201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18224-2014 (O&M)
Date of decision : 18.10.2022

Kuljive Mahajan ...... Petitioner

versus

State of Haryana & anr. ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. R.S.Rai, Senior Advocate with
Mr. Nitish Pathak, Advocate and
Ms. Radhika Mehta, Advocate
for the petitioner.

Mr. Sumit Jain, Addl.AG, Haryana.

Mr. Divay Sarup, Advocate
for respondent No.2.

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PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of Criminal Complaint Case No.396-1 dated 07.09.2011 and the summoning order dated 20.04.2013 vide which the petitioner was summoned to face trial.

The respondent filed complaint before the Magistrate alleging offences punishable under Sections 406 & 420 IPC against the petitioner. The relevant extract of the complaint reads as under :-

> *2] That at that time, the accused produced himself before the Complainant as a full fledged incharge and authorized person of M/s Concern Pharma Pvt. Ltd., 308-C, Dearness Nagar, Ludhiana, Punjab. The accused told the Complainant that he was in the need of a Pharmacist, who was a Graduate also, for the expansion of said M/s Concern Pharma Pvt. Ltd., In continuation of aforesaid situation, the*

Complainant came into accused's talks and started showing the interest to take part in the Medicine Industries. At that time, accused started showing the best opportunity in the medicine industry by way of investment particular of being a Diploma Holder in Pharmacy along with a degree of graduate.

3] That due to aforesaid inducement of the accused, the Complainant offered himself job in the Medicine Industry on the basis of his aforesaid qualification. However, the accused offered the Complainant that he (Complainant) could be appointed as Director in M/s Concern Pharma in the particular section of Pharmacy and Research. The accused assured that the Complainant would also be given benefits of the share holding as Director to his best as per knowledge and experience. The accused assured the Complainant that if he (Complainant) made investment of about 20-25 lacs in one shot, then the Complainant could be appointed as Director in said M/s Concern Pharma Pvt. Ltd. It was also explained by the accused to the Complainant that if Complainant become the "Director", then Complainant will be given Rs.1,20,000/- as salary per month along with 500 sq. yard plot and one Honda City Car. The Complainant came into talks of the accused. However, the Complainant showed his inability to deposit Rs. about 20-25.00 lacs in one shot with the accused in year 2002. Upon this, the accused proposed the Complainant that instead of aforesaid Rs.20-25 lacs in one shot, the Complainant could made payment to the accused on the basis of monthly installments. Then, it was settled between Complainant and accused that said monthly installments could be of Rs.25,000/- per month a period of 10 years. It was settled between Complainant and accused that if in any month the Complainant was in deficiency of paying installments of Rs.25,000/- then same could be adjusted by lowering the monthly installment upto Rs.10,000/- but same would be resultant in extension of period of aforesaid ten years to some more period. However, it was also settled that monthly installment could be of more than Rs.25,000/-, if Complainant wanted to do so and on such a situation, the period of payment in question of total amount could be lowered. All aforesaid episode had been happened in Hotel Palki, Red Square Market, Hisar, Hotel Minerwa, Red Square Market, Hisar in the presence of Vinay Kukreja son of Sh. Vijay Kumar Kukreja, resident of H.No. 49, near

Yog Nagar, Gali No.4, Hisar, Om Parkash Bishnoi son of Sh. Richpal Bishnoi, resident of V.P.O. Parbhuwala, Tehsil Uklana, Distt. Hisar, Kapil Kathuria S/o Sh. Ramesh Kathuria, R/o H.No. 29/30, Yog Nagar, Thandi Sarak, Hisar & Manohar Bishnoi S/o Sh. Om Parkash Bishnoi, R/o VPO Pirthala, Distt. Fatehabad.

4. That in this way, the accused succeeded to induce the Complainant to send a monthly installment to him accordingly. On this inducement the Complainant started sending the payment of Rs.25,000/- per month on the average basis in the name of accused Kuljiv Mahajan through Demand Draft or Account Payee Cheque. The accused used to encash said demand draft and cheques etc. at his bank account.

