

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49311-2021 (O&M)
Date of decision: - 08.04.2022

Balram Garg
.....Petitioner

Versus

State of Haryana and another
.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Manu K. Bhandari, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. N.S. Shekhawat, Senior Advocate
With Ms. Sukhpreet Kang, Advocate
with Sahil Gupta, Advocate and
Mr. Kushagra Beniwal, Advocate
for complainant/respondent No.2.

VIKAS BAHL, J. (ORAL)

Present petition has been filed by accused no.1 under
Section 482 of the Code of Criminal Procedure, 1973 (hereinafter
referred to as “Cr.P.C.”) for quashing of FIR bearing No.452 dated
14.11.2021, registered under Section 420 of the Indian Penal Code,
1860 (hereinafter referred to as “IPC”), at Police Station Civil Lines,
Sirsa, Haryana.

This judgment has been divided into the following sections: -

1.	Background / facts of the case	Para 2	Pg 2 to 5
2.	Arguments on behalf of the petitioner	Para 3 to 5	Pg 6 to 14

3.	Arguments on behalf of respondent No.2	Para 6 to 10	Pg 14 to 18
4.	Arguments on behalf of the petitioner in rebuttal to arguments of respondent no.2	Para 11	Pg 18
5.	Arguments on behalf of the State	Para 12	Pg 18 to 19
6.	Details of SLP filed by the Petitioner during the pendency of the present petition	Para 13	Pg 19 to 22
7.	Finding of this Court: a) Chronological events demonstrating that a purely civil dispute is being sought to be given a criminal colour b) Summary of Factors emerging from the FIR/admitted documents d) Judgments in favour of the Petitioner e) Judgments cited by Respondent no. 2-Distinguished g) Conclusion/Relief	Para 14 to 47 Para 15 to 18 Para 19 Para 20 to 34 Para 43 to 46 Para 35 to 41 Para 47	Pg 22 to 112 Pg 22 to 54 Pg 55 to 60 Pg 60 to 88 Pg 103 to 111 Pg 88 to 103 Pg 111 to 112

Background of the Case:

2. The background of the case is that the above said FIR was registered on the complaint of respondent No.2-Poonam Gautam against five accused persons including the present petitioner, on the allegations that respondent No.2 had a wholesale Patanjli shop, number of which is DSS-50, HUDA Complex, old bus stand, near town park, Sirsa, District Sirsa and her business was running well when, accused No.1 had stated that M/s PC Jewellers had no showroom at Sirsa and in case, respondent No.2 were to act on their advice, then she will be able to earn more money than what she was earning from her old business and she will be able to earn a minimum of Rs.50,000 per month and in case, the respondent No.2 helps the company in selling the company items, then she would get commission of @ 2% on gold jewellery, 1% on coins and 5% on

diamond and would earn an income of about Rs.4 to 5 lakhs per month from the said percentage commission. After the said assurance, respondent No.2 was informed that she would have to design her shop according to their architect Devender Gupta, for the purpose of sale of jewellery and she will have to pay fee to the said Devender Gupta. It is further alleged that the papers were received by the complainant-respondent No.2 from the said Devender Gupta and thereafter, she spent an amount of Rs.95,60,000/- in renovating her shop which included expenses on account of installation of false ceiling in the shop, wallpapers, lights/electrification expenses, high standard wooden furniture, toughened glass, looking mirror including fittings, 82 KV Generator set, one split AC, Somany company tiles, granite and marble, high tech CCTV cameras, five computers with hardware, iron racks for the employees etc. It is further alleged that an amount of Rs.2,76,000/- was also paid to the architect Devender Gupta and that the entire work was done on the advice of the said architect, who was sent by the accused no.1. During the said period, respondent No.2 had shifted the Patanjli shop to the basement on which also a lot of money was spent and on account of the said shifting, there was loss of business. It is further alleged that papers of the lease deed (annexed as Annexure A-1 with the complainant, on the basis of which, the present FIR has been registered) were given, to which, certain objections were raised by the respondent no.2, but however, under pressure the papers were got signed and registered and accordingly, the showroom was rented out to M/s PC Jewellers Limited as per the

conditions laid down in the lease deed. The said lease deed was written at the instance of the company and it is alleged that the intention of accused No.1 was bad at the time of the execution of the lease agreement and it is on account of the said fact, that it had been written in para 3.2 of the said lease deed that respondent No.2 was to get commission on the sale of gold, silver and diamond jewellery etc., so that the respondent No.2 may not get more rent. It is further alleged that the accused persons sold out material in excess quantity with intent to pay less rent and when respondent No.2 opposed the same and stated that she did not want to work at the sale margin, then the accused persons started the process to take their material from the shop to the head office of the company and by 15.07.2021, they had taken almost the entire material. It is further alleged that respondent No.2 had her own Patanjli shop having its common shutter and there is a security system of the company in front of the shop which had been got installed by respondent No.2 and there is a locking system with the shutter to enter into the showroom and the said shutter was an automatic one, which was opened by a remote and the remote was kept by accused No.5 and the company had appointed four gunmen for its own security and respondent No.2 had requested a number of times to get her money, but the accused refused on one pretext or the other and rather the accused claimed that they had spent Rs.7,25,000/- on front board and display material of the showroom and even sent its bills. It is alleged that when respondent No.2 demanded the balance payment, they refused to pay the same and when respondent No.2

insisted, the accused persons started shifting their material without giving any notice and the accused persons even refused to pay the commission and thus, respondent No.2 has suffered a great financial loss to the tune of Rs.29,20,100/-. It is also alleged that the accused persons have not paid the electricity, water, telephone bills amounting to Rs.1,26,448.86/- and thus, respondent No.2 has been cheated. Further, allegations have been made with respect to the scheme JFL regarding which, it has been alleged that accused had collected a large amount of money from people although, the said scheme could not be launched and although the money has been returned to some persons, but the same is less than the principal amount due to which the customers come to the shop and quarrel with the complainant. It is alleged that the accused persons were involved in illegal activities as they had raised loans from the Bank and purchased gold, silver and diamonds with the said loans and had kept it in their stores/showrooms including the showroom of respondent No.2. It is further alleged that the accused persons used to sell jewellery without bills and the income tax department also needed to be informed with respect to the same. In the concluding part of the FIR, it has been prayed by respondent no.2 that the respondent no.2 has been put to a loss of Rs.29,20,100/- and commission @ Rs.50,000/ per month is payable to respondent no.2 and the same be got paid to respondent no.2 and incase, in case any jewellery is left, then the same be seized so that respondent No.2 can be compensated for the loss suffered by her and that the documents which have been prepared under pressure

and compulsion by the accused, may be seized. On the basis of the said allegations, the present FIR under Section 420 IPC has been registered against five persons including the present petitioner.

3. Learned counsel for the petitioner has submitted that in the present case, a purely civil dispute has been given a criminal colour. It has been argued that a perusal of the FIR would show that a dispute arose between the company M/s PC Jewellers and the complainant, with respect to a showroom, which had been let out by the complainant to the Company M/s PC Jewellers. It is argued that even as per FIR (page 62 of the paperbook), there is a lease deed which has been referred to in the FIR and the said lease deed is dated 01.04.2019 (annexed as Annexure P-1 with the petition). Learned counsel for the petitioner has referred to Clause Nos.2, 3, 4, 12, 13, 16 and 18.7 of the said lease deed. It is stated that the petitioner has not even signed the said lease deed and the same is signed by one Ravindra Kumar Singhal, on behalf of the company M/s PC Jeweller Limited. It is submitted that the said lease deed was entered into between Ms. Poonam Gautam and M/s PC Jeweller Limited, being the lessor and lessee, respectively and thus, the present petitioner is neither a party to the said lease deed nor is privy to the contractual relationship between the company and respondent no.2. As per clause 2 of the said agreement, the lessee was supposed to use the said premises solely for the purpose of retail business of jewellery. It is further highlighted that as per clause 3, the rental/payment to be made to Respondent no.2 were clearly defined. As per the said clause, the

company was to pay a sum of rupees, which was equivalent to the percentage of sale as stated in clause 3.2 and it was specifically stated that the lessee i.e., the company, was not liable to pay any additional rent in any form by way of rent. As per clause 3.1 of the said lease deed, the lease was for a period of three years and thus, the same had to come to an end on 31.03.2022. Clause 4 of the said lease deed stipulated the lock in period, which specifically mentioned that there was no lock in period with respect to the present lease deed and it had further been provided that it was the company i.e., lessee, which could alone terminate the lease deed, by giving a 30 days' notice to the lessor/respondent No.2 and the lessor could not terminate the present lease deed during the entire period of three years. Leaned counsel for the petitioner however, has submitted that as per clause 16 of the lease deed, the lessor/respondent No.2 had a right to terminate the lease deed during the period of three years in case, the lessee i.e., the company, failed to pay continuous three months share of the revenue as per clause 3.2 and further has stated that the said clause 4 be read along with clause 16. Further, clause Nos.12.1 and 12.4 have also been highlighted to show that the lessor was responsible for all major structural changes, maintenance, work in the building and further that the lessor was to ensure that the lessee has peaceful possession of the said scheduled premises. It has been argued that Clause 13 of the lease deed provided for the services/facilities, which were to be provided by the lessor to the lessee and no extra cost of the same was to be charged and under clause 13.1 sub-clause (j), all interior designing

with furniture and fixtures was to be provided by the lessor, without any extra cost. Specific reference has been made to Clause 18.7 of the above-said lease deed, which stipulates the arbitration clause and the jurisdiction and specifically provides that all the disputes arising from or out of or touching upon or in relation to the terms or formation of this lease deed or its termination including interpretation and validity, were to be settled amicably by mutual consent, failing which, the same was to be settled through arbitration by a Sole Arbitrator, who was to be appointed by mutual consent of the parties.

4. Learned counsel for the petitioner has submitted that there was no dispute between the parties and it was only on 09.04.2021, that husband of respondent No.2 had sent an email dated 09.04.2021, in which, it has been stated by the said husband of respondent No.2 that he and respondent No.2 had been working in the current model of sale percentage and since they were no longer interested in working with the said arrangement, husband of respondent no.2 had two proposals for the company/lessee to consider. The first proposal was that the complainant and her husband would run the store PC Jeweller without a manager and would reserve the right to select the staff to be employed. The second proposal was that PC Jeweller should take the site on rent and pay the complainant a fixed monthly rent. It has been highlighted that, in the said email, there was no allegation of cheating or even of any amount being outstanding and a reading of the said email would show that there were some disputes between the employees of the company M/s PC

Jewellers Limited working in the store and the complainant/husband of the complainant. It is submitted that said email was responded to by an email dated 15.04.2021 (P-3) which was sent by Sheiba Anand (accused No.2) to the husband of respondent No.2, in which, it was stated that the company was open to discuss the new proposal and a meeting could be held for the same on 16.05.2021. Further reference has been made to an email dated 18.07.2021 (P-4), page 35 of the paperbook, which has been sent by Sheiba Anand (accused No.2) to the husband of respondent No.2, wherein, it had been stated that it was shocking to know that on 18.07.2021, one Bhairo had come to the PC Jeweller store and had put a lock up on the shutter of the PC Jeweller store and the said act of the said Bhairo was a complete violation of the terms of the agreement and that respondent No.2 or her husband or Bhairo (acting on their behalf), had no right to put the said lock. It is submitted that on the said date, apparently, a dispute arose between the parties. The said email was stated to be replied by email of even date i.e., 18.07.2021 (P-5), page 36 of the paperbook, sent by the husband of the complainant. Learned counsel for the petitioner has submitted that a perusal of the entire email would show that no allegation of cheating or the lease deed having been entered into by exerting pressure or any term of the lease deed being unconscionable, was levelled. It is argued that a perusal of the said email would show that the husband of respondent No.2 had alleged that employees of the company M/s PC Jewellers were transferring the complete stock of gold, silver and diamond from the Sirsa store to

the Head office and from the said acts, it was apparent that they were wanting to close the store. It had been stated by him that earlier also normally the fresh stock would come to the showroom and then, the old stock would be transferred and stated that the said stock was sought to be taken by the staff of the M/s PC Jewellers store without paying the dues owed to respondent No.2 and her husband. Further reference has been made to page 39 of the said email, in which, it has been stated by the husband of the complainant that they had locked the showroom so that the staff of M/s PC Jeweller does not run away without fulfilling the liabilities towards the landlord. It is argued that no allegation of cheating or fraudulent inducement has been made in the same and the dispute between the parties was apparently a civil dispute. Learned counsel for the petitioner has also referred to the legal notice dated 23.07.2021 (P-6), which had been given on behalf of respondent No.2 by her counsel to the company M/s PC Jewellers. In the said legal notice, paragraph 3 has been highlighted to show that even as per the case of respondent No.2, it had been stated that the Company became irregular in payment of dues since February, 2021 and that the amount for the months of April, May and June were allegedly still due. Further, it has been stated that as per paragraph 4, it has been specifically mentioned by respondent No.2 that three defaults had been made and thus, respondent No.2 had the right to terminate the lease deed and in fact in paragraph 9, it had been stated that the lease in favour of the company was terminated w.e.f. 01.09.2021 and a request had been made to hand over the possession

of the building to the landlord/respondent No.2. The averments made in the said legal notice at page 47 of the paper-book have also been highlighted to state that in case, the same was not done, then, legal proceedings would be initiated for recovery of possession etc. against the company. It is submitted that instead of instituting a suit/ejectment proceedings/arbitration proceeding, respondent No.2 has chosen to get the present FIR registered. Learned counsel for the petitioner has further referred to the reply dated 29.07.2021 (Annexure P-7), which has been given on behalf of the company M/s PC Jewellers to the complainant and her counsel. It has been highlighted that in paragraph 9, it had been mentioned that the husband of the complainant started interfering in the working of the staff and started asking unnecessary questions and harassing the employees on 15th -16th July, 2021 and thereafter, on 18.07.2021, the lock had been placed on the showroom by husband of respondent No.2 without the consent of the client therein (PC Jewellers). In the said legal notice reply, it has been specifically stated that the demised premises was in the possession of the complainant since 18.07.2021. It is submitted that the documents (P-1 to P-7), which are referred to and annexed with the petition, are all admitted documents, as is apparent from a reading of paragraph Nos.7 to 13 of the petition and their corresponding paragraphs in the written statement filed by respondent No.2. Learned counsel for the petitioner on the basis of the said documents has submitted that apparently, there was a civil dispute between the landlord and the tenant i.e., between the company and respondent No.2 and instead of

seeking the appropriate recourse for redressal, i.e., either before an Arbitrator or before the rent Court/civil Court, respondent No.2 has got the present FIR registered on 14.11.2021 under Section 420 IPC. It is submitted that in the said FIR, five persons have been arrayed as accused persons even though, the present petitioner has no privity of contract with respondent No.2 and more so, the agreement has not been entered into, by the present petitioner nor signed by him and yet, the present petitioner has also been roped in as an accused. It is submitted that although, the lease agreement is between M/s PC Jeweller Limited and respondent No.2, but the said company has not even been arrayed as an accused and as per settled law, there is no vicarious liability with respect to the offence under Section 420 and at any rate, in case, a special statute provides for vicarious liability then, it is incumbent upon the complainant to array the company as an accused.

5. Learned Counsel for the petitioner has further argued that the allegations levelled in the FIR to the effect that there was an assured income of Rs.4 to 5 lakhs per month, is not based on any documentary evidence and is in fact, contrary to the terms of the lease deed, wherein, the amount to be paid to respondent No.2/complainant by the company M/s PC Jewellers has been specifically mentioned. It is further submitted that with respect to the amount spent on the showroom, apart from the fact that the said amount is being disputed by the present petitioner, even as per the lease deed, it was the duty of respondent No.2 to have carried out the necessary interiors/structural

changes. Moreover, the said showroom along with the interiors in any case belong to respondent No.2 and if any improvement has been made in the showroom, the same would remain with respondent No.2. It has been argued that as per clause 13 of the lease deed, even the architect was to be engaged by respondent No.2 at her own expense and thus, the allegations in the FIR that money had to be spent on the architect is also baseless and sans merit. It is further submitted that the allegation against the company qua shifting material/stock, cannot be questioned by respondent No.2, as it is the right of the company to shift the material/stock which is owned by the company. It has been submitted that the allegations with respect to the scheme and there being income tax department issues, are absolutely false and frivolous and have been made without any bases and at any rate, have nothing to do with the complainant. In support of his arguments, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in "**Vijay Kumar Ghai and others Vs. The State of West Bengal and others, passed in Criminal Appeal No.463 of 2022, decided on 22.03.2022.**" Learned counsel for the petitioner has further relied upon the judgments of Hon'ble Supreme Court in '**Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd.**', reported as 2012(5) SCC 661 as well as in '**Sharad Kumar Sanghi Vs. Sangita Rane, reported as 2015 AIR SCW 4202,** to contend that till the time the company is not made an accused, the petitioner cannot be vicariously held liable for its acts. It is further contended that there is no concept of vicarious liability under the Indian Penal Code and even where the

statute provides for vicarious liability, there also, the petitioner cannot be prosecuted against without the company being made an accused.

Learned counsel for the petitioner has submitted that as per the terms of the lease deed, only an amount of Rs.1,13,451/- is due, which the petitioner was not able to pay as the present dispute had arisen and the FIR had been wrongly registered against the petitioner and the other accused persons. It is submitted that the petitioner is ready to pay the said amount to respondent No.2.

