

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

+ CRL.M.C. No. 3111/2016 & Crl.M.A. No.13367/2016

Judgment reserved on : 17.09.2021

Date of decision : 11.11.2022

VIKRAM KAPUR & ANR

..... Petitioner

Through: Mr. Salman Khurshid, Sr.
Advocate with Mr. Madhav
Khurana, Ms. Azra Rehman &
Mr. Ankit Bhatia, Advocates.

Versus

M/S ATLAS CYCLES (HARYANA) LTD

..... Respondent

Through: Mr. Sudhir K. Makkar, Senior
Advocate with Ms. Saumya
Gupta and Ms. Yogita Rathore,
Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners vide the present petition seek directions for quashing of the Complaint Case No. 43/1/2015 titled “ *Atlas Cycles (Haryana) Ltd. V. Vikram Kapur & Anr.*” pending in the Court of the ACMM, South-East, Saket Courts as well as the quashing of the order dated 19.07.2016 therein.

2. Vide the impugned order dated 19.7.2016 of the learned ACMM, South-East, qua CC No. 43/1/15, the petitioners herein were

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

summoned for the alleged commission of offences punishable under Sections 406/417/418/120B/422 of the Indian Penal Code, 1860.

3. The complainant M/s Atlas Cycles (Haryana) Ltd. through its complaint CT No. 43/1/15 submitted to the effect that the petitioner No.1 herein was working as the President of the Sonapat Unit of the complainant company and that vide the Resolution passed by the Board of Directors of the complainant company on 31.8.2003, the Board constituted three Management Committees for three manufacturing units and entrusted the management of the same to the said Management Committees whereby the Management Committees so constituted were to have complete autonomy of operations under the overall supervision of the Board of Directors and the powers and authority of the Management Committee were suitably defined and detailed in the said Resolution dated 31.8.2003.

4. It was averred through the complaint that the Board of Directors of the complainant company received a complaint dated 11.11.2014 from Mr.Sanjay Kapur, President of the Malanpur unit wherein it was alleged that unauthorized payment of rent had been made through the accounts of the complainant company for residential accommodation enjoyed by the accused persons (petitioner Nos. 1 and 2 herein) without any lawful authorization from the Board of Directors and vide a similar complaint dated 12.11.2014 also received by the Board from Mr. Prashant Kapur, Sr. Vice President of Malanpur Unit and that the residential accommodations for which the rent was being paid were property bearing No. 28, Friends Colony (West), New Delhi and property bearing No.7-A Friends Colony (West) New Delhi. Upon the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

complaints received by the Board of Directors, the Board in its meeting held on 19.11.2014, inter alia, resolved that the accused No.1 and Mr. Ganesh Ayer, CFO, Sonapat be directed to furnish complete details of rent paid, if any, through the account of the Company for residential accommodations enjoyed by accused persons.

5. It is stated through this complaint that after repeated reminders the accused persons vide a communication dated 30.01.2015 informed the Board that the rent for residential premises enjoyed by the accused persons was indeed paid out of the accounts of the Company for the last almost eight years but that in the said communication the accused persons erroneously contended that they were lawfully authorized to make the said payment and they did not require any specific Board authorization for the purpose. Annexure P-9 to the petition is the reply sent by the accused, i.e., the petitioners herein stating inter alia to the effect:

“The decision to take the premises on rent for the residence of the undersigned and Mr. Angad Kapur was taken by the Management Committee members of Sonapat which was duly authorized to take such decision as per the Board Resolution dated August 31, 2003. Taking the premises on rent for our residence did not require any prior board approval. Further, this was not an exceptional matter which required prior board Sanction. The fact that the premises had been taken on rent was fully known to the Board for the past these years as they have been writing official letters at this address. This rent was always reflected in the Balance sheet of the company for all the past years and the Board of Directors have been signing the same and was adopted in the AGM. It is therefore, obvious this point has been now raised at the instance of the Complainant.

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

It appears that this issue is being raised only after the award has been given by the Learned Arbitrator. I further state that nothing wrong has been done, whatever decisions the Management Committee Members took was in the interest of the company. It is further very painful to note that in spite of misfeasance of the other management committee which had been pointed out by me, no action has been taken by the BOD. For your immediate attention, I quote below a few misfeasance done by other units."

6. It was further stated through the complaint that as a matter of policy, the complainant does not provide any accommodation to any of the members of the Management Committee nor was there any provision for reimbursement of rent paid towards their residential accommodation and thus the payment through the accounts of the Company for the residential accommodation enjoyed by the accused, i.e., the petitioners herein, was absolutely unlawful and unauthorized and in its meeting on 12.2.2015 it was resolved by the Board of Directors of the complainant company that the accused persons, i.e., the petitioners herein, be called upon to deposit back into the account of the company a sum of Rs.3.4 crores or the exact amount that may have been paid towards rent for the accommodations enjoyed by the accused persons till that date which direction of the Board of Directors was communicated to the accused, i.e., the petitioners herein, but despite the same they failed to deposit the said amount in the accounts of the company and the Board of Directors of the complainant company vide its meeting dated 5.3.2015 again resolved that the accused persons, i.e., the petitioners herein, be directed to deposit the

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

amount of Rs.3.4 crores or the exact amount that may have been paid towards rent for the accommodation enjoyed by them within a maximum period of seven days from the date of communication of the Resolution which was however not adhered to by the accused persons, i.e., the petitioners herein. It was thus submitted by the complainant that the amount of Rs.3.4 crores had been unauthorizedly and unlawfully paid by the petitioners herein, i.e., the accused through the accounts of the company for personal accommodation enjoyed by them.