5. That accused accepted all aforesaid amount in question from the Complainant and he (accused) kept the Complainant in the line of good dreams that Complainant had the bright future and the Complainant should continue the sending of the amount to him.

6. That for the continuation period of seven years, the Complainant used to send the average amount of Rs.25,000/- per month in accused name. In the meantime, the Complainant asked the accused to issue any tentative appointment letter for the post of Director. However, the accused succeeded in ignoring the said request of the Complainant by inducement.

7. That in the year 2009, the Complainant got some doubt on the accused because the accused was not giving any document in respect of making "Director" of the Complainant. So, the Complainant started his repeated demands of issuance of a tentative appointment letter for the post of "Director" from the accused. However, the accused flatly refused to do so. Due to this refusal, the Complainant's doubt raised further. He (Complainant) enquired the matter with more cautions with all concerned. Then the Complainant came to know that he was being cheated by the accused because the accused was not supposed to appoint him as a "Director in question". Consequently, the Complainant stopped making payments of monthly installments in September 2009 to the accused. On this, the accused visited at Hisar to meet the Complainant. The Complainant and accused met with each *other in the end of 2009 in the presence of all aforesaid four witnesses at Lido Bar near Bus Stand, Hisar. In this meeting, the Complainant demanded the accused either a writing on a stamp paper for the appointment of "Director" from accused side or make a refund of his aforesaid paid money with interest in the presence of all aforesaid witnesses. The accused assured the Complainant in the presence of all aforesaid persons that tentative appointment letter in question would be issued by him within one month otherwise he would refund the money in question with interest. However, neither any tentative appointment letter nor any refund in question had been given by the accused to the Complainant. In this way, the Complainant had been deceived badly by the accused."*

Trial Court sought report under Section 202 Cr.P.C. On receiving the report, trial Court vide impugned order dated 20.04.2013 summoned the petitioner to face trial for offences punishable under Sections 420 & 406 IPC. The relevant extract of the order *ibid* reads as under :-

"5. From the perusal of the contents of the complaint, it is not in dispute that an oral settlement was took place between the complainant and accused and after some time a dispute arose as the accused has not issued appointment letter nor refunded the amount to the complainant. The version of the complainant Sudhir Bhatia is corroborated by the versions of remaining witnesses. A perusal of the report under section 202 Cr.P.C also shows that the accused Kuljiv Mahajan has taken money from the complainant dishonestly and cheated the complainant.

6. In view of above discussion, a prima facie case under Sections 420 and 406 of Indian Penal Code is made out against accused namely Kuljiv. Hence, he be summoned for 23/5/2013 on filing of summons, copies etc."

Learned senior counsel appearing for the petitioner submits that from bare perusal of the contents of the complaint neither offence punishable under Section 406 nor that punishable under Section 420 IPC is made out. He further submits that even if all the allegations levelled against the petitioner are taken on their face value, the same would not constitute criminal offence and at the most he can be tried for civil consequences. He further asserts that owing to the nature and the definition as enumerated under bare provisions of the Code, offences punishable under Sections 406 & 420 IPC are mutually exclusive and the petitioner cannot be tried for the same together. Precise contention is that in case the petitioner is being alleged for having been entrusted with the property allegation of dishonest inducement cannot sustain. He further asserts that from the bare perusal of the contents of the complaint seem to be unbelievable as the same does not behove a man of ordinary prudence to pay money in monthly installments and that too for 7 years to secure appointment as a Director in a private company.

Per contra, learned counsel for respondent No.2 submits that in a report filed under Section 202 Cr.P.C. before the trial Court, the accused-petitioner could not give any satisfactory answer with respect to receipt of amounts for 7 long years. He submits that even if offence under Section 406 IPC is not made out, it is a case wherein offence punishable under Section 420 IPC is made out against the petitioner and thus no fault can be found with the order passed by trial Court.

I have heard learned counsel for the parties and have gone through the records of the case.