6. Learned Senior counsel appearing for respondent No.2 has opposed the present petition under Section 482 Cr.P.C. and has prayed for its dismissal. Reference has been made to Section 415 of the IPC to contend that where a person has deceived any person, fraudulently or dishonestly and has induced the said person so deceived to deliver any property to any person or induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and has submitted that in the present case the said ingredients have been fulfilled, inasmuch as, initially the accused persons had induced respondent No.2 to enter into a franchise agreement and respondent No.2 in the hope that franchise agreement would be finalized had spent an amount of Rs.95,60,000/- and thereafter, accused persons had back tracked from finalizing the franchise agreement. Reference has been made to the franchise agreement dated 15.01.2018 (Annexure R-2/2) (page 29 of the reply) to show that initially the agreement was entered into and once the amount had been spent by respondent No.2, then, since the

accused persons were in a dominant position, instead of giving a franchise to respondent No.2, made respondent No.2 enter into a lease deed dated 01.04.2019. It is submitted that the offence of cheating was complete the moment accused persons had induced respondent No.2 with the allurements of getting into a franchise agreement and had made respondent No.2 spend a huge amount of money on their premises. Further reference has been made to writing (Annexure R-2/6 (page 77 of the reply) to contend that accused Sanjeev Bhatia, CFO, M/s PC Jewellers had given a chart which showed the projected sales and made respondent No.2 believe that even in case, they would be given 1%/2% of the said sales, the said amount would be very substantial, whereas, the actual earning of respondent No.2, on account of leasing out the showroom was between Rs.10,000 to Rs.30,000/- per month. It is submitted that the said allegations made in the FIR and the said background would show that the offence under Section 420 IPC is made out. It has also been stated that the investigation is at the initial stage and there is every possibility that the offence of mischief and criminal intimidation may also be added, inasmuch as, there is allegation of loss of Rs.29,60,000/- and also, the fact that there were four armed gunmen guarding the shop in question, which was the security, which had been put by the accused persons. Further, reference has been made to para 10 of the FIR to show that the allegations have been made in the FIR with respect to an alleged fraud scheme, namely, JFL, as per which it has been alleged that money taken from a large number of persons under the said scheme

had not been returned fully, thus, the said persons used to come to showroom and quarrel with respondent no. 2. It is submitted that the enquiry qua the said aspect has to be conducted.

7. Learned Senior Counsel for Respondent no. 2 has also made a reference to the receipt dated 01.03.2019 (Annexure R-2/4) to show that an amount of Rs.85 lakhs was spent as per the certificate given by Saluja & Company, Architectural / Engineering Consultants and it is thereafter, that the lease deed dated 01.04.2019 was entered into by the accused persons and at that stage, respondent No.2 was not in a position to bargain. Learned Senior counsel for respondent No.2 has further highlighted that in the FIR, specific allegations have been made against the petitioner and as per the emails, Sheiba Annand, who is a co-accused, had stated that the proposal which had been given by, on behalf of respondent No.2, would be considered by the “MD Sir” and reference regarding “MD Balram Garg”, had also been made in the email dated 18.07.2021 and it is, thus, submitted that the petitioner, who is the Managing Director of PC Jewellers Company, was actively involved in the entire incident. It is submitted that the reliance sought to be placed by learned counsel for the petitioner upon the Arbitration Clause, to contend that the present dispute is a civil dispute, is also not well founded, inasmuch as, it is now settled law that solely on the basis that there is an arbitration clause, FIR cannot be quashed. It is also submitted that the judgment of the Hon’ble Supreme Court in **Aneeta Hada's case (supra)** would not apply in the present case as a perusal of para No.45 of the said judgment would

show that the provisions of NI Act, particularly Section 141 of the NI Act, was under consideration in the aforesaid judgment and not the provisions of IPC, under which, the present FIR has been registered.

8. Learned Senior counsel for respondent No.2 has further relied upon the judgment of Hon'ble Supreme Court in "**Jitul Jential Kotecha Vs. State of Gujarat and others etc., Criminal Appeal No.1328-1333 of 2021, decided on 12.11.2021**", to contend that where a specific role has been assigned to a particular accused person, the FIR should not be quashed as disputed question of facts should not be gone into at the stage under 482 Cr.P.C. To a similar effect, judgments of the Hon'ble Supreme Court in "**State of Orissa and others Vs. Ujjal Kumar Burdhan, reported as 2012(4) SCC 547**", as well as in "**Som Mittal Vs. Govt. of Karnataka, reported as 2008(3) SCC 753**" have been cited by learned senior counsel for respondent No.2.

9. Learned Senior counsel for respondent No.2 has also relied upon judgment of the Hon'ble Supreme Court in "**M/s Neeharika Infrastrucutre Pvt. Ltd. Vs. State of Maharashtra and others, passed in Criminal Appeal No.330 of 2021, decided on 13.04.2021**", to contend that the Court should not embark upon an enquiry in a petition under Section 482 Cr.P.C. Further reliance has been placed upon a judgment passed by a Co-ordinate Bench of this Court in "**Gurbachan Singh Bhasin Vs. State of Punjab and others, reported as 2013(4) R.C.R. (Criminal) 512**", to contend that the disputed question of facts should not be adjudicated upon, in a petition under Section 482 Cr.P.C. Further, reliance has been placed on

judgments of a Co-ordinate Benches of this Court in "Pawan Kumar Vs. State of Haryana, reported as 2006(2) R.C.R. (Criminal) 162 and Davinder Singh and Jaspal Singh Vs. State of Punjab, reported as 2006(3) CLR 432."

10. Learned Senior counsel for respondent No.2 has submitted that since as per his instructions, the amount which is due to respondent No.2, on account of the loss suffered, as has been alleged in the FIR, is much more, thus, the proposal given by learned counsel for the petitioner to pay Rs.1,13,451/-, is not acceptable to respondent No.2.

11. Learned counsel for the petitioner in rebuttal has submitted that as far as Annexure R-2/6 is concerned, the same was never supplied to respondent No.2. Learned counsel for the petitioner has further submitted that gold worth Rs.2.27 crores is still lying in the showroom in which, one of the locks has been placed by respondent No.2 and thus, the said store cannot open till respondent no.2 does not remove the lock placed by her or on her behalf. Learned Counsel for the petitioner has also submitted that on account of COVID-19 pandemic, the earnings in various businesses had decreased all over the world and decreased earnings cannot be made basis for registration of FIR. Learned Counsel for the petitioner has further sought to rely upon receipt dated 17.09.2021 to show that even the electricity bill to the tune of Rs.1,59,109/- has been paid after filing of the present complaint dated 14.08.2021.

12. Learned State counsel has opposed the present petition for quashing on the ground that the investigation in the present case is

still pending and the offences against the petitioner are *prima facie* made out.

13. Before considering the merits of the present case, it would be relevant to note that during the pendency of the present case, the petitioner had filed a Special Leave to Appeal (Criminal) No.417 of 2022, which was disposed of vide order dated 28.01.2022, with a direction to this Court to decide the Criminal Misc. No.1978 of 2022 and/or the main petition itself, at the earliest and it was observed that until the matter is considered by this Court, no coercive step shall be taken against the present petitioner and it was further observed that the interim relief shall remain in operation until the matter is considered by this Court. On 10.02.2022, when the matter came up for hearing before this Court, the following order was passed: -

“Reply on behalf of the State has been filed in the present case. The same is taken on record.

On behalf of respondent No.2, it has been submitted that they have also filed reply to the present petition but the copy of the reply given by the State has not been supplied to them and thus, prays for short adjournment to obtain the reply and argue the matter. It has further been submitted that with respect to the adjournment being sought, counsel for the petitioner had already been informed.

Learned counsel for the petitioner has submitted that he has no objection in case a short adjournment is granted for final arguments in the case and has further submitted that in case, any rejoinder is to be filed, the same would be filed on or before the next date of hearing with an advance copy to learned counsels for respondents.

It is further stated by both learned counsel for the parties that an interim order had been granted by the Hon'ble Supreme Court vide order dated 28.01.2022 to the effect that no coercive steps shall be taken against the petitioner till 10.02.2022 and it has been agreed that the said interim order may be continued till the next date of hearing. It has further been agreed by learned counsel for all the parties that the main case itself would be taken up for hearing on the adjourned date.

Adjourned to 18.02.2022.

To be taken up at 02:30 pm.

The interim order to the effect that no coercive steps shall be taken against the petitioner, as ordered by the Hon'ble Supreme Court, would continue till the next date of hearing.

It is made clear that no further request for an adjournment in the matter shall be entertained.

*(VIKAS BAHL)
JUDGE”*

10.02.2022

Thereafter, on 18.02.2022, this Court was pleased to pass the following order:-

“During the course of arguments, learned counsel representing the petitioner as well as respondent No.2 have shown their inclination towards resolving the matter through mediation, and have prayed that a mediator be appointed for the same.

On joint request of both the learned counsel, Mr. Atul Lakhanpal, Senior Advocate, is requested to mediate the matter. The mediation would be conducted at the Mediation & Conciliation Centre of this Court or any other place, as per the convenience of Mr. Atul Lakhanpal, Senior Advocate.

The offices of Mr. Manu K. Bhandari, Advocate and Mr.R.S. Rai, Senior Advocate, are requested to contact the office of Mr.Atul Lakhanpal, Senior Advocate for the purpose of fixing a date, which would be convenient to Mr. Atul

Lakhanpal, Senior Advocate, for holding the mediation proceedings between petitioner/representative of the petitioner and respondent No.2/representative of respondent No.2.

For further consideration before this Court, list on 11.03.2022.

To be taken up at the end of the list or at 2.00 PM, whichever is earlier.

Interim order to continue till the next date of hearing.

(VIKAS BAHL)

February 18, 2022

JUDGE"

On 11.03.2022, the following order was passed by this Court:-

"On 18.02.2022, this Court was pleased to pass the following order: -

"During the course of arguments, learned counsel representing the petitioner as well as respondent No.2 have shown their inclination towards resolving the matter through mediation, and have prayed that a mediator be appointed for the same.

On joint request of both the learned counsel, Mr. Atul Lakhanpal, Senior Advocate, is requested to mediate the matter. The mediation would be conducted at the Mediation & Conciliation Centre of this Court or any other place, as per the convenience of Mr. Atul Lakhanpal, Senior Advocate.

The offices of Mr. Manu K. Bhandari, Advocate and Mr.R.S. Rai, Senior Advocate, are requested to contact the office of Mr.Atul Lakhanpal, Senior Advocate for the purpose of fixing a date, which would be convenient to Mr. Atul Lakhanpal, Senior Advocate, for holding the mediation proceedings between petitioner/representative of the petitioner and respondent No.2/representative of respondent No.2.

For further consideration before this Court, list on 11.03.2022.

To be taken up at the end of the list or at 2.00 PM, whichever is earlier.

Interim order to continue till the next date of hearing.

(VIKAS BAHL)

February 18, 2022

JUDGE"

Learned counsel for the parties have pointed out that in the first round of talks, the compromise has not been effected, but they have prayed for one last opportunity to see whether the matter can be finally settled, failing which, the same will be argued. It is also being jointly prayed that the matter be heard on 22.03.2022.

List on 22.03.2022.

To be taken up at 1.45 PM.

Interim order to continue till the next date of hearing.

(VIKAS BAHL)

March 11, 2022

JUDGE"

Since the compromise could not be finalized between the parties, thus, prayer was made that the case be decided on merits.

14. This Court has heard learned counsel for the parties and has perused the paperbook.

15. The facts of the present case would show that the present dispute is a purely civil dispute between the tenant (company) and the landlord (respondent no.2), in which the parties are governed by a written document and the respondent no.2 has tried to stretch the contours of a civil dispute to impart a criminal colour and has chosen to get the present FIR registered, instead of, filing a claim before the Arbitrator or a petition/suit before the rent controller/civil court and the same has been done with a malafide intent, in order to extract

money from the accused persons. **The chronological list of events, which would bring about the above point, are detailed hereinunder: -**

15.1 **01.04.2019 (Annexure P-1 Pg 16 of the Petition):-** Lease deed dated 01.04.2019 executed between M/s PC Jewellers Limited (lessee/tenant) and respondent No.2/Poonam Gautam (lessor/landlord). The said lease deed is an admitted document as is apparent from a perusal of the FIR itself, as the said document finds mention in the FIR at page 63 of the petition and has been annexed as Annexure A-1 along with the Complaint on the basis of which, the present FIR has been registered. Moreover, in the written statement filed by respondent no.2, the said lease has been annexed as Annexure R-2/5 (internal page 59 of the written statement) and is also not disputed in the written statement filed by respondent no.2 (reference may also be made to paragraph 5, internal page 13 of the written statement of respondent No.2). Even during the course of arguments, the said document has not been disputed. The relevant part of the said lease deed is reproduced hereinbelow: -

"LEASE DEED

THIS LEASE DEED is made and executed at Sirsa, Haryana on this 01" April, 2019;

BY AND BETWEEN:

Ms. Poonam Gautam W/o Mr. Satyawar Gautam, PAN Card Number: AFPPG6171E, R/o House No. 193, Sector 20, HUDA, Sirsa, Haryana - 125055. (hereinafter referred to as "LESSOR") which expression shall, unless repugnant to the context or meaning hereof, mean and include their heirs, successors, legal

representatives, executors, nominees and assigns of the FIRST PART;

AND

*M/s PC Jeweller Limited, a Company incorporated under the Companies Act, 1956 having its registered office at C-54, Preet Vihar, Vikas Marg, Delhi - 110 092 through its **Authorised Signatory Mr. Ravindra Kumar Singhal**, son of Late Shri N.L. Singhal, resident of B-3/26, Pharma Appts, 88, IP, Extension Delhi-110092 (hereinafter referred to as the "LESSEE) authorised vide Management and Finance Committee Resolution dated 15.09.2017, which expression shall, unless repugnant to the context thereof, mean and include its direct and indirect subsidiaries, holding companies, group companies successors and permitted assigns of the SECOND PART*

WHEREAS THE LESSOR are in lawful possession and has clear, absolute and unrestricted title in the commercial property situated at DSS-50, HUDA Complex, Opp. Town Park, Sirsa, Haryana comprising of three floors (ground floor, first floor and second floor) admeasuring about total area approx. 2200 square feet, owned by the above mentioned LESSOR.

xxx-xx-xxx

AND WHEREAS THE LESSEE is desirous of taking the SCHEDULED PREMISES on LEASE and based on the aforesaid representations and submissions made by the LESSEE, the LESSOR have agreed to join hands together to give the SCHEDULED PREMISES on LEASE to LESSEE on the terms and conditions hereinafter contained.

NOW THIS DEED WITNESSETH AS UNDER:

Xxxx-xxx-xxxxx

3. RENTAL

3.1 In consideration of in lieu of lease rent herein reserved and the covenants and conditions hereinafter contained and to be observed on the part of the LESSOR and the LESSEE, the

LESSOR hereby demise UNTO the LESSEE the SCHEDULED PREMISES for a period of 3 (three) years with effect from the LEASE COMMENCEMENT DATE.

3.2 In lieu of lease rent THE LESSEE shall pay a sum of Rupees, which is equivalent @1% of the sale of gold coins, @2% of the sale of gold Jewellery, @5% of the sale of diamond Jewellery, @2% of the sale of silver coins and @5% of the sale of other products which may come to Rs. 50,000/- per month. The "sale" for this purpose will be net sale i.e. after deduction of the sale returns. The sale will be finally determined by the GST returns and for the bifurcation of sales of gold coins, gold jewellery, diamond jewellery, Silver coins and others the company will provide a separate report generated by the system. The LESSEE shall not be liable to pay any additional rent of any form by way of rent in addition to the above mentioned percentage of the net sales.

3.3 The share of revenue in lieu of lease rent shall be payable by THE LESSEE to THE LESSOR by the 10th day of each next English calendar month. The payment shall be made to THE LESSOR after deducting TDS by THE LESSEE, as applicable. The LESSOR shall also Issue written acknowledgement after receipt and actual credit of amount. Separate TDS certificates shall be issued by the LESSEE.

4. LOCK IN PERIOD

It is agreed between the Parties that there be no lock in period in this lease deed.

The LESSEE alone can terminate this lease deed by giving 30 days notice to the LESSOR.

The LESSOR cannot terminate the present LEASE DEED during the entire three years.

xxx-xx-xxxxx

12. LESSOR'S COVENANTS

12.1 THE LESSOR shall be responsible for all major structure, maintenance work in the building that shall include the walls, ceilings, roof, water, drainage mains and pipes thereof in good and substantial repair and in proper working order and conditions.