7. A legal notice dated 15.4.2015 is stated to have been issued by the complainant to which accused persons, i.e, the petitioners herein, sent a reply dated 29.4.2015 refuting the liability for payment of the said amounts and raised according to the complaint frivolous issues which were only a convenient after thought and a device to avoid payment of the dues of the complainant company. The complainant thus submitted that the accused persons were liable for commission of the criminal conspiracy to cheat and were also liable for commission of criminal breach of trust and were thus liable for commission of offences punishable under Sections 120-B/406/417/418/422 of the Indian Penal Code, 1860.

8. The impugned order dated 19.7.2016 is a under:

“ In brief the case of the Complainant is that complainant is a public limited listed company. In the present case filed through its whole time Director Sh. I D Chugh. The company has brought evidence before the Court through the testimony of its whole time Director namely Sh. I D Chugh.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

It is deposed by CW-1 Sh. I D Chugh that accused Vikram Kapoor and Angad Kapoor are both employees of the Company and are managing the Sonapat unit of the Complainant Company. It is further case of the Complainant that Board received a complaint dt. 11.11.2014 from Sh. Sanjay Kapoor, President of Malanpur Unit thereby alleging that the said accused no. 1 and accused no. 2 are unauthorizedly making payments of rent of their residential house through company's account without any lawful authorization from the Board of the Directors Similar complaint was also received from Sh. Prashant Kapoor, who is Vice President of Malanpur Unit. The said complaints are already duly exhibited on record.

After receipt of the complaint, the Board held a meeting on 19.11.2014 wherein it was decided that accused no. 1 and accused no. 2 be directed to furnish details of rent paid for residential accommodation. Copy of Board Resolution is already duly exhibited on record. The communication through which copy of resolution was sent to proposed accused is already duly exhibited on record.

Accused persons filed a reply wherein they admitted the payment of rent through company's account. The copy of the said letter is already placed on record. Thereafter, company sent a legal notice dated 15.04.2015 to both accused persons and they replied through their advocates vide a letter dt. 29.04.2015 which is duly exhibited on record. In the said reply to the legal notice, accused persons have admitted the said fact of payments of bills.

Further, in order to support their claim, complainant has placed on record the published annual report of the company which is duly exhibited on record. In the said report, the amount of rent is reflected under the heading as recoverable claims.

In view of the above there is prima facie evidence on record for summoning accused no.1 and accused no.2

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

and they are hereby summoned for offences under 406,417,418,120B & 422 IPC.”

9. The petitioners through the present petition have submitted that the complaint filed by the complainant is wholly erroneous and that the perusal of the ledgers for the years 2012-13, 2013-14 and 2014-15, annexed as Annexure P-4 (Colly) to the petition indicate to the effect that the rent paid by the petitioners was duly reflected in the audited balance sheets of the Manufacturing Unit, Sonapat, and that the TDS was deducted before the payment made to the landlords of the tenanted premises and that it is evident thus that the Board of Directors was aware of the payment of the rent on behalf of the petitioners which rent was being paid with the knowledge of the auditors and the respondent.

10. The petitioners submit that on 8.1.1999 a Memorandum of Understanding was entered into and signed by the Kapur family members whereby the three groups decided to split the ownership management and/or control of the companies, private limited companies, partnership firms, charitable trusts, joint properties firms, other personal assets of Sh.Janki Das Kapur in three equal shares and to allot each share to the three units of the family through draw of lot. The petitioners further submit that the built up area of the common house at 3 Augranzeb Lane, New Delhi, was also agreed to be divided amongst the three brothers and their families in equal share and the Memorandum of Understanding further provided for an arbitration clause in case of difference of opinion on any matter and if a settlement was not arrived at between the parties.

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

11. It has been submitted that the disputes and differences arose between the three groups in 2000 and the Arbitration Clause was invoked and in terms of the Memorandum of Understanding, the respondent vide resolution dated 31.8.2008 agreed that the three Management Committees be formed by the three sons of Late Sh. Jankidas Kapur and the three manufacturing units at Sonapat, Sahibabad and Malanpur be given to each Management Committee and the three branches of the family were put in absolute control of the three Manufacturing Units and the manufacturing unit at Sonapat was given to the petitioner and his group i.e., B.D. Kapur Group to work at without any interference from the other units and since then each group had been managing their own unit without interference from each other till the award was passed by the learned Arbitrator in November, 2014. The petitioners submit that they had shifted their residence from H. No. 3 Aurangzeb Lane, New Delhi to H. No. 28, Friends Colony (West) and 7A Friends Colony (West) respectively and that they had been paying the rent by the profits generated from the Manufacturing Unit, Sonapat for approximately 8 years and that the rent paid by them was duly reflected in the audited balance sheets of the manufacturing Unit, at Sonapat and the TDS was deducted before the payment made to the landlords of the rented premises. The petitioners further submitted that the balance sheets were then audited by the independent authorized auditors appointed by the Board of Directors of respondent thus the Board of Directors was aware of the payment of rent on behalf of the petitioners. Placed on record the copy of the ledgers for the year 2012-13, 2013-14 and 2014-15 as Annexure

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

P-4 Colly and submit that it was evident that the rent was being paid with the knowledge of the auditors and the respondent.

