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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ CRL.M.C. 4189/2022 & CRL. M.As.17220/2022 & 17221/2022

BETWEEN:-

VIKRAMJIT SINGH
S/O BHAI MANJIT SINGH
R/O 68, JOR BAGH, NEW
DELHI - 110003

..... PETITIONER NO.1

MAHEEP MANJIT SINGH
W/O BHAI MANJIT SINGH
R/O 110, SUNDER NAGAR
NEW DELHI – 110003

..... PETITIONER NO.2

(Through: Mr. Siddharth Aggarwal, Senior Advocate with Mr.
Karan Khanuja, Mr. Harsh Yadav and Mr. Vikram
Panwar, Advocates)

AND

THE STATE OF NCT OF DELHI
THROUGH THE STANDING COUNSEL,
HON'BLE HIGH COURT OF DELHI
NEW DELHI — 110003

.... RESPONDENT NO.1

MR. PUNIT BERIWALA (COMPLAINANT)
S/O MR. S.S. BERIWALA
R/O 15/10, SARVAPRIYA VIHAR,
NEW DELHI- 110016

.... RESPONDENT NO.2

(Through: Mr. Utkarsh, APP for State.
Mr. Dayan Krishnan, Senior Advocate along with
Mr. Lokesh Bhola, Mr. Sarojanand Jha and Ms.
Deepa Chansotia Advocates for R-2).

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Pronounced on : 17.10.2022

J U D G M E N T**PURUSHAINDRA KUMAR KAURAV, J.**

1. By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C'), the petitioners seek quashing of FIR No.94 of 2022 registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi for offences punishable under Section 467/468/471/420/120B of the Indian Penal Code (in short, the IPC) and all criminal proceedings emanating therefrom.

2. On 16.06.2022, FIR in question came to be registered on a written complaint made by Mr. Punit Beriwal S/o Mr. S.S. Beriwal, respondent No.2 herein (who is called "the complainant"). Besides others, the FIR is also against the present petitioners, who are the son and wife of one Bhai Manjit Singh. Bhai Manjit Singh is also an accused in the instant FIR. It is, thus, seen that the father of petitioner No.1 and husband of petitioner No.2, Bhai Manjit Singh, is the main accused in the instant FIR. There are two other accused, namely, SREI Infrastructure Finance Ltd. and SREI Equipment Finance Ltd., which are stated to be financial institutions. Bhai Manjit Singh has also been arrayed as accused in the capacity of being *Karta* of the Hindu Undivided Family (in short, 'HUF'). It is, thus, seen that there are six accused in the FIR. Bhai Manjit Singh in the capacity of HUF *Karta* is accused No.1, Bhai Manjit Singh in his personal capacity is accused No.2, Maheep Manjit Singh W/o Bhai Manjit Singh is accused No.3 (petitioner No.2) and Vikramjit Singh

(petitioner No.1) is accused No.4. Accused No.5 and 6 are SREI Infrastructure Financial Ltd. and SREI Equipment Ltd., respectively. The petitioners are being referred here according to their number as accused in the FIR. Since the present petition is filed by accused No.3 – Maheep Manjit Singh and accused No.4 – Vikramjit Singh, therefore, the matter is being dealt only with respect to the two accused. The gravamen of the allegation in the FIR is as under:

- (i) Accused No.1 is a HUF by name of Bhai Manjit Singh of which, accused No.2, accused No.3 and accused No.4 are the coparceners.
- (ii) Accused No.1 is the owner of the property bearing No.28-A Prithviraj Road, New Delhi admeasuring 3727 sq. yards. (hereinafter referred to as 'property in dispute').
- (iii) In the year 2004, accused No.2 – Bhai Manjit Singh approached the complainant being *Karta* of accused No.1 with an offer to sell the property in dispute to the complainant. Accused No.2 represented and assured that other family members of the accused No.1 have also extended an offer to sell the property in dispute to the complainant and it was told that the property in dispute is free from all kinds of encumbrances.
- (iv) After negotiation between the complainant and the accused No.1 to 4, it was agreed that the total sale consideration of the property in dispute shall be Rs.28 crores. The property in dispute was stated to be leasehold, therefore, parties agreed for the payment of total sale consideration in parts. Accused Nos.1 to 4 had undertaken to get the property in dispute freehold from the Land and Development Office. It was also agreed that the complainant

would make some payments as earnest money till the time accused Nos.1 to 4 get the said property freehold from the Land and Development Office. Between 12.04.2004 to 03.01.2005 against various receipts, a total sum of Rs.1,64,50,000/- was paid to the accused No.1. The role attributed to accused No.3 and 4 i.e., petitioners herein is that they have signed as witnesses in the aforesaid receipts. The possession of part premises of the property in dispute i.e., servant quarter was handed over to the complainant *vide* letter of possession dated 22.04.2004.

- (v) Accused No.1 to 4 had assured that they would transfer the property to the complainant after obtaining all permissions and making payments to various authorities in order to freely transfer the property in dispute to the complainant.
- (vi) In June 2020, accused No.2 is stated to have approached the complainant stating that the title of the property in dispute is clear from all encumbrances and, therefore, the complainant should make the payment of balance consideration so that the title of the property in dispute can be transferred in the name of the complainant.
- (vii) The complainant requested the accused Nos.1 to 4 to show the documents to indicate that the property in dispute is clear from all encumbrances. Since no documents were provided, therefore, the complainant observed some *mala fide* behaviour, hence, he issued a public notice on 18.07.2020 in the newspaper 'Hindustan Times' declaring to the public at large his agreement with respect to the property in dispute with accused No.1 to 4.

- (viii) Pursuant to aforesaid public notice, an objection letter dated 20.07.2020 was received on behalf of Punjab and Sindh Bank, Rajendra Place, New Delhi, SREI Infrastructure Finance Ltd., and SREI Equipment Finance Ltd. staking claim over the property in dispute, wherein, it was stated that the said property had been mortgaged by the accused No.2 for securing the loan granted to one borrower company, namely, Montari Industries Ltd. That apart, two other objections *vide* letters dated 22.07.2020 were also received by the complainant from the accused Nos.5 and 6, stating therein that the property in dispute is mortgaged with them as well. Besides, the objections as stated above, another objection letter dated 23.07.2020 was also received from accused No.1 itself by the complainant, denying the agreement between the accused No.1 and complainant for the sale of the said property in dispute and the accused No.1 sought the production of documents from the complainant.
- (ix) As per the allegation in the FIR, it is only on 23.07.2020, that accused Nos.1 to 4 for the first time refused to perform their obligation to conclude the sale transaction of the property in dispute. There were various correspondences between the complainant and the accused and the complainant also filed a civil suit [CS (OS) 598 of 2021] before this court. However, on 02.12.2021, the complainant could get the copy of the sale deed whereby, accused No.1 sold the property in dispute to JK Paper Ltd., wherein, it was disclosed to him that under a Memorandum of Family Settlement dated 10.03.2000, accused No.2 resigned as *Karta* of accused No.1 and transferred all rights, claims, title and

entitlements in favour of remaining members of the HUF and the accused No.4 was recognized as *Karta* of accused No.1.

