Crl.O.P.No.31125 of 2014

M.NIRMAL KUMAR. J.,

This matter came up for hearing today under the caption 'For Being Mentioned' at the instance of the learned counsel appearing on behalf of the petitioner.

2.The learned counsel appearing on behalf of the petitioners submits that submits that in the first page of the order, i.e. in the cause title it is mentioned as “In the High Court of Judicature at Madurai” instead of “In the High Court of Judicature at Madras” and hence, the said typographical error may be rectified.

3.Accordingly, the Registry is directed to rectify the typographical error occurred in the cause title as stated above.

4.Further, Paragraph Nos.21 and 22 of the order dated 28.07.2023 in the above Criminal Original Petition shall be read as follows:-

“21.Considering the entire facts and circumstances of the case and a reading of the criminal complaint submitted by the private complainant, this Court is of the view that it is a commercial, civil dispute involving alleged non-performances of contractual obligations between the Private Complainant and the accused. Arraying the Petitioners herein as A14 to A-17 in the present case is totally unjust and with oblique motives. The whole dispute, arising out of written contractual obligations between the Parties, is of a civil nature. Mere breach of contract cannot give rise to criminal prosecution for cheating, unless dishonest intention is shown right from the beginning of transaction. The matter in question is far fetched purely of civil nature as regards the petitioner, which has been given a criminal colour by the complainant in order to take advantage of relatively quick relief granted in criminal case in contrast to civil dispute. Hence, this Court is inclined to quash the proceedings in C.C.No.2726 of 2014.

22. In view of the forging discussions, this petition is allowed and the proceedings in C.C.No.2726 of 2014, pending on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai, is hereby quashed, as against the petitioners/A14 to A17."

5.Registry is directed to issue the fresh order copy after incorporating the necessary corrections in the above said order dated 28.07.2023.

10.10.2023

cse

Note: Issue the corrected order
copy on 10.10.2023

M.NIRMAL KUMAR. J.,

cse

Crl.O.P.No.31125 of 2014

10.10.2023

IN THE HIGH COURT OF JUDICATURE AT MADURAI

Reserved on : 09.11.2022

Pronounced on : 28.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.31125 of 2014

1.M/s.Nano Kernel Limited
Represented by its Managing Director,
V.S.Harikumar, 480/17, 45th Cross,
Jayanagar 8th Block,
Bangalore – 560 082.

2.V.S.Harikumar
Managing Director,
M/s.Nano Kernel Ltd.,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore – 560 082

3.S.A.Muthu
Director,
M/s.Nano Kernel Ltd.,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore – 560 082

4.Anupama Srikantiah
Director,
M/s.Nano Kernel Ltd.,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore – 560 082 ... Petitioners / A14 to A17

Vs.

M/s.Interlace India Private Limited
Rep.by its President Mr.G.Ambalavanan
No.40, Sapthagiri Colony,

Jaggarkhanpet,
Chennai – 600 083. ... Respondent / Private Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.2726 of 2014, on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioners	:	Mr.V.B.R.Menon
For Respondent	:	Mr.G.Shivasurya

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.2726 of 2014, on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

2. The facts leading to filing the present petition is as follows:-

(i).M/s.Nano Kemel Limited (A-14) is a Public Company incorporated on 16 April 1998, a Non-Government Company and is registered at Registrar of Companies, Bangalore. The petitioners / A-14 to A-17 are Directors of the Company having residences in Bangalore.

