IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APL] NO. 701/2021.

Sayyad Sadik Patel,
Aged about 50 years, Occupation -
Business, resident of 4th Floor,
Near Ice Factory, Wathode,
Nagpur. … Applicant.

-Versus-

1.State of Maharashtra
through Police Station Office,
Ganeshpeth, Tq. And District
Nagpur.

2.Vishesh Anil Agrawal,
Aged about major, Occupation -
Business, resident of 102, Himalay
Crown, Opp. Law College,
Ambazari, Nagpur. … Non-applicants.

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Shri S.P. Bhandarkar, Advocate for the Applicant.
Shri S.S. Doifode, Addl.P.P. for Non-applicant No.1.
Shri R.S. Ahuja, Advocate for Non-applicant No.2.

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CORAM : NITIN W. SAMBRE
& G.A. SANAP, JJ.

CLOSED FOR JUDGMENT ON : 20.09.2023.

JUDGMENT PRONOUNCED ON : 29.09.2023.

<u>ORAL JUDGMENT</u> (PER NITIN W. SAMBRE, J) :

1. This application is by the accused in Crime No.51/2021 registered on 19.02.2021 by Ganeshpeth Police Station, Nagpur for the offence punishable under Sections 406 and 420 of the Indian Penal Code, so also questioning the charge-sheet No.85/2021 for the aforesaid offences pending on the file of the Judicial Magistrate First Class, Court No.1, Nagpur.

2. The genesis of the offence alleged against the applicant by the non-applicant no.2 is, the applicant is the proprietor of M/s. S.S. Traders, who is dealing in steam coal.

3. The complainant, a broker by profession, allegedly provided supply order to the applicant from three firms namely – [1]Block Chain Solutions, vide order dated 01.01.2021 to supply 360 M.T. Coal @ 6975/- per metric tonne as against advance payment of Rs.26,36,550/-, [2]Acron Services, vide order dated 31.12.2020 to supply 210 M.T. Coal @ 7000/- per metric tonne as against advance payment of Rs.14,70,000/- and [3]Vogel Services, vide order dated 26.12.2020 to supply 810 M.T. Coal @ 6970/- per metric tonne as against total consideration of Rs.59,27,985/-. As against above supply orders from

all these three firms an amount of Rs.81 lakhs was received by the applicant in his current account operated with Yes Bank, Khamla Branch, Nagpur. Instead of supplying coal, the applicant has started misusing the said amount, as he has withdrawn Rs.18 lakhs cash from his current account, transferred Rs.41 lakhs to the saving bank account of one Ashok Borkar, and in turn Rs.46 lakhs to his account. Based on above withdrawals it is claimed that the applicant had every intention to commit an offence of criminal breach of trust, cheating as instead of supplying the coal, the amount was fraudulently misappropriated.

4. The contention of Shri Bhandarkar, learned Counsel for the applicant is that the offence under Section 406 i.e. criminal breach of trust and offence under section 420 i.e. cheating cannot go hand in hand. According to him, the complainant i.e. non-applicant no.2, who is just a broker has no cause in the transaction in question, and as such he has no authority to file the complaint in the matter. He would submit that before registration of the crime, the current bank account of the applicant was sealed on 08.02.2021, which speaks of high handed action on the part of the police authorities as without offence being registered they have sealed the bank account of the applicant. It is further claimed that there is no motive or intention on the part of the

applicant to commit any offence, as after receipt of the part consideration the amount was invested in the very business. He would further urge that perusal of purchase orders, which are produced on record, speaks of absence of any time limit for supply of coal. Apart from above, his contention is that the transaction is contractual one and in such an eventuality, a civil/contractual matter is sought to be given colour of criminal proceedings not only by freezing the account of the applicant but such act has led to making the applicant impossible to perform his part of contract. He would further urge that if criminal law is set in motion on an authorization executed in favour of the complainant which procedure is not recognised in law. In order to substantiate his contentions, he has relied on the judgment of Apex Court and Delhi High Court in the matter of -

(1) Anil Mahajan .vrs. Bhor Industries Limited and another – (2005) 10 SCC 228;
(2) Lalita Kumari .vrs. Government of Uttar Pradesh and others – (2014) 2 SCC 1;
(3) Hridaya Ranjan Prasad Verma .vrs. State of Bihar and another – (2004) 4 SCC 168;
(4) Satishchandra Ratanlal Shah .vrs. State of Gujarat and another – (2019) 9 SCC 148;
(5) Anand Kumar Mohatta and another .vrs. State (NCT of Delhi) Department of Home and another – (2019) 11 SCC 706;
(6) Sarabjit Kaur .vrs. State of Punjab and another – 2023 SCC Online SC 210;
(7) International Advanced Research Centre for Powder

Metallurgy and New Materials (ARCI) .vrs. Nimra Cerglass Technics Pvt. Ltd – (2016) 1 SCC 348.