12.2 *THE LESSOR shall obtain all the necessary permissions, approvals, or consent from the necessary authorities, departments, financial Institutions, society, etc. for any and all clearances for the peaceful possession of the property.*

12.3 *THE LESSOR shall pay compounding charges, penalties etc., if any, to Sirsa municipal authority for covered area. If Sirsa Municipal Authority or any department takes some action due to any such non-payment by LESSOR, THE LESSEE reserves the right to claim damages from THE LESSOR and adjust the same against sums payable to THE LESSOR. Also, the LESSEE reserves the right to make any such payment direct to Sirsa Municipal Authority or any other Department and adjusts the same against any sums payable to the LESSOR by the LESSEE.*

12.4 *THE LESSOR shall ensure that THE LESSEE will have peaceful possession of SCHEDULED PREMISES and will be able to enjoy the same for conducting its business till the expiry of the Lease. The LESSOR shall not have the right to continuously monitor, interfere or in any way interrupt the showroom activities. The LESSOR also, undertakes and agrees that it shall take the final account sheet and monthly sales as provided by the LESSEE to be authentic and true and on the basis of the same the amount in lieu of rent shall be payable by the LESSEE to the LESSOR as mentioned in clause 3.2. The LESSOR shall not be entitled to inspection of the books, accounts etc. of the LESSEE under any condition or circumstance.*

12.5 *THE LESSOR shall pay for any damages caused to the property on account of any Government, Sirsa city corporation laws. In the event of non-payment by the LESSOR, the LESSEE shall have the rights to adjust these amounts against any sum payable due to the LESSOR which had to be paid by the LESSEE.*

12.6 *THE LESSOR shall indemnify THE LESSEE against any loss, which may be used or incurred as a consequence of the LESSOR falling to obtain the requisite permissions, consents, approvals etc. for the peaceful enjoyment of the SCHEDULED PREMISES.*

xxxx-xxx-xxxxx

13. SERVICES/FACILITIES TO BE PROVIDED BY THE LESSORS TO THE LESSEE

13.1 THE LESSOR shall provide inter alia the following services/facilities at no extra cost to THE LESSEE. It is mutually agreed that these facilities constitute an important component of the consideration which is being exchanged vide this LEASE DEED. These services/ facilities are:

- (a) Electric connection as per the requirement of the LESSEE.*
- (b) Water Supply*
- (c) Structural stability certificate from approved engineer/ architect.*
- (d) Copy of sanctioned plans approved by the competent authority.*
- (e) Parking*
- (f) DG sets of 82 KVA***
- (g) Air conditioners/panels*
- (h) Sewer connection*
- (j) All interior designing with furniture and fixture***
- (k) Strong room with door*
- (i) Pantry/washroom*
- (m) Space on roof of top floor of the building for the tower for the purposes of video conferencing*
- (n) All necessary office equipments*

13.2 Notwithstanding anything mentioned anywhere else in this LEASE DEED, the LESSEE reserves his right to proportionately withhold/ deduct from the payment of amount in lieu of rent, any such amount, for which it has to incur expenses on account of purchasing any of the above mentioned services in cases wherein the LESSOR has defaulted in being able to provide any of the above mentioned services.

13.3 The LESSOR shall ensure that during the above mentioned term of this LEASE DEED, at all times, these above mentioned services would be provided to THE LESSEE with absolutely no interruptions. Any third party problem arising in relation to the above mentioned services shall be exclusively handled by THE LESSOR and THE LESSEE shall not entertain any excuse/ reason for any kind of interruption or default in the provision of the above mentioned services.

13.4 Following points pending to be completed by lessor up to 10th April-2019

- A) Electricity Load enhancement as required
- B) Additional Telephone Connection
- C) Air Condition installation
- D) Civil Work-Marble on Outer Stairs
Shutter Boxing
Plumbing work in Toilet
Final Paint Coat
Strong Room Door Adjustment
- E) Show Window stand/silver Counter Lock
- F) External Branding Poster Change
- G) D.G. Set Installation
- H) UPS Installation Pending
- I) Panel and Servo installation Pending
- J) CCTV footage storage required for 15 days.
- K) RO/ Refrigerator Water Coller Installation Pending
- L) weighing scale/Caratmeter/melting furnace Pending
- M) Small safe for keys and additional Telephone instruments for internal connectivity
- N) EPBX/LED Installation Pending
- O) Computers and accounts room furniture pending
- P) chandelier pending.

xxx-xx-xxxx

16. TERMINATION

16.1 The LESSOR cannot terminate the present Lease Deed during the entire period of three years i.e. the fixed term of this lease. However, in case the LESSEE falls to pay any continuous three months share of revenue as per clause 3.2 as stipulated herein then the LESSOR shall be entitled to terminate this lease by giving 30 (Thirty) days written notice to the LESSEE at the address given above.

16.2 The LESSEE shall have the right to terminate the present LEASE DEED at any point during the subsistence of this LEASE DEED. The LESSEE shall be duty bound to give a one month written notice to the instant LESSOR before terminating the present LEASE DEED.

16.3 *Upon the expiry or termination, as the case may be, of this LEASE AGREEMENT the LESSEE shall peacefully hand over the vacant SCHEDULED PREMISES to the LESSOR*

xxx-xx-xxxx

18. MISCELLANEOUS

Xxxx xx xxxxx

18.7 ARBITRATION AND JURISDICTION

18.7.1 *All or any disputes arising from or out of or touching upon or in relation to the terms or formation of this LEASE DEED or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration by a Sole Arbitrator who shall be appointed by mutual consent of the parties. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications or re-enactment thereof for the time being in force.*

In case of the failure to reach upon a consensus with regard to the appointment of sole arbitrator with mutual consent between the LESSOR and LESSEE within a period of 30 days, the LESSOR and LESSEE each will appoint an arbitrator and the two arbitrators appoint the presiding arbitration. The arbitration proceedings shall be held in English language and decision of the Arbitrator including but not limited to costs of the proceedings/award shall be final and binding on the parties. The cost of arbitration shall be borne and paid by the LESSOR and LESSEE in equal proportion. The venue of the arbitration shall be at Sirsa.

18.7.2 *Jurisdiction of all legal matters shall be the courts in the city of Sirsa. The Courts at Sirsa alone shall have the jurisdiction in all matters arising out of/touching and/or concerning this Lease Deed.*

SCHEDULE

All that piece of property admeasuring about 2200 sq. ft. approx. constructed on the land situated at DSS-50, HUDA Complex, Opp. Town Park, Sirsa, Haryana. Property ID SRS/B16/0321

North by: Main road

South by: Jaat Dharamshala

East by: Others property

West by: Others property

IN WITNESS WHEREOF THE LESSOR AND THE LESSEE hereto have subscribed their name, executed and delivered these presents at Sirsa, on the date, month and year first above written: SIGNED AND DELIVERED BY THE WITHIN NAMED "LESSOR"

*sd/-*_____

SIGNED AND DELIVERED BY THE WITHIN NAMED "LESSEE"

M/s PC Jeweller Limited by its Authorized Signatory Mr. Ravindra Kumar Singhal, authorized in this behalf by a Management and Finance Committee Resolution dated 15.09.2017."

A perusal of the above lease deed would bring out the following points: -

- (i) The petitioner is not a party or a signatory to the same and on behalf of M/s PC Jewellers Limited, Mr. Ravindra Kumar Singhal has signed the said document. M/s PC Jewellers has not even been arrayed as an accused in the present FIR.
- (ii) Clause 3 clearly states as to what would be the rental with respect to the said premises. It had been agreed that the lessee/company is required to pay a sum of Rupees, which is equivalent to 1% of the sale of gold coins, 2% of the sale of gold Jewellery, 5% of the sale of diamond Jewellery, 2% of the

sale of silver coins and 5% of the sale of other products, which may come to Rs.50,000/- per month. It was specifically agreed that the lessee/company shall not be liable to pay any additional rent. The allegations made by respondent No.2 to the effect that she was made to believe that she would be able to earn Rs.4 to 5 lakhs per month or that there would be some minimum amount of earning, is contrary to the terms of the lease deed, which is an admitted document between both the parties, as no such minimum amount has been specified in the lease deed.

- iii) Perusal of Clause 13.1 would show that respondent No.2 had agreed to provide the services/facilities, which have been detailed from sub-clause (a) to clause (n) with no extra costs. The same included *inter alia*, DG sets of 82 KVA, air conditioners/panels and all interior designing with furniture and fixtures. The allegations in the FIR that respondent No.2 had to spend money on the showroom was thus, on account of the agreement between the parties, as is reflected from the terms of the lease deed, and the said lease deed has not been challenged in any court of law, till date.
- iv) A perusal of clause 12 would show that lessor/respondent No.2 was to carry out all major structural changes, maintenance, work in the building and also take all necessary permissions and approvals and ensure that the lessee/tenant/company has peaceful possession of the said premises. Further, respondent

No.2 had undertaken and agreed that the financial account sheet and monthly sale as provided by the lessee/tenant/company would be taken to be authentic and true and it was on that basis that the rent was to be paid as per clause 3.2.

v) Clause 18.7 specifically provides for arbitration and it is stated that all the disputes arising from or out of or touching upon or in relation to the terms or formation of this lease deed or its termination including the interpretation and validity thereof, shall be settled by mutual consent, failing which, the same is to be settled through arbitration by a Sole Arbitrator. The allegations/disputes raised by respondent No.2 can be best resolved by resorting to the recourse of arbitration. It is only after both the parties have been granted an opportunity to lead evidence and put-forth their case, that the present dispute can be adjudicated. The pleas/allegations raised/levelled by respondent No.2 are contrary to the written admitted documents whereas, the pleas raised by accused persons, moreso, the petitioner, are in consonance with the written agreement/lease deed.

(vi) Clause 4 of the agreement would show that the lessee/tenant/company had a right to terminate the lease deed by giving 30 days notice. The said clause, when read along with Clause 16, would show that even lessor/respondent No.2 was entitled to terminate the lease by 30 days written notice in case, the lessee/company failed to pay continuously for three months,

share of revenues as per clause 3.2. Thus, in the eventuality of non-payment of amount as stated in Clause 3.2, respondent No.2 had a right to terminate the lease. In the present case, although the right to terminate the lease has been exercised by respondent no.2, but no case/suit has been instituted for recovery of the money.

15.1.2 **March, 2020**: Lockdown imposed on account of COVID-19 pandemic and on account of which, the businesses all across the country were affected.

15.2 **09.04.2021 (Annexure P-2 Pg 33 of the Petition)**: Email dated 09.04.2021 sent by Dr S Gautam, husband of respondent No.2, to the representative of the Company. The said email is also an admitted document as is apparent from paragraph 7 of the written statement (internal page 17 of the written statement). The said email has been reproduced hereinbelow:

*“On Fri. Apr 9, 2021 DR. S. GAUTAM
<bhairavindustries.sirsa@gmail.com>*

Respected mam

mam as discussed on the phone call, that we are no longer interested in working in the current model of sale percentage on going model, so here are the two new proposals from our side:

- 1. We will run the pc jeweller store without manager, as we will select the staff and we will individually run the store, but the stock would be of pc jeweller itself, and the money from the sale of jewellery will be deposited in the bank account of pc jewellers, and whereas we will work on***

the sales margin but our sales margin has to be increased from the ongoing current margin.

2. The second proposal is that the pc jeweller should take our site on rent. and pc jewellers pays us the fixed per month rent for our building (and it's my request that pc jeweller decide the value of rent itself) as we do not set up any benchmark about the rent.

******so, this are two proposal from our side and now the MD sir has to decide which one he will choose, as we are no longer interested in working with the ongoing model***** as due to this ongoing model we had faced a lots of insult from the managers and the other pc jewellers staffs, and we had not opened this store for insult, as the monthly sales percentages bill are sent on the mail of pc jeweller sirsa and they get to know about the value which we are receiving per month, as I am really ashamed to tell you that your pc staff insult us by stating that "we are working as an employee in pc jeweller and after that also we are receiving higher monthly wages then gautam ji who is saying that he is the owner of this store" as they also state that the gautam ji is receiving the less per month wages then the ordinary employees of pc jeweller, and the gautam ji has an attitude like he is the franchise owner of the PCJ sirsa" and they are considering us like their colleague and they are not considering us the owner, and that's why they insult us*

****** and one more thing that changing the staff is not the solution for this problem because each of the person has the same mentality that "they are the staff of PCJ and after that they are receiving the higher wages then gautam ji who is stating that he is the owner, as every PCJ staff start considering gautam ji and his family like their colleague who are just working for the pc jeweller as the sales person, who receives the sales percentage for his efforts of doing sales per month, as they are not the owner they are also like them******

As man one thing I want to make you clear that we cannot face the indiscipline and the insult from such a employees who are working for PCJ, as we are the owner of the store and we have some self respect, s you can't imagine the level of insult we are facing because of this model

So, hereby it is my request to you to please consider my request.

*Warm Regards,
dr. Gautam
Bhairav industries
sirsa (Haryana)"*

Perusal of the above email would show that after two years of executing the lease deed dated 01.04.2019, the said email was sent by stating that respondent No.2 was no longer interested in working in the current model of sale percentage and gave two new proposals. The first proposal was that respondent No.2 and her husband would run the PC Jeweller store without a manager and would select their own staff and would themselves run the store and the money from the sale of jewellery would be deposited in the bank account of PC Jewellers and said respondent No.2 would work on sales margin. The second proposal given was that the company PC Jewellers should take the site on rent and pay a fixed per month rent for the showroom of respondent no.2. In the said email, there was no allegation that some amount had not been paid by the company to respondent no. 2 or that there was any amount outstanding towards the landlord/respondent No.2 or that there was any inducement/cheating on the part of accused persons, much less, the present petitioner. There was no allegation that the lease deed was entered into by exerting pressure or that there was an earlier franchise agreement. It

was stated that the parties had been working in the current model of sale percentage since 01.04.2019.

15.3 **15.04.2022 (Annexure P-3 Pg 34 of the Petition):-** Email dated 15.04.2022 was sent from Sheiba Anand (accused No.2) to husband of respondent No.2. The said email is also an admitted document as is apparent from paragraph 8 at page 17 of the written statement. Moreover, during the course of arguments, the said email has also been relied upon by learned Senior counsel appearing for respondent No.2. The relevant portion of the said email is reproduced herein below: -

"From: Sheiba Annand <sheiba.anand@pcjeweller.com>

Date: Thu, Apr 15, 2021-11-22 Subject: Re: regarding the new proposal for pc jeweller sirsa

To: DR.S.GAUTAM <bhairavindustries.sirsa@gmail.com>

Respected Gautam ji

As per our Agreement dated 1 April 2019, which is for a period of 3 years based on Rent calculated on percentage of sale in store.

Percentage mentioned in Agreement copy.

As per your mail below, You have proposed a new proposal, MD Sir has gone through your proposal & we are open to new discussion.

Since we are facing new covid waves & restricted movement, All meetings are suspended. Please let know a suitable Date to meet post 16th May 2021.

Look Forward to hearing from you.

*Warm Regards,
Sheiba Anand"*

A perusal of the above would show that it had been stated by accused No.2 that as per the lease agreement, the rent was

Also this is totally tarnishing the name of our company PC JEWELLER

Please revert at the earliest else your meeting with MD sir for tomorrow will be reconsidered.”

A perusal of the above email would show that it was stated by Sheiba Anand that she was shocked to know that on the morning of 11 July, 2021, one Bhairo had come to the PC Jewellers showroom and had put a lock on the shutter of the PC Jeweller showroom and that the said action was totally against the terms of the agreement and that respondent No.2 or her family members did not have any right to put the said lock. It was further stated that the said Bhairo was threatening the store manager and had refused to open the lock. It was stated that the said act was tarnishing the image of the company. From the above email, it is apparent that it was respondent no.2 and her husband who had committed an act that would constitute a *prima facie* breach of the terms of the lease deed, as the company's possession could not have been interfered in the manner, it has been done as per the averments made in the above-said email.

15.5 **18.07.2021 (Annexure P-5 Pg 36 of the Petition):-** Email dated 18.07.2021 sent by the husband of respondent no. 2 to Sheiba Anand-accused no.2 at 2.00 PM. The said email is also an admitted document as is apparent from paragraph 10 of the written statement (internal page 18 of the written statement). Even during the course of arguments, learned Senior counsel for respondent No.2 has relied upon the said email. A perusal of the above-said email would show that it had been stated by the husband of respondent No.2 that Sheiba

Anand (accused No.2) and the store staff had started transferring the complete stock of gold, silver and diamond from the Sirsa store to the head office and respondent No.2 and her husband tried to stop them, but they did not stop and it was on account of the said fact that respondent No.2 and her husband locked the showroom from one side and on the other side, the lock of the company was fitted and thus, there were two locks i.e, one belonging to respondent No.2 and the other, to the company. The following points emerge from the said email:

- a) No plea/allegation regarding cheating and fraudulent inducement has been taken/levelled.
- b) It has not been stated that the lease agreement or its terms are not binding or that the lease deed was entered into, on account of coercion/pressure. Rather, reliance was placed by respondent no.2 upon the terms of the agreement to state that certain amounts under the agreement were pending.
- c) It was alleged in the said email by husband of respondent no. 2 that the rent as per the agreement was being paid after some delay.
- d) No plea with respect to the earlier alleged franchise agreement was raised.
- e) It was admitted that the stock of jewelry etc. belonged to the company.
- f) No allegation was made against the present petitioner. Rather, it had been stated that Sheiba Anand had arranged a meeting with the petitioner on 19.07.2021 and prior to the said date, the incident of locking of the store took place on 18.07.2021.
- g) It has been stated in the said email that since, the rent to be paid to the respondent no.2 would depend upon the

sales made by the company, thus, the closing of the showroom would result in a loss to respondent no.2.

- h) All the above-said issues at best, give rise to a civil dispute.

15.6 **23.07.2021 (Annexure P-6 Pg 41 of the Petition):-** Legal Notice dated 23.07.2021 sent by respondent no. 2 through her counsel to the accused company. The said legal notice is also an admitted document. Reference regarding the same has been made to paragraph 12 of the written statement page 19 of the reply. The relevant portion of the said legal notice is herein below: -

“To,

1. *M/s P.C. Jeweller Limited Company,
C-54, Preet Vihar, Vikas Marg,
Delhi-110092, through its
Managing Director Sh. Balram Garg*
2. *M/s P.C. Jeweller Limited Company,
C-54, Preet Vihar, Vikas Marg,
Delhi-110092 through Mr. Ravinder
Kumar Singhal son of Sh. N.L. Singhal
R/o B-3/26, Pharma Appts. 88, IP,
Extension, Delhi-110092*

Per Instructions of my client Smt. Poonam Gautam wife of Sh. Satyawan Gautam R/o House No. 193 Sector-20 HUDA, Sirsa, I serve M/s P.C. Jewellers Company aforesaid with the following notice:

- 1- ***That M/s P.C. Jewellers Company C-54, Preet Vihar, Vikas Marg, Delhi-110092 had taken on lease one building DSS-50 HUDA Complex Opp. Town Park, Sirsa (Haryana) belonging to my client on lease for period of three years commencing from 1-4-2019 and a lease deed was duly executed by both the parties on 1-4-2019 which was duly registered in the office of Sub Registrar Sirsa on 8-4-2019 at Sr. No. 174. This lease deed was executed by Sh. Ravinder Kumar Singhal on behalf of the company who was an authorized***

signatory. The terms and conditions of the lease were duly incorporated in the deed.