(ii).The complainant had entered into a contractual obligation with M/s.Imatics Technologies(A1) towards execution of software products and supplies of hardware materials. There was a contract between M/s.Vayam Technologies Ltd./(A5) with M/s.Imatics Technologies/(A1), who in turn, had an agreement with M/s.Interlace India Pvt. Ltd. (complainant). Subsequently, for the execution of the project, the complainant had entered into a Turkey execution agreement with M/s. Nano Kernel Limited (A14) with 100% advance payment terms. When the complainant was not able to honour the said commitment of 100% payments even after supply of materials by M/s.Nano Kernel Limited (A14), the complainant had decided to replace the Petitioner's company M/s. Nano Kernel Limited from the Turn-key agreement and thereby, relieving the Petitioner company from the contractual obligations by executing a tri-party business agreement with M/s. Applied DSP Pvt Ltd. which is a company owned and operated by the Director of M/s. Imatics Technologies (A1), M/s. Nano Kernel Limited (A14) and M/s. Interlace India Pvt Ltd (Complainant) on 23.04.2011. As per the tri-party agreement, the entire contractual responsibly along with the entire payments made to A14 till the date of execution of the tri-party business agreement were transferred to the incoming party with the consent of Complainant.

(iii). The main grievance of the complainant, both in the criminal complaint before the learned Magistrate and the police authorities, was for the money, which was due to him from the first Accused towards the works executed by him upon a contract. The first accused had not paid the money, since the fifth accused had not made payment to the first accused. It is also alleged that the above accused have intentionally not made the payment and thereby, they have committed various criminal offences mentioned above.

(iv) Each of the contractual agreements were executed between independent Corporate Companies having separate and distinct identities and having no interconnections between them. The contractual agreements, which the complainant had entered with other companies, are not binding on the petitioners. Any one company did not have any right or liability as against any other company with whom they did not have a direct contractual obligation. The transactions are purely civil in nature and hence, there is no element of criminality involved to attract the provisions of Indian Penal Code.

(v). The Directors of M/s. Nano Kernel Limited (A14), who supplied materials after signing the Turnkey Execution Agreement with the complainant had received the part payment as advance. Further, the Complainant for his convenience chose to substitute the petitioner with a new Party through a tri-party Business Agreement wherein, the petitioners were relieved from all the contractual responsibilities and the advance payments received till the date of tri-party agreement towards the works already carried out were transferred to the account of the incoming party with the consent of Complainant. In view of the nature of the allegation made in the complaint and in the absence of the ingredients of the offences alleged against the Petitioners clearly points out that the complainant has falsely implicated the accused with an oblique motive, which is clearly indicative of the fact that the private complainant is attempting to invoke the jurisdiction of the Criminal Court to settle a civil dispute between unconnected parties.

3. Mr.V.B.R.Menon, the learned counsel appearing for the petitioners would submit that M/s. Vayam Technologies Private Ltd. (A-5 to A-13), on behalf of VGIT (SPV), had outsourced entire Project of Supply, Installation and Commissioning of items for AJL Ahmedabad and Operation and Maintenance of the same for 7 Years

to A-1 to A-4 (M/s Imatics Technologies Pvt Ltd.) in turn A-1 to A-4 had outsourced the project to M/s.Interlace India (P) Ltd, the Private Complainant herein, through Business Agreements. It is the further contention of the learned counsel that a portion of the work of supply of Equipments & Software for about Rs.18 Crores to A-14 to A17 / Ms.Nano Kernel Pvt.Ltd.,, the petitioners herein, through a Turnkey execution agreement, dated 20.01.2011, containing advance payments terms. Initially, the Private Complainant paid an advance amount of Rs.2 Crores to A-14, for the supply of equipments, as per the stipulated performance conditions, after collecting an undated guarantee cheque for Rs.2 Crores from A-14 vide the letter dated 12.01.2011. Thereafter, A-14 had started working on the project and spent the entire advance amount of Rs.2 Crores received from the Private Complainant for procuring and supplying equipments, as per the agreement and to meet the stipulated time schedule of the project. Additionally. A-14 had spent about Rs.4.80 Crores from their hands towards procurement of items for the timely implementation of the project, as on 31.03.2011. However, the Private Complainant was unable to provide further timely payments in accordance with the agreement, dated 20.01.2011, for procurement of items in spite of several reminder to them in this regard by A-14. At last, the Private