- (x) As per the complaint, accused No.2 in the capacity of *Karta* of accused No.1 signed and delivered various receipts for a sum of Rs.1,64,50,000/- towards part consideration for the purchase of property in dispute and accused Nos. 3 and 4 had signed as witnesses to the said receipts issued in favour of the complainant which clearly indicated that accused Nos.3 to 4 have jointly misled the complainant to enter into an oral agreement to purchase the said property from the accused No.1, thereby, grabbing and siphoning off the hard-earned money of the complainant.
- (xi) The complainant after perusal of the sale deed also came to know that accused No.1 executed the Mortgage Deed dated 04.01.2019 in favour of the accused No.5. Accused No.1 also deposited the title deeds of the property in dispute with accused No.6 as security against the credit facility for an amount of Rs.87,00,00,000/- availed by the ADIZAA Investment Pvt. Ltd.
- (xii) It is, alleged in paragraph No.44 of the FIR that the accused had committed fraud against the complainant to the tune of Rs.6,67,87,000/- alongwith interest calculated up-to-date @ 18% per annum w.e.f. 03.01.2005. It is the allegation that the accused had acted dishonestly thereby causing wrongful loss to the complainant and wrongful gain to themselves. The accused have committed an offence of cheating and dishonestly inducing delivery of property. They have also committed an offence of

dishonest misappropriation of the property apart from the commission of an offence of criminal breach of trust.

3. The petitioners as stated above who are accused Nos.3 and 4 i.e., wife and son of the accused No.2, respectively have filed this petition for quashing of FIR and all the proceedings emanating therefrom on various grounds.

4. This petition was taken up for hearing by this court on 31.08.2022 and after considering the averments made in the petition, notices were directed to be issued to the Respondents. Respondent No.2 through his counsel accepted the notice. Respondent No.2 sought time to file the reply. On prayer made by the petitioners for considering the grant of interim relief, this court, after consideration of the matter, directed the respondent to file the reply within seven days and subject to cooperation by the petitioners, their arrest has been stayed. On 15.09.2022, the parties undertook to file written synopsis with relevant judgments so that the matter could be heard finally and, accordingly, this petition came up for hearing on 22.09.2022 and on that date, the arguments on behalf of the parties were heard for final disposal.

5. Respondent No.2/complainant filed his reply and the substance of the reply is as under:

- (i) The accused have deceived the complainant into believing that the accused No.2 is the *Karta* of accused No.1. The accused dishonestly induced the complainant to part with his hard-earned money in the year 2004-05 to the tune of Rs. 1,64,50,000/- and entered into an Agreement to Sell with the complainant with

respect to property in dispute and hence, an offence punishable under Section 420 of the IPC is *prima facie* made out.

- (ii) Since the accused dishonestly misappropriated the amount paid to them and finally refused to honour the Agreement to Sell with respect to the property in dispute and, therefore, the act of the accused is clearly punishable under Section 406 of the IPC.
- (iii) Accused persons are in the habit of committing offences. One Mr. Ashok Gupta was also subjected to misrepresentation, who had disbursed consideration of Rs.4,30,00,000/- to the accused Nos.1 and 2 in the year 2010-11.
- (iv) It is stated in the reply that the property in dispute was mortgaged to various banks in order to avail loan and hence, the accused are habitual offenders who had defrauded various people by showing dreams to own the property in dispute.
- (v) An FIR No.105 of 2016 dated 24.06.2016 was also got registered by Mr. Ashok Gupta at Police Station E.O.W, Delhi, against the accused No.1 to 4. The said FIR, however, came to be quashed *vide* order dated 13.02.2019 in W.P.C.(Crl) No.465/2019 by this court on the basis of an amicable settlement entered into between Ashok Gupta and accused Nos.1 to 4.
- (vi) It is stated that on 22.08.2022, the accused No.1 lodged an FIR No.128/2022 at Police Station Tuglaq Road, New Delhi alleging therein that receipts of the amount are forged, whereas, he did not utter even a single word in his reply dated 23.07.2022 sent by him on behalf of the Bhai Manjit Singh (HUF). The averments made in

the FIR are contrary to the ones made in Civil Suit (OS) No.598/2021 and FAO (OS) No.20/2022.

- (vii) The petitioners i.e., accused No.3 & 4 have not joined the investigation. The change of *Karta* from Bhai Manjit Singh to accused No.4/petitioner No.1, was never intimated to the complainant. The complainant was sincerely and patiently waiting for the accused persons to obtain all NOCs to ensure that the property in dispute becomes free from all incumbrances and, therefore, no delay can be attributed to the complainant. The delay is not material in taking criminal proceedings for the offences alleged in the FIR.
- (viii) There are cross FIRs. They need proper investigation as in one FIR accused No.2 himself is alleging that the receipts in question are forged which is contrary to his own reply and documents. In the present FIR, it was alleged that the accused No.2 has induced the complainant while describing himself to be *Karta* of accused No.1, whereas, the accused No.2 had already resigned from being *Karta* of the family on 02.05.2000 itself. Since this fact has been discovered only after perusal of the sale deed dated 02.12.2021, therefore, it cannot be said that there is any delay in lodging the instant FIR. It is thus, stated in the instant reply that there is no substance in the petition, therefore, the same deserves to be dismissed.

6. Respondent No.1/EOW has also filed its reply/Status report stating therein that during the investigation, it was found that accused No.1 to 4 have also cheated another person Ashok Gupta on the pretext of the sale

of the same property and, therefore, they are habitual cheaters. The notice under Section 91 of the Cr.P.C. was issued to the accused to supply relevant documents to confirm payment and their signatures were sought to be obtained. It is also stated that the investigation of the case is at the initial stage. The reply of the accused is being analyzed and further investigation is in progress.

7. The learned senior counsel appearing on behalf of the petitioners submits that there is no agreement entered into between the parties for the sale of the property in dispute and it is unbelievable to accept the allegation that the payment of such a hefty amount was made, as part consideration, without recording any written agreement. There is a delay of about 17 years in the registration of the FIR and the delay has not been explained in any manner whatsoever. There is not a single letter, e-mail, WhatsApp message, or text exchanged between the complainant and the accused No.2 between 2005 and 2020 enquiring about the status of the property in dispute and the complete silence on the part of the complainant speaks volumes about the correctness of the allegations. Even if entire allegations made in the FIR are taken at their face value as correct, no offence as alleged is made out against the petitioners. No offence of cheating is made out. The dispute, at best, is purely of civil nature, which has been given a criminal colour to arm-twist the petitioners. There is no allegation of forgery. The E.O.W. does not have any right to register an FIR for an offence where the pecuniary limit is less than three crores. The FIR No.105/2016 lodged by Ashok Gupta is already quashed and rather respondent No.2 is a habitual offender against whom FIR No.40 of 2018 is pending at E.O.W apart from FIR No.2000/2013 at the same Police Station. Besides that, respondent No.2

is also placing reliance on the notice under Section 8(6) of Security Interest (Enforcement Rules 2002) read with Securitization and Reconstructing of Financial Assets and Enforcement of Security Interest Act. The learned senior counsel places reliance on the decisions of the Hon'ble Supreme Court in the matters of *Prof. RK Vijayasathy v. Sudha Seetharam*¹, *VY Jose v. State of Gujarat*², *G. Sagar Suri and Anr. v. State of UP and Ors.*³, *Rashmi Jain v. State of UP*⁴, *Jibrial Diwan v. State of Maharashtra*⁵, *Mohammed Ibrahim v. State of Bihar*⁶, *State of Haryana v. Bhajan Lal*⁷, *Sheela Sebastian v. R. Jawaharraaj*⁸ and *Bandekar Brothers Pvt Ltd. & Anr v. Prasad Vassudev Keni & Ors*⁹.