While laying down broad parameters for exercise of inherent powers by High Courts under the Code, Apex Court in the case of ***R.P.Kapur Vs. State of Punjab, AIR 1960 SC 860***, held as under :-

> "*Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*"

Extending the afore-said principle in ***State of U.P. Vs. R.K.Srivastava, 1989(4) SCC 59,*** while interpreting Section 482 of the 1973 Code, Apex Court held that :-

> "*4. It is now a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed.*"

Then came the much celebrated case of ***State of Haryana & ors. Vs. Ch. Bhajan Lal & ors., 1992 AIR (Supreme Court) 604.*** Apex Court laid the principles elaborately holding that :-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

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

(3) Where the uncontroverted 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. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The afore-said law serves as the guiding light while dealing with petitions seeking quashing of criminal proceedings. In the case of ***Prof. R.K.Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr., 2019(6) SCC 739,*** Apex Court while invoking Section 482 Cr.P.C. to quash the FIR registered for offences punishable under Sections 406 and 420 IPC held that :-

"10. Section 482 of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In ***Indian Oil Corpn. v. NEPC India Ltd., 2006(3) RCR***

(Criminal) 740: (2006) 6 SCC 736*, a two judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:*

"12....

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v)..."

11. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal

> *Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code."*

In ***S.W.Palanitkar Vs. State of Bihar, 2002(1) SCC 241,*** Apex Court held that :-

> "27. xxx xxx xxx
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> *Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Criminal Procedure Code, 1973 should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under Section 482 Criminal Procedure Code, 1973 to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."*

Issue is, whether the case in hand warrants exercise of jurisdiction under Section 482 Cr.P.C. to quash the FIR applying the afore-said principles? It will be apposite to peruse definition of Criminal Breach of Trust as enumerated under Section 405 IPC and that of cheating as laid down under Section 415 IPC.

> ***"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 breach of trust". 1[Explanation 2 [1].—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] 4[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] Illustrations

> *(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.*
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> *(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.*
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> *(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A*

dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

***406. Punishment for criminal breach of trust**.—*

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

***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".*

Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

As per Section 405, the essential ingredients constituting Criminal Breach of Trust are:

1. *Entrusting any person with property or with any dominion over property.*
2. *The person entrusted is:-*
   (i) dishonestly misappropriating or converting to his own use that property, or
   (ii) dishonestly using or disposes of that

property or wilfully suffering any other person so as to do in violation of:

(a) any direction of law prescribing the mode in which such trust is to be discharged, or

(b) any legal contract made touching the discharge of trust."

There is no allegation qua entrustment of any property and the counsel for the complainant fairly concedes that offence qua Section 406 IPC is not made out.

Coming on to the offence of cheating, Apex Court in ***Hridaya Ranjan Pd. Verma and others Vs. State of Bihar and another, 2000 (4) SCC 168,*** while dealing with the prayer seeking quashing of FIR under Section 420 IPC held as under :-

"13. Cheating is defined in Section 415 of the Code as, "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".

Explanation - A dishonest concealment of facts is a deception within the meaning of this Section.

14. The section requires - (1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

15. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived *may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*

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

In the case of ***Dalip Kaur & ors. Vs. Jagnar Singh & another, 2009(14) SCC 696,*** while dealing with offence punishable under Section 420 IPC Apex Court held as under :-

11. The ingredients of Section 420 of the Indian Penal Code are :

"(i) Deception of any persons;

(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."

12. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between *the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code. {See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11]}.*

13. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta & Ors. [(2009 (1) SCC 516] is attracted, which are as under:

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

Yet again, in Hira Lal & Ors. v. State of U.P. & Ors. [2009 (5) SCALE 418], this Court held :

> *"10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide."*

{See also Harmanpreet Singh Ahluwalia & Ors. v. State of Punjab & Ors. 2009 (2) RCR (Criminal) 956 : 2009 (3) RAJ 531 : [2009 (7) SCALE 85]}