12. The petitioners submit that on 5.10.2014 the Board of Directors of the Respondent Company passed a resolution thereby deciding the closure of the Manufacturing Unit, Malanpur restructuring of the commercial territory of the said unit and bearing losses of the said unit. Vide the said resolution the Board of Directors directed the Manufacturing Unit, Sonapat to pay up a sum of Rs. 10 Crores for covering the losses of Manufacturing Unit, Malanpur. The sole motive of the said resolution was to defeat the implementation of the award dated 01.11.2014 and affecting the basket of the Petitioner's group in violation of the MOU dated 8.1.1999 and the Resolution dated 31.08.2003. The petitioners submit that by having majority voting rights in the Board by the other groups, the complainant in connivance with the other family members and the Board of Directors have been attempting to defeat the rights of the Petitioners on one pretext or the other.

13. The petitioners further submit that vide award dated 1.11.2014 the Arbitrator, split the assets, ownership, control and management etc of the Kapur Family and various companies into the three branches of the family in terms of the MOU dated 8.1.1999 and operative part of the award reads to the effect: (page 7 of the petition)

“

B. The lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group will have any right or entitlement to any part of

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

that lot or burden it for any liability incurred by the other group in managing its lot.

C. The profit and loss of the lot since August, 2003 shall remain the profit and loss of that lot and that no liability of that lot shall befall on any other lot.

D. Any loss of claim against the Assets arising because of a particular group, shall be net and settled by the group managing, operating and controlling the said lot;”

14. The petitioners submit further that after the same Mr.Sanjay Kapur, President of the Manufacturing Unit, Malanpur filed a frivolous complaint on 11.11.2014 with the respondent alleging that the payment of the rent by the Sonapat unit on behalf of the petitioners residential accommodation was made without the approval of the board of the respondent and on 12.11.2014 Mr. Prashant Kapur filed a similar complaint with the Respondent.

15. The petitioners submit that on 19.11.2014, the Board of Directors of the respondent company acting on the complaint of Mr.Sanjay Kapur, President of the Manufacturing Unit at Malanpur directed the petitioner No.1 and one Mr.Ganesh Iyer, CFO of the manufacturing unit at Sonapat, Haryana to furnish details of the rent paid for residential accommodation of petitioner Nos. 1 and 2 which had been paid through the accounts of the company. The petitioners further submit that the award was challenged in January, 2015 by parties including Mr.Sanjay Kapur and Prashant Kapur and the award was partly set aside by this Court vide its order dated 3.8.2015 in OMP No. 30/2015 and OMP No. 31/2015 and the appeal against the same is pending and is *sub judice* in FAO(OS) 447/2015 and 448/2015 and 459/2015 before this Court.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

16. The petitioners submit further that on 19.1.2015 the Board of Directors of the respondent company passed another resolution directing Petitioner No.1 for furnishing the details of the rent paid for their residential accommodation and directing that no further payment shall be made by the company towards the rent as such payment is without any authority of the Board of Directors.

17. The petitioner submit that the petitioner No.1 responded on 30.1.2015 and stated that the Board of Directors of Respondent has categorically stated that the Board of Respondent was fully aware about the premises taken by the Petitioners was on rent for the past these years. The rent paid was always reflected in the Balance Sheets of Respondent for all the past years which was duly signed by Board of Directors and was adopted at the AGM. The Petitioner further pointed out the various discrepancies and illegalities in the working of the other two Manufacturing Units. The Petitioner No.1 further gave a breakup of the rent paid for the residential accommodation of Petitioner Nos.1 & 2 which sums up to approximately Rs.3.4 Crores.

18. The petitioner further submitted that on 12.2.2015, the Board of Directors of the Respondent company passed another Resolution directing the Petitioner No.1 to deposit back to the account of the Respondent the sum of Rs. 3.4 Crores paid towards rent.

19. The petitioners have referred to the resolutions dated 5.3.2015 of the Board of Directors of the respondent company and 6.4.2015 and the legal notice dated 15.4.2015 of the respondent sent to the petitioners asking the petitioners to repay the amount of Rs.3.4 crores and had also adverted to their reply of the petitioners sent vide reply

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

dated 29.4.2015 to the effect that the decision to take the premises on rent for residence was taken by the Management Committee which was within the power granted to it vide Board Resolution dated 31.8.2003 and it did not fall under any of the exceptions mentioned therein and that the rent was always reflected in the Balance Sheets of the respondent and the Board of Directors had been signing it adopting the same in AGM.

20. The petitioners have further submitted that they pointed out towards the various illegal acts at the other two manufacturing units to which the respondent No.2 had no plausible explanation. The petitioners have further referred to the resolution dated 17.6.2015 of the respondent to initiate legal action against the petitioners for recovery of a sum of Rs.3.4 crores and to institution of the complaint CC No. 43/1/15 of which the petitioners have sought quashing.

21. The petitioners submit that the material placed on record by the complainant indicates that the complaint is based on a civil dispute between the family which has been given a criminal colour by the Board of Directors in connivance with Mr.Sanjay Kapur, the President of the Manufacturing Unit at Malanpur, Mr.Prashant Kapur, Vice President of the Manufacturing Unit at Malanpur, to harass and pressurize the petitioners to withdraw their petition before the National Company Law Tribunal.

22. Inter alia, the petitioners submit that the respondents have suppressed the material fact that they were in complete knowledge of the rent being paid by the petitioners from the accounts of the Manufacturing Unit at Sonapat, Haryana and this was clear from the

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

ledger of the respondent which shows that the cheques were paid to the landlords and the TDS were deducted.