Complainant paid an additional amount of Rs.65,71,580/- to A-14 ,as against Rs.4,80,06,699/-, due to A-14 towards the expenditure already incurred. As against payment of the additional amount, the Private Complainant taken a post dated Cheque, dated 30.04.2011, for Rs.65,71,580/- from A-14, as security. When the A-14 insisted for urgent payments of the remaining overdue amounts payable to them towards the expenditure already incurred in executing the project, the Private Complainant offered to open a Letter of Credit (LC) instead of making transfer through RTGS. Evethough it is not acceptable, to avoid disruption in the project, A-1 agreed to accept the LC from the Private Complainant and executed a Tri-Party Agreement, on 23.05.2011 with A-1, A-14 and M/s Applied DSP Pvt. Ltd, one of the associate companies of A-1, as Incoming Party in place of A-14, for the execution of the Project.

4. As per the above Tri-Party Agreement, dated 23.05.2011, the entire contractual obligations between the Private Complainant and A-14 for the execution of the project, as per the Agreement, dated 20.01.2011, come to an end after the incoming Party stepped into the shoes of A-14 w.e.f 23.05.2011. As per clause 4(iv): PRICE AND PAYMENT, of the substituted business agreement, dated 23.05.2011,

it was agreed that the Post dated cheques given to the Private Complainant as security/ guarantee shall be returned to A-14, which the Private Complainant did not do in spite several request by A-14 in this regard. In violation to the above agreement, the Private Complainant had presented the undated cheque, given by A-14 as per the letter dated 12.01.2011, after 15 months of the execution of the above Tri-Party Agreement on 23.05.2011 Thereafter, the Private Complainant had instituted 138 NIA proceedings against A-14 to A-16 in CC No. 5155 of 2013 before the Magistrate Court, Saidapet, which was dismissed. As per the agreement, the entire money received from the Private Complainant by A-14 as on 23.05.2011 was transferred in favor of the substituted Party and as per clause 4 (v) of the same agreement, A-14 to A17 have been discharged from all liabilities out of the agreement, dated 20.01.2011, with the Private Complainant

5. Further, the Private Complainant filed a Criminal Complaint, dated 07.12.2012, with the Crime Branch, Chennai. During the inquiry, A 14 was summoned by the Crime Branch, on 15.06.2013, even though there was no allegation/ whisper against A-14 to A-17 in the above Complaint. After conducting a detailed enquiry into all aspects of the above Complaint and perusal of all relevant documents

produced by the Parties, the Police Authorities, come to a conclusion that it is a pure civil dispute arising out of contractual obligations and there are no criminal offences involved Accordingly, the Crime Branch closed the complaint and submitted a closure report on 07:03.2014. The Private Complainant collected post dated / undated Cheques, as security from A1 in respect of all their transactions and filed Cheque bounce cases before the Court of Metropolitan Magistrate, Saidapet, claiming Rs.16 Crores in addition to penalties and interest. The Court ordered A1 to pay Rs.11 Crores to the Private Complainant against which A-1 has preferred a Criminal Appeal in CRL.A.No.19/2021 and it is pending.

6. The learned counsel for the petitioners referring to the Turnkey Execution Agreement, dated 20.01.2011, submitted that as per the Agreement, a postdated cheque for Rs.2 Crores as counter guarantee had been handed over to the complainant. Further, the works to be complied has been enlisted in the Annexure A3 to the Turnkey Agreement. Thereafter, for some reasons, the Turnkey Agreement could not be taken forward and a Business Agreement, dated 23.05.2011, between the complainant M/s.Interlace India

