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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

\+ **CRL.M.C. 2814/2012**

**Between:-**

**DEEPAK MEHTA**
**CEO, MEHTA ENTERTAINMENT**
**2499, THE INDUSTRIAL PARKWAY**
**HAYWARD, CA-94545, USA**
**THRU SPECIAL ATTORNEY**
**SHRI DUSHYANT TYAGI**
**S/O SHRI RAJ PAL TYAGI .**
**R/O A-45, HAUZ KHAS, NEW DELHI-16**
**.....PETITIONER**

*(Through: Mr. Shashwat Mishra & Mr. Anirudh Mehrotra Advocates)*

**AND**

**1. YASHI MULTIMEDIA PVT. LTD**
**HAVING ITS REGISTERED OFFICE AT**
**K-1, KAILASH COLONY, NEW DELHI-48**

**ALSO AT: 5 KARTAR KUNJ**
**GOLDEN BEACH SOCIETY**
**UIA PARK, JUHU, MUMBAI-400049**

**2. SHRI SURESH MOHAN OBEROI @ SURESH OBEROI**
**K-1, KAILASH COLONY, NEW DELHI-48**
**ALSO AT: 5 KARTAR KUNJ**
**GOLDEN BEACH SOCIETY**
**UIA PARK, JUHU, MUMBAI-400049**

**3. SMT. YASHODHARA OBEROI**

**4. MS. MEGHA OBEROI**

**5. MR. VIVEK OBEROI**

**RESPONDENT NOS. 3-5 RESIDENTS OF:**
**5 KARTAR KUNJ**
**GOLDEN BEACH SOCIETY**
**RUIA PARK, JUHU, MUMBAI-49**
**……..RESPONDENTS**

*(Through: Mr. Ravi Kant Chadha, Senior Advocate alongwith Ms. Mansi Chadha & Mr. Siddhant Chaudhary, Advocates)*

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% Pronounced on : 01.11.2022

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**J U D G M E N T**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the order dated 30.09.2011 passed by the learned Additional Sessions Judge, Saket Courts, New Delhi, in Criminal Revision No. 58/2011, whereby, order dated 06.05.2011, passed by the learned Metropolitan Magistrate-03, (South), Saket Courts, in Criminal Complaint case No. 27334/2010 dismissing the complaint at the stage of issuing of summons, has been affirmed.

2. The brief facts of the case are that the petitioner filed a complaint under Section 200 of the Cr.P.C. for the offence punishable under Section 420 read with Section 120-B of the Indian Penal Code, 1860 (IPC) before the Court of learned MM (South), Saket Courts, Delhi. As per the complaint, the petitioner was carrying a business of event management and was organizing shows of celebrities/cine stars, film actors etc. in different parts of the United States of America. Respondent No.1 is a Private Limited Company and respondent Nos.2 to 4 are the Directors of Respondent No.1. Respondent No.5 is a cine

star/film actor and is the son of respondent No.2 & 3 and brother of respondent No.4. According to the complaint, the respondent No.5 being a film actor had authorized the other respondents to deal on his behalf for his live shows in India as well as abroad and the other respondents were receiving the payments on behalf of respondent No.5. It is further stated that in January, 2003, respondent Nos.2 to 5 were introduced to the complainant by one *Mr. Farhath Hussain.* In January, 2003, the complainant met respondent No.2 in Delhi, who requested the complainant to organize some shows of respondent No.5 in U.S.A. and Canada in the month of August and September, 2003. The deal for organizing the show was completed and the letter of confirmation dated 29.01.2003 by respondent No.1 duly signed by respondent No.2 was issued. The consent of respondent No.5 was also obtained and it was agreed that the show would be organized in the month of August & September, 2003 in different parts of U.S.A. and respondent No.5 would be paid a sum of $3,00,000/-. The complainant further stated that he remitted the aforesaid amount in the bank account of respondent No.1. The complainant organized the shows but respondent No.5 did not turn up. Accordingly, efforts were made to resolve the issue but the same failed. A letter was written on 07.01.2006 by the complainant to the accused persons demanding the return of the amount remitted to respondent No.1. It is thus stated that the *malafide* intentions of the respondents is apparent and they, on one pretext or another, avoided the repayment of the said amount and have, therefore, cheated the complainant with an intention at the very inception of not participating in the shows.

3. After filing of the complaint, the learned MM recorded pre-summoning evidence and after hearing the complainant did not find any ingredients of the offence in question and accordingly refused to

issue summons. The order passed by the learned MM has been affirmed by the revisional court by the impugned order dated 30.09.2011. The petitioner is, therefore, before this court in the instant petition.

4. Learned Senior Counsel appearing on behalf of the petitioner submits that both the courts have miserably failed to appreciate the facts in the right perspective. According to him, the offence under Section 420 & 120-B of IPC is clearly made out. It is submitted that *prima-facie* there was an inducement by the accused persons to the complainant to part with his money with fraudulent intention not to conduct the shows. He submits that the availability of the civil remedy would not bar the criminal court to proceed in taking action in accordance with law for the offence in question. He has taken this court through various documents to indicate that respondent No.5 (*Vivek Oberoi)* had confirmed that he authorized M/s *Yashi Multimedia Pvt. Ltd* to deal on his behalf for anything and everything regarding the shows to be conducted on the 22$^{nd}$ & 30$^{th}$ of September, 2003. According to him, page No. 66 of the petition clearly shows the money transaction and notwithstanding the fact that the civil suit was dismissed, the instant complaint is still maintainable. He has placed reliance on the decisions of the Hon'ble Supreme Court in the matters of ***Indian Oil Corpn. v. NEPC India Ltd. and Others*[1], *Sau. Kamal Shivaji Pokarnekar v. The State of Maharashtra & Ors.*[2]** & ***K. Jagadish v. Udaya Kumar G.S. & Anr.*[3]**