- 2- *That as per terms of the lease deed my client was entitled to a sum which was to be calculated on the sale of gold coins, gold jewellery, Diamond jewellery, silver coins and on sale of other products. The sale was to be determined by the GST returns and copy of return was to be supplied by the company to the lessor. The percentage of commission on sale have been duly mentioned in the lease deed. The amount payable to my client was to be paid by the 10th day of the each month.*
- 3- *That the company had been irregular in making payment of amount (in lieu of rent) to my client since Feb. 2021. The amount payable for the month of Feb. & March 2021 has been paid to my client in the month July 2021 only, whereas the amount payable for the months of April, May & June is still due and copy of GST returns have been supplied to my client only in the month of July 2021 with the result that the amount payable to my client for these months have not been paid so far. Even The amount payable for Feb 2020 has not been paid to my client despite repeated demands.*
- 4- *That the company has thus committed three consecutive defaults in making payment of amount to my client and as such my client has a right to terminate the Lease Deed.*

xxx xxx xxx xxx

- 9- *That since there are more than three consecutive defaults on the part of lessee, therefore the lease in favour of the company is terminated w.e.f. 1-9-2021 and you are requested to hand over vacant possession of the building to my client.*

xxx xxx xxx xxx

*Please Note that in case the company does not handover the vacant possession of building to my client by 1-9-2021 and does not make payment of the amount (payable in lieu of rent) and the amount payable for the loss caused to the building and to the material supplied by the lessor for use in the building by 1-9-2021, **then my client shall have no option but to start legal proceedings against the company for the recovery of possession and for the recovery of amount payable to my client and shall also be entitled to claim a sum of Rs. 100,000/- (One lakh) for the inconvenience cause to my client.** Since the showroom has been locked since*

18-7-2021 and no sale is being transacted after 18-7-21, therefore my client shall also claim compensation for use and occupation at the rate of Rs. Three Lakh per month (3,00,000/-) after 31-8-2021.

*A carbon copy of notice duly signed by me has been retained in my office for records and you requested keep the original safe.
(Each page of the notice has been signed by me)*

Sirsa/dt. 23-7-21

(Yashpal Nanda)

Advocate

Distt. Courts, Sirsa

Licence No.P-1/1965”

The following points emerge from the said legal notice:-

- a) Lease deed dated 01.04.2019 and its terms have been admitted including the terms of the payment. No plea has been taken that the said lease deed was got executed under coercion or force.
- b) No allegation has been made against the present petitioner.
- c) It is admitted that the tenant is M/S PC Jewellers Company and its authorized signatory is Ravindra Kumar Singhal and not the present petitioner.
- d) It is admitted that the rent is to be paid as per the terms of the Lease Deed i.e., Clause 3.2 and there is no allegation that the said clause is unconscionable or unfair to the respondent no.2.
- e) There is no allegation of fraudulent intention/cheating against the accused persons, much less, the present petitioner and much less, at the time of inception.
- f) There is no reference to the alleged Franchise Agreement, now sought to be relied upon by Respondent no. 2.
- g) In paragraph 3, it is alleged that the rent had not been paid regularly and since three consecutive defaults had been made, thus, respondent No.2 had a right to terminate the lease deed.
- h) In paragraph No.9, the lease was terminated by respondent No.2. It was further observed that in case, the possession was not handed over and the amount as demanded was not paid, then legal proceedings against the company for recovery of possession and other reliefs would be initiated.

i) Instead of instituting the said civil proceedings/ arbitration proceeding, the present FIR has been registered.

j) The disputes as raised in the said legal notice would show that the same is a civil dispute between the parties and the registration of the present FIR is an abuse of the process of the Court.

15.7 **29.07.2021 (Annexure P-7 Pg 49 of the Petition):-** Reply dated 29.07.2021 filed on behalf of the company M/s PC Jewellers Limited to the legal notice given on behalf of Respondent no.2. The said reply has not been denied by Respondent no. 2 either in the written statement or during the course of arguments. The averments with respect to the said reply have been made in paragraph 13 at page 8 of the petition. The relevant portion of the said reply is reproduced herein below: -

“To,

- 1. Mr. Yashpal Nanda, Advocate
Gali Ram Swaroop Bansal,
Near Petrol Pump,
Hisar Road, Sirsa (Haryana)
(Contact No.: 01666-232124)*
- 2. Smt. Poonam Gautam,
W/o Sh. Satyawar Gautam,
R/o House No. 193, Sector-20,
HUDA, Sirsa, Haryana-125055.*

Subject: Reply to Legal Notice dated 23.07.2021.

Dear Mr Nanda,

Under instruction and on behalf of PC Jeweller Limited (hereinafter referred to as "our Client") having its registered office at C-54, Vikas Marg, Preet Vihar Delhi-110092, we hereby state as under:

This is in response to your Legal Notice dated 23.07.2021, sent by you on behalf of your Client, Smt. Poonam Gautam, W/o Sh. Satyawar Gautam, R/o House No. 193, Sector-20, HUDA, Sirsa (Haryana), addressed to our Client.

xxx xxx xxx xxx

10. To the utter shock and surprise of our Client, your Client and her husband placed a lock on the shutter of the Showroom without the consent of our Client on 18.07.2021 and in this regard, the husband of your Client [bhairavindustries.sirss@gmail.com] addressed an email on 18.07.2021 at 02:22 PM to Ms. Sheiba Anand [sheiba.anand@pcieweller.com] (Retail Head of our Client) having subject "A SERIOUS concern regarding the sirsa store AND TOTALLY UNPROFESSIONAL BEHAVIOR OF MS. SHIBA ANAND" admitting the said fact and further levelling baseless allegations against our Client and its staff.

Since 18.07.2021, the lock placed by your Client on the shutter of the Showroom of our Client operating from the demised premises, have not been removed. Thus, it may be noted that the demised premises are in fact, in possession of your Client since 18.07.2021. This is so despite the fact that our Client made repeated requests for deliberating on the issues arising out the present dispute pertaining to the rentals of the demised premises and the autonomy of our Client in carrying out its business from the demised premises. Hence, since 18.07.2021, your Client is in illegal possession of the demised premises and has committed the offence of criminal restraint punishable under section 341 of the Indian Penal Code. Please take note that in case your Client fails to remove the lock from the shutter of the Showroom of our Client, it shall be constrained to take all possible legal actions against your Client including putting the criminal law machinery into motion. Thus, it is suggested that you advise your Client to immediately remove her lock from the demised premises.

xxx xxx xxx xxx

13. It is submitted that our Client, on a routine basis, reshuffles its stock as a matter of policy and while the same was being done at the demised premises, the husband of your Client, guided by his wild imagination and unsupported apprehensions, interfered in the process and started demanding explanation from the employees of our Client at the site. **This has resulted in great inconvenience to our Client and its employees and is a clear breach of Clause 12.4 of the Lease Deed which clearly stipulates:**

"The LESSOR shall ensure that THE LESSEE will have peaceful possession of SCHEDULED PREMISES and will be able to enjoy the same for conducting its business till the expiry of the Lease. The LESSOR shall not have the right to continuously monitor, interfere or in any way interrupt the showroom activities. The LESSOR also undertakes and agrees that it shall take the final account sheet and monthly sales as

provided by the LESSEE to be authentic and true and on the basis of the same the amount in lieu of rent shall be payable by the LESSEE to the LESSOR as mentioned in clause 3.2. The LESSOR shall not be entitled to inspection of books, account, etc. of the LESSEE under any condition or circumstance."

A bare perusal of the said Clause makes it clear that the Lessor has no right to interfere in the affairs of the Lessee and as such, the actions as narrated by the husband of your Client in his email dated 18.07.2021, amount to a breach of this condition.

xxx xxx xxx xxx

16. *It is not out of place to mention that in November, 2020, your Client had facilitated certain jewellery purchases for his acquaintances from the Showroom of our client from the demised premises. The purchase for an amount of Rs. 6,10,000/- (Rupees Six Lacs and Ten Thousand only). Your Client had undertaken to clear the said amount, however, despite constant reminders and relentless chasing, your Client has failed to clear the outstanding amount. Vide the present reply, we also call upon your Client to clear the said outstanding due of Rs.6,10,000/- within 7 days of receiving of the present reply, failing which, our will be constrained to put the legal machinery into motion to seek a recovery of the said amount.*

17. *As far as the allegation pertaining to late payment of rentals is concerned, it is brought to your kind notice that the rent for the premises has been paid by our Client up to March 2021 as been confirmed by the husband of our Client in his email dated 18.07.2021. Post March, 2021, our Client did not receive any invoices/bills for outstanding rent. As soon as the rent invoice/bill are shared, our Client will make the outstanding payment. The rent for April, 2021 is Rs. 29,020/- (details were shared with your Client on 05.05.2021) and for May & June, the rent is Rs. 21,530/- (details were shared with your Client on 02.07.2021). It may be noted that the rent since April 2021 is pending owing to the failure on part of your Client in sharing the rent invoice/bill despite the fact that our Client had shared the requisite details with your Client on the above-mentioned dates. In such circumstances, no liability can be imputed to our Client for the non-payment of rent.*

*Further, the rent for the month of February, 2020 amounting to Rs. 48,089/- is pending owing to some confusion. However, vide the email dated 18.07.2021, the husband of your Client raised the said demand for the very first time. **Till 18.07.2021, no mention was ever made by your Client in respect to the said outstanding rent. In this regard, our Client undertakes to clear the same at the earliest.***

xxx xxx xxx xxx

20. *It is also pertinent to note that owing to the actions of your Client and her husband, our Client has suffered great loss and inconvenience. The interference caused by the husband of your Client negatively impacted the business and good will of our Client causing a loss to the tune of about Rs.50,00,000/ (Rupees Fifty Lacs only). It needs to be appreciated that the "reshuffling process" was undertaken by our Client at not one, but few showrooms across India simultaneously so as to ensure the refreshing of the items at those showrooms. As such, by interfering in the reshuffling process and subsequently locking the Showroom of our Client that was being operated from the demised premises, your Client has caused business loss to our Client not just at the Sirsa showroom (demised premises) but at various other showrooms which were supposed to be part of the reshuffling process. Such interruption has led to great inconvenience and unnecessary financial burden which our Client has computed to be Rs.50,00,000/-. Thus, vide the present Notice, we also call upon your Client to pay a sum of Rs. 50,00,000/- to our Client on account of the loss and financial injury suffered by it coupled with damages for the inconvenience, within a period of 15 days of receiving of the present reply.*

21. *Accordingly, vide the present Notice our Client hereby terminates the Lease Deed dated 01.04.2019. Since the demised premises are locked by your Client, it is not possible for our Client to vacate the demised premises and hand over the peaceful possession of the premises at present. Hence, our Client undertakes to vacate the premises and hand over the peaceful possession to your Client within 15 days from the date when your Client removes the lock placed by her on the shutter of the Showroom of our Client.*

Please note that in case your Client fails to remove the lock within 2 days of receiving of the present reply, our Client will be entitled to receive damages at the rate of Rs. 1,00,000/- per day on account of business loss, for the period that the premises are kept locked beyond 31.07.2021."

Perusal of the above reply would show that it has been specifically stated that husband of respondent No.2 had started levelling unsubstantiated allegations against the employees of the company and had placed a lock on 18.07.2021. It was specifically pointed out that the putting up of the lock was a violation of the terms

of the lease deed, more so, clause 12.4 and since then, respondent no. 2 and her husband have been in illegal possession of the demised premises. It was submitted that no loss has been caused to respondent no. 2 and in fact, amount of Rs.6,10,000/- was due to the company from respondent No.2. It is also stated that respondent No.2 had not sent the invoices/bills within time and the lease amount had been paid as soon as the rent invoice/bill was shared by respondent no.2. It was also stated that in case any rent was due, the company was ready to clear the same at the earliest. It was further stated that the acts of respondent No.2 and her husband were impacting the goodwill of the company, causing a loss to the tune of Rs. 50 lacs and on account of the default committed by Respondent no.2 and her husband as well their acts, the company terminated the lease deed dated 01.04.2019.

15.8 **14.11.2021 (Annexure P-8 Pg 57 of the Petition):-** FIR under Section 420 registered at PS Civil Lines, Sirsa, Haryana against five accused persons, including the present petitioner, in which, one of the allegations is that the lease deed dated 01.04.2019 was executed between the parties in spite of objections raised to certain terms and conditions by Respondent no.2. The term of the lease deed was for a period of three years and the said FIR has been registered after a delay of two years and seven months from the date of the lease deed dated 01.04.2019.

16. From the above-said facts, it is apparent that the present dispute is a civil dispute between tenant (company) and landlord

(respondent No.2) and instead of either filing a claim before an Arbitrator or a petition/suit before the Rent Controller/Civil Court, respondent No.2 has got the present FIR registered on 14.11.2021 under Section 420 IPC, which is an abuse of the process of the Court and has been registered with a malafide intention, to extract money from the accused persons. The respondent no. 2 has tried to stretch the contours of a civil dispute to impart a criminal colour.

17. The case of respondent No.2 in the reply is based upon the franchise agreement dated 15.01.2018 (Annexure R-2/2). Apart from the fact that the clauses in the said agreement are more onerous upon respondent No.2 than the ones in the lease deed, the said franchise agreement also contained clauses with respect to respondent no. 2 being under an obligation to carry out the interior decorations of the showroom. The franchise agreement dated 15.01.2018 relied upon by respondent No.2 does not in any way further the case of respondent No.2. The relevant portion of the said franchisee agreement is reproduced herein below: -

“AGREEMENT

THIS Agreement is made and executed at Sirsa on this 15th of January, 2018 BY AND BETWEEN:

***PC Jeweller Ltd.,** a Company incorporated under the Companies Act, 1956 having its registered office at C-54, Preet Vihar, Vikas Marg, New Delhi 110092, **through its Authorised Signatory Mr. Kuldeep Singh,** S/O Shri Rambir Singh, 204, Ankur Apartments, Patparganj, Delhi-110092 (hereinafter referred to as the COMPANY) vide Management and Finance Committee Resolution dated 17-11-2017, which expression shall, unless repugnant to the context thereof, mean and include its direct and indirect subsidiaries, holding companies, group companies, successors and permitted assigns) of the FIRST PART*

AND

Bhairav Industries, with registered office at DSS-50, HUDA Complex, Opp. Town Park, Near Old Bus Stand, Sirsa (Haryana). Details of Proprietor as under:

1. Smt Poonam Gautam W/o Sh.Satyawan Gautam, R/o House No.193, HUDA, Sector-20, Part-1, Sirsa (Haryana).

(hereinafter referred to as the "FRANCHISEE") which expression shall, unless repugnant to the context thereof, mean and include its direct and indirect subsidiaries, holding companies, group companies, successors. and permitted assigns) of the SECOND PART

Xxxxxx-xx-xxxxx

AND WHEREAS the FRANCHISEE has confirmed that it will carry out the interior decoration of the Showroom including making structural modifications and installing furniture fittings and requisite services at its own cost, in accordance with the interior design concept, schematic drawings and specifications provided by the COMPANY from time to time;

xxxxxx-xx-xxxxx

AND WHEREAS the FRANCHISEE recognizes that the COMPANY has incurred and will be incurring substantial expenses and has made and will make substantial investments, including investments in establishing the "PCJ" brand, developing and manufacturing the product range, promoting the products and generating store traffic. The FRANCHISEE shall, therefore, comply with the COMPANY's instructions from time to time in order to ensure that the full benefit of such investment can be derived by both parties.

xxxx-xxx-xxxxx

3. CONSIDERATION

The FRANCHISEE undertakes and agrees to pay a onetime FRANCHISEE FEES of Rs.5.00,000/- plus 18% GST at the execution of this Agreement vide cheque no 562743 dated 22-12-2017 and drawn on State Bank of India situated at Sadar Bazar, Sirsa and fixed ROYALTY FEES of Rs. 2,00,000/- per annum for every subsequent year. This is in addition to the payment made for the purchase of jewellery whose payment shall be made by the FRANCHISEE to the COMPANY in advance at the time of issuing the purchase order subsequent to which the COMPANY shall issue the sales invoice followed by the delivery of the concerned jewelry items.

4. SHOP DESIGN AND INTERIORS

4.1 The FRANCHISEE undertakes that the Franchise Showroom shall at all times be amongst the best designed, maintained and operated Franchise Showroom. The FRANCHISEE shall ensure compliance of this intention at all times to both safeguard and further the reputation of the COMPANY and its products and in so doing accord with the advice of the COMPANY

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4.3 The FRANCHISEE hereby expressly undertakes not to copy, duplicate, infringe or violate the Showroom design, concept and ambience

of the Franchise Showroom for any other store or establishment. The FRANCHISEE accepts that the Franchise Showroom interior design drawings and concepts are exclusively the property of the COMPANY and at no point of time it shall be considered to have been transferred to the FRANCHISEE or any other third party during the terms of this Agreement and subsequent thereto. Any breach of this provision will be viewed as a serious default and the FRANCHISEE shall pay the COMPANY appropriate damages.

xxxx-xx-xxxxx

6.6 Subject to legal requirements for the time being in force, the FRANCHISEE will sell the products at prices not exceeding the maximum recommended price fixed by the COMPANY from time to time. The FRANCHISEE shall not sell any other products (other than those sent/ sold by the COMPANY to them) in the Franchise Showroom.