23. The petitioners further submitted that according to the resolution dated 31.8.2003 all the balance sheets at the manufacturing unit accounts stand merged and consolidated into a common balance sheet at the end of the financial year in consultation with the concurrent auditors and thus the rent paid by the petitioners from the profits of the Manufacturing Unit at Sonapat have been duly reflected in the balance sheet of the Manufacturing Unit at Sonapat. The petitioners further submit that the balance sheets were then audited by the respondent and were signed by the Board of Directors of the respondent and adopted in the AGM.

24. Inter alia, the petitioners submit that the learned ACMM failed to appreciate that as per the allegations of the complainant an amount of Rs.3.4 crores is recoverable by the respondent from the petitioners on the account of the rent paid by the petitioners for about 8 years for their personal accommodations and that it was evident from this that the dispute between the family members was civil in nature. The petitioners further submit that the impugned complaint filed by Mr. Sanjay Kapur, Mr. Prashant Kapur was in connivance with the Board of Directors of the respondent to pressurize the petitioners to accept their illegal demands and that it is settled law that Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes and that the paying of the rent for personal accommodation does not fall in the exception clause of the resolution dated 31.08.2003 and would not

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

require any prior approval of the Board of Directors of the respondent company.

25. The petitioners further submit that a bare perusal of the complaint makes it apparent that the basic ingredients to constitute the offence of criminal breach of trust are absent and that there was no dominion over the property given to the Petitioners by the Board of Directors of the Respondent and there was no dishonest misappropriation of any property by the Petitioners.

26. It is further submitted by the petitioners that to constitute an offence punishable under Section 405 of the Indian Penal Code, 1860 there should be an entrustment of the property or dominion over the property to a person and that person to whom it is entrusted dishonestly misappropriates or converts the property to his own use. The petitioners submit that the impugned complaint clearly indicates no entrustment of the property in question nor of the manufacturing unit at Sonapat to the petitioners by the respondent.

27. The petitioners submit that the manufacturing unit at Sonapat, Haryana, was given to them in furtherance of the Memorandum of Understanding and according to the Memorandum of Understanding the said unit falls under the complete autonomy of the petitioner without any interference from other units and that as per the resolution dated 31.8.2003 the bank operation with respect to the manufacturing unit at Sonapat, Haryana, would be exclusively handled by the Management Committee of Sonapat and that the rent paid by the petitioners for

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

their respective accommodations was from the profits generated from manufacturing unit at Sonapat.

28. The petitioners submit further that the profit & loss of each manufacturing unit, as per the award of the Sole Arbitrator dated 1.11.2014, has to remain the profit & loss of that unit only and that thus there was no dishonest intention that can be attributed to the petitioners.

29. The petitioners further submit that the ingredients of Section 417/418 of the Indian Penal Code, 1860, are wholly lacking in the instant case and that the petitioners have not induced anyone and even the inducement of the respondent is not borne out from the records. The petitioners submit that the condition precedent for the offence of cheating is that there is fraudulent or dishonest inducement and in the instant case there was no inducement by the petitioners to anyone and that the petitioners were given the authority to run the manufacturing unit at Sonapat according to the Memorandum of Understanding and the Resolution dated 31.8.2003 and the respondent was aware of the payment of rent and that there was no wrongful loss caused to the respondent and nor any wrongful gain to the petitioners from by paying the rent from the profits of the manufacturing unit, Sonapat in as much as the profit & loss of that manufacturing unit belong to the Management Committee under whose supervision the manufacturing unit was working.

30. Inter alia, the petitioners submit that the essential ingredients of Section 422 of the Indian Penal Code, 1860 are also wholly lacking in as much as the respondent has not brought forth on the record that a

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

legally recoverable debt is due to the petitioners and as to how the complainant has been preventing the recovery of the same and in as much as the manufacturing unit, Sonapat is solely under the control of the petitioners.

31. The petitioners have further submitted that the profits generated by any manufacturing unit were not to be shared with any other manufacturing unit and that the Board of Directors had no rights on the profits generated by the manufacturing unit, Sonapat, and the use of the said funds was under the autonomy of the Management Committee running the unit and thus the rent paid by the petitioners as President and Vice-President of the manufacturing unit, Sonapat, is not a debt payable to the respondent.

32. Inter alia, the petitioners submit that the appointment of Mr.I.D. Chugh is also in contravention of the Companies Act, 2013 and his appointment is under challenge in Civil Suit No. 117/2016 titled Sanjay Dhawan V. M/s Atlas Cycles (Haryana) Ltd.& Ors. before the Additional Civil Judge (Senior Division), Sonapat and vide an order dated 8.8.2016 Mr. I.D. Chugh has been restrained to be a whole time Director of the respondent and that all actions taken by him from 31.3.2013 on behalf of the respondent No.2 in his capacity of being the whole time director, have been prayed to be null & void.

33. Inter alia, the petitioners submit that the complaint has been instituted only to pressurize the petitioners to withdraw the various litigations filed by them before the National Company Law Tribunal and that the complaint is a counter blast to the various proceedings pending before the various Courts and forums after a lapse of seven

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

years. The petitioners further submit that the complaint emanates from the same cause of action which is already the subject matter of numerous civil proceedings and relates only to the same dispute and no offence is made out against the petitioners.

34. The petitioners further submit that there is nothing on record to indicate that any offence has been committed. Reliance is inter alia placed on behalf of the petitioners to the verdict of the Hon'ble Supreme Court in ***Pepsi Foods Ltd. And Anr.V. Special Judicial Magistrate and Ors.***; (1998) 5 SCC 749, wherein it has been laid down to the effect:

"...Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

offence is prime facie committed by all or any of the accused."