8. Learned senior counsel appearing on behalf of respondent No.2 while reiterating the submissions in the reply, highlights that it is only on 23.07.2020, the accused for the first time denied the transaction with the complainant and stated that absolutely there is no proposal of sale of the property in dispute. It is also stated that on 02.12.2021, the accused fraudulently and in a bid to frustrate the rights of the complainant, sold the property to JK Paper Ltd. and it is only on the perusal of the documents, the complainant had come to know that the accused had got converted the property from leasehold to freehold on 09.03.2017, which was granted on 04.06.2018. It is, therefore, submitted that as per the

¹ (2019) 16 SCC 739

² (2009) 3 SCC 78

³ 2000 2 SCC 636

⁴ (2014) 13 SCC 553

⁵ (1997) 6 SCC 499

⁶ (2009) 8 SCC 751

⁷ 1992 Supp (1) SCC 335

⁸ (2018) 7 SCC 515

⁹ (2020) 20 SCC 1

terms of the agreement, the property was to be sold to the complainant only after the same is free from all encumbrances and that process continued up to 2018 and, therefore, there cannot be said to be any delay in the registration of the FIR. While highlighting the averments made in the FIR, the learned senior counsel has submitted that this court has to confine itself to the allegations in the FIR and to consider whether the allegations made therein constitute *prima facie* allegations of the offence as alleged against them. According to him, the mere existence of civil proceedings cannot act as a bar to the investigation of a cognizable offence and both can go together in a given case. It has been pointed out that right from the beginning, the intention of petitioner No.2 in describing himself as a *Karta* of petitioner No.1 was clearly to cheat the complainant and to dishonestly induce him to deliver the property. It is stated that the petitioners, who are accused Nos.3 and 4, in the FIR have put their signatures as witnesses into the receipt which contains specific averment that accused No.2 being *Karta* of accused No.1 is entitled to enter into an agreement for the sale of the property in dispute. It is, thus, submitted that *prima facie* the allegations against all the accused are made out and this court should not interfere in the FIR at this stage as the investigation is yet to be completed. It has also been argued that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stay the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose cognizable offence. Learned senior counsel has placed reliance on decisions of the Hon'ble Supreme Court in the cases of *Neeharika Infrastructure Pvt. Ltd v. State of*

*Maharashtra*¹⁰, *State of Madhya Pradesh v. Mishrilal*¹¹, *Lalita Kumari v. State of U.P.*¹², *Edmund S. Lyngdoh v. State of Meghalaya*¹³, *Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.)*¹⁴, *Lee Kun Hee v. State of UP*¹⁵, *Trisuns Chemicals v. Raj Agarwal*¹⁶, *Priti Saraf & Anr v. State of NCT of Delhi & Anr*¹⁷ and *Ramveer Upadhyay & Anr v. State of UP & Anr*¹⁸ and the decision of this court in the matter of *MGF Developments v. State NCT of Delhi*¹⁹

9. The Learned APP while placing reliance on standing order No. Crime/06/2022 dated 23.05.2022 stated that the understanding of the petitioners with respect to the pecuniary jurisdiction of E.O.W is completely misplaced as an offence has a pecuniary limit of up to one crore. E.O.W is empowered to enquire into with the approval of district DCP and up to three crore Jt. CP Range/Crime and for more than three crores Spl. CP/EOW and in this case, there is approval by the competent authority and hence, the petitioner cannot allege any incompetence on the part of E.O.W.

10. I have heard submissions made by the learned senior counsel appearing on behalf of the parties and perused the record.

11. So far as the pecuniary jurisdiction of E.O.W is concerned, since the issue goes to the root of the matter, therefore, the same has to be

¹⁰ 2021 SCC OnLine SC 315

¹¹ (2003) 9 SCC 426

¹² (2014) 2 SCC 1

¹³ (2016) 15 SCC 572

¹⁴ (2009) 5 SCC 528

¹⁵ 2012 3 SCC 132

¹⁶ 1999 8 SCC 686

¹⁷ 2021 sSCC OnLine SC 206

¹⁸ 2022 SCC OnLine SC 484

¹⁹ 2022 SCC OnLine Del 2824

examined at the threshold. Standing order No.Crime/06/2022 dated 23.05.2022 clause 4.1.2 reads as under:

“4.1.2 Following officers will be competent to order for taking up the enquiry in EOW as well as in Districts: -

Sr. No.	Amount	Competent Authority
1.	Up to 1 Crore	District DCP
2.	1Crore to 3 Crore	Jt. CP Range/Crime
3.	More than 3 Crore	Spl. CP/EOW

If during the course of the enquiry, it emerges that the Economic offence involves more than one crore and three crores, the complaint(s) will be sent to the competent authority for approval as well as for taking up the enquiry. Complaints which have been asked to be enquired from the higher offices like CP/Delhi and Special CP/EOW shall be taken up for enquiry, after preliminary scrutiny and verifying the facts. Enquiry of complaints and subsequent investigation of the cases as per described limit shall be undertaken in the districts by specialized units like DIU (District Investigation Unit)/ Crime with the approval of the competent authority.

Further, the Multi Victim Cases (20 (Twenty) or more victims) will be investigated in EOW irrespective of the amount involved. The rest of the cases of similar nature, but less than 3 crore and less than twenty victims, shall be investigated by concerned Districts or Crime. The cases related to cyber-crime in which substantial cyber techniques are to be delved into will be taken up by Cyber Cell under Special Cell or Crime Branch. The cases in

which inter-state gangs are involved will be investigated by Crime Branch.”

12. A perusal of the standing order clearly indicates that there is no threshold limit for E.O.W to investigate any offence. What is required as per the standing order is the approval of competent authority for taking up the inquiry in E.O.W as well as in districts. For an amount up to one crore, the competent authority is district DCP and for an amount of one crore to three crore, the competent authority is Jt. CP Range/Crime, whereas, for an amount of more than three crore Spl. CP/EOW is the competent authority.

13. It is, thus, seen that there is no substance in the argument advanced on behalf of the petitioners that the E.O.W does not have pecuniary jurisdiction to entertain a complaint for an offence involving an amount of less than three crores. It is, therefore, held that the E.O.W is competent to investigate the offence in question.

14. Under the facts of the present case, the question that arises for consideration of this court is whether the High Court would be justified in quashing FIR at its nascent stage when the investigation has not yet been completed. The determination of the question involved in the instant case would depend upon the issue as to whether the allegations made in the FIR, even when taken at their face value and accepted in their entirety, do they *prima facie* constitute any offence or make out a case against the petitioners or, whether the allegations made in the FIR 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 petitioners.

15. It is settled legal position that the power under Section 482 of the Cr.P.C. should be sparingly invoked with circumspection and it should be exercised to see that the process of law is not abused or misused. The High Court at the stage of quashing the FIR is not to embark upon an inquiry as to the probability, reliability or genuineness of the allegations made therein. If the averments taken on face value do not constitute the ingredient necessary for an offence, the FIR in question can certainly be quashed. Though the law does not require that the complaint should reproduce the legal ingredient of the offence *verbatim*, however, the complaint must contain the basic facts necessary for making out an offence under the penal code. It is also permissible in the exercise of power under Section 482 of the Cr.P.C. to examine, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. If the High Court finds that the continuation of FIR would result in an abuse of the process of law, the High Court would be empowered to exercise its power under Section 482 of the Cr.P.C. and to quash the FIR even at the nascent stage.

16. In order to reassure the aforesaid legal position, a few judgments of the Hon'ble Supreme Court on the aforesaid legal aspects are necessary to be considered.

17. The Hon'ble Supreme Court in the matter of *State of Karnataka v. L. Muniswamy*²⁰ had an occasion to consider the scope and ambit of power under Section 482 of the Cr.P.C. In the case of *L. Muniswamy (supra)*, the challenge was made by the accused to the charges before the High Court and the High Court dismissed the petition, accordingly, the

²⁰ (1997) 2 SCC 699

accused therein were before the Hon'ble Supreme Court. The Hon'ble Supreme Court in paragraph No.7 of its decision held as under:

“In the exercise of this wholesome power, the 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 proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

18. In the matter of **Chandrapal Singh and Ors v. Maharaj Singh & Anr.**²¹, the Hon'ble Supreme Court was considering the validity of a criminal complaint instituted by the landlord against the tenant for the commission of an offence under Sections 193, 199 and 201 of the IPC. The cognizance was taken by the Chief Judicial Magistrate for the aforesaid offences and the order of cognizance was challenged by the tenant before the High Court. The High Court did not find any merit in the said challenge and, therefore, the tenant was before the Hon'ble Supreme Court.