6.7 The cash memos raised by the FRANCHISEE shall carry the name of the FRANCHISEE, clearly describing itself as the FRANCHISEE of “PC Jeweller Limited”. The cash memo must carry the Sale Tax Registration Number of the FRANCHISEE.

7. OPERATIONS

7.1 The FRANCHISEE shall comply and abide with policies and guidelines of the COMPANY in relation to display, staffing, training, selling systems and operations in relation to the Franchise Showroom and shall not commit a breach thereof. The FRANCHISEE shall carry on the business in accordance with the direction of the COMPANY and with all due diligence. In particular, the FRANCHISEE shall be obliged for making use of only the COMPANY specified software and hardware from time to time for all its business operations. The FRANCHISEE shall not carry on any other business (other than what is covered under this agreement) at the "PCJ" showroom premises, as aforementioned, and shall only sell the "PCJ" products at the premises/ showroom.

7.2 The FRANCHISEE shall keep the showroom open for business during the hours and days specified by the COMPANY, subject to local laws. The FRANCHISEE hereby irrevocably permits the officers and representatives of the COMPANY to enter the Franchise Showroom or any other location in order to exercise this right of inspection.

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8. EXPENSES

The FRANCHISEE shall be responsible for and shall bear all expenses whatsoever incurred or to be incurred in carrying on the business in the Franchise Showroom unless specifically provided otherwise in this Agreement. Without prejudice to the generality of the foregoing, the FRANCHISEE shall pay:

- (a) Expenses pertaining to rent, rates and taxes and other statutory and legally mandatory payments that are required to be paid in the normal running of the Franchise Showroom.*
- (b) Expenses pertaining to employee's remuneration.*
- (c) Expenses pertaining to utilities and public services including telephones, electricity and water, that are required for the day to day running of the Franchise Showroom.*

- d) *Expenses in connection with the decoration of the shop and display and merchandising of goods,*
- (e) *Expenses in connection with maintenance, upkeep, repairs and renovation of the Franchise Showroom.*
- (f) *Entertainment expenses incurred on customer relationship development and management.*
- (g) *Expenses incurred in engaging the services of security guards posted in the Franchise Showroom.*
- (h) *Expenses in connection with providing uniform to the sales personnel.*
- (i) *Expenses pertaining to "KARAT METER" weighing balance, computer melting kit and tools required for services.*
- (j) *All other taxes including property tax, corporate tax and any other direct or indirect tax levied by the appropriate governmental authority.*
- (k) *Sharing of local advertisement expenses (50-50 by both parties) as per the given budget decided by the COMPANY.*
- (l) *Repairing of jewellery items locally*
- (m) *All bank charges including charges on credit/debit card transactions*
- (n) *Payment of franchisee fees*
- (o) *The cost of stock insurance will be borne by the franchisee*
- (p) *Franchisee will maintain at least 85% of stocks at all times, against agreed assortment*

The above mentioned list is only illustrative and not exhaustive and the FRANCHISEE shall pay any other expense which may arise during the course of operations which is not mentioned as above but is important to be incurred for the smooth functioning of the Franchisee Showroom.

9. HUMAN RESOURCES, EMPLOYEES AND STAFF

9.1 The FRANCHISEE shall at its own expense and cost employ suitable personnel i.e. counter sales persons as well as support staff as the COMPANY may consider necessary for providing efficient service to customers, for maintaining the premises, for displaying stocks and for performing other functions.

XXXX-XXX-XXXX

10.5 All rates, taxes fees, charges and other statutory payment shall be the responsibility of the FRANCHISEE and the FRANCHISEE hereby undertake to indemnify the COMPANY against all such liabilities.

10.5 The authorized representatives of the COMPANY shall have access. to and shall be entitled to inspect records and make photocopies of certified copies of all such records.

10.6 Any loss or penalty imposed on account of the failure to comply with legal requirements shall be borne by the FRANCHISEE and the COMPANY shall not be liable for any damages or payments in this regard.

XXXXX-XXX-XXXX

14.2 The COMPANY's decision in respect of the violation of any of the terms of this agreement shall be final and binding on the FRANCHISEE.

The COMPANY shall not be liable for any damages, claims for loss of profit, loss of investment or any such claim of a similar nature, in the case of termination of this agreement by any party by any mode or for whatsoever reasons.

14.3 Upon expiry/termination of this Agreement the FRANCHISEE shall:

xxxx-xxx-xxxx

(v) Change the Franchise Showroom interior design concepts as required by the COMPANY.

xxxxx-xxx-xxxxx

(ix) Handover the possession of the showroom premises to the COMPANY without demur in as is where is condition or in such condition as the COMPANY may deem it just and necessary. In case if the FRANCHISEE fails to vacate the showroom premises, then the FRANCHISEE shall be liable to indemnity and keep indemnified the COMPANY for all the loss, damages caused to the COMPANY due to such act of the FRANCHISEE.

xxxx-xxx-xxxxx

15.4 ARBITRATION AND JURISDICTION

15.4.1 All or any disputes arising from or out of or touching upon or in relation to the terms or formation of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration by a Sole Arbitrator shall be appointed by mutual consent of the parties. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act. 1996, or any statutory amendments, modifications or re-enactment thereof for the time being in force.

In case of the failure to reach upon a consensus with regard to the appointment of sole arbitrator with mutual consent between the COMPANY and FRANCHISEE within a period of 30 days, the COMPANY and FRANCHISEE each will appoint an arbitrator and the two arbitrators shall appoint the presiding arbitration. The arbitration proceedings shall be held in English language and decision of the Arbitrator including but not limited to costs of the proceedings/award shall be final and binding on the parties. The cost of arbitration shall be borne and paid by the COMPANY and FRANCHISEE in equal proportion. The venue of the arbitration shall be at Delhi.

15.4.2 Jurisdiction of all legal matters shall be the courts in the city of Sirsa (Haryana). The Courts at Sirsa (Haryana) alone shall have the jurisdiction in all matters arising out of/touching and/or concerning this Agreement”

A perusal of the clauses of the above-reproduced franchise agreement would show that the same are more onerous upon respondent No.2 than the terms of the lease deed. Even as per the

franchise agreement, respondent No.2 had undertaken/confirmed that they would carry out all the interior decoration of the showroom including, structure and installation of fittings. As per clause 3, respondent No.2 was to pay franchise fee of Rs.5 lakhs + 18% GST and a fixed royalty of Rs.2 lakhs per annum for subsequent years in addition to the payment to be made to the company in advance on account of the purchase of the jewellery from the company. It had been further provided in the Franchise Agreement that respondent No.2 accepts that the franchise showroom, interior design drawings and concepts are exclusively the property of the company. Respondent No.2 was also required to pay all the expenses incurred in the business to be carried out in the showroom and also pay all taxes, fees, charges and in case, any default was committed by the respondent no.2 as detailed in Clause 13, then, the company had the option to terminate the agreement. Clause 14.2 provided that the company's decision with respect to the violation of the terms of the agreement would be final and binding on the franchisee and the company shall not be liable for any damages. Clause 15.4 provided for an arbitration clause which is similar to the arbitration clause in the lease deed. It is thus, apparent that as per the franchise agreement, the investment to be made by respondent no. 2 was much higher as respondent no.2 had to employ their own persons, pay all expenses for carrying out the business, pay a one-time franchise fee and royalty for every year, which is not the case in the lease deed.

In the present case, even as per the case of respondent No.2, the franchise agreement was not acted upon and in case, respondent No.2 wanted to act upon the said franchise agreement, then, her obligation under the same would have been more onerous. The rights of the company under the said franchise agreement were on an equivalent footing if not higher, than in the lease agreement. Thus, the plea of respondent No.2 that he wanted to execute the franchise agreement, but was forced to enter into the lease deed, apart from being an afterthought, is absolutely baseless and in any case, does not constitute the commission of any offence, much less, Section 420 IPC.

18. Reliance placed upon by the respondent no. 2 on receipt dated 01.03.2019 to show that as per the certificate given by Saluja & Company, Architectural / Engineering Consultants, Rs.85 lakhs have been spent by respondent No.2, also does not further the case of respondent No.2. As per the lease deed as well as the franchise agreement, relied upon by respondent No.2, the said expenses had to be borne by respondent No. 2 and was thus, the contractual obligation of Respondent no.2. Even with respect to the argument of learned senior counsel for respondent No.2 that on account of there being four gunmen hired by the company for its security, the offence of criminal intimidation has been made out, it is observed that the same is completely misconceived, inasmuch as, firstly the FIR has not been registered under Section 506 IPC and secondly, the only allegation that has been made in the FIR is that the company has appointed four gunmen for its own security and there is no allegation with respect to

any act committed by the said gunmen or any other person so as to remotely bring the case within the parameters of criminal intimidation so as to constitute the offence under Section 506 IPC. Even the arguments raised by learned Senior counsel for respondent No.2 with respect to mischief, is misconceived, inasmuch as, firstly the FIR has not been registered under Section 425 IPC, which constitutes the offence of mischief. Secondly, there is nothing to remotely show as to how the said offence is stated to have been committed. Even with respect to the alleged loss caused, it is observed that the same is on the basis of calculations made by respondent No.2, which are contrary to the specific terms and conditions of the lease deed.

19. The following points emerge from a perusal of the FIR, admitted documents such as lease deed, emails, legal notice etc.: -

- i) In the present case, a purely civil dispute is being sought to be given a criminal colour.
- ii) It is the admitted case of the parties that there is a lease deed dated 01.04.2019 and respondent No.2 had tried to set up a case contrary to the written terms of the said lease deed and has stated that the amount payable by the company to respondent no.2 would be more than as provided for, in terms of the lease deed. Clause 3.2 of the Lease Deed specifically provides that other than the percentage of sale as provided in the said clause, the company would not be liable to pay any additional rent. Thus, to sustain a plea contrary to the written

terms of the agreement, heavy onus would lie on the respondent no.2, which could be appropriately adjudicated upon only in civil proceedings/arbitration proceedings.

iii) Para 3.2 of the Lease Deed, the contents of which have been relied upon in the legal notice issued by Respondent no.2, is now sought to be projected by respondent no. 2 to be the clause on account of which, respondent no.2 is not able to earn rental income as had been allegedly orally promised.

iv) The lease deed as well as the alleged franchise agreement on which reliance has been placed by respondent No.2, is between the company and respondent No.2 and the company has not been made an accused in the present case. The petitioner is not even a signatory to the above-said two agreements and there is no privity of contract between the petitioner and respondent no.2. In the emails or in the legal notice and other admitted documents, there is no allegation much less, any specific allegation against the present petitioner.

(v) The allegation that respondent No.2 had to spend substantial money on the showroom for changing its interior, would not constitute any offence, inasmuch as, the same was the requirement of the terms of both the lease deed as well as franchise agreement relied upon by respondent No.2 and at any rate, the amount spent on the said improvements/additions is for the benefit of the showroom which still belongs to respondent No.2. Money is stated to have been spent on wooden furniture, split AC, generator mark Kirloskar, tiles granite and

marble, five computers with hardware etc., which in any case, are in the ownership of respondent no.2.

vi) There is a delay of 2 years and 4 months in the filing of the complaint on the basis of which, the present FIR has been registered.

vii) Complaint with respect to the FIR has been given on 13.08.2021 and the information had been received at the Police Station on 14.11.2021, whereas, in the FIR it has been alleged that the respondent no.2 was made to sign the lease deed on 01.04.2019 in spite of objections raised by her.

viii) In the FIR, there is no allegation of fraudulent inducement having been made by the accused persons at the time of inception of the relationship, i.e, on 15.01.2018, which as per the case of the respondent no.2, was the starting point of the said relationship between the respondent no.2 (landlord) and the company (tenant) and thus, on the said ground also, the offence under Section 420 is not made out.

ix) A perusal of the admitted documents i.e., email, legal notice given on behalf of respondent no.2 would show that the respondent no.2 has relied upon the clauses of the agreement and no plea of coercion/undue influence has been taken in the same.

x) The allegation in the FIR that 4-5 lac rupees would be the income earned by respondent no.2 by letting out the showroom and a minimum income of Rs.50,000/- was guaranteed, is contrary to the

specific terms and conditions of the lease deed, which does not even remotely state that any minimum income is guaranteed. As per settled law, even in civil proceedings, heavy onus is placed upon a party to substantiate its claims in case, the same is based on oral assertions contrary to written documents.

xi) With respect to the allegation regarding taking away the gold stock from the showroom by the company officials, it is observed that the same would not constitute any offence as the gold items etc. belong to the company and as per the reply of the Company to the legal notice, it is the case of the company that they replenish their stock periodically.

xii) With respect to the allegations regarding the scheme namely, JFL, it is observed that no so-called customer has filed any complaint before any Court. At any rate, it is not the case of the complainant that any money had been collected from the complainant under the said scheme and thus, the offence of cheating is not made out even on the said allegation. Moreover, the said allegations are absolutely vague.

xiii) The allegations with respect to loan and non-payment of income tax are vague and apparently an afterthought as the perusal of the admitted documents (email dated 09.04.2021 P-3) would show that the only issue which respondent No.2 and her husband had raised was that they wanted to change the terms of the lease deed after a period of two years from the date of the execution of the lease deed and there was no allegation in the said admitted documents (emails,

legal notice etc.) that any loan had been misappropriated or that any income tax had been evaded. Moreover, there is no allegation that any bank or income tax authority has proceeded against the company or the petitioner.

xiv) From a perusal of the FIR and the admitted documents, the grievance of respondent no.2 at best, could be that the lease/rent/commission that respondent no.2 earned from the showroom was lesser than the amount which the respondent no.2 was expecting. Sales in a particular case and the earning thereof, would depend upon several factors and in the present case, the discontent is reflected for the first time by the respondent no. 2 and her husband on 09.04.2021 (P-2) in their email, when the whole country was in the midst of a pandemic i.e., COVID-19 during which, earnings in most businesses had declined.

xv) It was the case of the petitioner that an amount of Rs.1,13,451/- only, is due from the company as per the terms of the lease deed and the same could not be paid on account of registration of the present FIR and the petitioner is even now ready to pay the said amount to respondent No.2. On the other hand, the fact that Rs. 1,13,451/- is due as per the agreement has neither been rebutted nor it has been stated that an amount, higher than the said amount, is due as per the terms of the agreement, but a plea has been raised that a higher amount, on account of alleged oral assurances stated to have been made by the accused persons and as alleged in the FIR, is due to respondent no.2.

Even a perusal of the written statement filed by respondent No.2 would show that it is not the case of respondent No.2 that the amount as alleged in the FIR is due, on account of non-payment of any amount in terms of the lease deed.

xvi) It is the case of the petitioner that gold amounting to Rs.2.7 crores belonging to the company is still lying in the shop in question, which has been locked by respondent No.2 and the same cannot be opened without respondent No.2 unlocking the lock which has been put by them. In the FIR (at page 66), it has been alleged by respondent No.2 that the alleged loss suffered by respondent No.2 be recovered to her and in case, any jewellery is left then the same may be seized so that respondent No.2 could be compensated. The said allegation in the FIR gives some credence to the case of the petitioner to the effect that stock of gold is lying in the shop and thus, all the said pleas are necessarily required to be adjudicated either before an arbitrator or before the Civil Court/rent controller, after both the parties get an opportunity to lead their evidence.

xvii) A perusal of the FIR, admitted documents including lease deed, emails, legal notice etc. would show that the necessary ingredients of Section 420 IPC under which the FIR has been registered, are not made out.

20. The Hon'ble Supreme Court of India has repeatedly held that the practice of giving a criminal colour to a purely civil dispute with a malafide intent and an ulterior motive to extract money from

the accused persons as a shortcut to civil proceedings, should be deprecated and in a large number such cases, the Hon'ble Supreme Court has quashed criminal proceedings. Some of the judgments on the said proposition have been noted hereinunder:-

21. The Hon'ble Supreme Court of India in a recent judgment in "Mitesh Kumar J. Sha Vs. State of Karnataka and others", reported as **2021 AIR (Supreme Court) 5298**, has held as under: -

" xxx xxx xxx xxx xxx xxx "

2. This appeal is directed against the judgment and order dated 13.08.2019 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 2691 of 2016, filed by the Appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the FIR No. 185/2016 dated 29.03.2016 implicating the appellants for offences under Section 420 read with Section 34 IPC and to quash the proceedings in C.C. No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, initiated pursuant to charge sheet dated 29.03.2017 against the appellants for offences punishable under Sections 406, 419, 420 read with Section 34 of IPC. The High Court vide order impugned herein dismissed the same.

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Respondent No. 2 on the other hand filed a police complaint claiming that the sale of flats was in excess of the share agreed between the parties. The complaint (Respondent No.2), inter-alia, had two contentions-

- *First, that the GPA was not executed in favour of the company, therefore, company could not have sold the said apartments.*

- *Secondly, flats sold by the company belonged to Respondent no. 2's share. Flats alleged to have been sold in excess bearing No. 002, 301, 304, 404.*

*10. Pursuant to this complaint, FIR No. 185/2016 dated 29.03.2016, was registered against Appellant No. 1 and 2 for offences punishable under section 420 read with 34 of Indian Penal Code. **Appellants herein, thereby approached the High Court of Karnataka seeking quashing of the said FIR invoking Section 482 of CrPC.***

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It was further observed that since there are allegations against the Appellants for having sold the flats contrary to the terms of MoU, there were no grounds to interfere with the matter. The Appellants herein, thereby approached this court by way of the present Special Leave Petition.