Similarly in the case of ***R.Kalyani Vs. Janak C.Mehta, 2009 (1) SCC 516,*** Apex Court holding that the complainant is required to show that accused had fraudulent intention at the time of taking promise and culpable intention right from beginning cannot be resumed by mere failure to keep a promise subsequently observed as under :-

> *"25. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust. So far as allegations in regard to commission of the offence of forgery are concerned, the same had been made only against the respondent No.3 and not against the respondent No.2. Sending a copy thereof to the National Stock Exchange without there being anything further to show that the respondent No.2 had any knowledge of the fact that the same was a forged and fabricated document cannot constitute offence. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in- charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :*
>
> > *"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."*

Yet again, in Radhey Shyam Khemka & Anr. v. State of Bihar [(1993) 3 SCC 54], the law has been laid down by this Court, thus :

> *"6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the share-holders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie and offence under the Penal Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceeding, in many cases, some disgruntled share-holders may launch prosecutions against the promotors, directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code the complainant has to make out a prima fade case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statue imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed."*

In Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2003) 5 SCC 257], it has been held :

> *"32. Likewise the ingredients of Section 420 of the Indian Penal Code are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial as has been held by this Court in the case of G. Sagar Suri*

and Anr. v. State of U.P. and Ors. [(2000) 2 SCC 636]. In this, this Court held that.

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

39. It is settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."

Apex Court in the case of ***Vijay Kumar Ghai & ors. vs. State of West Bengal & ors., (2022) 7 SCC 124*** while dealing with the prayer seeking quashing of FIR registered for offences punishable under Sections 420, 406 and 120-B IPC while reiterating the law laid down in ***Hridaya Ranjan Pd. Verma's case (supra)*** held as under :-

"The essential ingredients of the offence of cheating are:
1. Deception of any person
2. (a) Fraudulently or dishonestly inducing that person—
(i) to deliver any property to any person; or
(ii) to consent that any person shall retain any property; or
(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no 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.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam (2019) 16 SCC 739, the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to:

> *(a) deliver property to any person; or*
>
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.*

*38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in **Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168**, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. <u>While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent 2 does</u>*

> *<u>not disclose dishonest or fraudulent intention of the appellants</u>.*
>
> *39. In **Vesa Holdings (P) Ltd. v. State of Kerala (2015) 8 SCC 293**, this Court made the following observation: (SCC pp.297-98, para 13)*
>
> > *"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."*

Thus as per the settled proposition of law while entertaining present petition under Section 482 Cr.P.C. seeking quashing of the complaint and the summoning order, the Court is required to enquire whether the allegations levelled in complaint do constitute offence or not?

Facts of the present case when viewed from the prism of aforesaid settled proposition of law, this Court is of the considered opinion that as per the allegations levelled in the complaint the amount was being paid by the complainant in anticipation of an appointment as Director and certain perks including a 500 sq. yard plot and one Honda

City Car. The necessary ingredient of intentional deception on part of the accused right at the inception of the transaction does not find trace in the complaint. There is no averment that the accused-petitioner allured the complainant to part away with the money with an intent to deceive him. [All that is alleged is that neither the appointment letter has been issued nor amount has been refunded by the complainant despite assurance]. Thus the allegation of deception at the inception of transaction which is *sine-qua-non* to constitute offence of Cheating is found missing from the complaint even if all the contents of the complaint are taken to be true on their face value. In view of the aforesaid fact in the considered opinion of this Court, this will be one of the case which would fall within the parameters as laid down by Apex Court in ***Ch. Bhajan Lal's case (supra).*** As held in ***M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998(5) SCC 749,*** trial Court ought to have satisfied itself with respect to prima-facie case against the petitioner before summoning him and should not have acted in a mechanical manner. Thus the impugned order warrants interference.

As a sequel of discussion held hereinabove, this Court is satisfied that no offence punishable under Sections 406/420 IPC is made out against the petitioner.

Consequently, the present petition is allowed. Complaint

Case No.396-1 dated 07.09.2011 along with the summoning order dated 20.04.2013 is ordered to be quashed.

(PANKAJ JAIN)
JUDGE

18.10.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No