5. Learned counsel appearing on behalf of the respondents vehemently opposed the petition. He submits that the instant case is a

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[1] (2006) 3 SCC (Cri) 188
[2] (2019) SCC OnLine SC 182
[3] (2020) 14 SCC 552

complete misuse of the process of law. This court in exercise of its powers under Section 482 of the Cr.P.C. should not re-appreciate the entire material available on record and should confine its consideration to the issue as to whether there is miscarriage of justice caused to the petitioner. According to him, the learned Metropolitan Magistrate has rightly appreciated the facts and has held that the instant case is a civil dispute. He further submits that the order passed by the revisional court duly takes care of the submissions made by the complainant. In addition to the orders passed by the Magistrate and affirmed by the learned ASJ, he submits that even the company petition filed by the complainant was dismissed besides the dismissal of the civil suit by the competent court for the said relief. He, therefore, submitted that there is no reason to take a different view than the view which has already been taken by the two courts below.

6. Learned counsel for the respondents has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Mitesh Kumar J. Sha v. The State of Karnataka & Ors.***[4] & ***Syed Yaseer Ibrahim v. State of Uttar Pradesh & Anr.***[5]

7. I have heard the learned counsel for the parties and perused the record.

8. The Hon'ble Supreme Court in a catena of cases has laid down the scope and ambit of the court's power under Section 482 of the Cr.P.C. Inherent powers under Section 482 of 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;*

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[4] (2021) SCC OnLine SC 976
[5] (2022) SCC OnLine SC 271

*(iii) to otherwise secure the ends of justice*

9. It is a settled law that the powers under Section 482 of the Cr.P.C., though wide, have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. The powers under Section 482 of the Cr.P.C. are for the advancement of justice. 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 the injustice from taking place through the invocation of its inherent powers in the absence of specific provisions in the statute.

***See: R.P. Kapur v. State of Punjab*** [6], ***State of Karnataka v. L. Muniswamy & Ors.***[7], ***Janata Dal v. H.S. Chowdhary & Ors.***[8], ***G. Sagar Suri v. State of U.P.***[9], ***Roy V.D. v. State of Kerala*** [10], ***Zandu Pharmaceutical Works Limited v. Mohd. Sharaful Haque & Anr.***[11] and ***Indian Oil Corpn. (supra)***

10. The Hon'ble Supreme Court in the case of ***Inder Mohan Goswami & Ors. v. State of Uttaranchal***[12] while considering the various other pronouncements including the pronouncement mentioned above has held that to constitute an offence under Section 420 of the IPC, the ingredients of Section 415 of the IPC must be satisfied. It has also been held in paragraph No.42 that in order to hold a person guilty for the offence of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making

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[6] AIR 1960 SC 8 66
[7] (1977) 2 SCC 699
[8] (1992) 4 SCC 305
[9] (2000) 2 SCC 636
[10] (2000) 8 SCC 590
[11] (2005) 1 SCC 122
[12] (2017) 12 SCC 1

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.

11. Coming back to the facts of the present case, it is seen that the correspondence between the complainant and the respondents only reveal that certain terms and conditions were finalized. However, on account of certain reasons, the contract could not be honoured. The learned MM therefore, has held that there may be a breach of contract which is essentially a civil dispute and he did not find any material to *prima-facie* arrive at a conclusion that the complainant was dishonestly and fraudulently induced to part with the sum of money on account of false promise.

12. The learned revisional court opined that the instant dispute is purely a civil dispute and, therefore, did not find any substance to take a different view than given by the learned MM. It is a matter of record that the complainant filed CS(OS) 869/2010 against the respondent before this court for recovery of damages in the sum of $8,69,387.67/- which is equal to Rs.4,02,00,486/-. It is also a matter of record that Company Petition No. 360/2008 was also filed by the petitioner against respondent No. 1 company for its winding up *inter alia* on the ground that the alleged amount was illegally usurped by the respondent No.1. The said Company Petition was also dismissed on 21.05.2012. This court vide order dated 21.04.2014 dismissed the suit on the ground of limitation. The decision of dismissing the civil suit was challenged before the appellate court in RFA (OS) 123/2014 and the Division Bench of this court vide order dated 07.07.2015 also dismissed the appeal preferred by the complainant.

13. So far as the decision relied upon by learned counsel for the petitioner for the proposition that the parties are entitled to avail criminal remedy notwithstanding the pendency of the civil remedy is concerned, there is no dispute about the said proposition of law. It is well settled that in certain cases, very same set of facts may give rise to remedies in civil as well as in criminal proceedings, and even if the civil remedy is availed by the party, he is not precluded from setting in motion, proceedings in criminal law.

14. In the instant case, this court is not disallowing the relief claimed by the petitioner only on the ground that the petitioner has resorted to civil remedies but this court finds that the perusal of the entire complaint would not *prima-facie* attract the commission of the offence under Section 420 of the IPC. Even non-disclosure of the commission of the offence on the basis of the entire complaint would be one of the grounds to quash the complaint as per the decision of the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. v. Bhajan Lal & Ors.***[13].

15. In view of the aforesaid analysis, this court finds no justification to interfere with the order passed by the courts below in exercise of its powers under Section 482 of the Cr.P.C. Accordingly, the instant petition is dismissed.

**(PURUSHAINDRA KUMAR KAURAV)**
**JUDGE**

**NOVEMBER 01, 2022**
*p'ma*

[13] (1992) Suppl. (1) SCC 335