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18. Respondent No. 2 who appeared in person on the contrary submits that the developer company of the Appellants being entitled to sell only 9 flats has executed a sale deed for 13 flats in all. Further the sale of 4 flats (flat nos. 002, 301, 304 & 404) beyond the 9 flats is in excess of the Appellants company's share and therefore Respondent No. 2 has been constrained to lodge a complaint for cheating against the Appellants.

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24. It is further contended that sale deed in respect of 8000 sq. ft. area cannot be executed by the Appellants as Respondent No 2 had not given GPA to sell the said area. Therefore, the sale made by the Appellants in excess of their authority is unlawful and is indicative of the criminal intent of the appellants.

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26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant

case: - Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

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As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s India n Oil Corpora tion v. M/s. NEPC India Ltd & Ors., (2006) 6 SCC 736 , as under :-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

42. It was also observed:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."

43. On an earlier occasion, in case of G. Sa ga r Su ri a nd Anr. v. State of UP and Ors., (2000) 2 SCC 636 , this Court has also observed:-

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not

to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

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The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

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47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

48. In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed.

49. As a result, appeal stands allowed."

Perusal of the above judgment would show that petition filed under Section 482 Cr.P.C. by the petitioner therein challenging

the FIR registered under Section 420 IPC was dismissed by the High Court, but in the appeal filed by the accused persons, the same was allowed and the criminal proceedings were quashed. In the said case, as per the allegations made by complainant therein, it was stated that accused persons therein, had sold flats contrary to the MoU and had sold 13 flats although, they were entitled to sell 9 flats. The Hon'ble Supreme Court had framed three issues, out of which, two specific issues were: 1. "whether the sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating" and 2. "whether the dispute is one of entirely civil nature and therefore liable to be quashed". The Hon'ble Supreme after relying upon a series of judgments including the judgment **M/s Indian Oil Corporation v. M/s. NEPC India Ltd & Ors.**, reported as **(2006) 6 SCC 736** and after noticing a growing tendency in business circles to convert purely civil disputes into criminal cases, allowed the said appeal, set aside the Order passed by the High Court and quashed the criminal proceeding. It was observed that the complainant therein had made an attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it and the same was done merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute and such an exercise was held to be nothing but an abuse of the process of law, which is required to be discouraged. The principle as laid down in the said judgment fully applies in the present case also.

22. The Hon'ble Supreme Court of India in "**G. Sagar Suri Vs. State of U.P.**", 2000(2) SCC 636 has observed as under: -

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2. This appeal is directed against the judgment dated June 5, 1999 of Allahabad High Court dismissing the application of the appellants filed under Section 482/482. Saving of inherent powers of High Court - Nothing in this Code shall be deemed or limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice.] of the Code of Criminal Procedure (for short, the 'Code'). By this application the appellants had sought quashing of the criminal proceedings pending against them under Section 406/420

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8. Jurisdiction under section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

9. In State of Kanataka v. L. Munishwamy and others, AIR 1997 Supreme Court 1489: 1977(3) SCR 113 this Court said that in the exercise of the wholesome power under section 482 of the Code High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed.

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11. *In Chandrapal Singh and others V. Maharaj Singh and another, AIR 1982 Supreme Court 1238, the judgment started as under:-*

"A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."

This Court said :-

"We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 Criminal Procedure Code, 1973"

12. *This Court said that the Chief Judicial Magistrate, Secunderabad ought not to have taken cognizance of the proceedings. It said it considered it to be a fit case to invoke jurisdiction under section 482 of the Code.*

13. *In the circumstances of the case in hand conclusion is inescapable that invoking the jurisdiction of criminal court for allegedly having committed offences under Sections 406/420 Indian Penal Code by the appellants is certainly an abuse of the process of law.*

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As normally understood business of a finance company is to invite deposits, pay interest on that and also to give loans and

earn interest. A finance company also advances short term loans. In that case it is essentially a commercial transaction.

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In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 Indian Penal Code and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.

15. The appeal is allowed and judgment of the High Court dated June 5, 1999 is set aside and prosecution of the appellants under Sections 406/420 Indian Penal Code in Criminal Case No. 674/97 (now Criminal Case No. 6045/98) and pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed.”

A perusal of the above judgment would show that even the said case arose out of proceedings initiated under Section 482 Cr.P.C. before the High Court and the appeal had been filed against the judgment vide which the said petition under Section 482 Cr.P.C. was dismissed by the High Court. In the said case, it was observed that even in a petition under Section 482 Cr.P.C, it is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence as criminal proceedings is not a short cut for other remedies available in law and before issuance of process, a criminal court has to exercise a great deal of caution and power under Section 482 Cr.P.C., has to be exercised to prevent abuse of the process of the court or otherwise to secure the ends of justice. The case was found to be a case involving a commercial transaction and accordingly, the appeal was allowed and the criminal proceedings were quashed and the judgment of the High Court was set aside.

23. The Hon'ble Supreme Court of India in "**Syed Yaseer Ibrahim Vs. State of Uttar Pradesh and another**", passed in **Criminal Appeal No.295 of 2022, decided on 28.02.2022**, has observed as under:-

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2 This appeal arises from a judgment dated 10 August 2021 of a Single Judge of the High Court of Judicature at Allahabad. The Single Judge dismissed a petition under Section 482 of the Code of Criminal Procedure 1973 filed by the appellant for quashing the charge-sheet, which was submitted on 12 February 2021, an order taking cognizance dated 8 March 2021 and the proceedings which arise out of Case Crime No 15 of 2020 for an offence punishable under Section 420 of the Indian Penal Code 18602 registered at PS Swaroop Nagar, District Kanpur Nagar.

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The allegation in the FIR, Crime No 15 of 2020, is that in pursuance of a Power of Attorney executed by Wasif on 29 October 2018, the second respondent visited the disputed property on 24 November 2019 and found that certain work of demolition was being carried out. Insofar as the appellant is concerned, the allegation is that he has committed an offence punishable under Section 420 of the IPC. Against the three other co-accused who have been named in the FIR, there are allegations in regard to offences allegedly punishable under Sections 323, 504 and 506 of the IPC. After investigation was complete, a charge-sheet was submitted before the competent court on 12 February 2021.

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In this backdrop, the continuation of the prosecution against the appellant would amount to an abuse of the process where a civil dispute is sought to be given the colour of a criminal wrong doing.

10. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Single Judge of the High Court of Judicature at Allahabad dated 10 August 2021. In consequence, the petition under Section 482 of CrPC will stand allowed by quashing the charge-sheet dated 12 February 2021, confined only to the appellant.

Perusal of the above judgment would show that the challenge in the said case was to the judgment of the High Court vide which a petition under Section 482 Cr.P.C. for quashing had been dismissed. In the said case, it was found that the disputes between the parties therein was a civil dispute and was sought to be given the colour of a criminal wrong and accordingly, the appeal was allowed and the impugned order was set aside and the criminal proceedings were quashed qua the appellant therein, although, as far as the other accused were concerned, the proceedings were ordered to be continued as the said co-accused persons had been alleged to have committed the offences under Sections 323, 504 and 506 IPC.

24. The Hon'ble Supreme Court in "**Anand Kumar Mohatta and another Vs. State (NCT of Delhi), Department of Home and another**", reported as (2019) 11 Supreme Court Cases 706, has held as under: -

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Leave granted. This Criminal Appeal is filed by Appellants challenging the final judgment and order dated 02.02.2016 of the High Court of Delhi. The High Court vide the above dated final judgment and order dismissed the petition filed by the Appellants under Section 482 of Criminal Procedure Code and refused to quash FIR No.0139/2014 dated 20.08.2014. During the pendency of the

appeal in this Court, Respondent No.1 filed charge sheet dated 03.08.2018 in the Court of Metropolitan Magistrate, Patiala House Court, Delhi against the Appellants herein. Thus, by way of amendment to the main prayer in the appeal, Appellants have also prayed for quashing of charge sheet dated 03.08.2018. Appellants seek quashing of the FIR dated 20.08.2014 and the charge sheet dated 03.08.2018.

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8. The High Court, however, disposed of the Appellants' petition filed under Section 482 on the ground that the petition has been filed pre-maturely as the case is still at the stage of investigation. The High Court directed the investigation to proceed and further directed the Appellants to join the investigation.

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12. Shri Sanjiv Sen, vehemently submitted that the charge under Section 406 against the Appellant No.1 arises from the fact that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the development agreement dated 03.06.1993 to his wife i.e Appellant No.2.

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15. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

"482. Saving of inherent powers of the High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

16. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise

jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court

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26. *In Indian Oil Corpn. V. NEPC (India) Ltd., this Court observed as follows: (SCC p. 749, para 13)*

: "13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged...."

The Court noticed a growing trend in business circles to convert purely civil dispute into criminal cases.

27. *We find it strange that the complainant has not made any attempt for the recovery of the money of rupees One Crore except by filing this criminal complaint. This action appears to be mala fide and unsustainable."*

A perusal of the above reproduced judgment would show that the High Court in the said case had dismissed the petition under Section 482 Cr.P.C. by observing that the said petition had been filed pre-maturely as the case was still at the stage of investigation. The Hon'ble Supreme Court after considering the powers of High Court under Section 482 Cr.P.C. and after noticing the growing trend in business circles to convert purely civil dispute into criminal cases wherein, no attempt was made by the complainant therein to recover the money amounting to Rs. One crore except for filing the criminal case, observed that the action of the complainant therein was malafide and unsustainable and accordingly, the FIR was quashed and the order of the High Court was set aside and the appeal was allowed.

In the present case also, no suit/proceedings have been filed/instituted by respondent No.2 for the recovery of the alleged amount due to respondent No.2, except for filing the present criminal case, so that her demands can be met by pressurizing the accused persons under the threat of criminal prosecution.

25. The Hon'ble Supreme Court of India in **Randheer Singh Vs. State of U.P. & Ors.**, arising out of **Criminal Appeal No.932 of 2021**, decided on 02.09.2021, has held as under:-

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2. This appeal is against a judgment and order dated 15th December, 2020 passed by the High Court of Judicature at Allahabad dismissing the application of the Appellant under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.').

3. As recorded in the judgment and order impugned, the application under section 482 of the Cr.P.C., 1973 had been filed for quashing of proceedings in Crime Case No.5973/2020 (State v. Rajan Kumar) under Sections 420, 467, 468 and 471 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.'), Police Station Shahpur, District Gorakhpur pending in the Court of the Additional Chief Judicial Magistrate, IIIrd District Gorakhpur and also to quash the charge sheet dated 18th January, 2020 and summoning order dated 26th June, 2020.

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13. As pointed out by Mr. Sanjeev Agarwal, learned counsel appearing on behalf of Respondent No.2, the FIR was challenged in the High Court of Judicature at Allahabad under Article 226 of the Constitution of India. The said writ petition was disposed of by order dated 5th October, 2017 with the following order:

"It is contended that the dispute in respect of the property as to whether the petitioners have any right therein on the basis of conveyance deed executed by power of attorney holder or the first informant has the right is purely civil in nature and does not give rise to any criminal liability.

Learned AGA and Sri Sudhanshu Pandey, appearing for complainant-respondent no. 3 opposed the petition.

We have gone through the allegations contained in the impugned F.I.R., which, prima-facie, discloses commission of cognizable offence, as such, we are not inclined to interfere in the F.I.R.

However, in view of the facts and the allegations made in the FIR, writ petition stands finally disposed of with the direction that the petitioners shall not be arrested in the aforesaid case crime number till submission of police report under Section 173(2) Cr.P.C., 1973 before the Court concerned, subject to their cooperation in the investigation, which will go on and shall be brought to a logical end."

14. Mr. Agarwal, submitted that the order dated 5th October, 2017 of the High Court disposing of the Writ Petition (Criminal Miscellaneous) No.20919 of 2017 had not been challenged by the Appellants and had, thus, assumed finality. It was not open to the Appellant to reopen the same issues by filing an application under section 482 of the Cr.P.C., 1973

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Whether Bela Rani had title, whether she validly executed a power of attorney, whether any right has accrued to the Appellant, are matters for the civil court to adjudicate.

20. There is a further allegation that on the basis of the false sale deed, the Appellant and Rajan Kumar (since deceased) in association with the witnesses of the sale deed who are "criminal natured persons" were attempting to trespass the house by breaking open the lock and had got written their name in the absence of the complainant.

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23. *Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*

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The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

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35. *The appeal is, thus, allowed. The impugned judgment and order of the High Court is set aside and the proceedings in Crime Case No.5973/2020 are quashed as against the Appellant.*

In the said case, the petition which was filed under Section 482 C.P.C for quashing of the criminal proceedings under Sections 420, 467, 468 and 471 of the IPC, was dismissed by the High Court by observing that *prima facie* perusal of the FIR discloses commission of cognizable offence. The Hon’ble Supreme Court had observed that the issue as to whether Bela Rani had title, whether she had executed a power of attorney and whether any right was accrued to the appellant therein, were matters for the civil court to decide and allowed the appeal and set aside the order of the High Court and further, held that the High Court is to see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence and

after considering the said aspect, quashed the criminal proceedings therein.

In the present case also, the question as to whether respondent No.2 could be held to be entitled to any money, including damages etc., in spite of the fact that the specific terms of the agreement entered into between the parties do not provide for the same, are all issues which have to be decided by the civil Court/arbitrator as, in order to claim amounts beyond the written agreement, a very heavy onus would lie upon the respondent no.2, which she would have to discharge to be able to make good her claim and the appropriate forum for the same would be a civil Court/Arbitrator.

26. The Hon'ble Supreme Court of India in "**Uma Shankar V. State of Bihar**", **reported as 2005(10) SCC 336**, has held as under:-

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2. This appeal by special leave has been filed challenging the judgment rendered by Ranchi Bench of Patna High Court, as it then stood whereby petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Criminal Procedure Code') filed on behalf of the appellant for quashing the first information report lodged against him has been dismissed.

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According to the complainant thereafter on 20.7.1995 the appellant called upon him at his Sindhri house and induced him to permit the appellant to handle the insurance claim, which request

was acceded to by the complainant on assurances given by the appellant that when the claim of Rs. 4,20,000/- is received from insurance company, out of that a sum of Rs. 2,60,000/- which the complainant was entitled to receive would be paid to him. Upon this assurance a complaint was made by the accused persons before the West Bengal Consumers Grievances Redressal Forum in which the complainant was also made a party and by order dated 23rd July, 1996 the entire claim was allowed and insurance company was directed to pay Rs.4,20,000/- with interest accrued thereon and pursuant thereto insurance company issued a cheque for Rs. 4,20,000/- in favour of the Corporation which was encashed by the appellant but out of the said amount a sum of Rs. 2,60,000/- was never paid to the complainant in spite of assurances given to him by the appellant which necessitated filing of the complaint for prosecution of the accused persons. Upon filing of the complaint, the Magistrate did not entertain the same but directed the police to register a case and investigate. Pursuant to said direction, the police registered a first information report which was numbered as Sindhri P.S. Case No.23/98 dated 3.3.1998 under Sections 420/120B of the Indian Penal Code against all the aforesaid three accused persons including the appellant.

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6. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B of the Indian Penal Code and **the present case is a case of purely civil dispute between the parties for which remedy lies before a Civil Court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of Court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 of the Criminal Procedure Code which it has erroneously refused.** It appears that though the complaint was filed against three persons one of whom Vijay Shankar has died as stated above, there is another accused Gopalika Financial Corporation Limited which has neither moved the High Court nor this Court for quashing the first information report relating to it. But in view of our conclusion that the first information report does not disclose any

offence whatsoever and the prosecution is liable to be quashed, we are of the view that it would be just and expedient to quash prosecution launched against the aforesaid Corporation as well.

7. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and police investigation and consequent prosecution of the appellant as well as the Corporation are hereby quashed.

Appeal Allowed”

In the said case also, a petition under Section 482 Cr.P.C. filed on behalf of the accused for quashing of the FIR was dismissed by the High Court. The Hon’ble Supreme Court, after considering the allegations made in the complaint including the allegations of inducement and assurances made, observed that a case of purely civil dispute had arisen between the parties for which remedy lies before a Civil Court by filing a properly constituted suit and to allow the police investigation to continue would be an abuse of the process of Court and to prevent the same it would be just and expedient for the High Court to quash the same by exercising the powers under Section 482 of the Criminal Procedure Code.

27. The Hon’ble Supreme Court of India in “**Veer Prakash Sharma v. Anil Kumar Agarwal**”, reported as 2007(7) SCC 373, has held as under: -

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2. The parties hereto entered into a contract for sale and purchase of welding rods. Appellant allegedly did not pay some amount due from him towards supply of the said article. He issued two cheques for a sum of Rs. 3,559/- and Rs. 3,776/- in the year

1983. The said cheques were dishonoured. Alleging that by reason of such act, the appellant has committed offences under Sections 406, 409, 402 and 417 of the Indian Penal Code a complaint petition was filed by the First Respondent in the Court of Special Judicial Magistrate, Rampur which was marked CC No. 132 of 1986. The principal allegation made therein against the appellant reads as under :

"That applicant, regarding these cheques and payment of money, wrote several times to accused and also sent his representative. But he kept on making excuses in making payment. At last he told on 19.12.1985 that he had issued fabricated cheques knowingly with an intention to cheat him and grab his money. He would not pay his money, he is free to take any action, whatever he likes."