(8) Wolfgana Reim and others .vrs. State and another – 2012 SCC Online Del 3341.

5. While countering the aforesaid submissions the learned Counsel for non-applicant no.2 would urge that the moment applicant has received the amount towards consideration least that was expected was to honour the commitment of supply of coal. According to him the intention of the applicant since inception is that of commission of offence and that being so, the applicant has withdrawn an amount of Rs.18 lakhs in cash and transferred an amount to the extent of 40,50,000/- to the saving bank account of Ashok Borkar. According to him the aforesaid conduct sufficiently establishes intention of the applicant to dupe the non-applicant and the principal. As such it is prayed that the application, which is devoid of merit, is liable to be rejected.

6. The learned A.P.P. would also support the aforesaid contentions. According to him, this Court is not required to appreciate the defence of the applicant and while doing so, the Court need not to even appreciate the evidence on record, as such he would urge that the application is liable to be rejected.

7. In this background, we have appreciated the rival submissions.

8. The Apex Court in the matter of **Anil Mahajan .vrs. Bhor Industries,** cited supra, had an occasion to consider the ingredients of Sections 415, 418 and 420 viz. Cheating under the Indian Penal Code. The Apex Court has held that in a contract for supply of goods, fraudulent and dishonest intention must be demonstrated to be existing from the inception of the transaction. Mere failure to keep the promise at a subsequent stage will not attract the offence of cheating. The Apex Court held that there is difference between offence of cheating and breach of contract. Merely because the complainant has used the word cheating in the complaint will not be sufficient to substantiate the claim of making out an offence of cheating. Support can be drawn from the observations made in paragraph no.8, which reads thus :

> "*8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating and fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had an intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086 out of the total amount of Rs.3,38,62,860 was paid leaving balance of Rs.33,23,774. We need not go into the question of*

> *the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."*

9. Apart from above, while considering the prayer for quashing in exercise of powers under Section 482 of the Criminal Procedure Code, the Apex Court in **Hridaya Ranjan Prasad .vrs. State of Bihar,** cited supra, while dealing with the satisfaction of the ingredients of offence of cheating under Section 415 of the Indian Penal Code, has held on the aforesaid similar lines. The Apex Court has held that as plain reading of the allegations in the complaint, does not indicate expressly or impliedly of any deception on the part of the alleged accused right from the beginning of the transaction to commit an offence, it cannot be said that the offence of cheating can be inferred. The observations of the Apex Court in paragraph nos. 15 and 16 of the aforesaid judgment are worth referring, which reads thus :

> "*15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give*

rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in State of Haryana v. Bhajan Lal and as such warrants interference by the Court. Reading the avernments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in complaint. All that the Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the Respondent 2 part with property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the

> *accused will be, in our considered view, an abuse of process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same."*

10. In the matter of **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) .vrs. Nimra Cerglass Technics Pvt. Ltd.,** cited supra, it has been held that based only on false representation, the offence of cheating cannot be inferred unless it is proved that the representation was false to the knowledge of the accused and was not in order to deceive the complainant. It has further held that the intention of the accused was dishonest at the very time when the promise was made at the time of entering into the transaction is an essential element to be satisfied. In case if the promise is not kept by the accused person at a later point of time, the criminal liability cannot be foisted on the accused. Paragraph no.16 of the said judgment reads thus :

> *"16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the*

> *complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar v. State of Bihar (2002) 1 SCC 241, this Court held as under:*
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> > *"21 ……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."*
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> *The above view in Palanitkar's case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr. (2014) 13 SCC 553."*

11. Apart from above, the Apex Court has held that exercise of inherent powers of the High Court under Section 482 of the Criminal Procedure Code for quashing criminal proceeding can be said to be justified, if without analysing and appreciating the evidence on record, necessary ingredients of the offence are said to be inferred. It has also held that the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution, if the averments in the complaint do not constitute an offence.