Private Limited, the petitioner M/s.Nano Kernel Limited and M/s.Applied Digital Signal Processing (P) Ltd., entered into Tri-Party Agreement. As per the Tri-Party Agreement, it was resolved that the petitioner relieved from all liabilities in the business transactions and M/s.Applied Digital Signal Processing (P) Ltd., the part of the 3rd party, to honour the counter guarantees of the petitioner, if such occasion arises. Hence, from 23.05.2011, the petitioners had nothing to do with the business between the complainant and the other accused. When the complainant was called for enquiry by the CCB, Chennai, a detailed explanation submitted on 14.06.2013, along with documents. Thereafter, the complaint closed. In the complaint to CCB, there is nothing against the petitioners. Thereafter, with an ulterior motive, the complainant had further developed his case and falsely arrayed the petitioners as A14 to A17. The trial Court Magistrate finding that it is a business transaction and the dispute is in course of the business, further the petitioners are residing away from its jurisdiction, in Bangalore, failed to follow the mandatory condition of enquiry under Section 202 of Cr.P.C. On this score alone, the case to be quashed. It is further submitted that A11 in this case filed a petition seeking to quash the complaint and this Court in Crl.O.P.No.31361 of 2014, by order dated 25.10.2021 recorded that the mandatory requirement of Section 202 of Cr.P.C., not fulfilled. He further submitted that by way of commercial Invoice No.221, dated 04.06.2011, the materials transferred and credited to the account of M/s.Applied Digital Signal Processing (P) Ltd., Commercial Tax Invoice and C-Form declaration produced to show that the Tri-Party Agreement acted upon, thereafter, the complainant reverting back without any reference to the Tti-Party agreement lodging the complaint is not proper.

7. The Private Complainant tried to institute 3 parallel and simultaneous criminal proceedings in respect of the very same alleged cause of action i.e., no receipt of payments arising out of written contracts / agreements between the same parties. As the Crime Branch Police, after detailed enquiry, came to the conclusion that it is a pure civil dispute, nothing remain to survive in the present Private Complaint as against A-14 to A-17. Further, the Learned Magistrate has not complied with the mandatory requirement prescribed under Sec. 202(1) of CrPC, 1973 to conduct an inquiry or Investigation into the allegations against the Petitioners herein, who are residents of Bangalore, before issuing the summons and proceeding with the matter. Non-compliance of the above mandatory requirement,

especially in the context of the closure report by the Crime Branch, shall vitiate the entire proceedings pending against the Petitioners herein.

8. Perusal of the Criminal Complaint submitted to the Crime Branch by the Private Complainant contains no allegations or even a whisper about the alleged involvement of R-14 to 17 in the entire dispute The above facts shall reveal, without a pale of doubt, that it is a pure civil dispute involving alleged non-performances of contractual obligations between the Private Complainant and A-1 to A-13. Hence dragging the Petitioners herein into the present case and arraying them as A-14 to A-17 shall show the wicked and perverted mindset of the Private Complainant to somehow recover the amounts from anybody through hook or crook. Both the Agreements dated 20 01,2011 and 2.05.2011 contain arbitration clauses and hence the proper course for resolving the disputes. if any, between the Private Respondent and A-14 should have been through Arbitration proceedings only. Hence, the mala fide intentions of the Private Complainant in filing the present case against the Petitioners herein, without disclosing all the facts, shall be self evident to any reasonable mind. Arraying of the Petitioners herein as A 14 to A-17 in the

present case was totally unjust and with oblique motives. Moreover, the whole dispute, arising out of written contractual obligations between the Parties, is of a civil nature. Further, the Private Complainant had taken guarantee cheques from all the parties towards the full values of advance payments / supplies made and had also instituted 138 NIA proceedings against A-1 and A-14 due to bouncing of the cheques. Hence, none of the alleged criminal offences of cheating, criminal breach of trust, etc. shall have any legs to stand in the present case against the Petitioners herein.