35. The petitioners thus seek invocation of the power under Section 482 of the Cr.P.C., 1973 submitting to the effect the institution of the complaint case and the proceedings in relation thereto are malafide and a misuse of the process of law.

36. The respondent vide its reply dated 3.5.2017 whilst submitting to the effect that there was no infirmity whatsoever in the impugned order summoning the petitioners has further submitted to the effect that as a matter of policy the respondent company does not provide any residential accommodation to any of the members of the Management Committees nor is there any provision for reimbursement of the rent paid towards their residential accommodation and as such the payment through the accounts of the respondent for the residential accommodation enjoyed by the petitioners was absolutely unlawful and unauthorized and thus in its meeting held on 12.02.2015, it was resolved by the Board of Directors of the Company that the petitioners be called upon to deposit back into the account of the company a sum of Rs.3.4 crores or the exact amount that may have been paid towards rent for the accommodation enjoyed by the petitioners till that date.

37. The respondent submitted that despite repeated reminders and demands made to the petitioner they have failed to pay or neglected to pay back the amount that was unlawful and without any authorization paid by them through the accounts of the company for personal accommodation enjoyed by them. The respondent submits that the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11.11.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

payment of rent for the personal accommodations of the petitioners by them was a clear abuse of trust and authority vested in them in their capacity as officers of the respondent.

38. The respondent further submitted that the Civil Suit No. 117/2016 titled *Sanjay Dhawan V. M/s Atlas Cylces (Haryana) Ltd. & Ors.* has already been dismissed as withdrawn vide order dated 8.8.2016 of the Court of the Civil Judge (Senior Division), Sonapat, and that the order restraining Mr. I.D. Chugh acting as the whole time Director of the respondent is no longer operational.

39. Inter alia, the respondent submits that the petitioners are only the executives of the respondent company and have no lawful claim to the profits of the respondent nor do the petitioners have any lawful authority to in any manner to decide upon the application of the said profits and that the action of the petitioners regarding unauthorized payment of rent cannot be legitimized by contending that the said payment was made out of the profits of the manufacturing unit at Sonapat, with it having been submitted by the respondent that all balance sheets of the manufacturing unit accounts are merged and consolidated into a common balance sheet at the end of every financial year and hence the said contention is baseless.

40. It has been submitted by the respondent that the concrete evidence has been disclosed by them for the commission of offences by the petitioners and that there is no infirmity in the impugned order summoning the petitioners and that the petition is a misuse of the process of law and the respondent has sought the dismissal of the petition.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

41. Written submissions were submitted on behalf of either side.

42. Through the written submissions submitted by the petitioners, it has been submitted that in the year 2017 after two years of filing of the complaint of which the petitioners seek the quashing, the respondent filed a Civil Suit against the petitioners for the recovery of the disputed rent amount of Rs.3.40 crores, i.e., CS(OS) 228/2017 titled **Atlas Cylces (Haryana) Ltd. V. Vikram Kapur & Anr.** ; and the stage of filing of the said at such a belated date reveals the mala fide of the respondent company and that the perusal of the Board Resolutions of the respondent itself indicated that it was all the time contemplating a civil action yet the respondent company instituted the complaint first and filed a civil suit only when the period for limitation for filing the civil suit was nearing its expiry.

43. Inter alia the petitioners submit that the petitioners admittedly are the President and Vice-President of the company and not Directors of the respondent company and were not entrusted with the money of the company and even if they had been Directors they could not have been prosecuted for breach of trust as they could not be said to enjoy dominion over the property nor is there any entrustment because by virtue of their proximity or holding of a particular position they have access to the property which is natural to flow from the discharge of their duties and thus it cannot be said that there was any entrustment.

44. The petitioners further submit that even if it be presumed that there was entrustment of property, there was no dishonest misappropriation or conversion of any of the funds by the petitioners in as much as the rent for all seven years was disclosed in the ledgers

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMI ANU
MALHOTRA.

of the manufacturing unit at Sonapat which was then reviewed by the Statutory Auditors appointed by the Board of Directors of the respondent company and then used to prepare the consolidated balance sheets of the respondent company, the TDS of the rent was deducted and was duly reflected in the ledgers of the respondent company and that the balance sheet of the respondent company were prepared using the aforementioned ledgers which was approved and signed by the Board of Directors of the respondent company and that despite being aware of all these facts, the respondent company has intentionally suppressed these facts in the impugned complaint.

45. The petitioners further submitted that the respondent company has not denied the general ledgers of the manufacturing unit, Sonapat, which were in the knowledge of the Respondent Company and duly reflect the payment of rent from the profits generated by the Sonapat unit, thus there was no dishonest intention of the part of the petitioners which is an essential ingredient of Section 405 of the Indian Penal Code, 1860, and in the absence of any such dishonest intention no such offence under Section 405 is made out.

46. The petitioners further submitted that the provisions of Section 417/418 which would provide for the punishment for cheating as defined under Section 415 of the Indian Penal Code, 1860 are not even remotely brought forth in as much as the sine qua non for the commission of the offence of cheating is that the accused must induce a person to deliver any property, or to consent that any person shall retain any property or do or omit to do anything.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

47. The petitioners submit that there is nothing in the impugned complaint to show that the petitioner ever induced the respondent company to authorize it to pay the rent for the petitioners' residence and rather it was the case of the respondent company that it was supposedly unaware of the payments being made by the petitioners until 11.11.2014 when the respondent company received a complaint from Mr.Sanjay Kapur in relation to the payment of rent. The petitioners submit that the unawareness necessarily negates any kind of inducement or representation.