12. The view expressed by the Apex Court in the judgment in case of

Hridaya Ranjan Prasad Verma [supra] was further referred in the judgment of **Satishchandra Ratanlal Shah .vrs. State of Gujarat**, cited supra. The Apex Court while dealing with the ingredients for constitution of offence of criminal breach of trust and cheating in paragraph nos. 11 to 14 has observed thus :

> *"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that the Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.*
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> *12. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 of IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellants for the said offence. Unfortunately, the High Court also failed to correct this manifest error.*
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> *13. Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon*

the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC."

13. Apart from above in the matter of **Anand Kumar Mohatta and another .vrs. State (NCT of Delhi)**, cited supra, it is held by the Apex Court that the essentials of the offence punishable under Section 406 lies in the use of the property entrusted to a person by that person in violation of any direction of law or any legal contract. In the matter of **Wolfgang Reim and others .vrs. State and another**, cited supra, the Delhi High Court has held that a person cannot be tried with the

offence of cheating and criminal breach of trust simultaneously for the same transaction. The said Court has held that for an offence of cheating, it is pre-requisite that dishonest intention must exist at the inception of any transaction, whereas in case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with the property as per law.

14. The Apex Court in the recent judgment of **Sarabjit Kaur .vrs. State of Punjab and another**, cited supra, had an occasion to consider the aforesaid provisions and in paragraph no.13 has observed thus :

> *"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for*

> *settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."*

15. As such this Court is required to appreciate the rival claim of the parties based on the aforesaid settled position of law as reflected in the respective judgments of the Apex Court.

16. In case in hand, it appears that the supply orders were executed issued in favour of the applicant some time in the month of December-January 2020-21 by the three firms which at the relevant time were not represented by the complainant. The transaction of payment of major part of consideration was not between the complainant and the applicant/accused. It appears that third parties who later on nominated/authorised the respondent/complainant have directly issued the supply order and also deposited the payment of consideration.

17. It appears that pursuant to aforesaid supply orders for coal, as referred in the factual matrix, the applicant has received total amount of Rs.81 lakhs towards 80% of the consideration. The said amount was

received by the applicant in between 5th and 6th January, 2021 in his current account operational with Yes Bank in the name of M/s. S.S. Traders. Subsequent to the receipt of said amount, the applicant claimed to have withdrawn Rs.18 lakhs in cash, routed Rs.40,50,000/- to his saving bank account. It is the claim of the complainant that instead of honouring the commitment of supply of coal, the offence of cheating is committed by the applicant. It is also specifically stated that the aforesaid account of the applicant was attached by the Economic Offence Wing without registering an offence. The case of the complainant is based on his entitlement to the commission from both the parties at a fixed rate on each metric tonne of coal to be supplied. He has also stated that on inspection of the current account of the applicant on 08.01.2021, he has noticed the aforesaid transaction of Rs.18 lakhs and Rs.41 lakhs.

18. Perusal of the orders which were placed by the three parties, who are not the complainant, does not reflect that the coal was to be supplied within a stipulated period or any time limit was fixed for such supply.

19. The fact remains that non-applicant no.2/ complainant was

authorized by Acron to be a representative vide communication dated 29.01.2021, 03.02.2021 by Block Chain Solutions and dated 01.02.2021 by Vogel, as such till then the complainant was not vested with any authority to cause any complaint or set the criminal investigation in motion.

20. In the aforesaid factual matrix background, if we appreciate the very conduct of the investigating agency in the light of the law laid down by the Apex Court in case of **Lalita Kumari .vrs. Government of Uttar Pradesh** [supra], the offence came to be registered on 19.02.2021, whereas the investigating agency without registration of the offence has taken recourse to the provisions of Section 91 of the Criminal Procedure Code on 08.01.2021, and has directed the Yes Bank under the signature of Senior Police Inspector, Police Station Crime Branch to recover the fraudulent amount to the source account and further requested/directed to have lien over the said amount of Rs.81 lakhs.

21. If we take into account the contents of the aforesaid communication issued by the investigating officer that too without there being registration of the offence, and the powers under Section 91 of the Code, it cannot be said that Section 91 gives an authority to the

investigating officer to issue such directions to the Bank where the applicant was operating his account. The fact remains that within two days of the receipt of the amount in the account of the applicant, his account was sealed and applicant was not permitted to carry out/honour transaction arising out of contract so entered into between the applicant and three firms, referred above. The very conduct of the complainant narrated herein-above has created an artificial situation with the aid of the police officers that too without any lawful authority, so as to stop the applicant from honouring the commitment of supply of coal, as was agreed, as reflected in the supply order issued by the three firms.