9. It is a settled position of law, through a Catena of decisions of the Hon'ble Apex Court, that criminal proceedings shall not be abused to settle disputes which are predominantly Civil in nature. Approaching the appropriate Civil Court or Arbitration proceedings in the present case must have been the right course of action available to the Private Complainant on the facts and circumstances of this case. The learned counsel, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court in ***Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd., and Ors.,*** reported in ***(AIR 2021 SC 4587).***

10. Further, the learned counsel relied upon the Judgment of the Apex Court in ***Deepak Gaba and Others Vs. State of Uttar Pradesh and Another,*** reported in ***(2023) 3 SCC 423*** wherein this Court had reiterated that Section 202 of the Code made it obligatory upon the Magistrate to follow Section 202 and conduct enquiry. The petitioner further referring to the Judgment of the Apex Court in ***Thermax Limited and Others Vs. K.M.Johny and Others*** reported in (2011 (13) SCC 412) wherein the Apex Court had held that the Court should be watchful of the difference between civil and criminal wrongs though there can be situations where allegations may constitute both civil and criminal wrongs. The Court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of the criminal wrong are missing. In this case, admittedly, after the Tri- Party Agreement, dated 23.05.2011, the petitioners have no business dealing and nothing to do with the complainant or other the accused.//

11. Further, the petitioner relied upon the Judgment of the Apex Court in the case of ***MohdIbrahim and Another Vs. State of Bihar and Another*** reported in ***(2009 (8) SCC 751)*** stating that it is the

criminal Court's duty to check abuse of process and further criminal Court should ensure that the criminal proceedings are not misused for settling the personal scores or to pressurize the parties to settle the civil disputes. Further, in the case of ***Prashant Bharti Vs. State (NCT of Delhi)*** reported in ***(2013 (9) SCC 293),*** the Apex Court has observed the proposition of law pertaining to quashing of criminal proceedings against an accused by the High Court under Section 482 of Cr.P.C., and given four steps. He also relied upon the Judgment of the Apex Court in the case of ***Melmood UI Rehman Vs Khazir Mohammed Tunda and Others*** reported in ***(2015 (12) SCC 420)***. In the case of ***Ananda Kumar Mohatta Vs. State (NCT of New Delhi)***, the Apex Court held that civil dispute converted into criminal case to harass accused, exercise of power to quash criminal proceedings warranted. Further, for the same principle he had also relied upon the decision of the Apex Court in the case of ***Vinoc Natesan Vs. State of Kerala and Others*** reported in ***(2019 (2) SCC 409)***. Lastly, the counsel relied upon the Judgment of ***Bajan Lal's Case***. Thus, it was submitted that looking the case from any angle it is seen that a commercial dispute have been given a criminal colour as regards the petitioners and the petitioners have been falsely implicated, which is proved by the uncontroverted and undisputed documents. After the Tri-Party Agreement, the petitioners have got nothing to do with the transaction with the complainants and other accused. He further referring to the complaint submitted that there is no reference to the Tri-Party agreement and about M/s.Applied Digital Signal Processing (P) Ltd., substituting the petitioners in the Business Agreement with the complainant. The complainant has not come with clean hands, as regards the petitioners.

12. On the contrary, Mr.G.Shivasurya, the learned counsel for the respondent / private complainant would submit that the Respondent Company deals with development of software products and also supplies hardware equipment. During the course of business, the 15th accused, the Managing Director of 14th accused Company, M/s.Nano Kernel Ltd., had acquaintance with the complainant. A16 and A17 are directions of A14 Company and are incharge of day-to-day affairs of said Company. The 5th accused Company, M/s Vayam Technologies Ltd, have bagged a project called, 'Integrated Transit Management System' (ITMS) for installing smart cards and other advanced computer based ticketing system in the buses from one M/s.Ahmedabad Janmarg Limited (AJL), a subsidiary of Ahmedabad Municipal Corporation. He further represented that the estimated bid

value of the project was Rs.77.4 Crores and the 1" accused Company, M/s.Imatics Technologies Pvt Ltd., represented by their Directors / A2 to A4 entered into an agreement with 5th accused Company, represented by A6 to A10 to execute the said project within a time frame. A1 to A17 colluded and conspired together and hatched a plan to induce the complainant as an investment partner in the above said project. With the common *mala fide* intention of causing wrongful loss to the Complainant, A2 and A15 met the complainant several times at Complainant's office, requested the complainant to invest money in the said project and also to execute some work relating to the business of the complainant.