3. In his statement under Section 200 of the Code of Criminal Procedure, Respondent No. 1 alleged :

"... Both the Cheques were, thus, dishonoured. I also wrote to accused regarding dishonour of Cheques, even I, myself, visited him and also sent to my Representative, but the accused kept on making excuses for making the payment. At last, on 19.12.1985, he told that he had knowingly issued these false and fabricated Cheques only to deceive and grab his money. He further told that he shall never pay back his money. You can do whatever you like. I went to lodge the Report, but Thana Officials did not note down the Report."

4. One of the witnesses Shri Rajendra Kumar Saxena in his statement alleged :

"I was working as Supervisor in Hira Electronics during 1983. Accused Vir Prakash has purchased Electric Rods from the company worth Rs. 3,599.33 and Rs. 3,776.73. Money was paid later on through Bank cheques both cheques were dishonoured by Bank. When accused was later on asked for the payment of the amount taken accused refused to pay and said that he had knowingly issued the fabricated cheques to deceive and grab the money. You can do what you like."

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6. *Cognizance was taken against the appellant. He was summoned. An application was filed by him on 25.8.1987 for quashing of the said criminal proceeding before the High Court. A learned Single Judge of the Allahabad High Court by reason of the impugned order dated 3.1.2006 while refusing to exercise his jurisdiction stated :*

"As the allegations against the applicant are factual in nature, that cannot be adjudicated in the present application, there is no ground for quashing criminal proceedings. Stay order, if any, stands vacated. The trial Court is directed to conclude the trial expeditiously."

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8. *The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.*

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In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Indian Penal Code.

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11. *For the reasons aforementioned, the impugned judgment is set aside. The order taking cognizance is quashed. The appeal is allowed. In the facts and circumstances of the case, no offence is made out.*

Appeal allowed."

In the said case, the Hon’ble Supreme Court had observed that non-payment or underpayment of the price of the goods

by itself does not amount to commission of an offence of cheating or criminal breach of trust and accordingly, set aside the order passed by the High Court vide which the petition under Section 482 Cr.P.C. had been dismissed on the ground that the allegations against the accused therein were factual in nature. The criminal proceeding in the said case was quashed.

28. The Hon'ble Supreme Court of India in ***Hotline Teletubes and Components Ltd. & others V. State of Bihar & another***, reported as **2005 (10) SCC 261**, has held as under: -

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It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under section 406 or 420 Indian Penal Code. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same.

3. Accordingly, the appeal is allowed and prosecution of the appellants is hereby quashed.”

Even in the said case, it was observed that the dispute in the case was a purely civil dispute and accordingly, the criminal proceedings were quashed.

29. The Hon'ble Supreme Court of India in :**Vesa Holdings P. Ltd. & anr. v. State of Kerala & Ors.**”, reported as **2015(8) SCC**

293 as well as in “Anil Mahajan Vs. Bhore Industries Ltd. and another”, reported as (2005) 10 Supreme Court Cases 228, quashed the criminal proceedings which were primarily of a civil nature and observed that mere use of the expression "cheating" in the complaint is of no consequence and in case, after considering the substance of the complaint/FIR, if it is found that the same is a civil dispute, then the criminal proceedings should be quashed.

30. The Hon'ble Supreme Court of India in a latest judgment in the case “Vijay Kumar Ghai and others V. The State of West Bengal and others”, passed in Criminal Appeal No.463 of 2022 (arising out of SLP (Crl.) No.10951 of 2019), decided on 22.03.2022, had also quashed the FIR therein, which was registered under Sections 420, 406 and 120-B of the Indian Penal Code, 1860 and had set aside the order of the High Court, vide which the petition under Section 482 Cr.P.C. was dismissed by observing that the allegations in the FIR disclosed the commission of the offence alleged and that there were allegations in the FIR to the effect that the accused therein had induced the complainant to purchase share or invest money by willful misrepresentation. On appeal, the Hon'ble Supreme of India had observed that the dispute was purely a contractual dispute and the same was being given a criminal colour and after considering the judgment in ‘G. Sagar Suri and another Vs. State of U.P. and others’ (supra) as well as other judgments, allowed the appeal and quashed the proceedings.

31. The Hon'ble Supreme Court of India in case "**Sripati Singh (since deceased) through is son Gaurav Singh Vs. The State of Jharkhand and others**", passed in **Criminal Appeal Nos.1269-1270 of 2021 (arising out of SLP (Criminal) Nos.252-253/2020)**, **decided on 28.10.2021**, had placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Samir Sahay alias Sameer Sahay V. State of UP and another**, reported as **(2018) 14 SCC 233** and had reiterated the proposition that in a dispute which is primarily civil and there is a breach of contract on the part of the accused and the accused has not refunded the amount due, would not constitute an offence of cheating. It was noticed in the said case of **Samir Sahay (supra)** that although the amount of loan had not been refunded yet, the same would not fall within the meaning of cheating.

32. The principles laid down in the above-said judgments by the Hon'ble Supreme Court would apply in the present case, inasmuch as, in the present case, a purely civil dispute, based on a written contract between the landlord and the tenant, has been sought to be given a criminal colour by stretching the contours of a civil dispute, with a malafide intent and an ulterior motive, in order to extract money out of the company and the petitioner instead of filing a civil suit/ initiating the arbitration proceedings, as per the arbitration clause, has chosen to institute the present the criminal proceedings and the same amounts to an abuse of the process of the Court and thus, the FIR and the subsequent proceedings arising therefrom, deserve to be quashed on the said ground alone.

33. There is another aspect in favour of the present petitioner. The lease deed is between the company and respondent No.2. The petitioner is not privy to the said agreement and has not signed the same. Even the franchise agreement, which is sought to be relied upon by respondent No.2, is also between the company and respondent No.2 and even the said agreement has not been signed by the petitioner. The facts emerging from the admitted documents, moreso, the emails, are that respondent No.2 had been corresponding/communicating with Sheiba Anand (accused No.2) and not with the present petitioner. The company in the present case has not been made an accused. Apparently, the petitioner has been roped in the matter, only on account of the position he holds in the company, so as to enable respondent No.2 to pressurize and to extract money out of the company/petitioner.

34. The Hon'ble Supreme Court of India in "**R. Kalyani Vs. Janak C. Mehta and others**", (2009) 1 Supreme Court Cases 516, has held as under: -

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2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.

3. *Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :*

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorise the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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10. *In Hamida v. Rashid, this Court opined" (SCC p. 78, para 6):*

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the

Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

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13. *In Kailash Verma v. Punjab State Civil Supplies Corpn. this Court stated : (SCC pp. 573-74, para 4)*

"5. In Krishna v. Krishnaveni this question came up for consideration. That was a case where the complaint was registered under Sections 420, 406 Indian Penal Code. After inquiry, the police filed a report stating that the case was essentially of a civil nature and no offence was made out. The complainant brought the matter to the Superintendent of Police. As per the directions of the Superintendent of Police, the case was investigated by the Crime Branch and a fresh report was filed under Section 173 Indian Penal Code. On receipt of the report, the Magistrate took cognizance of the offences under sections 420 and 406 Indian Penal Code. Thereupon, the appellant/accused filed an application for discharge and the accused was discharged by the Magistrate. The complainant filed a revision before the Sessions Court and the revision was dismissed. On further revision by the complainant, the High Court set aside the order of the Magistrate and directed the trial of the criminal case on merits. This was challenged on the ground that the second revision was not maintainable. A Bench consisting of three Judges of this Court held :

'14.....though the revision before the High Court under Sub-section (1) of Section 397 is prohibited Sub-section 3 thereof, inherent power of the High Court is still available under section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below'."

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32. 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.

33. In Sham Sunder v. State of Haryana this Court held (SCC p. 632, para 9)

"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."

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41. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.

42. For the reasons aforementioned, we do not find any legal infirmity in the impugned judgment."

Perusal of the above judgment would show that the High Court had interfered in the matter and had allowed the petition under Section 482 Cr.P.C. when the investigation in the case had not been completed. The Hon'ble Supreme Court while considering the said matter observed that under Section 482 Cr.P.C., the High Court has inherent powers to quash the proceedings. It was further observed that the allegations contained in the FIR were for commission of offences under a general statute and a vicarious liability can be fastened only by reason of a provision in a statute and not otherwise and for the said purpose, a legal fiction has to be created. It was further observed that 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 for it, all the ingredients laid down under the statute are required to be fulfilled. It was further observed that penal provisions must be strictly construed and there is no vicarious liability in criminal law unless the statute under which the offence has been alleged to have been committed, provides for it. It was further observed that a person can only be proceeded against, being vicariously liable for the acts of the company only in case, the company has been arrayed as an accused, which has not been done in the present case.

35. To be fair to the learned Senior counsel for respondent No.2, this Court would like to consider the judgments relied upon by him. The first judgment which has been relied by respondent No.2 is

the judgment of Hon'ble Supreme Court in **Jitul Jentilal Kotecha's** **case (supra)**. The relevant portion of the said judgment is as under: -

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This batch of appeals arises from a judgment and order dated 8 January 2019 of a Single Judge of the High Court of Gujarat. The High Court quashed an FIR 1 which was registered against the private respondents under Section 482 of the Code of Criminal Procedure 1973 2, except for the allegations against the fourth and fifth respondents under Section 385 of the Indian Penal Code 1860 3, in respect of which the investigation has been permitted to continue.

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8 *The appellant lodged a complaint with the Gandhigram Police Station against the respondents and a FIR 8 was registered on 13 April 2016 for offences punishable under Sections 465, 467, 468 and 120B of the IPC. The second to seventh respondents filed petitions 9 before the High Court under Section 482 of the CrPC to quash the FIR 10 registered at the behest of the appellant against them. By an interim order dated 2 May 2016, the High Court directed that the investigation may continue but the charge-sheet be filed only with its permission.*

9. *The eighth and ninth respondents were not named in the FIR. Apprehending arrest, they sought and were granted anticipatory by the Sessions Court, Rajkot. Thereafter, they also filed petitions 11 for quashing of the FIR under Section 482 of the CrPC.*

10 *A draft charge-sheet was placed before the High Court for offences punishable under Sections 385, 389, 418, 477, 506 (2), 120B and 34 of the IPC. The draft charge-sheet also contains allegations against the eighth and ninth respondents. It is alleged that the eight respondent who is an advocate, helped the other accused in drafting false documents – the powers of attorney and MoUs. The ninth respondent is alleged to have*

entered into a settlement with the second respondent on 25 February 2015 against a payment of Rs 41,51,000.

11. The petitions for quashing the FIR were allowed by the High Court by its impugned judgment dated 8 January 2019 save in respect of the investigation for offences punishable under Section 385 of the IPC against the fourth and fifth respondents. The conclusion of the High Court is extracted below:

“10.4 The upshot of the foregoing analysis and observations is that prima facie, it appears that the offence under Section 385 of attempt to commit extortion is said to have been established against Karanbhai Gordhanbhai Solanki and Maganbhai Devabhai Vaghela (applicants of Criminal Misc.Application No.10534/2016). Hence, the investigation shall proceed further for the offence under Section 385 against them. No offence as alleged in the FIR and draft charge sheet is said to have been established against the rest of the accused. Necessary report shall be filed in this regard as expeditiously as possible.”

The High Court has held that an offence under Section 385 of the IPC is prima facie made out against the fourth and fifth respondents who are alleged to have demanded money from the appellant to enter into a compromise. The High Court observed thus:

“9.1 In the present case, the contents of the FIR reveal that the daughter of Shamjibhai namely Ritaben and Savitaben have executed various powers of attorneys with other accused in order to jeopardize the right and title of the land belonging to the first informant for the purpose of extorting money. It is also alleged that before three months, the husband of Ritaben @ Ramaben had called him at the office of one advocate Mr.B.B.Mehta, for compromise, and informed him that he has already executed the title of land to land mafias and has taken the money from them, and if he wants to compromise, he will have to give crores of rupees. After, one or two days, Kalubhai called him and told that Karanbhai has informed him (Kalubhai) that the

husband of Savitaben, i.e Maganbhai has demanded money in order to enter into compromise. It is also alleged that before one and half years, Karan had visited at his hotel Europine along with his broker friend Puneet Koli, and had demanded five crores from him, and also told, if does not do so, he will lodge a complaint against him and he will have to go to jail. Both these persons Magan and Karan have signed as witness in the power of attorney documents.

The first informant has alleged that Karanbhai Gordhanbhai (Applicants Solanki and Maganbhai Devabhai Vaghela of Application No.10534/2016) had contacted him and have said that the land has been transferred to land mafias and if he wants to compromise he has to part with corers of rupees. The demand of money by way of compromise will satisfy the ingredients of Section 385. The foregoing analysis and observations, prima facie reveal that there is an attempt to extort money from the first informant by Karanbhai Gordhanbhai Solanki (Applicant no.1 of Cri.Misc Application No.10534/2016) husband of Ritaben @ Ramaben and Maganbhai Devabhai Vaghela (Applicant No.2 of Cri.Misc.Application No.10534/2016), who is the husband of Savitaben.”

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The allegations in the FIR prima facie indicate that the sixth and seventh respondents entered into champertous agreements with the legal heirs of Shamjibhai and were alleged to be involved in the extortion of money from the appellant. In the impugned judgment, the High Court has held that the allegations on their face disclose that the fourth and fifth respondents committed the offence of extortion under Section 385 of the IPC and directed that the investigation be continued against them. However, the High Court completely failed to examine the allegation of criminal conspiracy qua the other accused where it has been alleged that they were also privy to such extortion. Thus, in such circumstances, when a specific role was attributed to the accused, the High Court could not have quashed the FIR under Section 482 of the CrPC.

24 During the course of its impugned judgment, the High Court noted that certain persons (the eighth and ninth respondents) who were named as accused in the draft charge-sheet had instituted quashing petitions, evidently before the draft charge-sheet was placed before the High Court. In this backdrop, there is substance in the submission which has been urged on behalf of the appellant that the proceedings before the High Court have followed an unusual, if not extra-ordinary course. The High Court proceeded to entertain petitions for quashing under Section 482 at the behest of persons who were not named in the FIR purely on the basis of their names appearing in the draft charge-sheet. A draft charge-sheet was placed before the High Court by the investigating officer only in order to seek its permission, pursuant to the interim order, for submitting the charge-sheet to the competent court. Knowledge in regard to what has transpired during the course of the investigation is obtained by the accused once a copy of the charge-sheet is made available under Section 207 of the CrPC, 1973. Evidently, the persons whose names were mentioned in the draft charge-sheet had already moved the High Court in proceedings under Section 482 at a point of time anterior to the investigating officer submitting the charge-sheet to the High Court for seeking its permission to submit it before the competent court in accordance with law. As a matter of fact, the draft charge-sheet records the filing of the petitions for quashing in the High Court which would indicate that even before the charge-sheet was brought to the notice of the High Court, petitions for quashing had already been filed. The High Court ought to have taken note of these developments. The appellant has submitted both in the course of the oral and written submissions that these developments indicate that the accused were complicit with the police. The High Court should have been alive to the abuse of its process.”

Perusal of the above judgment would show that the High Court quashed the FIR except for the allegation against respondents No.4 and 5 under Section 385 IPC and directed that the investigation

be continued against them. The High Court had observed that they were land mafias who were extorting money and the allegations to the said effect satisfied the ingredients of Section 385 IPC qua the Respondent Nos.4 and 5 therein. It was observed by the Hon'ble Supreme Court in paragraph 23 that in the impugned judgment, the High Court after observing that the allegations with respect to extortion against respondents No.4 and 5 were *prima facie* made out, failed to examine the allegation of criminal conspiracy qua the other accused persons where it had been alleged that they were also privy to such extortion. It was observed by the Hon'ble Supreme Court that in such circumstances, where a specific role was attributed to the accused person the High Court could not have quashed the FIR under Section 482 of the Cr.P.C. It was further observed that the High Court had proceeded to entertain the petitions for quashing under Section 482 Cr.P.C. at the behest of persons who were not named in the FIR, purely on the basis of their names appearing in the draft charge-sheet and the said persons had filed petition under Section 482 Cr.P.C. at a point of time anterior to the investigating officer submitting a charge-sheet to the High Court which would indicate that even before the charge-sheet was brought to the notice of the High Court, petitions for quashing had already been filed and it was observed that the High Court ought to have taken note of these developments, which showed that the accused were complicit with the police and the high court should have been alive to the abuse of its process. The facts of the above case are completely different from the case in hand, inasmuch

as in the said case, the allegations of extortion, were prima facie found to be true against two accused therein, by the High court and the Hon'ble Supreme Court observed that there were specific allegations with respect to other accused therein being in conspiracy with each other. No argument, as is being sought to be raised in the present petition, were raised in the above-cited case and thus, the said case does not further the case of respondent No.2.

36. The second judgment relied upon by learned Senior counsel for respondent No.2 is the judgement of the Hon'ble Supreme in the case of **Ujjal Kumar Burdhan (supra)**. The relevant portion of the said judgment is as under: -

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*2. This appeal by special leave, assails the judgment dated 12th February, 2008, rendered by a learned Single Judge of the High Court of Orissa at Cuttack. **By the impugned order, on a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the investigation initiated by the Vigilance Department of the State Government into the allegations of irregularities in the receipt of excess quota, recycling of rice and distress sale of paddy by one M/s Haldipada Rice Mill, a proprietary concern of the respondent, has been quashed.***

3. On receipt of a complaint, the civil supply department of the State Government initiated an inquiry against the said concern, relating to the processing of paddy for and on behalf of the Food Corporation of India. Preliminary inquiry conducted by the Food and Supply department revealed certain irregularities in the procurement and milling of paddy by the respondent. A subsequent departmental inquiry recommended initiation of a proper administrative action against the

respondent. Consequently, the State Government directed the Vigilance Cell of the Police department to conduct a preliminary inquiry regarding the alleged criminal acts.