²¹ (1982) 1 SCC 466

19. While deciding the aforesaid controversy the Hon'ble Supreme Court in paragraph No.1 of the decision has observed 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."

Extract of paragraph No.14 is also reproduced as under:

"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. This 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 CrPC."

On the basis of the aforesaid observations and findings, the Hon'ble Supreme Court in paragraph No.15 of its judgment had set aside the order of taking cognizance against the petitioners therein.

20. The Hon'ble Supreme Court in the matter of **G. Sagar Suri and Anr. (supra)** which is also relied upon by the learned counsel appearing on behalf of the petitioners had an occasion to consider the prayer for quashing of the criminal proceedings against the petitioners therein for an offence under Section 406/420 of IPC. In paragraph No.8 of the aforesaid decision, it has been held that if the matter, which is essentially of a civil nature, has been given a cloak of a criminal offence, criminal proceedings are not a short-cut of other remedies available in law, are factors to be considered while exercise power under Section 482 of the

Cr.P.C. In addition to the earlier decision of the Hon'ble Supreme Court in the case of *L. Muniswamy (supra)*, the Hon'ble Supreme Court had also considered other decisions in the case of *Kurukshetra University & Anr v. State of Haryana & Anr.*²², *Chandrapal Singh and Ors. (supra)* and under the circumstances of that case has held that invoking the jurisdiction of a criminal court for allegedly having committed an offence under Section 406/420 of IPC by the appellant, was an abuse of the process of law and, therefore, the appeal preferred by the appellant/accused, therein, was allowed and criminal case pending before the Chief Judicial Magistrate was quashed.

21. In the matter of *Zhandu Pharmaceutical Works Ltd & Anr. v. Mohd Sharaful Haque & Anr.*²³, while placing reliance on the decision in the case of *R.P. Kapur v. State of Punjab*²⁴, and the decision of the Hon'ble Supreme Court in the case of *Bhajan Lal (supra)* and other earlier decision of the Hon'ble Supreme it has been held as under:

“9. In R.P. Kapur v. State of Punjab MANU/SC/0086/1960:1960 Cri. LJ 1239, this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g., want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

²² (1977) 4 SCC 451

²³ (2005) 1 SCC 122

²⁴ AIR 1960 SC 866

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

22. In the decision of ***Uma Shankar Gopalika v. State of Bihar & Ors.***²⁵, the Hon’ble Supreme Court was considering the challenge made by the accused to the complaint filed by respondent No.2, therein, for an offence punishable under Section 420/120B of the IPC. The matter was related to an agreement and the complainant had made a partial payment of his investment to the accused. It was the case of the appellant/accused therein that the only allegation against him was that the accused assured the complainant that when they receive the insurance claim, they would pay a certain sum to the complainant but the same was never paid. It was also alleged that the accused, therein, fraudulently persuaded the complainant to agree so that accused persons may take steps for moving consumer court in relation to their own claim. The Hon’ble Supreme Court in paragraph No.6 of its decision had held that every breach of contract would not give rise to the offence of cheating and only those cases of breach of contract would amount to an offence where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to the offence of cheating. In the said case, it was found that there was no deception at the very inception and, accordingly, no offence under section 420/120B of the IPC was found to be committed. The dispute in question was found to be civil in nature and it was held that the remedy lies before the civil court by filing a properly constituted suit. Accordingly, the Hon’ble Supreme Court had set aside the order passed by the High Court and also quashed

²⁵ (2005) 10 SCC 336

the complaint in question. Paragraph Nos.6 and 7 of the aforesaid decision are being reproduced as under:

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complainant any criminal offence whatsoever is made out of much fewer offences Under Section 420/120B of the Indian Penal Code. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,000/-, they would pay a sum of Rs. 2,60,000/- to the complainant out of that but the same has never been paid. Apart from that, there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to a claim of Rs. 4,20,000/-. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed, later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence Under Section 420 of the Indian Penal Code.

7. 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 Code of Criminal Procedure which it has erroneously refused.”

23. In the matter of *Indian Oil Corporation v. NEPC India Ltd. and Ors.*²⁶, the Hon'ble Supreme Court was again considering the scope and ambit of Section 482 of the Cr.P.C. in the context of an offence punishable under Sections 405/420/403 and 415 of the IPC. In the said decision, the complaint in question was found to be maintainable only with respect to an offence punishable under Sections 450 and 425 of the IPC and the other offences were found to have been rightly quashed by the High Court. The Hon'ble Supreme Court in the matter of *Vir Prakash Sharma v. Anil Kumar Agarwal & Anr*²⁷ was considering the tenability of the offence under Sections 406/409/420 and 417 of the IPC. The cognizance was taken against the appellants therein and the summon was issued to them. The appellants approached the High Court, however, the High Court refused to exercise its jurisdiction on the ground that the allegation against the accused therein was factual in nature and cannot be adjudicated in the exercise of power under Section 482 of the Cr.P.C. The Hon'ble Supreme Court reiterated the well-settled legal position that if the allegations contained in the complaint even if taken on face value and taken to be correct in their entirety, do not disclose an offence, the High Court can exercise its power under Section 482 of Cr.P.C and quashed the complaint/FIR. In the said case, the dispute was found to be essentially of a civil nature. Non-payment or underpayment of the price of the goods itself does not amount to the commission of an offence of cheating or criminal breach of trust. Finally, paragraph No.17 of the judgment of the High Court was set aside and the order of taking cognizance was quashed.

²⁶ (2006) 6 SCC 736

²⁷ (2007) 7 SCC 373

24. In the matter of *Inder Mohan Goswami & Anr. v. State of Uttaranchal*²⁸, the Hon'ble Supreme Court was considering the validity of FIR under Section 420/467 of the IPC against the appellants therein against whom non-bailable warrants were also issued. The allegations therein against the accused were that the accused allegedly had committed an offence of cheating in connivance with other accused by selling a portion of their land to a third party and by cancelling the General Power of Attorney. The complainant therein after the filing of the criminal complaint also instituted a civil suit against the appellant therein. The appellant/accused, therein, filed a petition under Section 482 Cr.P.C. before the High Court. The High Court dismissed the petition on the ground that the record demonstrated that the allegation in the FIR constitutes an offence as alleged by the complainant therein. The Hon'ble Supreme Court in the said decision of *Inder Mohan Goswami (supra)* made reference to various earlier decisions including the decisions of the English Courts and analyzed the relevant provisions of law with respect to sections 420, 415 and 467 of the IPC. It has been held that inherent powers under Section 482 of the Cr.P.C. can be exercised: -

- (i) to give effect to an order under the court,
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

It has also been held that if any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

²⁸ (2007) 12 SCC 1

25. The Hon'ble Supreme Court after analyzing the relevant Sections of the IPC has held that the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. It has also been held that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdictions of the High Courts under Section 482 of the Cr.P.C., though wide, have to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself.

26. In the decision of *Suneet Gupta v. Anil Triloknath Sharma & Ors.*²⁹, the Hon'ble Supreme Court while affirming the order of the High Court of quashing an FIR for offences punishable under Sections 468/406 read with 120B of the IPC, has noticed that the High Court rightly quashed the FIR as in that case one partner was trying to drag the principal company into criminal litigation to recover dues which the principal had paid to the other partner. It was also noted that the dispute therein was a tripartite civil dispute and the same was given a colour of criminality.