13. It is further submitted that the principal Contractor - M/s. Ahmedabad Janmargh Ltd, would pay A11-Company viz., M/s.Vayam GMV Intelligent Transportation Pvt. Ltd. A11 would pay the respective ratio to A5 Company viz., M/s.Vayam Technologies Ltd., who in turn, would pay A1 Company viz., M/s.Imatics Technologies Ltd. A1 Company would finally pay the amount to the complainant. The payment would be through standing instruction to the respective banks after opening a dedicated account for this transaction. To make the complainant believe the above system to be true, the A5 Company,

represented by A6, issued a letter, dated 20.01.2011, stating that the project will be jointly executed by A1 Company, represented by A2 to A4 and the Complainant Company. This letter was written by A5 Company to lure the complainant and make him believe that he is a part of the project, and therefore, the Complainant would invest and part with his money. On the same day, ie., on 20.01.2011, a Business Agreement between the A1 Company and the Complainant was entered into wherein, it was stated that the Complainant would supply entire hardware and software, based on the purchase order placed by A1. The value of such supply of equipment and other services, as per the agreement would be Rs.49,50,00,000/-, which was subsequently amended as Rs.16,07.41,978/-, under agreement dated 23.05.2011. The payment was agreed to be paid by A1, represented by A2 to A4 to the Complainant Company.

14. The learned counsel further submitted that believing the above arrangement as true, the complainant supplied materials and extended technical constancy services to A1 Company to the tune of Rs.16,07,41,978/- which is accepted by A2 through delivery challans and invoices. Not stopping with this, the A11, represented by A12 and A15 represented by A6, in order to make the complainant believe

that the above system is effectively working, transferred small amounts on 11 occasions to the credit of Complainant's bank account at IDBI Bank, T.Nagar, Chennai. Thus, to prove the mechanism of standing instruction is effectively working, A1 to A17 deceitfully organized for such a transfer of money and the complainant believed them and invested more money.

15. The learned counsel for the respondent also submitted that since the complainant did not receive any further payment for a long period, though the due amount was exceeding Rs.16 crores, he made enquiries about A1 with bankers. To the shock of the complainant his bankers after enquiry with their counterparts in Delhi understood that the standing instruction given by the A5 was cancelled without the knowledge of the complainant and the A14 to A17 had used the money for their personal unlawful gains. The complainant transferred under 5 transactions to the account of A11 herein, having received 15 crores, A11 company represented by A12 and A13, in connivance with other accused, defrauded the complainant with fraudulent intention of causing wrongful loss to the complainant, thereby, cheating him, by willfully not honoring the standing order instructions. A1 to A17 had dishonestly and fraudulently misappropriated the money that should

have gone into the account of complainant. When the complainant confronted, the accused 1 to 4 issued 5 cheques all drawn on Corporation Bank, Indira Nagar Branch, Chennai and A15 issued a cheque drawn on Corporation Bank, Jayanagar Branch, Bangalore, dated 17.08.2012, for Rs 2,00,00,000/-, which were eventually dishonoured on presentation and the complainant has duly initiated criminal action u/s 138 of Negotiable Instruments Act and the cases are pending. A1 to A17 have conspired and cheated the complainant by tactfully using the banking system as a tool to deceive the complainant and have misused the amount deposited in the account by diverting it with the common intention of making wrongful gain for them and wrongful loss for the complainant and therefore they are punishable for offences committed u/s 417, 418 and 420 r/w,34 of IPC. In this regard, the complainant gave a complaint before the Inspector of Police, J-13, Taramani Police Station and the same was not registered as the amount involved is outside their pecuniary jurisdiction. Hence a complaint before the Commissioner of Police, Egmore, Chennai was given but no action was taken. Hence the complaint.

16. I have heard the learned counsel appearing on either side

and perused the materials available on record.