4. *In the meantime, on filing of a Writ Petition, being W.P. No.8315 of 2005, by the respondent, a Division Bench of the High Court while ordering the issue of the enforcement certificate to the respondent pending the ongoing inquiry, directed the completion of the said inquiry within twelve weeks of the receipt of that order. In compliance with that order, the Civil Supply Department of the State Government issued enforcement certificate to the respondent. However, the respondent filed yet another Writ Petition, being W.P. No.10761 of 2005, inter-alia, praying for quashing of inquiry proceedings initiated by the State vigilance department on the ground that an inquiry had already been conducted on the same complaint by the department concerned. By way of an interim order, the High Court directed the State Government not to take any coercive action against the respondent till further orders. As a result thereof, the preliminary inquiry came to a standstill. For a similar relief, respondent filed another petition, being Crl.M.C.No.2808 of 2006 under Section 482 of the Code in which the impugned order has been passed. Aggrieved by the said order, the State Government as also its two functionaries, viz. Director- cum-Addl. D.G.P., Vigilance and Dy. Superintendent of Police, Vigilance Cell have preferred this appeal.*

5. *Mr. Suresh Chandra Tripathy, learned counsel appearing for the appellants submitted that it is settled law that a preliminary inquiry ought not to be quashed by the High Court in exercise of its jurisdiction under Section 482 of the Code. He argued that the High Court was not at all justified in interfering with the investigation at the threshold even before the registration of an FIR, particularly when in his report dated 4th June 2005, the civil supply officer had reported fabrication and forgery of accounts maintained by the respondent as also violation of the guidelines laid down in the Food and Procurement Policy for the marketing season 2004-2005. Referring us to the order dated 18th*

July 2005, passed by a Division Bench of the High Court in W.P.(C) No.8315 of 2005, whereby, as aforesaid, a direction was issued for expediting the inquiry, learned counsel stressed that having observed that if in the inquiry any irregularity is established, the respondent could be proceeded under the relevant provisions of law, the High Court committed a serious illegality in law in quashing the same inquiry/investigation.

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10. Bearing in mind the afore-said legal position with regard to the scope and width of the power of the High Court under Section 482 of the Code, we are constrained to hold that in the fact-situation at hand, the impugned decision is clearly indefensible. In the present case, the S.P., Vigilance Cell, had merely approved the opening of an inquiry and converted it into a Cell File. The preliminary inquiry was yet to commence and an FIR was yet to be lodged.

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The High Court has committed a grave error of fact in observing that the respondent had been exonerated in the two inquiries held previously as both the inquiry reports had in fact concluded that the respondent had committed serious irregularities and proper action needs to be initiated against him.

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It is also pertinent to note here that the High Court had itself, by order dated 18th July, 2005 directed the completion of inquiry within a set time-frame of twelve weeks, which was subsequently interjected by an interim order and finally the entire investigation/inquiry came to be quashed by the impugned judgment. It seems incongruous that in the first instance the court set into motion the process of law only to ultimately quash it on the specious plea that it would cause unnecessary embarrassment to the respondent.

14. For all these reasons, in our opinion, High Court's interference with the investigation was totally unwarranted and therefore, the impugned order cannot be sustained. We, accordingly, allow the appeal, quash and set aside the impugned judgment and restore the investigation initiated against the respondent and direct the Vigilance Cell of the State to proceed with and complete the investigation expeditiously, in accordance with law.”

The above-said case was a case relating to a claim raised regarding irregularities in receipt of excess quota, recycling of rice and distress sale of paddy and in the said case, a preliminary inquiry had been initiated and the same was quashed under Section 482 Cr.P.C. before the registration of an FIR in spite of the fact that it had been reported by the civil supply officer that there was a fabrication and forgery of accounts maintained by respondent No.2. In the writ petition, the Division Bench of the High Court had directed for expediting the said enquiry, whereas, in the petition under Section 482 Cr.P.C., the said enquiry was quashed and in the background of the said facts, the Hon'ble Supreme Court of India observed that it seemed incongruous that on one hand, the court set into motion the process of law only to ultimately quash it on a specious plea that it would cause unnecessary embarrassment to the respondent and the impugned order of the High Court was stated to be indefensible. In the said case, there was no argument raised as is being sought to be raised in the present petition and the above said case was with respect to the irregularities in receipt/recycling/sale of rice and even an FIR had not

been registered, thus, the above said judgment also does not further the case of respondent No.2.

37. The third judgment which has been relied upon by learned Senior counsel for respondent No.2 is “**Som Mittal Vs. Govt. of Karnataka**”, reported as **2008 AIR (Supreme Court) 1126**. The relevant portion of the said judgment is reproduced as under: -

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(3) *This appeal is directed against the judgment and order dated 28th March, 2006 passed by the High Court of Karnataka at Bangalore in Criminal Petition No. 1535 of 2006 filed under Section 482 of the Code of Criminal Procedure with a prayer to quash cognizance of offence under Sections 25 and 30(3) of the Karnataka Shops and Commercial Establishments Act, 1961 (in short the Act) by Metropolitan Magistrate Traffic Court III.*

(4) *In view of the order that we propose to pass, it may not be necessary to recite the entire facts leading to the filing of the present appeal. Suffice it to say that an unfortunate incident had occurred on 13th December, 2005 in which late Smt. Pratibha Srikant Murthy was stated to have been murdered on her way to work from her residence. Pursuant to the aforesaid incident a complaint was filed on 27th December, 2005 against the appellant alleging violation of Sections 25 and 30(3) of the Act before the Metropolitan Magistrate. On 30th December, 2005, the Metropolitan Magistrate took cognizance of the offences under aforesaid sections of the Act. On 23rd March, 2006, a petition under Section 482 of the Code of Criminal Procedure for quashing of the complaint and cognizance was filed before the High Court. The High Court, by its impugned order dated 28th March, 2006, dismissed the petition. Hence, the present appeal by special leave.*

(5) *The High Court, by its impugned order, has altered the cognizance taken by the Magistrate under Section 25 read with Section 30(3) to that one under Section 25 read with Section 30(1) of the Act. The High Court was of the view that taking cognizance*

against the appellant cannot be found fault with and dismissed the petition.

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(21) In the result, there is no infirmity in the order passed by the High Court warranting our interference in exercise of our power under Article 136 of the Constitution. This appeal is, accordingly, dismissed.

(22) We clarify that we do not express any opinion on the merits of the case. The trial court shall decide the matter expeditiously uninfluenced by any observations made by this Court or the High Court. The trial court shall decide the maintainability of the complaint at the time of consideration of the charge. We further make it clear that it is open to the parties to urge all the contentions as available under the law, including the maintainability of the complaint before the trial judge at the time of consideration of this charge.

(23) With these observations and directions, the appeal is dismissed.”

In the said case, an unfortunate incident had taken place wherein, a woman had been murdered on her way to work and in pursuance of the same, a complaint had been filed on the ground that Section 25 and 30(3) of the Karnataka Shops and Commercial Establishments Act, 1961, stood violated and cognizance was taken by the magistrate on the same and a petition under Section 482 Cr.P.C. for quashing of the said complaint and order of cognizance, was dismissed by the High Court. It was observed in the said judgment by the Supreme Court that it was not expressing any opinion on the merits of the case and the trial was made to continue. The said case relates to death of an employee attracting the provisions of the

Karnataka Shops and Commercial Establishments Act, 1961. The facts of the said case are completely different from the facts of the present case and the issues arising in the present case were not under consideration in the said case before the Hon'ble Supreme Court.

38. The fourth judgment relied upon by learned Senior counsel for respondent No.2 is a judgment of the Hon'ble Supreme Court in "**M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others**", ***passed in Criminal Appeal No.330 of 2021, decided on 13.04.2021***. In the said case, an interim order to the effect that "no coercive measures shall be adopted" was passed by the High Court without giving any reason, while the petition under Section 482 Cr.P.C. was kept pending. It was the said interim order which had been challenged before the Hon'ble Supreme Court and it was highlighted that apart from there being no reasons given in the said order, the same would result in a blanket direction to the investigating officer restraining him from taking coercive measures. In the said case, the Hon'ble Supreme Court of India deprecated the practice of passing of an order of "no coercive steps" and that too without giving any reason. Even while setting aside the said order, it had been observed that in a case where no cognizable offence or offence of any kind is disclosed in the FIR, the Court may not permit the investigation to go on and further observed that the if the Court thinks fit, having regard to the parameters of quashing as laid down in various judgments including ***State of Haryana and others v. Bhajan Lal and others***, reported as ***1992 Supp(1) SCC 335***, could exercise its

jurisdiction to quash the FIR/complaint. It was stated that the said parameters would also be considered in case interim order is to be passed but however, the interim order is to be passed only in exceptional circumstances and that too, by giving reasons for the same and by clearly stating as to why the interim order has been passed. In the present case, there is no challenge to any such order granting "no coercive action" and thus, the said judgment would not apply to the present case. In the present case, the final matter is being adjudicated upon, after considering the whole dispute and thus, the above said judgment would not further the case of respondent No.2.

39. The fifth judgment which has been relied upon by learned Senior counsel for respondent No.2 is a judgment of a Coordinate Bench of this Court passed in “**Gurbachan Singh Bhasin Vs. State of Punjab and others**”, reported as **2013(4) RCR (Criminal) 512**. In the said case, the allegations against the accused were that a fraud had been committed upon a Bank, inasmuch as, the accused/petitioner in the said case had the property mortgaged with the Bank vide two registered sale deeds, which had already been attached by the order of the civil Court in execution proceedings and a note regarding attachment of the property was also changed by making wrong/false entries and thus, the accused persons were successful in defrauding the Bank. A false record was also prepared in the said case. Further in the said case, PO proceedings were also initiated against the petitioner and petitioner was declared a proclaimed offender and after he surrendered, the charges had been

framed on 15.03.2012, which fact was never brought to the notice of the Court when notice of motion was issued in the case on 26.03.2012 and it was observed by a Co-ordinate Bench that the said amounts to concealment and disentitles the petitioner therein for grant of relief. None of the arguments raised in the present petition have been raised in the said case and thus, the said case does not even remotely further the case of respondent No.2.

40. The sixth judgment relied upon by learned Senior counsel for respondent No.2 is the judgment of a Co-ordinate Bench of this Court in “**Pawan Kumar Vs. State of Haryana**”, reported as **2006(2) R.C.R. (Criminal) 162**, in which the allegations against the petitioner therein were with respect to misappropriation of rice, which was allotted to the accused/petitioner therein by the Food Corporation of India. It was observed that there were specific allegations of entrustment of paddy and failure of the accused therein to deliver rice and of duping the PUNSUP and thus, the offence was observed to have been *prima facie* made out.

41. Even the seventh judgment relied upon by learned Senior counsel for respondent No.2 is the judgment of a Co-ordinate Bench of this Court in “**Davinder Singh and Jaspal Singh Vs. State of Punjab**”, reported as **2006(3) CLR 432**, which is a case similar to the case of **Pawan Kumar’s case (supra)** and in the said case on physical verification, it was found that the miller had embezzled/misappropriated 11779 bags of paddy grade-A and thus, the offence of criminal breach of trust and entrustment of property was *prima facie*

committed. In both the above-said cases, there was a huge misappropriation of rice/paddy of the PUNSUP/Food Corporation of India. The above noted dispute is not the same as in the present case as the present case is a dispute between tenant (company) and landlord (respondent No.2) and thus, the said judgment also does not further the case of respondent No.2.

42. On the basis of the above-said facts and circumstances, this Court is of the opinion that the FIR and subsequent proceedings arising therefrom, deserve to be quashed.

43. Apart from the judgments, which have been referred to hereinabove, it would be pertinent to note that the Hon'ble Supreme Court of India has repeatedly held that in a case in which issues arise as in the present case and the Court finds that the institution of the criminal proceedings is malafide or has been filed with an ulterior motive, then the High Court can exercise power under Section 482 Cr.P.C. to quash the FIR, even at the initial stage. The judgment of the Hon'ble Supreme Court in "M/s Aryan Mining and Trading Corporation Pvt. Ltd. and another Vs. The State of Chhattisgarh and others", reported as 2020(4) R.C.R. (Criminal) 111, has held as under: -

"xxx xxx xxx xxx xxx xxx

5. *Having examined the matter in detail and hearing the learned counsel for the parties, we are of the opinion that the dispute essentially is of civil nature and a perusal of the FIR makes it clear that the offences alleged against the appellants are not made out. The High Court ought to have examined the*

allegations made in the FIR to adjudicate the matter. Instead, the High Court refused to quash the FIR on the ground that the investigation is in progress.

6. *In the facts and circumstances of the case, we set aside the judgment of the High Court and quash FIR No. 106/2011.”*

A perusal of the above judgment would show that the dispute was found to be civil in nature and the High Court refused to quash the FIR on the ground that the investigation was in progress but it was observed by the Hon’ble Supreme Court in Appeal that the High Court ought to have examined the allegations made out in the FIR to adjudicate the matter and the judgment was set aside and the FIR was quashed.

44. The Hon’ble Supreme Court in “*Ajay Mitra vs. State of M.P. & Ors.*”, *reported as 2003(3) SCC 11*, has held as under: -

“Leave granted. These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482Cr.P.C. were dismissed.

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Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

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The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in State of West Bengal &Ors. V. Swapan Kumar Guha &Ors., AIR 1982 Supreme Court 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana &Ors. V. Ch. Bhajan Lal &Ors. 1991(3) RCR (Criminal) 383 (SC) and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were summarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :

"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 F.I.R. 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."

The said judgment by a three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in Bhajan Lal's case (*supra*), in which, it was observed that the High Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

45. The Hon'ble Supreme Court of India in "**R Kalyani v. Janak C. Mehta**" ***reported as 2009 (1) SCC 516*** has held as under:-

"Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

The First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.

3. Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend:

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorize the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined: -

“6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive,

cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court.”

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

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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 incharge 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.”

27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the

Company as well as the person responsible for the acts of the Company.

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30. The appeal is dismissed with the aforementioned observations.”

A perusal of the said judgment would show that the High Court had, in a petition under section 482 Cr.P.C., quashed the FIR without the investigation having been completed and the said order was upheld by the Hon’ble Supreme Court qua the persons who had filed the petition under Section 482 of Cr.P.C.

46. The Hon’ble Supreme Court in **“T.T. Antony vs. State of Kerela reported as 2001(6) SCC 181** has observed as under: -

“However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Criminal Procedure Code, 1973 It would clearly be beyond the purview of sections 154 and 156 Criminal Procedure Code, 1973 nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Criminal Procedure Code, 1973 or under Articles 226/227 of the Constitution.

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The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same

incident and making a fresh investigation is not permissible under the scheme of the provisions of the Criminal Procedure Code as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open of the investigating agency to seek permission in Crime No. 353/94 or 354/94 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law.”

*A perusal of the above-reproduced judgment would show that it had been observed by the Hon’ble Supreme Court of India that in case, with respect to one incident an FIR already stands registered, then a second FIR with respect to the same incident cannot be registered and **in case the same is registered then, the High Court while exercising its powers under Section 482 Cr.P,C, would be well within its rights to quash the second FIR.** The same principle has been followed by the Hon’ble Supreme Court in the case of “Amitbhai Anil Chandra Shah’s case (supra). Thus, in a situation where a second FIR is registered with respect to the same incident on which an FIR has already been registered as in the present case, the petition for quashing of the second FIR should not be thrown out on the ground that the report under Section 173 CrPC has not been submitted.*

A perusal of the above-reproduced judgment would show that it had been observed by the Hon'ble Supreme Court of India that in case, with respect to one incident an FIR already stands registered, then a second FIR with respect to the same incident cannot be registered and in case the same is registered then, the High Court while exercising its powers under Section 482 Cr.P,C, would be well within its rights to quash the second FIR. The same principle has been followed by the Hon'ble Supreme Court in the case of "**Amitbhai Anil Chandra Shah v. Central Bureau of Investigation and another**",

reported as 2013(6) SCC 348. Thus, in a situation where a second FIR is registered with respect to the same incident on which an FIR has already been registered, the petition for quashing of the second FIR should not be thrown out on the ground that the report under Section 173 CrPC has not been submitted.

Conclusion/Relief

47. The abovesaid facts and circumstances would clearly show that the present dispute is purely a civil dispute between the landlord (complainant) and the tenant (company), whose relationship is based upon a written lease deed, which was executed on 01.04.2019 and its term was for a period of three years and after a period of 2 years and 7 months of the said term having been completed, the impugned FIR was registered on 14.11.2021 by making allegations contrary to the terms of the written lease deed as well as the admitted documents i.e, emails, legal notice sent/issued on behalf of respondent no. 2. In case, the present FIR which has been registered on the complaint of respondent No.2, is permitted to continue, then the same would be an absolute abuse of the process of the Court.

Keeping in view of the abovesaid facts and circumstances, the present petition is allowed. The impugned FIR bearing No.452 dated 14.11.2021, registered under Section 420 of the IPC, at Police Station Civil Lines, Sirsa, Haryana and all the subsequent proceedings arising therefrom are quashed qua the present petitioner.

It is, however, clarified that nothing stated hereinabove would affect the case of either of the parties in civil/arbitration/rent proceedings, if any instituted and the said proceedings would be adjudicated independently, after considering the evidence and the material produced in the said proceedings, in accordance with law.

Since the main case has been decided, thus, the pending application(s), if any, stand disposed of accordingly.

April 08, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes