* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 2nd September, 2022**

\+ **W.P.(CRL) 727/2022, CRL.M.A. 6132/2022, CRL.M.A. 12359/2022 CRL.M.A. 12646/2022**

M/S. JHAJJZ PVT. LTD. AND ORS. ..... Petitioners

Through: Mr. Paramjit Singh Patwalia, Sr. Adv. with Ms. Harshika Verma, Mr. Tushar Singh, Mr. Ajit Joher & Mr. Harkirat Singh, Advs.

versus

STATE OF NCT OF DELHI AND ORS. .....Respondents

Through: Ms. Rupali Bandhopadhya, ASC with Mr. Abhijeet Kumar & Mr. Akshay Kumar, Advs. for the State

Mr. Chinmoy Sharma, Sr. Adv. with Mr. Samarjit Pattnaik, Mr. Vikas Gogne, Mr. Satyam Chaturvedi, Mr. Hitaish Chauhan, Mr. Irfan Hasieb and Mr. Krishna Jyoti Deka, Advs. for R-3 to R-5 with R-4 in person

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. This petition has been filed under Article 226 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (for short, **"Cr.P.C."**) praying for quashing of FIR No.196/2021 dated 21st December, 2021, registered at the Economic Offences Wing, Delhi Police, New Delhi, (for short, **"EOW"**) under Sections 406/120B

of the Indian Penal Code, 1860 (for short, **"IPC"**), and all proceedings emanating therefrom.

2. The FIR in question was registered on the complaint initially made to the DCP, Rohini District, Delhi, by the respondent No.4/Siddarth Nautiyal, which was forwarded to the EOW, which in turn, got the FIR in question lodged. The FIR records that the complaint of the respondent No.4 was received in the EOW "for necessary action" and on the basis "pre-registration enquiry *prima facie,* an offence under Section 406 read with Section 120B IPC was made out". After the FIR was registered, the Investigating Officer summoned the petitioners, and the petitioner No.2, being one of the Directors of the petitioner No.1, apart from the petitioners No.3 and 4, appeared before the EOW on 29th November, 2021 and submitted his reply. Despite which, since the EOW continued with the investigations, the present petition has been filed seeking the quashing of the FIR in question.

3. In the FIR, the respondent No.4 alleged that it was on the assurance of the petitioners that the respondent No.3 engaged in business with the petitioners on assured returns on their investments. Cars were to be purchased in the name of the complainant after availing of a loan. The petitioners were to pay the initial cash/down-payment and make payments of the EMIs, insurance charge, road tax, TDS, GST, etc.. The complainant started purchasing and delivering cars from the month of August, 2017 after availing the loan from the Bank. Payments were made in the year 2018, sometimes with delays, for which the petitioner No.2 apologized.

4. More cars were purchased in the year 2018. The total number of cars thus rose to 22. According to the complainant, towards the end of 2018, on account of delayed payments, a sum of Rs.25 lakhs had become due and payable by the petitioners to the complainant towards the payments of the cars delivered to them. The petitioner No.2 expressed financial difficulties, assuring payments within a short time. In order to maintain the business relationship, the complainant managed to secure a loan of Rs.25 lakhs, to support the petitioners in their business revival efforts, as otherwise, the complainant would have had to bear huge financial losses, legal complications and damage to his reputation in the business society. The petitioners assured to make EMI payments. However, in February/March, 2019, again the petitioners defaulted.

5. According to the complainant, while assuring payments and apologizing for the delays in payments due, the petitioner No.2 requested for hire of few more cars to revive the business. Believing his words and since few part payments were made, few more cars were purchased in 2019. From July, 2019 to December, 2019, the complainant made repeated requests through WhatsApp and telephonic conversations to the petitioners to clear the outstanding amount by the winter of 2019. On 13th November, 2019, two indemnity bonds on stamp paper were executed and signed by the parties at Mohali, which were duly notarized, whereby the petitioner No.2 confirmed about taking of physical possession of all the cars and to make payments for the same and indemnify the complainant against any loss or harm caused to the cars.

6. Some part payments against the outstanding amounts were made

between October-November, 2019. One more car was purchased in December, 2019 on the assurances of the petitioner No.2. Subsequent thereto, no payments were made after March, 2021 and the petitioners failed to pay the outstanding amount, the complainant suspected the petitioners of creating forged documents and thus, complained to the police that the petitioners were guilty of the offences of *"cheating, forgery, criminal misappropriation in conspiracy with each other, besides threat to life of the complainant, as well as other cognate offences with mala fide and dishonest intentions to cause wrongful gain to themselves and wrongful loss to the complainant and criminally misappropriating the amount of more than Rs.3.9 crores and is further accumulating and also 26 cars worth Rs.7.1 crores approx."*. It was also recorded in this complaint that the complainant had earlier filed a complaint in the *"concurrent jurisdiction of P.S. Mohali Punjab, however, the FIR has not been registered on the premises of the complainant having its business place at Delhi"*.

7. It is the submission of Mr. Paramjit Singh Patwalia, learned senior counsel for the petitioners, that the FIR was liable to be quashed for several reasons. It was submitted that once the complainant had approached the Mohali Police for registration of a complaint, which was materially the same, except with respect to the amount claimed, way back on 27th March, 2021, the complainant could not have filed the second complaint before the Delhi Police. It was submitted that assuming an offence had been committed, it was committed in Mohali and not in Delhi. Therefore too, the Delhi Police had no jurisdiction to register the

FIR as no part of the offence has allegedly been committed in Delhi.

8. The learned senior counsel for the petitioners submitted that the dispute was in the nature of a civil dispute based on the terms of contract, and no criminal offence, leave alone misappropriation under Section 406 IPC, was made out against the petitioners. It was submitted that the petitioners and the respondents No. 3 to 5 had business dealings whereunder several high-end luxury cars were purchased in the name of the respondents No.3 to 5 by availing of loans as the respondents No. 3 to 5 had some advantage in purchasing the cars in their name. However, as reflected in the indemnity bonds, admittedly executed between the parties, the loan was to be repaid by the petitioners. The down-payment was in fact made by the petitioners as also the payments towards road tax, insurance, GST, etc.. There was no financial obligation on the respondents No. 3 to 5.

9. The business arrangement was that these cars were to be plied by the petitioners, enabling them to earn from the business. As far as the respondents No. 3 to 5 were concerned, they were paid commission at the very initial stage and therefore, nothing further remained due and payable to them. The EMIs were being directly paid to the bank accounts but when the Covid-19 pandemic struck, there was some difficulty and then the banks had declared the moratorium, after which, on the instructions of the respondent No.4, amounts were transmitted into his account, but he did not deposit the same with the Bank. As a consequence, thereof, the Bank loans became NPAs. According to the learned senior counsel for the petitioners, the dispute commenced thereafter.

10. Learned senior counsel for the petitioners further submitted that on 27th March, 2021, the respondent No.4/complainant filed a complaint to the Senior Superintendent of Police, District SAS Nagar, Mohali, Punjab. A Report was drawn up on 16th July, 2021 by the Superintendent of Police, District SAS Nagar, concluding that the dispute was civil in nature as it pertained to non-payment of instalments of car loans and the complainant could pursue the same before a civil court. Since all efforts to amicably settle the dispute stood extinguished, on 4th August, 2021, the petitioner No.1 approached the District Court at Mohali with a suit being Suit No. CS-42-2021, titled ***M/s. Jhajjz Pvt. Ltd. v. M/s. JSR Cars and Ors.,*** for permanent injunction to restrain the respondent/company from taking forcible possession of the vehicles from the custody of the petitioner/company, except in the due course of law and after settling the amount of Rs.5,22,93,803/- with interest which was spent by the petitioners. The respondent No.4 entered appearance before the court of the Additional District Judge, SAS Nagar, Mohali in the said suit on 16th September, 2021 and was thus fully aware of the pendency of the civil suit. It was thus submitted that the entire case, as made out by the complainant, was civil in character, which was being given a cloak of criminal nature to coerce the petitioners into agreeing to the terms dictated by the respondents No. 3 to 5. Reliance in this regard has been placed on the judgement of the Supreme Court in ***S.W. Palanitkar v. State of Bihar*** (2002) 1 SCC 241.

11. Learned senior counsel for the petitioners drew attention of this Court to the Report of the Superintendent Police, placed on the record as

Annexure P-8, to submit that once a complaint had been investigated by the police and had been closed, the complainant was barred under law to initiate another complaint on the very same allegations at a different police station, which, further had no jurisdiction in the matter. Learned senior counsel submitted that had the respondents No.3 to 5 any grievance against the closure of the complaint, they ought to have taken legal recourse in Mohali, specifically under Section 156(3) Cr.P.C.. But this was not done. Instead, the present FIR was registered knowing fully well that the police at Mohali had concluded that the dispute was a civil dispute. The filing of the subsequent complaint on identical facts is a gross abuse of the process of law and also amounted to "forum shopping". Reliance in this regard has been placed on the judgements of the Supreme Court in ***Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors***. 2022 SCC OnLine SC 344, ***Samta Naidu & Anr. Vs. State of Madhya Pradesh & Anr.*** (2020) 5 SCC 378 and of the Coordinate Benches of this Court in ***Charu Motors Pvt. Ltd. & Anr. Vs. Pegasus Computers & Ors***. 2021 SCC OnLine Del 5520, ***Somesh Sharma Vs. State of NCT of Delhi & Ors.*** 2021 SCC OnLine Del 278 and ***K.S. Bhatnagar Vs. State & Anr.*** 2015 SCC OnLine Del 8188.

12. On merits of the FIR, it was submitted that the ingredients of Sections 405/406 IPC were not disclosed in the averments recorded in the FIR. The indemnity bonds clearly record that the petitioner No.2 was given vehicles having paid all cost and expenses for the cars. On 7th December, 2021, the counsel of the respondent No.4 gave a "No Objection", pursuant to which an interim injunction was issued by the

Mohali Court restraining the defendants therein, being the respondents No.3 to 5 herein, from taking forcible possession of the vehicles in question. Subsequently, an injunction was granted by the District Court, Mohali, on 25th April, 2022 in favour of the petitioner No.2 restraining the respondents No.3 to 5 from taking forcible possession of the vehicles. This order was affirmed by the Division Bench of the Punjab and Haryana High Court vide order and judgment dated 16th May, 2022 in FAO(COMM)12/2022, which was an appeal preferred by the respondents No.3 to 5 against the order dated 25th April, 2022. No special leave petition seems to have been filed. Thus, when the possession of the cars was with the specific permission of the court, there could be no offence committed, leave alone one under Section 406 IPC read with Section 120B IPC. It was submitted that the FIR was intended only to arm-twist the petitioners into accepting extortionist demands of the respondents No.3 to 5 by threat of penal action against them. Hence, it was submitted that the petition be allowed and the FIR in question be quashed.

13. Mr. Chinmoy Sharma, learned senior counsel arguing on behalf of the respondents No. 3 to 5, submitted that the complaint was submitted to the Rohini Police Station on 15th June, 2021, but the FIR was registered only on 21st December, 2021 by the EOW. Therefore, it was not as if the FIR was registered here intentionally after the first complaint had been closed. It was submitted that on the first complaint made to the Mohali Police, no FIR had been registered. Therefore, the judgments cited by the petitioners were not applicable to the facts of the present case. Learned senior counsel submitted that the cited judgments related to filing of

criminal complaint cases before the Magistrate. A "complaint" has been defined under Section 2(d) Cr.P.C. to mean any allegation made orally or in writing to a Magistrate and did not include a Police Report. Moreover, the respondents No. 3 to 5 were not ever notified by the Mohali Police of the closure of their complaint, leave alone within seven days, which was in complete violation of the Guidelines in ***Lalita Kumari v. Govt of UP and Ors.*** (2014) 2 SCC 1. It was submitted that the Delhi Police had jurisdiction to inquire into the matter, but in the present instance, it was the Economic Offences Wing that had got the FIR registered and had complete jurisdiction to investigate.

14. Learned senior counsel for the respondents No. 3 to 5 submitted that the conjoint reading of Section 156(1) and Section 181(4) Cr.P.C. establishes that the police officer may investigate a cognizable offence within the local jurisdiction of that court, which had the power to inquire into it and in case of commission of an offence of criminal breach of trust, the complainant could choose the place where the property was to be returned and accounted for by the accused person. In the present case, the loans were obtained and disbursed from banks and financial institutions in Delhi and were to be repaid in Delhi and the cars in question were to be returned to the respondents No.3 to 5 by the petitioners in Delhi. It was submitted that though the cars were with the petitioners in Mohali, but the bank loans were obtained in Delhi. The EMIs were to be paid in Delhi and because of the default, SARFAESI proceedings were initiated, declaring the respondents No.3 to 5 as wilful defaulters. The petitioners were not cooperating with the investigations. It

was therefore, the complainant, being the respondent No.4, who was being subjected to harassment.

15. It was only on account of the repeated refusals of the petitioners to pay the dues that the necessity for lodging the FIR arose. It was the submission of the learned senior counsel for the respondents No.3 to 5 that the police must be allowed to investigate and unearth the truth. Reliance in this regard has been placed on decision in ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.*** (2021) SCC OnLine SC 315. There was no occasion for quashing the FIR. Further, it was contended that powers under Section 482 Cr.P.C. ought not to be exercised at such a nascent stage to put a premature end to the investigations. Reliance in this regard has been placed on the judgements of the Supreme Court in ***Ramveer Upadhyay and Anr vs. State of U.P. and Anr.*** 2022 SCC OnLine SC 484, ***Sanapareddy Maheedhar Seshagiri and Anr. vs. State of Andhra Pradesh and Anr.*** (2007) 13 SCC 165 and ***Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharaful Haque and Anr.*** (2005) 1 SCC 122.

16. Learned senior counsel for the respondents No.3 to 5 submitted that if the petitioners feared arrest, they ought to have moved an appropriate application under Section 438 Cr.P.C. for anticipatory bail and not seek the quashing of the FIR by moving the present petition. It is claimed by learned senior counsel that the commission due and payable to the respondents was factored into EMIs that was payable towards the loan being 20% of the EMIs plus a one-time payment/profit. That payment schedule was not adhered to by the petitioners. The petitioners

induced the respondent No.4 to open an office in Mohali and that is why, GST was also obtained at that address. Those facts would not defeat the right of the respondent No.4 to register the FIR at Delhi. Reliance in this regard has been placed on the judgement of the Supreme Court in ***Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr***. (1999) 8 SCC 728.

17. Learned senior counsel for the respondents No.3 to 5 also doubted the authenticity of the documents relied upon by the petitioners, namely, the Report of the Superintendent of Police, District SAS Nagar dated 16th July, 2021 and the source from where they had obtained it. Hence, it was submitted that the same ought to be rejected. In any case, no information had been received by the respondents No.3 to 5 about the closure. The filing of the civil suit was also not relevant as the complaint may have features of a civil dispute, but that would not foreclose the right of a complainant to initiate criminal action. Reliance has been placed on the judgements of the Supreme Court in ***Pratibha Rani v. Suraj Kumar and Anr.*** (1985) 2 SCC 370, ***Kamala Devi Agarwal v. State of W. B. and Ors***. (2002) 1 SCC 555, ***R. Kalyani v. Janak C. Mehta & Ors.*** (2009) 1 SCC 516 and ***State of Punjab v. Pritam Chand and Ors.*** (2009) 16 SCC 769 in support of these submissions.

18. It was submitted by the learned senior counsel for the respondents No.3 to 5 that the offence of mis-appropriation i.e., under Section 406 IPC, had occurred prior to the injunction order and the injunction order could not come to the aid of the petitioners. It was submitted that the petitioners have failed to establish that their case falls in any of the

categories spelt out in ***State of Haryana and Ors. Vs. Bhajan Lal*** 1992 Suppl. (1) SCC 335 and therefore, it was urged that this Court ought not to exercise its powers under Section 482 Cr.P.C., as the facts of this case did not constitute the rarest of the rare cases.

19. The last payments of the EMIs were in 2020 and one EMI was paid in 2021. The petitioners had retained the cars and were earning profits from plying those cars and yet had allowed the loans to become NPAs. The petitioners were not responding to the multiple notices that were issued to them and thus, were not cooperating with the investigations. The petition was therefore premature and was liable to be dismissed.

20. In rejoinder, it was submitted by learned senior counsel for the petitioners that in the FIR, the respondent No.4 had wrongly mentioned that the FIR at Mohali was closed because the office of the respondents was in Delhi because, admittedly, the Registered Office was at Mohali. Therefore, the FIR had been sought to be registered in Delhi on false claims. It was also submitted that the petitioners were ready and willing to make the payments of the Bank loans directly to the Banks provided the respondents No.3 to 5 disclosed to them the overall dues, but which they were not doing intentionally. It was submitted that the partner of the respondent No.4 had disclosed the details qua four cars and the Bank payments were made and the loan accounts closed. It was submitted that two cars were already in possession of the respondents No.3 to 5, which had been paid for by the petitioners. It was reiterated that ultimately, the dispute was one of accounting, the respondents claiming amounts being due to them. It was also explained that the Report of the Superintendent

of Police, District SAS Nagar dated 16th July, 2021 was obtained under RTI and the scanning had not been done properly, which was why, at the first instance, those details were not evident. It was submitted that the closure was known to the respondent No.4 inasmuch as, both parties had been called even by the Superintendent of Police and the present FIR was mischievously filed after the closure of the first complaint. Moreover, from the Status Report filed by the Assistant Commissioner of Police, EOW, it was clear that arbitration was in progress in respect of two bank loans. Thus, in actual fact, no offence had been committed and therefore, it was urged that the petition be allowed and the FIR quashed.

21. Before proceeding further, reference may be made to the Status Report dated 27th April, 2022, filed by the ACP, EOW.

22. In this Status Report, reference has been made to the pendency of the civil suit before the District Court, Mohali. Verification has been made regarding the payments referred to in Annexure P-5 to the petition i.e., the amounts paid by the petitioners on 26th July, 2017 upto 31st March, 2021. In relation to it, the Status Report records that the complainant has admitted that the petitioners had paid an amount of Rs.2,96,80,984/- as EMIs of 26 vehicles in question, while claiming that as on 28th February, 2022, Rs.3.6 crores approximately towards EMIs was pending. Of the other amounts mentioned in Annexure P-5, the complainant has admitted the receipt of a total sum of Rs.4,02,40,182/- (including the above amount of EMIs), while denying the receipt of Rs.61,10,000/- as margins/cash. The complainant further admitted having received profits for seven cars, i.e., Rs.3,00,000/- + Rs.10,00,000/- +

Rs.2,50,000/- + Rs.2,78,556/- + Rs.2,82,200/- + Rs.2,82,200/- + Rs. 1,45,000/-(only part profit), totaling to Rs. 25,37,956/-. It is also recorded that notices had been sent to the Banks and lending agencies seeking details of each loan account for all the 26 vehicles, payments receipts, EMIs not paid, loan amount sanctioned and disbursed, which information was yet to be received.

23. Information in respect of commission of cognizable offences is to be given to the police in terms of Section 154 Cr.P.C.. It could be given orally to an officer In-charge of a Police Station or even in writing. Which police station is to investigate such an offence is set out in Section 156(1) Cr.P.C.. The officer In-charge of a Police Station, who could investigate into the information regarding the cognizable offence, as furnished to him under Section 154(1) Cr.P.C., is the one located within the local area over which the jurisdictional court would have power to inquire under Chapter-XIII. Chapter-XIII specifies the jurisdiction of the criminal courts in respect of inquiries and trials. The ordinary place of inquiry and trial, as provided under Section 177 Cr.P.C., is the court within whose local jurisdiction the offence was committed. In short, the In-charge of a Police Station who can investigate into a cognizable offence must be one located within the jurisdiction of the court where the offence has been committed. It is thus necessary to determine whether the alleged offence was committed in Delhi or at Mohali or at both places.

24. It is the stand taken by the respondents that the EMIs had to be paid in Delhi and the vehicles had to be returned at Delhi. Therefore, Delhi had the jurisdiction. In this regard, notice must be taken of the

observations in the Status Report submitted by the ACP, EOW that the indemnity bonds are silent on the question of handing over of the vehicles after repayment of the loans. Therefore, according to the learned senior counsel for the petitioners, that claim cannot be determinative of the jurisdiction.

25. Section 178 Cr.P.C. provides that when it was uncertain in which of the several local areas an offence was committed, or where an offence was partly committed in one local area and partly in another, or was a continuing one and was being committed in more local areas than one, or where it consisted of several acts done in different local areas, it could be inquired into or tried by a court having jurisdiction over any of such local areas.

26. Section 181 Cr.P.C. makes a provision for trial of certain kinds of offences. Under Section 181(4), a court within whose local jurisdiction the offence of criminal misappropriation or criminal breach of trust was committed or any part of the property, subject matter of the offence, was received or retained or was required to be returned or accounted for by the accused person, could try the said offence. It is on this basis that it was urged that since the EMIs were to be paid in Delhi and were not, and the cars were to be returned in Delhi, the courts in Delhi had jurisdiction and therefore, the FIR had been lodged in the correct jurisdiction.