27. In the matter of *Gorige Pentaiah v. State of Andhra Pradesh & Ors.*³⁰, the appellant therein was aggrieved by the judgment passed by the High Court, whereby, his petition was dismissed for quashing of the FIR for offences punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 447/427/506 of the IPC. The Hon'ble Supreme Court made the reference to the decided cases on the subject and has held that inherent

²⁹ (2008) 11 SCC 670

³⁰ (2008) 12 SCC 531

power under Section 482 of the Cr.P.C. should be exercised by the High Court for the advancement of justice. The complaint, in that case, was found to be a total abuse of the law.

28. The Hon'ble Supreme Court in the matter of ***R. Kalyani v. Janak C. Mehta & Ors***³¹ while considering various earlier decisions as have been referred hereinabove including the decision in the case of ***Rajesh Bajaj v. State NCT of Delhi***³², ***Hamida v. Rashid***³³, ***Sunita Jain v. Pawan Kumar Jain***³⁴, ***State of Orissa v. Saroj Kumar Sahoo***³⁵, ***Kailash Verma v. Punjab State Civil Supplies Corpn.***³⁶ ***Monika Kumar v. State of U.P.***³⁷ has held that the following proposition of law would emerge from the said decision.

“15. Propositions of law which emerge from the said decisions are:

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

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

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose the commission of an offence, the court shall not go beyond the same and pass

³¹ (2009) 1 SCC 516

³² (1999) 3 SCC 259

³³ (2008) 1 SCC 474

³⁴ (2008) 2 SCC 705

³⁵ (2005) 13 SCC 540

³⁶ (2005) 2 SCC 571

³⁷ (2008) 8 SCC 781

an order in favour of the accused to hold the absence of any mens rea or actus reus.

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

28.1 Having held so, the Hon'ble Supreme Court went on to observe that no hard and fast rule can be laid down. Each case has to be considered on its own merit and the High Court should not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint.

29. Finally, the Hon'ble Supreme Court affirmed the decision of the High Court, whereby, the complaint in question was set aside by the High Court. The same legal position had been reiterated by the Hon'ble Supreme Court in the decision of ***Dalip Kaur & Ors. v. Jagnar Singh & Anr***³⁸ whereby the offence involved was that under Sections 406 and 420 of the IPC and the question which was decided by the Hon'ble Supreme Court was whether a breach of contract of an agreement for sale would constitute an offence for the aforesaid Sections. The Hon'ble Supreme Court came to the conclusion that the High Court did not correctly exercise its power and, accordingly, the matter was remitted back for fresh consideration.

30. The Hon'ble Supreme Court in the matter of ***Kishan Singh through LRs v. Gurpal Singh & Ors***³⁹ was considering the tenability of an FIR under Sections 420/423/467/468/471/120B of the IPC which was

³⁸ (2009) 14 SCC 696

³⁹ (2010) 8 SCC 775

quashed by the High Court placing reliance on the decree of the civil court between the same parties in respect of the subject matter. In paragraph No.25 of the said decision, it was found that FIR was lodged with the sole intention to harass the respondents therein. The FIR was lodged in the year 2002 and the allegations in the FIR were substantially similar to the allegation made in the civil suit filed in the year 1996. It was found that FIR was filed with inordinate delay and there was no plausible explanation for the same. In paragraph No.21 of the said decision, it is noted that prompt and an early recording of the occurrence by the informant with its vivid details gives an assurance regarding the truth of its version. In case, there is some delay involving the FIR, the complainant must give an explanation for the same. It has also been held that undoubtedly, delay in lodging the FIR does not make the complainants' case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. It has also been held that in cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that allegations were an afterthought or had given a coloured version of the event, in such cases, the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil case may initiate criminal proceedings just to harass the other side with *mala fide* intention or the ulterior motive of wreaking vengeance on the other party. Paragraph No.21 to 26 are being reproduced as under:

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance

regarding the truth of its version. In case, there is some delay in filing the FIR, the complainant must give an explanation for the same. Undoubtedly, a delay in lodging the FIR does not make the complainant's case improbable when such a delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. vide: Sahib Singh v. State of Haryana, (1997) 7 SCC 231

22. In cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be mere that the allegations were an afterthought or had given a coloured version of events. In such cases, the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.

(vide: Chandrapal Singh and Ors. v. Maharaj Singh and Anr.; State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.; G. Sagar Suri and Anr. v. State of U.P. and Ors.; and Gorige Pentaiah v. State of A.P. and Ors.

23. The case before us relates to a question of the genuineness of the agreement to sell dated 4.1.1988. The said agreement was between Kishori Lal and the respondents and according to the terms of the said agreement, the sale deed was to be executed by 10.6.1989. As the sale deed was not executed within the said time, suit

for specific performance was filed by the other party in 1989 which was decreed in 1996.

24. So far as the present appellants are concerned, agreement to sell dated 22.10.1988 was executed in favour of their father and the sale deed was to be executed by 15.6.1989. No action was taken till 1996 for non-execution of the sale deed. The appellants' father approached the court after 7 years by filing Suit No. 81/1996 for specific performance. However, by that time, the suit filed by the present respondents stood decreed. The appellants' father filed another Suit No. 1075/96 for setting aside the judgment and decree passed in favour of the respondents 1 to 4. The said suit was dismissed by the Additional District Judge (Senior Division), Khanna on 10.6.2002. Subsequently, the appellants preferred RFA No. 2488/02 on 15.7.2002 against the aforesaid order, and the said appeal is still pending before the Punjab & Haryana High Court.

25. It is to be noted that the appellants' father Kishan Singh lodged FIR No. 144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No. 1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law.

26. In view of the above, and to do substantial justice, we are not inclined to interfere with the order passed by the High Court quashing the criminal proceedings against the

respondents in spite of the fact that the impugned judgment dated 13.02.2009 passed in Criminal Misc. No. 4136 of 2003 is not sustainable in the eyes of law.”

31. In the matter of ***Binod Kumar & Ors. v. State of Bihar & Anr.***⁴⁰, the Hon’ble Supreme Court was considering the charges under Section 406 of the IPC and whether criminal complaint for criminal breach of trust for allegedly retaining the bill amount payable by the respondent No.2 therein was liable to be quashed. While placing reliance on earlier decisions, the Hon'ble Supreme Court in paragraphs no.17 to 19 has held as under:

“17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are: - (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.

18. In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere

⁴⁰ (2014) 10 SCC 663

fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed.”

32. The Hon'ble Supreme Court in the matter of ***Vinod Natesan v. State of Kerala & Ors.***⁴¹ was considering a case with respect to an offence under Section 420/406 read with Section 34 of the IPC, where, the allegations were that the accused after entering into the agreement with the complainant with regard to the availing of intellectual services for marketing the products of the complainant, the accused did not pay the amount due and payable in the agreement. It was alleged that only part payment was made and the remaining payment was not made and the accused therein backed out from the agreement and thereby the accused had committed that offence as alleged therein. The High Court in that case exercised its power under Section 482 of the Cr.P.C. and quashed the complaint, therefore, the complainant approached the Hon'ble Supreme Court. The Hon'ble Supreme Court affirmed the order passed by the High Court and dismissed the appeal. Paragraph No.10 and 11 of the said decision are being reproduced as under:

“10. Having heard the Appellant as party in person and the learned Advocates appearing on behalf of the original Accused as well as the State of Kerala and considering the judgment and order passed by the High Court, we are of

⁴¹ (2019) 2 SCC 401

the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the Appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the Accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original Accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month Notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence Under Sections 406 and 420 of the Indian Penal Code as alleged. We are in complete agreement with the view taken by the High Court.