22. The delayed registration of the first information report i.e. almost after a period of 40 days would cast a serious doubt on the very conduct of not only the complainant, but, also about bonafides of the investigating agency. In the judgment referred above viz. Lalita Kumari, a preliminary enquiry ought to have been completed by the investigating agency in time bound manner and in any case not later than 7 days from day one of the fact about the transaction being brought to its notice by the complainant. The investigating agency for almost a period of 40 days not only had taken recourse to Section 91 of

the Code without registration of any offence, but, had indulged in high handed action of creating lien on the amount of Rs.81 lakhs, and further issuing directions to the Bank officials to reverse the entry and transfer the amount to the source account. In such situation, the action of non-applicant no.1 in ordering illegally sealing of the account is not only without lawful authority, but, also smacks that the non-applicant investigating agency was acting hand in glove with the complainant. Support can be drawn from the observations of Apex Court in paragraph nos. 44 to 56 of the aforesaid judgment.

> “44. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.
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> 45. At this juncture, it is apposite to refer to the following observations of this Court in *Hiralal Rattanlal* which are as under:
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> > “22...In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only

when the legislative intention is not clear…"

46. The above decision was followed by this Court in *B. Premanand* and after referring the abovesaid observations in the case of *Hiralal Rattanlal*, this Court observed as under:

> "9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. SEBI (2004) 11 SCC 641.*

47. The language of Section 154(1), therefore, admits of no other construction but the literal construction.

48. The legislative intent of Section 154 is vividly elaborated in *Bhajan Lal* which is as under:-

> "30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined Under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.
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> 31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate

of Section 154(1) of the Code, the concerned police officer cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “information” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “reasonable complaint” and “credible information” are used. Evidently, the non- qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to

> record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be information and that information must disclose a cognizable offence.
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> 33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there

must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

'Shall'

50. The use of the word "shall" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

51. In *Khub Chand,* this Court observed as under:

> "6…The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations..."

52. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct

investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

54. Therefore, the context in which the word “shall” appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word “shall” used in Section 154(1) needs to be given its ordinary meaning of being of “mandatory” character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

55. In view of the above, the use of the word ‘shall’ coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in-charge of the police station. Reading ‘shall’ as ‘may’, as contended by some counsel, would be against the Scheme of the Code. Section 154 of the Code should be strictly construed and the word ‘shall’ should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

56. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392 etc., of the IPC. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer-incharge of a

Police Station to register the report. The word 'shall' occurring in Section 39 of the Code has to be given the same meaning as the word 'shall' occurring in Section 154(1) of the Code."

23. We are sensitive to the fact that the investigating agency within its limit can conduct preliminary enquiry in the matter of commission of economic offence like the present one, however, such enquiry is required to be completed within a period of 7 days. This has been expressly observed by the Apex Court in paragraph nos. 120.6 and 120.7 of the aforesaid judgment which reads thus :

> *"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under :*
>
> *[a] Matrimonial disputes/family disputes*
> *[b] Commercial offences*
> *[c] Medical negligence cases*
> *[d] Corruption cases*
> *[e] Cases where there is abnormal delay /laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*
>
> *The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.*
>
> 120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

24. This takes us to the next contention i.e. non satisfaction of the ingredients of the offence punishable under Sections 406 and 420 of the Indian Penal Code. We have already observed that for same transaction a person cannot be simultaneously charged with the offence of cheating and criminal breach of trust. It is pre-requisite that dishonest intention must exist at the inception of the transaction, whereas in criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with the property as per law. The aforesaid view is already endorsed by the Delhi High Court. In view of the aforesaid position of law, it cannot be said that the applicant at same time can be prosecuted for the offence of cheating and criminal breach of trust based on very same transaction as is reflected in the first information report.

In support of the aforesaid observations, reliance can be placed on the judgment of Apex Court in the matter of *International Advanced Research Centre (cited supra)*, wherein the Apex Court had an occasion to consider distinction between mere breach of contract and cheating. The Apex Court has held that the intention of the accused at the time of alleged inducement if is dishonest from the inception i.e. the accused made a promise and entered into a transaction which prompted the victim to part with the property or money and the liability is criminal, then the accused can be said to be guilty of cheating. The Apex Court has further held that in case if the representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and in such an eventuality, the remedy with the victim is that of to approach the civil court for breach of contract. The Apex Court held that mere breach of contract cannot give rise to criminal prosecution for cheating in absence of there being intention since beginning of the transaction to cheat a person. Apart from above, in the matter of *Hridaya Ranjan Prasad (cited supra)*, the Apex Court has held that plain reading of allegation in complaint if does not indicate expressly or impliedly of any deception on the part of the accused right from the inception of the transaction, then an offence of cheating cannot be inferred. While following *Hridaya Ranjan Prasad (cited supra)* in the matter of *Satischandra Ratanlal Shah (cited supra),* in paragraph 13 of the said jugment, the Apex Court had considered distinction between the mere breach of contract and cheating and has held that the difference is based on the fraudulent inducement and *mens rea*. Apart from above, in detail the Delhi High Court in the matter of *Wolfgang Reim (cited supra)* has dealt with the attaction of ingredients of offence of cheating and criminal breach of trust and the sanctity/legality of such transaction at the same time and has held as has been observed herein-above.

25. The complainant in his complaint has specifically alleged criminal act of cheating for an amount of Rs. 81 lakhs. Even if it is presumed that such amount was routed pursuant to the assurance given, in the account of the applicant, and the amount was received by the applicant some time on 5^{th} - 6^{th} January, 2021 he was hardly given any time to honour the commitment of supply of coal pursuant to the orders issued by the three firms who have deposited the amount in the account of the applicant. The supply orders conspicuously have not mentioned about the outer time period for compliance.

26. The non-applicant/complainant by taking unwarranted aid from the police authorities, by sealing the account and not permitting the applicant to use the said amount for honouring the transaction has artificially created a situation which has prompted not to honour the commitment as was promised by him. In this background, the offence as alleged against the applicant is that of receiving the amount in his account and transferring the same to various account which by itself will not attract the offence of cheating or criminal breach of trust, as has been alleged. Reliance can be placed on the judgment of Apex

Court in the matter of Hridaya Ranjan Verma and Anand Kumar Mohatta, cited supra.

In the matter of **Indian Oil Corporation .vs. NEPC (India) Ltd.** Reported in **(2006) 6 SCC 736,** the Apex Court has held that any effort to settle civil disputes and claims which are not involving any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. In such a situation it is open for the High Court to exercise powers conferred under Section 482 of the Criminal Procedure Code. Similar view is also expressed in the matter of **State of Haryana .vrs. Bhajanlal** reported in **1992 Supp [1] SCC 335**. Paragraph no.102 of the said judgment is worth referring so as to draw support in exercise of powers under Section 482 in the given situation. The same reads thus :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have accepted and reproduced, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly define and sufficiently channelize and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such powers should be exercised.*
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their*

face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

27. From the narration of the events and factual matrix, it is to be noted that the Investigating Agency has overexcitemently stepped in the contractual matter at the behest of respondent/complainant and

without there being authority not only sealed the account of the applicant's firm but also has issued instructions to reverse the transaction that too without any authority of law. Even if the provisions of Section 91 of the CrPC are sought to be taken recourse to, we hardly see any provision from the ingredients of the said provisions to infer conferring of such powers on the Investigating Agency to seal the account without registration of the offence and also to issue directions to reverse the transaction. Section 91 of the CrPC in categorical terms deals with summons to produce document or other thing. The plain reading of Section 91 of the CrPC does not empower the Investigating Agency to direct sealing of the account or to instruct reversing of entries to the banker thereby judging the very transaction to be fraudulent one or arising out of an offence of cheating in the facts and circumstanes of the case in hand.

28. At this stage, counsel for the applicant Mr. S. P. Bhandarkar has specifically stated that the applicant even today is ready to honour his contract on the same terms. Since the aforesaid statement is made on instructions, same is accepted as an undertaking to this Court.

29. That being so, we deem it appropriate to permit the complainant

to either honour the contract in any case by 31st December, 2023 or in alternate to refund the entire amount received by him to the consumers. The aforesaid observations are made purely based on the concession given by the counsel for the applicant Mr. S. P. Bhandarkar.

30. In the light of aforesaid findings recorded by this Court, it is to be held that the respondent authority/Investigating Agency has stepped into a civil/contractual transaction and has conducted the investigation in highhanded manner. The plain reading of the contents of the complaint and the transactions entered into between the applicant and his consumers by itself does not lead to drawing of inference of satisfaction of ingredients of offence punishable under Section 406 or 420 of the IPC. As such, the present Criminal Application stands allowed in terms of prayer clauses [b.1] and [b.2].

31. Copy of this judgment be placed before the Commissioner of Police/Addl. Director General of Police for perusal and action.

(G.A. SANAP, J.) **(NITIN W. SAMBRE, J.)**

Rgd.