27. Even though there is no clarity about the return of the cars in Delhi, but since the EMIs had been payable at Delhi, assuming at the moment that criminal misappropriation had occurred when the EMIs were not

paid, it is clear that the FIR could have been filed in Delhi under Section 154(1) Cr.P.C.. At the same time, since the payments were sent from Mohali, the transactions regarding the cars and their use being also at Mohali, the courts of Mohali also have concurrent jurisdiction to enquire into the alleged offences if they had occurred.

28. But the question in the present case is different. Admittedly, a complaint had been submitted to the police at Mohali. Admittedly, the police had made inquiries into that complaint. Could the complainant have then filed a fresh complaint in Delhi, is the main question. No doubt, as rightly pointed out by the learned senior counsel for the respondents No.3 to 5, the judgments cited by the petitioners relate to the filing of a complaint, but it cannot be that FIRs on the same cause can be filed in multiple jurisdictions when investigations by police in one place did not conclude favourably to the complainant's interests. Such an interpretation is inherently faulty. The Cr.P.C. itself provides for remedies where a complainant is dissatisfied with the investigation or lack of it by the local police.

29. In ***Lalita Kumari (supra)***, it has been held that a complaint under Section 154 Cr.P.C. should be submitted to the In-charge of a Police Station, who would be mandated to register the FIR if the information/complaint discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. However, in certain cases, if the information does not disclose commission of a cognizable offence, it was advised that a preliminary inquiry be conducted depending on the facts and circumstances of each case. These

categories of cases in which preliminary inquiry was recommended have been provided in para No.120.6, namely, matrimonial disputes/family disputes, commercial disputes, medical negligence cases, corruption cases and cased of abnormal delay/laches in initiating criminal prosecution. The present case is clearly covered under the description of "commercial cases". The preliminary inquiry would decide whether the registration of the FIR was called for.

30. Assuming that a complaint under Section 154(1) Cr.P.C. did not result in any action whatsoever, under Section 154(3) Cr.P.C. the complainant could approach the Superintendent of Police for registration of the FIR. In the instant case, the complaint was addressed to the Superintendent of Police, District SAS Nagar. The preliminary inquiry held by the Superintendent of Police was thus in accordance with the law. He submitted a Report to his superior, being the Senior Superintendent of Police, District SAS Nagar, to the effect that the matter involved only a civil dispute. It is difficult to accept the claim of the respondents No. 3 to 5 that they did not know about the result of the inquiry as the respondent No.4 participated in the inquiry, which is also why he claims that he was "given to understand" that the Mohali Police had no jurisdiction. The explanation offered in the instant FIR was that no FIR was registered at P.S. Mohali because the complainant was having its business at Delhi.

31. The inference is clear that the respondent No.4/complainant knew that on his complaint, no FIR had been registered. The explanation that he has offered is not borne out from the record, which adds suspicion to the explanation. Admittedly, in the indemnity bond, referred to even in the

FIR, executed on 15th November, 2019 and signed by the parties at Mohali, the address of the respondent No.3/M/s. JSR Cars is mentioned as "SSS 106-107, Phase-9, Mohali", with GST reference No.03AALFJ543C1Z0, which would again be a local number at Mohali. Thus, *prima facie,* there does not appear to be non-compliance of the guidelines issued in ***Lalita Kumari (supra)***. The preliminary inquiry initiated in the present matter, which is a commercial dispute, is, as noticed above, in accordance with law. The non-registration of the FIR was clearly not on account of the absence of the office or business premises in Mohali, but as reflected in Annexure P-8, being the Report of the Superintendent of Police, District SAS Nagar to the Sr. Superintendent of Police, District SAS Nagar, because no offence was disclosed.

32. Once it is to be accepted that the police having jurisdiction i.e., the Mohali Police, had conducted a preliminary inquiry and concluded that this was a civil matter, it was not open under law to the complainant to have filed a fresh complaint on the same facts before another In-charge of another police station, which had concurrent jurisdiction. If no action was being initiated, the complainant ought to have first moved under Section 154(3) Cr.P.C. by approaching the superior police officers. Alternatively, the respondents No.3 to 5 had the right to move the jurisdictional court under Section 156(3) Cr.P.C., as not only held in ***Lalita Kumari (supra)***, but also in several other cases [see, ***Priyanka Srivastava v. State of U.P.***, (2015) 6 SCC 287, ***Sakiri Vasu v. State of U.P.***, (2008) 2 SCC 409].