48. The petitioners also submit that there was no dishonest concealment of facts by the petitioners as the rent paid by them was duly reflected in the ledgers audited by the Statutory Auditors of the respondent company and also approved by the Board of Directors of the respondent company.

49. As regards the commission of the offence punishable under Section 422 of the Indian Penal Code, 1860, it is submitted by the petitioners that during the course of the present proceedings, the learned senior counsel for the respondent on 29.11.2018 conceded that the offence punishable under Section 422 of the Indian Penal Code, 1860 was not made out and that he was not pressing the same. Inter alia the petitioners have submitted that even otherwise the offence punishable under Section 422 of the Indian Penal Code, 1860 provides punishment for dishonest or fraudulent prevention of debts or demands being made available for the creditors was not made out in as much the essential ingredients of the offence are that there must be a

Signature
Not Verified

 Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

legally recoverable debt and dishonest prevention by the accused from the debt being made available.

50. The petitioners submits that there was no legal recoverable debt which was due from the petitioners or any other person neither does the complaint disclose or mention any such debt and that furthermore the respondent company had not stated in the impugned complaint as to how the petitioners have prevented the recovery of any debt. The petitioners further submit that the impugned complaint is pre-mature as the question of debt is a subject matter of Civil suit being CS(OS) No. 228/2017 titled *Atlas Cycles (Haryana) Ltd. V. Vikram Kapur & Anr.* The petitioner further submits that the provisions of Section 405 of the Indian Penal Code, 1860 qua alleged criminal breach of trust and under Section 417 of the Indian Penal Code, 1860 for cheating cannot be attracted together for the same transaction as both offences are distinct in nature.

51. Reliance was placed on behalf of the petitioners on the verdicts in *“Prakash G. Dudani v. State of NCT” (2010 SCC OnLine 3293)*, *“Superintendent and Remembrancer of Legal Affairs, West Bengal v. Birendra Chandra Chakravarty” (AIR 1974 SC 290)* and *“Vinod Natesan v. State of Kerala & Ors.” 2018 (15) SCALE 791* in support of the contentions of the petitioners that there was no commission of any offence by them much less of the commission of the offences punishable under Sections 406/417/418/422/120-B of the Indian Penal Code, 1860 for which they have been summoned vide the impugned order.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

52. The respondent through its written submissions dated 05.03.2019 submitted to the effect that vide the resolution passed by the Board of Directors on 31.08.2003, the Board of Directors of the respondent had constituted separate Management Committees in respect of the three manufacturing units and entrusted the management of the three manufacturing units to the said Management Committees, whereby, in terms of the said Resolution, the Management Committees so constituted were to have complete autonomy of operations under the overall supervision of the Board of Directors and that the Company had a common balance sheet, common company law department, one statutory auditor, one Company Secretary & one Chief Operating Officer and that the powers and authority of the Management Committees were suitably defined and all "excepted matters" required prior approval from the Board of Directors.

53. *Inter alia*, the respondent submitted that by virtue of the said resolution, the petitioner nos. 1 & 2 herein were appointed as the members of the Management Committee of the Sonapat unit of the respondent and had been working as the President and Senior Vice President respectively, of the Sonapat Unit of the respondent, ever since the passing of the said resolution but that no authority was conferred on the petitioner nos. 1 & 2, the President and Senior Vice President respectively to avail any residential accommodation at the cost of the respondent and that several communications were sent to the petitioners directing them to deposit back the amount that is of the rent paid out of the funds of the respondent for the residential accommodation of the petitioners at property bearing no. 28, Friend

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Colony (West), New Delhi and property bearing no. 7A, Friend Colony (West), New Delhi, which communications were sent on receipt of complaints received by the Board of Directors of the respondent that unauthorized payment of rent had been made through the accounts of the respondent for the residential accommodations enjoyed by the petitioners without any lawful authorization from the Board of Directors of the respondent, qua which there was no denial by the petitioners who rather affirmed vide a communication dated 30.01.2015 as sent by the petitioner no.1 that the rent for residential premises enjoyed by them was indeed paid out of the accounts of the respondent from 2007 to 2015 amounting to a sum of Rs. 3.4 crores but that the petitioners erroneously contended therein that they were lawfully authorized to make the said payment and did not require any specific Board authorization for the purpose. The respondent further submitted that despite repeated reminders, the petitioners failed to respond or comply with the directions of the Board of Directors, pursuant to which the Board of Directors were constrained to issue a Legal Notice dated 15.04.2015 calling upon the petitioners to make payment of the amount which was unlawfully paid out through the accounts of the respondent towards residential accommodation enjoyed by the petitioners and rather the petitioners stated that they required no authorization from the Board of Directors for making payments of rent towards their residential accommodation.

54. The respondent has further submitted that it sent a rejoinder dated 18.05.2015 to the reply to the Legal Notice of the petitioners stating that the petitioners were incorrect in contending that the

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11.01.2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

respondent was aware of the payment of rent for the last eight years and it was also pointed out that no separate entry for the payment of rent towards the residential accommodation was ever reflected in the balance sheets (which are prepared by the statutory auditors after consolidating the accounts of all 3 units) which were approved by the Board of Directors.

55. The respondent has *inter alia* submitted that the Board Resolution dated 31.08.2003 reveals that the decisions on all important matters were reserved to the domain of the Board of Directors and such matters were treated as excepted matters which were outside the purview of the authority of the Management Committee and that one of the excepted matters is clause (j) which read as under:-

*“(J) All decisions by the Management Committee of the respective units relating to increments / promotion / revision / fixation of salaries, benefits, **perks** etc. of the members of Management Committee or any other employee who may be directly or indirectly related to any member of the Management Committee.”,*

with it thus having been submitted on behalf of the respondent that any decision relating to increment of salary or confirming any benefit or **perks**, etc. could not have been taken by Management Committee without prior approval from the Board of Directors.

56. The respondent has further submitted that the petitioners had wrongfully contended that the said rent was paid out of the profits of the Manufacturing Unit, Sonapat and that the Petitioners were only the

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

executives of the respondent and have no lawful claim to the profits of the respondent nor did the petitioners have any lawful authority in any manner to decide upon the application of the said profits and that the action of the petitioners regarding unauthorized payment of rent cannot be legitimized by contending that the said payment was made out of the profits of the Sonapat Unit and that all the balance sheets of the manufacturing unit accounts were merged and consolidated into a common balance sheet at the end of every financial year. The respondent has further submitted that the petitioners had wrongfully contended that the dispute was of a civil nature and thus the complaint is liable to be quashed and submitted that rather it is the settled proposition of law that civil proceedings and criminal proceedings operate in different domains and both can continue simultaneously.

57. Reliance has been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "**Sau Kamal Shivaji Pokarnekar vs. State of Maharashtra**" Crl. Appeal No. 255 of 2019, with specific observations in paragraphs 4, 5, 6 & 9 to the effect:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued, it is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive, if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same, it is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal, if it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no Justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

58. *Inter alia*, reliance has been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in **"Trisuns Chemical Industry vs. Rajesh Agarwal and Ors."**, (1999) 8 SCC 686 with specific reliance on observations in paragraphs 7, 8, 9 which read to the effect:-

"7. Time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana vs. Bhajan Lal and Rajesh Bajaj vs. State NCT of Delhi).

8. In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:

'10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.'

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana vs. Bhajan Lal."

59. Reliance has also been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "**Rajesh Bajaj vs. Sate of NCT of Delhi and Ors.**" (1999) 3 SCC 259, with specific reliance on observations in paragraphs 10 thereof which reads to the effect:-

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

'(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.'

60. The respondent has further submitted that the reliance of the petitioners on the General Ledgers of the Sonepat unit for the Financial Years 2012-13, 2013-14 and 2014-15, is completely misplaced and that a perusal of the said ledgers showed that none of the entries pertained to rent being paid towards the residential property being used by the petitioners herein and the Petitioners have sought to argue that since the Balance Sheets were being duly approved by the Board, the Board was aware of the said payment having been made.

61. The respondent also submitted that in the rejoinder dated 18.05.2015, it had clearly stated that merely because the petitioners were using the said address, the same was not a reason enough for the Board to assume that the rent for the said premises was being paid through the accounts of the company and it was categorically denied that the payment of rent was duly reflected in the balance sheets for the last many years and it was clarified that there was no separate mention of payment of any rent in the balance sheet.

62. The respondent has further submitted through its written submissions that in deference to the directions made by the Court on 29.11.2018, it had placed on record the Balance Sheets for the last few years and that the attention of the Court was invited to Page-179 (part of annual report for FY 2014-15) wherein a sum of Rs. 341.07 lakhs

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

was shown as recoverable and also to Page-252 (part of annual report for FY 2015-16) wherein a sum of Rs. 241.07 lakhs was shown as recoverable and that the said entry made reference to Note 34, which was at Pg. 257 and it was clearly stated that in the annual report of the last financial year 2014-15 that a sum of Rs. 3,41,07, 212/- was shown as recoverable and that the said amount was recoverable against the unauthorized payment of rent made from the accounts of the company for residential accommodation availed by Mr. Vikram Kapur and Mr. Angad Kapur and that out of said amount, a sum of Rs. 1,40,00,000/- (Rupees One Crore Forty Lakhs only) was received into the accounts of the company on 30th September 2015 and the balance recoverable amount was Rs. 2,01,07,212/-. The respondent had further submitted that the company had already initiated appropriate legal proceedings against Mr. Vikram Kapur and Mr. Angad Kapur for misappropriation of the said amount and the matter was pending adjudication in the Court of the Magistrate, Saket Courts, New Delhi.

63. The respondent has further submitted that the petitioners had failed to place on record any authorization issued by the Board of Directors of the respondent in pursuance to Para J of the resolution dated 31.08.2003 which authorized the petitioners to claim reimbursement of any rent paid towards their personal residence. The respondent has further submitted that the petitioners had also failed to show any specific entries made in the balance sheets of the company which would demonstrate that the Board of Directors had any knowledge of the said actions for the last eight years due to the approval of the balance sheets by the Board of Directors and that mere

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

approval of the balance sheets was not enough to impute the knowledge of the Board of the unlawful actions of the petitioners and that it could be said from the balance sheets placed on record that there was no separate mention of the rent paid in any of the balance sheets and that there was a specific mention in the balance sheet of FY 2014-15 onwards about the amount recoverable from the petitioners.