11. In so far as the submissions made on behalf of the Appellant-party in person that initially the learned Judge dismissed the application and, thereafter when the judgment was dictated and pronounced, the learned Judge has allowed the application and, therefore, the impugned judgment and order passed by High Court is required to be quashed and set aside is concerned, the aforesaid has no substance. What is produced as P-45 is the docket of the file, which does not bear the signature of the learned Judge. Therefore, it cannot be said that initially the learned Judge dismissed the petition and, thereafter, when the judgment was pronounced the order was changed and the application was allowed. Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the Accused and a civil dispute is tried to be converted into a criminal dispute. Thus, to continue the criminal proceedings against the Accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers Under Section 482 of the Code of Criminal Procedure and has

rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed.”

33. The Hon'ble Supreme Court in the case of **Anand Kumar Mohatta & Anr. v. State (NCT of Delhi), Department of Home & Anr.**⁴² was considering a case, wherein, the challenge made by the accused in the FIR for an offence punishable under Section 406 of the IPC was rejected by the High Court, therefore, the accused therein was before the Hon'ble Supreme Court in an SLP. The dispute had arisen out of the agreement dated 03.06.1993 entered into between the accused and the complainant therein. The FIR was lodged about 21 years after the agreement. In that case, initially, the FIR was also lodged against the wife of one of the accused but no offence was found to have been committed after the investigation. The agreement was with respect to the development of the property owned by the accused. The property was situated at Feroz Shah Road, New Delhi. The parties agreed to develop the said property by considering a high-rise building comprising flats. The complainant therein paid a sum of Rs. One crore as per the agreement. The agreement could not be fulfilled on account of new building regulations. The appellant therein wrote a letter that he does not wish to develop the property. The amount received by the appellant therein admittedly was not returned to the complainant. A complaint was filed by the complainant therein on 19.11.2011 for an offence punishable under Section 406 of the IPC. It was alleged that the accused was guilty of an offence under Section 406 since he had clandestinely and surreptitiously transferred the subject property in the name of his wife i.e., co-accused

⁴² (2019) 11 SCC 706

therein and the said act was done to defeat the agreement dated 03.06.1993. While placing reliance on earlier decisions of the Hon'ble Supreme Court as discussed in the preceding paragraphs, the Hon'ble Supreme Court in paragraphs Nos.23 to 25 has held as under:

“23. We, thus find that it is not possible to hold that the amount of Rs. One crore which was paid along with the development agreement as a deposit can be said to have been entrustment of property which has been dishonestly converted to his own use or disposed of in violation of any direction of law or contract by the Appellant. The Appellants have not used the amount nor misappropriated it contrary to any direction of law or contract which prescribes how the amount has to be dealt with. Going by the agreement dated 03.06.1993, the amount has to be returned upon the handing over of the constructed area of the owner which admittedly has not been done. Most significantly the Respondent No. 2 has not demanded the return of the amount at any point of time. In fact, it is the specific contention of the Respondent No. 2 that he has not demanded the amount because the agreement is still in subsistence.

24. We do not see how it can be contended by any stretch of imagination that the Appellants have misappropriated the amount or dishonestly used the amount contrary to any law or contract. In any case, we find that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

25. Having given our anxious consideration, we are of the view that assuming that there is a security deposit of Rs. One Crore and that he has misappropriated the dispute between the two parties can only be a civil dispute.”

33.1 The Hon'ble Supreme Court set aside the order passed by the High Court and quashed the FIR and chargesheet filed against the accused/appellant therein. It was found that the prosecution was *mala fide* untenable and solely intended to harass the appellant therein. It was

also held that the respondent/complainant therein having failed to succeed to recover the deposited amount through a civil action tried to implicate the accused therein with *mala fide* intent. Paragraphs No.31 to 33 are also reproduced as under:

“31. We find that the prosecution is mala fide, untenable and solely intended to harass the Appellants. We are forfeited in view of the Respondent not having made any attempt to recover the deposit of Rs. One Crore through a civil action.

32. We have, therefore, no hesitation in quashing the FIR and the charge sheet filed against the Appellants. Hence, the FIR No. 0139/2014 dated 20.08.2014 and charge sheet dated 03.08.2018 are hereby quashed.

33. For the aforesaid reasons, we hereby set aside the impugned judgment and order dated 02.02.2016 of High Court of Delhi. Accordingly, appeal is allowed along with the application filed by the Appellants seeking amendment of main prayer.”

34. The Hon'ble Supreme Court in this decision while taking note of the decision in the case of ***Indian Oil Corporation (supra)*** has held that there is a growing tendency in a business circle to convert purely civil disputes into criminal cases. The said expression has been made keeping in mind the observations made by the Hon'ble Supreme Court in the decision of ***Indian Oil Corporation (supra)***. In Paragraph No.13 therein, it was held that 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.

35. The Hon'ble Supreme Court in the case of ***Prof. R. K. Vijayasathy & Anr. v. Sudha Seetharam & Anr. (supra)*** was considering the prayer of the accused-appellant therein to quash the

criminal proceedings instituted by the complainant and the challenge to the criminal proceedings was rejected by the High Court. In that case, FIR for an offence punishable under Sections 405/406/415/420 read with Section 34 of the IPC was registered against the appellant therein in paragraphs No.25 to 30. Following observations have been made by the Hon'ble Supreme Court, the same is reproduced as under:-

“25. The suit for recovery of money was instituted by the son of the Appellants against the first Respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first Respondent belatedly in 2016. It is clear from the face of the complaint, that no amount was entrusted by the first Respondent to either of the Appellants and there was no dishonest inducement of the first Respondent by the Appellants to deliver any property. As stated by the first Respondent in the complaint, the money belonged to the son of the Appellants. It was transferred by the Appellants' son to her on his own volition. The money was alleged to have been returned to the Appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences Under Sections 405, 415 and 420 of the Penal Code are not made out.

26. The Respondents have relied on the decision of this Court in Rajesh Bajaj v. State of NCT of Delhi: (1999) 3 SCC 259. In that case, the Delhi High Court had quashed an FIR alleging an offence Under Section 420 of the Penal Code on the ground that the complaint did not disclose the commission of any offence. Allowing the complainant's appeal, this Court held thus:

“9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the Accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence

to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details...”

The decision does not advance the submission of the first Respondent. As we have noted above, the complaint in the present case is bereft of the basic facts necessary to constitute the offences alleged Under Sections 405, 406, 415 and 420 of the Penal Code.

27. Learned Senior Counsel for the Appellant contended that the actions of the first Respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first Respondent has attempted to cloak it with a criminal flavor to harass the aged Appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first Respondent in filing the complaint against the Appellants. Learned Senior Counsel for the Appellants relied on the decision of this Court in State of Karnataka v. L Muniswamy: (1977) 2 SCC 699. In that case, the prosecution alleged that eight of the Accused had conspired to kill the complainant. The Karnataka High Court quashed the proceedings on the ground that no sufficient ground was made out against the Accused. A three judge Bench of this Court dismissed the appeal by the State with the following observations:

“7. ...In the exercise of this wholesome power, the 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 proceeding ought to be quashed.

The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

28. *The jurisdiction Under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.*

29. *In the present case, the son of the Appellants has instituted a civil suit for the recovery of money against the first Respondent. The suit is pending. The first Respondent has filed the complaint against the Appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first Respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first Respondent against the Appellants constitutes an abuse of process of court and is liable to be quashed.*

30. *For the above reasons, the appeal is allowed. The judgment of the High Court is set aside and the criminal proceedings arising from PCR 2116 of 2016 instituted by the first Respondent against the Appellants are quashed. We however clarify, that no opinion has been expressed on*

the merits of the pending civil suit filed by the son of the Appellants for the recovery of money. The pending suit shall be disposed of in accordance with the law.”

