commission of offence. It is further submitted that the FIR was registered in the year 2019 and the SIT was constituted only on 22.02.2021, therefore, the petitioner was not aware of the fact.

After hearing learned counsel for the parties, I find no merit in these petitions, for the following reasons: -

(a) All these petitions have been filed by the accused persons at the very initial stage i.e. after registration of FIR. It is clear case of the State that despite issuance of notices under Section 41 Cr.P.C. to the petitioners at their given addresses, they have failed to join the investigation. It is also not disputed that the petitioners have neither applied for anticipatory bail nor regular bail and have filed the present petitions under Section 482 Cr.P.C. for quashing of FIR and the Coordinate Bench, vide order dated 25.03.2021, directed that no coercive action be taken against the petitioners with regard to FIR in question, which, in fact, implies that blanket stay of arrest has been granted to the petitioners.

(b) In view of judgment of the Hon'ble Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd.'**s case (supra), **Kaptan Singh**'s case (supra) and **Habib Abdullah Jeelani**'s case (supra), these petitions are not maintainable at this stage, though the petitioners have relied upon number of documents, however, in view of dispute raised by the complainant that these documents are forged and fabricated, which, in fact, were used by the accused persons since inception of the conspiracy to allure the complainant to part away his money, therefore, the documents relied upon by the petitioners cannot be termed as the documents of unimpeachable character, in view of well settled principle of law that where there disputed facts, the FIR cannot be quashed, **Yogendra Singh Jadon**'s case (supra).

(c) The main argument on behalf of the petitioners is that the complainant has not come forward to seek specific performance of agreement(s) to sell, on the face of it, is liable to be rejected, for the reason that there is encumbrance on the properties, therefore, once the complainant came to know that the properties cannot be transferred in pursuance to agreements to sell, as there was charge/encumbrance over the same, it cannot be termed that the dispute is purely of civil nature. It is case of the complainant that the petitioners have concealed about status of the properties, which were to be transferred in pursuance to the agreements to sell, therefore, on the face of it, the criminal prosecution is maintainable, independent of the fact that some proceedings before the NCLT, New Delhi are pending. Even otherwise, the proceedings before the NCLT are altogether on different footings, as the allegations in the FIR are that all the petitioners, in conspiracy with each other, dishonestly induced the complainant to part away with his valuable property i.e.

sale consideration, therefore, arguments of the petitioners that the complainant has given criminal cover to the litigation, is devoid of merit, in view of judgment in **K. Jagdish**'s case (supra).

(d) The arguments on behalf of the petitioners that the police at Khanna has no jurisdiction to register the FIR, is also without any basis, as it is case of the complainant that the money was paid in Punjab, where the accounts were opened and the amount was transferred there, therefore, mere fact that the petitioners or their companies were having their registered offices at New Delhi, will not debar the jurisdiction of Khanna Police to register the FIR. This argument is primarily based on the jurisdiction under civil law and as per provisions of Section 182 Cr.P.C., Khanna Police has jurisdiction to register and investigate the FIR.

(e) The argument raised by learned State counsel that the petitioners are involved in other similar cases in NCR region also has a bearing on the present case, as it is specifically stated in the FIR that all the accused, in conspiracy with each other, with pre-determined mind, have committed the offence of cheating, forgery and misappropriation.

(f) The petitioners could not dispute the fact that properties i.e. Votive Propbuild Pvt. Ltd., Hacienda Infosoftech Pvt. Ltd. and Challengerz Websolutions Pvt. Ltd., sought to be sold by way of agreements to sell are not clear, as even efforts were made to sell the same to another company namely Max Estates Pvt. Ltd. to raise the funds, therefore, it cannot be said that on the face of it, no offence is made out, to quash the FIR.

For the reasons recorded above, all these four petitions are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

04.10.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No