64. The respondent has further submitted that the petitioners had also failed to place on record their Income Tax returns which could demonstrate that the value of the rent paid was being treated as a part of income of the petitioners i.e the same was being added to their salary for the purpose of payment of income tax and that the petitioners had admittedly paid a sum of Rs. 1.4 crores thereby admitting that the petitioners were liable to return the said amount to the coffers of the company. The respondent has further submitted that if the action of the petitioners was lawful, there was no occasion for the petitioners to pay back any amount into the accounts of the company.

65. The respondent has further submitted that the petitioners had erroneously sought to place reliance on an arbitration award dated 01.11.2014 which was misconceived, in as much as the respondent company was never a party to the MOU dated 08.01.1999 or to the subsequent arbitration proceedings and that the said arbitral award dated 01.11.2014 was partly set aside by a judgment dated 03.08.2015 passed by Hon'ble Mr. Justice S. Muralidhar of the Hon'ble Delhi High Court. The respondent submitted that the petitioners herein have

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

filed an appeal against the said judgment which is pending adjudication before the Division Bench of this Hon'ble Court.

66. It has been further submitted by the respondent that the facts stated in the complaint clearly disclosed the commission of an offence and the petitioners had been rightly summoned for the offences punishable under Sections 406, 417, 418 read with Section 120-B of Indian Penal Code, 1860 and that there is no case made out for quashing of the proceedings at the threshold as the case of the petitioners is not covered in any of the exceptions spelt out in *State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426*.

67. The respondent has thus submitted that it is a clear case where the petitioners being senior executives of the respondent company, were members of the Management Committee of the Sonapat Unit and in that capacity having cheque signing powers, clearly abused their fiduciary position and had paid a huge amount of rent for their personal residential accommodation without any lawful authority and that the petitioners thus having dominion over the funds of the company, had misused their authority and paid the rent for their personal residential accommodation from the accounts of the company and thus misappropriated the funds and committed an offence of criminal breach of trust.

68. The respondent has further submitted to the effect that the defences, if any, available to the petitioners are liable to be examined at the stage of trial and at this stage it is only to be seen whether the complaint filed by the respondent disclosed the commission of a

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

cognizable offence and that thus there was no infirmity in the order passed by the learned Trial Court and the petition filed by the petitioners deserves to be dismissed.

69. On a consideration of the entire available record, without any observations on the merits or demerits of the trial that would take place in CC No. 43/1 of 2015, or on the aspect of framing of charge or otherwise therein, it is essential to observe that in as much as, the decisions by the Management Committee of the Sonapat Unit of the respondent, apparently by the petitioner nos. 1 & 2 herein, the President and Senior Vice President respectively relating to increments / promotion / revision / fixation of salaries, benefits, *perks* etc. of the members of the Management Committee being within the aspects reserved to the domain of the Board of Directors, the payment of rental accommodation of the petitioners herein from the funds of the Sonapat Unit of the respondent without the matter being considered by the Board of Directors of the respondent does make it appear to have been done in excess of authority by the petitioners, thus, falling within the ambit of Section 405 of the Indian Penal Code, 1860, which provides as follows:-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

wilfully suffers any other person so to do, commits “criminal breach of trust”.

(emphasis supplied)

*1[Explanation 2[1].—A person, being an employer
3[of an estab-lishment whether exempted under
section 17 of the Employees’ Provident Funds and
Miscellaneous Provisions Act, 1952 (19 of 1952), or
not] who deducts the employee’s contribution from the
wages payable to the employee for credit to a
Provident Fund or Family Pension Fund established
by any law for the time being in force, shall be deemed
to have been entrusted with the amount of the
contribution so deducted by him and if he makes
default in the payment of such contribution to the said
Fund in violation of the said law, shall be deemed to
have dishonestly used the amount of the said
contribution in violation of a direction of law as
aforesaid.]*

*4[Explanation 2.—A person, being an employer, who
deducts the employees’ contribution from the wages
payable to the employee for credit to the Employees’
State Insurance Fund held and admin-istered by the
Employees’ State Insurance Corporation established
under the Employees’ State Insurance Act, 1948 (34 of
1948), shall be deemed to have been entrusted with
the amount of the contribution so deducted by him and
if he makes default in the payment of such contribution
to the said Fund in violation of the said Act, shall be
deemed to have dishonestly used the amount of the
said contribution in violation of a direction of law as
aforesaid.]*

and thus, punishable under Section 406 of the Indian Penal Code,
1860.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

70. However, as regards the alleged commission of the offences punishable under Sections 417/418/422/120-B of the Indian Penal Code, 1860 for which the petitioners have been summoned, which provide to the effect:-

“417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

422. Dishonestly or fraudulently preventing debt being available for creditors.—Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

120B. Punishment of criminal conspiracy.-- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]”

the Court is of the considered view that the said offences fall within the ambit of having criminal overtones and the invocation of such offences as sought by the respondent is apparently to settle scores with the petitioners.

71. Thus, the impugned order to the extent that it summoned the petitioners for the commission of offences punishable under Sections 417/418/422/120-B of the Indian Penal Code, 1860, is set aside. The summoning of the petitioner nos. 1 & 2, however, qua the alleged commission of the offence punishable under Section 406 of the Indian Penal Code, 1860, which is directed to be read with the invocation of Section 34 of the Indian Penal Code, 1860, which is now invoked and is thus, upheld.

72. The petition and the accompanying application are disposed of accordingly.

ANU MALHOTRA, J.

NOVEMBER 11th, 2022

sv/nc

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 11/11/2022
19:44:44
This file is
digitally signed by
PS to HMI ANU
MALHOTRA.