36. On the basis of the aforesaid legal position and for the purposes of the present case, this court is of the considered view that the High Court is well within its jurisdiction to quash the FIR even at its nascent stage if the following conditions are fulfilled: -

- (i) If the allegations made in the FIR, even if are accepted to be true in their entirety, the same would not constitute *prima facie* commission of offence alleged in the FIR;
- (ii) If the matter is essentially of a civil nature and has been given a cloak of a criminal offence.
- (iii) If the allegations made in the FIR 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.

37. The delay in lodging of the FIR may by itself not be the reason for quashing the FIR, however, the same can always be taken into consideration to appreciate the truthfulness or genuineness of the complaint in question.

38. Coming back to the facts of the present case, as stated in the initial paragraphs, it would be seen that the entire allegation made against the present petitioners is that the petitioners are son and wife of Bhai Manjit Singh. The main accused i.e., Bhai Manjit Singh had introduced the present petitioners to the complainant to sell the property in dispute to the complainant.

39. It is, thus, alleged in the complaint that accused Nos.1 to 4 deliberately committed fraud by misrepresenting that the accused No.2 is the *Karta* of accused No.1 in the year 2004. Whereas, according to the complaint, it was found that accused No.2 had already resigned as *Karta* of accused No.1 and instead accused No.4 was recognized as *Karta* of accused No.1. It is, thus, further reiterated that accused Nos.1 to 4, therefore, played fraud upon the complainant by misrepresenting the status of accused No.2 as *Karta*. It is also alleged that the present petitioners had acknowledged the sale of the property as well as the payment made by the complainant towards advance. Receipt of the amount so received by the main accused, namely, Bhai Manjit Singh was witnessed by the present petitioners. One of the receipts on page No.97 of the reply is being reproduced so as to understand the actual recital made therein.

“

RECEIPT

Received a sum of Rs. 31,00,000/- (Rupees Thirty One Lacs Only) as earnest money from Mr.. Punit Beriwal, s/o Shri S.S. Beriwal, r/o 15/10 Sarvapriya Vihar, New Delhi, against the sale of our property No. 28-A, Prithviraj Road, New Delhi, admeasuring 3727 sq. yards. The total sale consideration agreed upon is Rs. 28 Crore. (Rupees Twenty Eight Crores only), further a sum of Rupees Thirty lakhs to be made by Thursday.

The sale is subject to the said property being free from all kinds' charges, lien, encumbrances, prior sales, mortgages, litigations, claims, etc. The Seller has agreed to get the said property freehold from the concerned authorities at his own expense before the transfer of the said property in favor of the PURSHASER i.e Shri Punit Beriwal or his nominees

*Sd/-
SELLER.*

*Bhai Manjit Singh HUF
Through karta Bhai Manjit Singh
s/o
r/o 2 South End Lane, New Delhi*

WITNESS

1. -SD-

*Maheep Singh
2 south End Lane, New Delhi*

2. SD/-

*Vikramjit Singh
2 south End Lane, New Delhi”*

40. It is further alleged in the FIR that on 22.04.2004, the physical possession of a part of the property in dispute was handed over by the accused No.1 to 4 to the complainant. It is further alleged that accused No.1 to 4 undertook to get the said property unencumbered by making payments to various authorities. However, the same was sold to JK Paper Ltd. It is alleged that the accused Nos.1 to 4 for the very first time *vide* letter dated 23.07.2020 had refused to perform their obligation to conclude the sale transaction of the said property as agreed with the complainant.

41. Having considered the allegations in the FIR in their entirety and accepting them to be correct on face value, this court is of the considered view that the same does not constitute an offences under Sections 467/468/471/420/120B of the IPC. As per paragraph No.7 of the FIR, when all accused were ready and willing to sell the said property to the complainant, there was no reason to purport that the accused No.2 was the *Karta* of accused No.1. There is no written agreement between the respondent No.2 with the petitioners for sale of such a valuable and

prime property. The only role alleged against the petitioners are that they are witnesses to the alleged receipts signed by Bhai Manjit Singh for receipt of part sale consideration. The act of signing the receipt as a witness would not constitute any of the aforesaid offences. The last payment admittedly has been made on 03.01.2015 and it is unbelievable that in the year 2005, having made the payment of Rs.1,64,50,000/- against the total consideration of Rs.28,00,00,000/-, one would not prefer getting a formal agreement executed. The narration of the FIR does not disclose any action/step/effort being made by respondent No.2 between 03.01.2005 to 18.07.2020 i.e., for almost 16 long years. It is again beyond any prudent behaviour that someone who makes a payment of Rs.1,64,00,000/- in the year 2005 would not even bother to enquire about the further steps to be taken either for the execution of the sale document or to enquire about the step being taken by the seller with respect to obtaining NOCs etc. for almost 16 years. There is no whisper about any steps being taken by respondent No.2 between 2005 to 2020. Even according to the recital in the FIR, admittedly a part possession of the property in dispute was handed over to respondent No.2 on 22.04.2004 itself. The same would conclusively belie the allegation that right from inception there had been an intention of cheating respondent No.2. Respondent No.2 filed a civil suit on 28.10.2001 before this court seeking relief for specific performance, possession and injunction. The date of FIR is 16.06.2022. The application in the civil suit for dismissal of the suit under Order VII Rule XI of the CPC was dismissed by this court on 07.02.2022 and against the said order the learned Division Bench of this court in FAO(OS) No.20/2022 stayed the further proceedings of the said civil suit *vide* order dated 29.03.2022. It is, thus,

apparent that the proceedings of the civil suit have been stayed by the Division Bench of this court on 29.03.2022. It is, thereafter, the instant FIR dated 16.06.2022 has been registered.

42. Cheating is defined in Section 415 of the IPC and is punishable under Section 420 of the IPC. Section 415 of the IPC is set out below:

“Section 415: - Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

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

Section 415 thus requires: -

1. Deception of any person.
2. (a) Fraudulently or dishonestly inducing that person-
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

43. The Hon'ble Supreme Court in the matter of ***Inder Mohan Goswami (supra)*** while considering the FIR lodged under Section 467/420/120B of the IPC has held as under: -

“42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

43. We shall now deal with the ingredients of Section 467 IPC. Section 467 IPC reads as under:

“467. Forgery of valuable security, will etc.-- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

44. The following ingredients are essential for commission of the offence under Section 467 IPC:

- 1. the document in question so forged;*

2. *the accused who forged it.*

3. *the document is one of the kinds enumerated in the aforementioned section.*

The basic ingredients of offence under Section 467 are altogether missing even in the allegations of the FIR against the appellants. Therefore, by no stretch of the imagination, the appellants can be legally prosecuted for an offence under Section 467 IPC.