33. Once the jurisdictional Magistrate issues directions under Section 156(3), inevitably, the FIR is registered. After the investigations, a Report under Section 173 Cr.P.C. would have to be submitted to the jurisdictional court. The police may submit a closure report too. The Magistrate would then be free to either accept or reject that Report under Section 173 Cr.P.C. and to either take cognizance or close the matter, in the latter event, only after permitting the complainant a hearing, including through filing of a protest petition. In the present case, the complainant has given a complete go-by to the procedure as prescribed by law and the filing of the second complaint before the Delhi Police is an act of overreach, tantamounting to "forum shopping", which cannot be permitted.

34. Thus, even if the instant case is not one of filing of the complaint before the learned Magistrate, there is no gainsaying that when a complaint has been inquired into by the local police and the complainant is dissatisfied with the action taken or the conclusion drawn, the only option available is to approach the jurisdictional court within whose local limits the said local Police station is situate, under Section 156(3) Cr.P.C. or Section 200 Cr.P.C..

35. While this could suffice for the disposal of the petition, the nature of the complaint may also be looked into. Of course, it requires no reiteration that powers under Section 482 Cr.P.C. is to be exercised rarely and only if there is perversity or abuse of process of law. The Supreme Court in ***Bhajan Lal (supra)*** has laid down seven categories in which these powers could be exercised to quash the FIR. The same are

reproduced as below:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

36. The present FIR has been registered under Section 406 read with Section 120B IPC. Section 406 IPC provides for punishment for the offence of criminal breach of trust. What is criminal breach of trust is defined under Section 405 IPC. It reads as below:

*"**Criminal breach of trust -** Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."*

37. In the illustrations provided to the Section, examples have been

given where entrustment has been made with certain stipulations or directions for the use of the property in a particular manner and contrary to those stipulations or directions the one entrusted with the property uses it in a manner that benefits himself. In the present instance, the cars are claimed to be the property that the respondents No.3 to 5 assert was entrusted to the petitioners. Assuming it to be so, it was understood that the petitioners would be utilizing those cars to earn profits. It is thus a business arrangement where some payments out of such earning were to be made to the bank, i.e. the EMI, and to the respondent No.4, as commission. The petitioners having dominion over the cars have neither misappropriated nor converted those cars dishonestly or otherwise. The allegations are that the EMIs were not paid and the loans turned into NPAs and the petitioners had not paid the commission due to the respondents. It is amply clear that neither the ingredients of the offence under Section 406 IPC nor of any conspiracy to commit such criminal breach of trust, is made out on the basis of the complaint. The Status Report filed by the ACP, EOW also records the admission of the complainant of having received a sum of Rs. 4,27,78,138/-. In other words, the quarrel is regarding balance payment, either of the EMIs or of the commission. There could be no clearer case of a civil dispute.

38. That even the complainant and the respondents No.3 to 5 never considered themselves to have been cheated when payments were in default according to them, is borne out from the fact that despite such alleged defaults of the petitioners, the respondents No.3 to 5 purchased new cars including a Mercedes-Benz S-Class S 350d, in December, 2019.

The other relevant fact is that the civil court in Mohali, finding the trinity of *"prima facie* case", "irreparable loss and injury" and the "balance of convenience", in favour of the petitioners, has restrained the respondents No.3 to 5 from taking possession of the cars without due process. Thus, the arguments of the respondents No.3 to 5 that the petitioners are in unauthorized possession of the cars or that they were making illegal profits are stated merely to be rejected.

39. The filing of a complaint for registration of an FIR before the Deputy Commissioner of Police (DCP), Rohini District at Delhi, is *mala fide* as it was done after becoming aware that the preliminary inquiry of the Mohali Police had led to the conclusion that the dispute was only a civil dispute. The contents of the FIR disclose no offence. The dispute is only of civil nature. The case is covered under categories (1) and (3) and possibly (7), as listed in ***Bhajan Lal (supra).***

40. In the light of the foregoing discussion, therefore, this petition is allowed and the FIR No.196/2021 dated 21st December, 2021, registered at the Economic Offences Wing, Delhi Police, New Delhi, under Sections 406/120B IPC, and all proceedings emanating therefrom are quashed.

41. The petition is disposed of along with the pending applications.

42. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 02, 2022/s