**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 29th of September, 2022
Pronounced on 23rd December, 2022**

CRM-M-32487-2016 (O&M)

Vishal Gupta and another ....Petitioners

Versus

State of Haryana ...Respondent

CRM-M-34491-2017

Krishan Lal Taneja ....Petitioner

Versus

State of Haryana and another ...Respondents

CRM-M-36678-2017 (O&M)

Sarita Takru ....Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. N.P. Bhardwaj, Advocate and
Ms. Kajal Saini, Advocate
for the petitioners in CRM-M-32487-2016.

Mr. Sanjiv K. Aggarwal, Advocate,
Mr. Ojas Bansal, Advocate and
Mr. Tejas Bansal, Advocate
for the petitioner in CRM-M-34491-2017.

Mr. Keshav Pratap, Advocate and
Mr. Vishal Singh, Advocate
for the petitioner in CRM-M-36678-2017.

Mr. Ramesh K. Ambavta, Asstt. Advocate General, Haryana
for the respondent-State.

Mr. Abhik Kumar, Advocate and
Mr. Deepak Girdhar, Advocate
for the complainant/respondent No.2.

PANKAJ JAIN, J.

By this judgment, I intend to dispose off the afore-captioned three petitions filed at the behest of the petitioners under Section 482 Cr.P.C. seeking quashing of case FIR No.263 dated 14th of March, 2009 registered for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 120-B IPC, at Police Station Karnal Civil Lines, District Karnal (Annexure P-1) and all proceedings subsequent thereto.

2. As per the allegations levelled in the FIR, it has been alleged as under :-

> "Respected Sir, I, Vikash Mallan s/o Shri Ram Parsad Mallan, resident of 744, Sector-15, Faridabad am the authorized signatory and power of attorney holder on behalf of M/s UFIPL Infrastructure Ltd., hereinafter referred to as the company, having its registered office at P-45/90, First Floor, Connaught Circus, New Delhi. I have been authorized by the company to file the present complaint. Vishal Gupta s/o Om Parkash Gupta, Bhavana Gupta resident of House No. 923, Sector 9, Karnal is a shareholder and also a Director in this company. Bhavana Gupta w/o Vishal Gupta is also a share holder in this company. The company wanted to do an infrastructure project and Shri Vishal Gupta, Director was given the task of looking for land and completing the necessary formalities for its acquisition. Shri Vishal Gupta acting for and on behalf of UFIPL Infrastructure

Ltd. executed an agreement for purchasing total land measuring 43 kanals 13 marla (two pieces of land 14 kanal 5 marlas and 21 kanal 12 marlas situated in the revenue estate of Village Uchana, Tehsil and District Karnal and one piece of land 7 kanals 16 marla situated in revenue estate of village Jhanjari, Tehsil and District Karnal) from Vinod Saini s/o Rajender Kumar Saini resident of 634 Jaton Gate, Karnal. Total consideration for land was settled at Rs.10.74 cross. Copy of the agreement is enclosed as Annexure A, which also discloses the details of the land. Earnest money totaling 4.75 cross was paid by the company to Vinod Saini, being the part consideration of this agreement. The payment details are attached at Annexure B. The final date of getting the registry 5.1.2009, and the balance amount was also to be paid on this date. On 5.1.2009, on the asking of the other Directors. I asked Vishal Gupta to have the registry executed through Vinod Saini. Vishal Gupta said that since Vinod Saini was not available for a few days, so the registry could not be done and he will have it done in a few days. Since the registry was not being done the other Directors of the company got suspicious and tried to find out the actual facts. The following facts were revealed; 1. That Vinod Saini did/does not hold any power of attorney for the land that the agreed to sell to UFIPL at any time, till date. Since he does not have any claim to the land he has agreed to sell to the company, it is a clear case of cheating and forgery by him. Vinod Saini has clearly mentioned the fact that he is a power of attorney holder for Mr. Ram Niwas Jindal s/o Lal Chand resident of Peshpanjali, New Delhi in the agreement, whereas no such power of attorney exists. 2. On the settled date of 5.1.2009 Vinod Saini did not have any title to the land, so he could not have it registered in the name of the company even if he wanted to. 3. That Vishal Gupta and his wife Bhavana Gupta planned to cheat the company right from the beginning. They hatched a criminal conspiracy alongwith his long time employee Vinod Saini to cheat the company, and share

> the booty. 4. Vishal Gupta first struck the deal with Mr. /Ram Niwas Jindal for the said land at a price of Rs.1.25 cross per acre, and got an agreement to sell made in the name of Vinod Saini who is his trusted person and his longtime employee. Copy of this agreement is attached as Annexure C. Then Vishal Gupta, acting as a Director of the company executed an agreement for purchasing the said land at a price of Rs.1.97 croses per acre, thereby cheating the company to the tune of Rs.72 lakhs per acre. The cheating amount for the total land comes to more than 3.5 crores. Vishal Gupta knew fully well that Vinod Saini did not have any power of attorney for the land mentioned in the agreement, but still executed the agreement to sell on behalf of the company. Bhavana Gupta wife of Vishal Gupta also cheat played an active role throughout to heat the company. 5. The fact that Vinod Saini is an employee of Vishal Gupta and they are acting in connivance with each other is proved by the following to points: A. Firstly, from the fact that the address of Vinod Saini has been mentioned as H.No. 923, Sector 9, Karnal on the agreement done by Vinod Saini with Ram Niwas Jindal, whereas it is actually the residence of Vishal Gupta, See Annexure C. B. Secondly, from the telegram done by Mr. G.C. Arora, Lawyer for Mr. Ram Niwas Jindal to Mr. Vinod Saini on the address of H.No.923, Sector 9, Karnal which is actually the residence of Vishal Gupta. Copy of this telegram is attached as Annexure D. Since this fraud played by Vishal Gupta, Bhavana Gupta and Vinod Saini as described above has now come to light a criminal case under sections 406, 465, 467, 468, 471 read with 120B IPC be kindly registered and investigated."

CRM-M-32487-2016

3. Ld. Counsel for the petitioners contends that petitioner No.1 was Director in UFIL Infrastructure Limited and petitioner No.2 was a shareholder in the said Company. The company executed an agreement to

sell through petitioner No.1 with one Vinod Kumar Saini, who represented himself to be General Power of Attorney holder of Ram Niwas Jindal. In fact Ram Niwas Jindal initially entered into an agreement to sell with the aforesaid Vinod Kumar Saini w.r.t. the same land @ Rs.1.25 crore per acre as GPA holder of actual owners referred to as the Somany Brothers who received an amount of Rs.4.75 crores as earnest money. Thus, the gravamen of the complaint is that Vishal Gupta, petitioner No.1 being Director of the complainant/company and his wife Bhavana Gupta being shareholder cheated the complainant-Company and got huge money transferred in the name of their employee Vinod Kumar Saini, who further transferred the same to the accounts of the petitioners. During the pendency of the dispute Rajender Kumar Somany and Sandip Somany entered into Memorandum of Understanding (MoU) with the complainant Company. On account of which FIR *qua* them stands settled and compromised. Ld. Counsel for the petitioners thus contends that in view of the fact that the main accused(s) i.e. Sandip Somany and Rajender Kumar Somany who were actual beneficiaries of the transaction stand discharged of their criminal liability and have already paid a sum of Rs.10.00 crores to the complainant-company to make the loss good, present proceedings *qua* petitioners should be quashed.

4. Per contra, counsel for the respondent/complainant has submitted that in fact the company has settled the dispute with the Somany Brothers and so far as the present petitioners are concerned there is no

settlement.

5. Ld. Counsel for the respondent/complainant further refers to the order dated 17th of January, 2012 passed in CRM-M No.1596 of 2012 titled as 'Bhavana Gupta vs. State of Haryana' to submit that petitioner No.2 Bhavana Gupta previously instituted petition under Section 482 Cr.P.C. before this Court seeking similar relief and the same was withdrawn with liberty to enable the petitioner to take all points raised in the petition before the Trial Court at an appropriate stage. He, thus, submits that in the present petition however a specific averment has been made by the petitioners claiming that neither of the petitioners has ever filed similar petition before this Court prior in time. Reference is made to Para No.8 of the petition which reads as under :

> "8. That the petitioners have not filed any such or similar petition either in this Hon'ble High Court or in the Hon'ble Supreme Court of India."

6. He, thus, submits that petitioner(s) being guilty of concealing material facts from this Court, present petition would not be maintainable.

7. Faced with the situation counsel for the petitioners has relied upon law laid down by Apex Court in **Devendra vs. State of Uttar Pradesh, (2009) 7 SCC 495** to contend that the principle of *res judicata* has no application in a criminal proceeding. The principles of *res judicata* as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature. An order

taking cognizance of the offence on the basis of chargesheet filed by the Investigating Officer and/or directing issuance of summons on a complaint petition indisputably would attract the provisions of Section 482 Cr.P.C.

8. Without going into the merits of the case, this Court is of the considered opinion that there can't be any quarrel with the proposition of law laid down in **Devendra's case** (supra) that plea of *res judicata* is not available in the criminal proceedings yet whenever the inherent jurisdiction of this Court is invoked, the least the litigant is required to do, is to come with the clean hands. It would have been a different case had the petitioner pleaded that though she preferred the petition earlier yet she is entitled to file the same again in the light of fresh cause of action having arisen in her favour. But this is not the case in hand. Here it is evident from the records of the case that the petitioner pleaded unambiguously that she has not filed any such or similar petition prior in time seeking similar relief.

9. Apex Court in the case of **S.P. Changalvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs, 1994 AIR (Supreme Court) 853** held that :

> "7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. <u>We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of</u>

litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. 8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to got an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defend ants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on

> the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."
>
> (emphasis supplied)

10. In view of the aforesaid fact, the present petition is dismissed with costs of Rs.50,000/- with the State Legal Services Authority, State of Punjab.

CRM-M-34491-2017 and
CRM-M-36678-2017 (O&M)

11. So far as the case of the Sarita Takru and Krishan Lal Taneja is concerned they have been nominated in a supplementary chargesheet filed after the complainant filed an application under Section 173(8) Cr.P.C. seeking further investigation. As per the same certain monetary transactions have been traced to the bank accounts of the aforesaid two petitioners including that of Sandip Sumany and Rajender Kumar Sumany and Ram Niwas Jindal. In a petition filed by Sumany Brothers before the Apex Court a compromise was effected through MoU dated 17th of November, 2013. As per the same Sandip Sumany undertook to pay an amount of Rs.10.00 Crores in full and final settlement of all the disputes. Pursuant to such settlement, order dated 10th of January, 2014 was passed by Apex Court and pursuant to such settlement, FIR *qua* Rajender Kumar Sumany, Sandip Kumar Sumany and Ram Niwas Jindal stands quashed by this Court in **CRM-M No.8431 of 2014, CRM-M No.8432 of 2014** and **CRM-M No.37933 of 2014** all decided vide common order dated 23rd of February,

2016. Admittedly, Special Leave Petition was preferred by the complainant i.e. **SLP (Crl.) No.4804 of 2016** which stands dismissed vide order dated 26th of August, 2016.

12. In reply filed to the quashing petitions filed by the petitioners, respondents have admitted the aforesaid fact w.r.t. quashing of the FIR *qua* Sumany Brothers. It has also been admitted that the only reason for implicating the present petitioners namely Sarita Takru and Krishan Lal Taneja is that certain transactions have been made from the account of Vinod Kumar Saini to the bank accounts of aforesaid two persons. Sarita Takru is alleged to have received a payment of Rs.30.00 lacs vide cheque No.0062236. Likewise, Krishan Lal Taneja also received a payment of Rs.16.00 lacs through cheque bearing No.0062245 from the account of Vinod Kumar Saini. Issue is, whether the case in hand warrants exercise of jurisdiction under Section 482 Cr.P.C. to quash the FIR applying the aforesaid principles?

13. Law related to exercise of inherent jurisdiction by this Court for quashing of criminal proceedings under Section 482 Cr.P.C. is well settled and has been laid 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."

14. 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."

15. 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."

16. 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. <u>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.</u>

(v)..."

11. <u>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.</u>"

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

"27. xxx xxx xxx

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."

18. 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 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. 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 not disclose dishonest or fraudulent intention of the appellants.

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."

19. In order to constitute criminal conspiracy also prosecution has to first alleged meeting of minds between the accused(s). In **Kehar Singh and others vs. State (Delhi Administration) (1998) 3 SCC 609**, Apex Court held that transmission of thoughts sharing unlawful design and physical manifestation of agreement is *sine qua non* to invoke Section 120-B IPC. Similarly, in the case of **State of Kerala vs. P. Sugathan and another, (2000) 8 SCC 203**, Apex Court held that a few bits here and a few bits there cannot be held to be adequate for connecting the accused with the commission of crime and that there must be circumstances which give rise

to the conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. Same is the view of Apex Court in **Esher Singh vs. State of Andhra Pradesh, (2004) 11 SCC 585** and **P.K. Narayanan vs. State of Kerala, (1995)1 SCC 142**.

20. Issue is, in view of the aforesaid settled proposition of law, does mere transfer of money from the account of Vinod Kumar Saini to the accounts of aforesaid two petitioners itself warrants continuation of prosecution against them especially when there is no evidence on record to show that the aforesaid two petitioners had any role to play in the transaction of the deal wherein the complainant/Company alleges to have been cheated?

21. Written submissions have also been filed on behalf of the complainant, wherein the amounts paid to accused have been tabulated as under :-

Date	Amount	Mode of payment
01/07/2008	5,00,000	Paid in cash as authorized by Group Resolution dated 25.06.2008, token money given by Vikas Mallan (authorized person) to Ram Niwas Jindal (authorized person of Rajinder and Sandeep Somani) in the present of Vishal Gupta
14/07/2008	50,00,000	Vide cheque no. 277850 of ICICI Bank Handed over to Vinod Kumar Saini by Vikas Mallan as advized by Ram Niwas Jindal as consideration amount for purchase of land in the presence of Vishal Gupta.
15/07/2008	45,00,000	Paid in cash amount paid to Ram Niwas Jindal by Vikas Mallan as consideration amount for purshace of land in the presence of Vishal Gupta.
22/07/2008	40,00,000	Vide cheque no. 277651 of ICICI Bank Handed over to Vinod Kumar Saini by Vikas Mallan as advised by Ram Niwas Jindal as consideration amount for purchase of land in the presence of Vishal Gupta.

Date	Amount	Mode of payment
25/07/2008	35,00,000	Paid in cash Amount paid to Ram Niwas Jindal by Vikas Mallan as consideration amount for purchase of Land in presence of Vishal Gupta.
06/10/2008	50,00,000	Vide cheque no. 1501 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Ram Niwas Jindal as consideration amount for purchase of land.
13/10/2008	50,00,000	Vide cheque no. 1502 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Vinod Kumar Saini as consideration amount for purchase of land.
03/11/2008	50,00,000	Vide cheque no. 757 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Vinod Kumar Saini as consideration amount for purchase of land.
03/11/2008	50,00,000	Vide cheque no. 758 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Vinod Kumar Saini as consideration amount for purchase of land.
04/11/2008	50,00,000	Vide cheque no. 759 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Vinod Kumar Saini as consideration amount for purchase of land.
04/11/2008	50,00,000	Vide cheque no. 760 of HDFC Bank Handed over to Vishal Gupta by Vikas Mallan to be given to Vinod Kumar Saini as consideration amount for purchase of land.
Total	**4,75,00,000**	

22. Thus, at no point of time any amount was paid by the complainants either to Sarita Takru or to Krishan Lal Taneja. It has also come on record in the written submissions filed by the complainant itself that petitioner Sarita Takru is one of the Directors in the Companies named as Karnal Projects and Karnal Residency with Vinod Kumar and in the accounts of those companies also an amount of Rs.10,000/- each was transferred on 25th of November, 2008 by cheques bearing No.0086590, 0086589 respectively from the account of Vinod Kumar Saini. Admittedly, none of the aforesaid two petitioners ever dealt with complainants. They have been nominated in the supplementary report filed under Section 173

(8) Cr.P.C. only on the basis of certain financial transactions with Vinod Kumar Saini without their being any allegation that the said persons had any role to play in the land deal which forms main thrust of the FIR.

23. Consequently, it is hereby ordered that :-

(i) **CRM-M-32487-2016** titled as **Vishal Gupta and another vs. State of Haryana** is dismissed with costs of Rs.50,000/- to be deposited with State Legal Services Authority, State of Punjab.

(ii) **CRM-M-34491-2017** titled as **Krishan Lal Taneja vs. State of Haryana** is allowed. FIR No.263 dated 14th of March, 2009 registered for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 120-B IPC, at Police Station Karnal Civil Lines, District Karnal (Annexure P-1) and all proceedings subsequent thereto, are quashed *qua* Krishan Lal Taneja.

(iii) **CRM-M-36678-2017** titled as **Sarita Takru vs. State of Haryana** is allowed. FIR No.263 dated 14th of March, 2009 registered for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 120-B IPC, at Police Station Karnal Civil Lines, District Karnal (Annexure P-1) and all proceedings subsequent thereto, are quashed *qua* Sarita Takru.

December 23, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No