45. *Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.*

46. *The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."*

44. As has been discussed hereinabove, even as per FIR itself, the part possession of the property in dispute was handed over to Respondent No.2 in the year 2004 itself. There is no question of arriving at a conclusion that there was a dishonest or fraudulent intention at the beginning of the alleged act to induce the complainant to deliver an advance sum to the accused. So far as Section 467 IPC is concerned, I have examined the entire FIR and there is no allegation of forgery

against the petitioners. Hence, an offence under Sections 467/468 is also clearly not made out. None of the documents in the instant case has been used as genuine which is known or has been reason to believe to be forged and hence, an offence under Section 471 of the IPC is also not be attracted. There is no dishonest intention from the inception to induce respondent No.2 to purchase the property in question and it is thus, concluded that accepting all the allegations against the petitioner as correct in the FIR, no offence as alleged is *prima facie* made out. The case in hand clearly falls within exception No. (1) and (5) carved out for quashing of criminal prosecution in the decision of ***Bhajan Lal (supra)***. The allegations made in the FIR against the petitioners constitute purely a civil dispute and an attempt is being made to cloak them as criminal offences. Exceptions No (1) and (5) of ***Bhajan Lal (supra)*** are reproduced as under: -

(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.*

(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.*

45. As far as the decision relied upon by the learned senior counsel for respondent No.2 in the case of ***Neeharika Infrastructure Pvt. Ltd.***

(*supra*) is concerned, in paragraph No.57 thereof, the principle of law that emerges on the basis of the decisions of the Hon'ble Supreme Court right from the decision of the Privy Council have been reiterated. In paragraph No.60 of the said decision, the Hon'ble Supreme Court has clearly held that in a given case, there may be an allegation of abuse of process of law by converting a civil dispute into a criminal dispute only with a view to pressure the accused.

46. This court in the instant case finds that an effort has been made by respondent No.2 to convert a civil dispute into a criminal case. The decision of *Neeharika Infrastructure Pvt. Ltd. (supra)*, therefore, would not help the respondents. The decision in the case of *Mishrilal (supra)*, relates to FIR under Sections 147/148/149 and 324 of the IPC and another FIR for various offences including an offence under Sections 302/307 etc. of the IPC. The Hon'ble Supreme Court in paragraph No.8 of the said decision has held that the Investigating Officer submitted the *challan* on the basis of a complaint lodged by the accused Mishri Lal in respect of the same incident. It has been held, it would have been just, fair and proper to decide both cases by the same court in view of the guideline devised by the Hon'ble Supreme court in the case of *Nathi Lal & Ors. v. State of UP & Anr.*⁴³ The principle laid down therein is that the cross cases should be tried together by the same court irrespective of the nature of the offence involved. The aforesaid principle of law is not disputed and does not call for any consideration in the instant case. What is being argued by respondent No.2 is that the accused No.2 in the instant case has lodged an FIR against the present respondent No.2 stating therein that the receipts in question are forged. According to respondent

⁴³ 1990 Supp SCC 145

No.2 in one place the accused No.2 is alleging that the receipts are false and a contrary statement has been made to state that the amount in question has been received against those receipts and, therefore, the FIR which has been lodged by the respondent No.2 and the FIR lodged by the accused No.2 are cross FIRs and it requires a trial to go on. The aforesaid arguments do not have any substance for the reason that in the instant FIR, this court is only concerned with the allegations made therein and to adjudicate as to whether the same would constitute *prima facie* commission of the offence or not. Since it has been held that no *prima facie* offence in question is made out, therefore, the FIR lodged by accused No.2 of the present FIR against respondent No.2 would not bar this court to exercise power under Section 482 of the Cr.P.C.

47. So far as the decision in the case of ***Edmund S. Lyngdoh (supra)*** is concerned, in paragraph No.30 therein the Hon'ble Supreme Court has held that mere delay in lodging the FIR is not necessarily fatal to the prosecution case. This court is in respectful agreement with the aforesaid legal position. This court has not exercised its power under Section 482 of the Cr.P.C. on the ground of delay alone. The court has proceeded to analyze the allegations made in the FIR as a whole and has contrasted them with the offence lodged against the petitioners and has opined that the offence in question is not *prima facie* attracted, therefore, the FIR is being quashed. The delay alone is not the reason but of course is one of the reasons to consider the genuineness and authenticity of the allegation. The Hon'ble Supreme Court has not said that delay should never be taken into consideration in considering the prayer for quashing of an FIR. The delay of course can be one of the factors to be kept in mind while

exercising the power under Section 482 of the Cr.P.C in a case of this nature.

48. Another decision in the case of *MGF Developments (supra)* is in the same line, therefore, the same does not require to be elaborately discussed except to state that in that case, a Co-ordinate Bench of this court has held that if on the reading of complaint, the Magistrate comes to a conclusion that cognizable offence is made out then it is his duty to register the FIR. In the present case, this court has considered the entire FIR and has opined that no cognizable offence is made out it is for the reason the said decision would not have any application under the facts of the present case. In the decision cited by the learned senior counsel for the respondent in the case of *Syed Askari Hadi Ali Augustine Imam (supra)*, the legal position expounded therein is well settled that ordinarily criminal proceedings will have primacy over civil proceedings. Precedence to criminal proceedings is given having regard to the fact that the disposal of the civil proceedings ordinarily takes a long time and in a given case civil proceedings as also criminal proceedings may proceed simultaneously. In the present case, this court does not have any doubt with respect to the legal position propounded therein. However, this court has exercised its power not on the ground that the criminal and civil proceedings cannot go simultaneously but on the ground that the instant FIR that has been lodged does not constitute a criminal offence rather dispute in question has been found to be of civil in nature. It is for this reason that this decision would not have any application in the present case.

49. Another decision in the case of ***Lee Kun Hee (supra)*** relied upon by respondent No.2 relates to the scope of interference, in the exercise of power under Article 226 against the order of summoning issued by the Magistrate. This court has elaborately considered the legal position propounding by the Hon'ble Supreme Court in various decisions and has found that the instant case requires exercise under Section 482 of the Cr.P.C on the basis of the facts and situation involved therein.

50. The decision relied upon by the respondent in the case of ***Trisuns Chemicals (supra)*** also relates to the scope of Section 482 of the Cr.P.C. in quashing the FIR and the decision in the case of ***Ramveer Upadhyay & Anr. (supra)*** would also not help the respondents as the facts involved in this case clearly calls for interference in the exercise of power under Section 482 of the Cr.P.C. In the last decision in the case relied upon by respondent No.2 in the case of ***Priti Saraf & Anr (supra)*** in paragraph No.32 therein, the Hon'ble Supreme Court has opined that careful reading of the complaint/FIR/chargesheet would clearly disclose the commission of an offence. It has been held that whether the allegations in the complaint or otherwise are correct or not have to be decided based on evidence to be led during the course of the trial. In the instant case, this court has held that the reading of the FIR does not disclose a cognizable offence and the various decisions of the Hon'ble Supreme Court as has been discussed, hereinabove, would clearly show that in case no cognizable offence is made out and an effort has been made to give a cloak of criminality to a civil dispute, the High Court would be justified in exercising its power under Section 482 of the Cr.P.C.. It is, for this reason, the decision in the case of ***Priti Saraf & Anr. (supra)*** would not have any application in the facts of the present case.

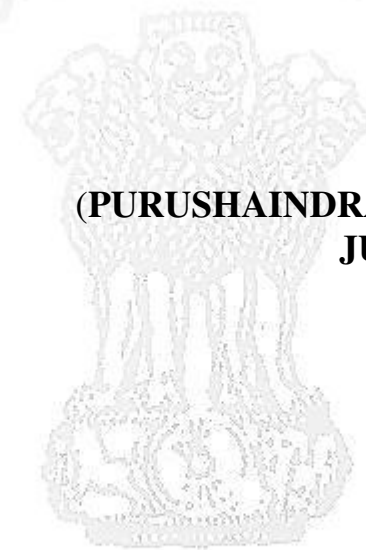
51. In view of the aforesaid discussion, the instant petition is allowed and FIR No.94 of 2022 registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi for offences punishable under Sections 467/468/471/420/120B of the IPC and all criminal proceedings emanating therefrom qua the petitioners are hereby quashed.

52. The petition is disposed of alongwith pending applications.

53. However, any observation made herein would not prejudice any of the rights of the parties in pending civil suit or other proceedings, if any.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 17, 2022
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नित्यमेव जयते