17. On perusal of the records it is seen that the petitioners herein are A14 to A17. The Company, namely, M/s.Nano Kernel Limited, is arrayed as A14; A15 is the Managing Director; A16 and A17 are the Directors of A14 Company. It is the specific case of the respondent / complainant that the petitioners/A14 to A17, in connivance with the other accused, tactfully, by using the banking system as a tool, cheated the respondent/complainant, willfully defaulted, misappropriated the amount due to the respondent towards the material supply and services rendered by the respondent, thereby, causing wrongful loss to the tune of Rs.16 Crores.

18. In the instant case, even at a glance of record, it appears that the alleged offences are purely civil in nature, arising out of contractual obligations. The complainant instead of approaching the civil forum, filed a criminal complaint for recovery of the money. The intention of the complainant is nothing but to harass the petitioners and the other accused to compel them to make payment. The complaint is filed with malafide intention and hence it is clear case of

abuse of process of the Court. Even though it is agreed in writing by the complainant that as per the agreements, they will make reasonable efforts to sort out the differences and disputes through Arbitration, under the Arbitration and Conciliation Act, 1996, the complainant intentionally misrepresented many facts, including approaching the clients, requesting them to secure the payment directly even though the complainant secured guarantee cheques from M/s. Imatics Technologies Pvt Ltd., which the complainant had tried to en-cash and initiated criminal proceedings under Section 138 of Negotiable Instruments Act, for which, trial is under progress. Further, the trial court proceeded to summon the petitioners and its officers without conducting any enquiry, as mandated under Section 202 of the Code of Criminal Procedure, 1973, as the petitioner was not located within the territorial jurisdiction of the trial court. Furthermore, no offence under Sections 417, 418, 420, 422 r/w 34 IPC., prima facie made out and no offence under Section 406 r/w. Section 34 of IPC., can be attributed against the petitioners, since there has been no 'entrustment' of property by the complainant. As per the agreement, the entire money received from the Private Complainant by A-14, as on 23.05.2011, was transferred in favor of the substituted Party and as per clause 4(v) of the said agreement, A-

14 to A17 have been discharged from all liabilities out of the agreement, dated 20.01.2011, with the Private Complainant. During the inquiry by Crime Branch Police, A14 was summoned on 15.06.2013, after conducting an enquiry, the Police Authorities, closed the complaint, finding it is a pure civil dispute arising out of contractual obligations and there are no criminal offences involved and filed closure report on 07.03.2014.

19. Admittedly, the accused persons are residing at far off places. In order to see that innocent persons are not harassed by unscrupulous complaint, it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction, he shall make an enquiry into the case himself or direct investigation to be made by a police officer or by such other persons as he thinks fit, for finding out whether or not there is a sufficient ground for proceeding against the case. In the instant case, no such enquiry is made either by Magistrate himself or by a police officer or by such other person, as the Magistrate thinks fit in compliance with the mandatory provisions under Section 202 of the Criminal Procedure Code. The Magistrate simply examined the complainant, considered the materials produced by the complainant and formed an opinion for

issuance of process, which is illegal.

20. It is not in dispute that the petitioner and the respondent/complainant had entered into a Turn Key Agreement on 20.01.2011 with specifications. Thereafter, for some reasons, the petitioners could not continue the Turn Key Agreement and they were relieved, substituted by M/s.Applied Digital Signal Processing (P) Ltd., and Business Agreement, dated 23.05.2011, confirms the same. The petitioners, respondent/complainant and M/s.Applied Digital Signal Processing (P) Ltd., are the signatories to the Tri-Party Agreement. The Tri-Party Agreement relieved the petitioners from all the obligations and it is M/s.Applied Digital Signal Processing (P) Ltd., who steps into the shoes of the petitioners and further absolves the petitioners from giving any guarantee assumed to be completed. It is also to be seen that on 04.06.2011 materials to the value of Rs.4,80,06,699/- have been transferred to M/s.Applied Digital Signal Processing (P) Ltd., by way of Invoice No.221 and correspondingly, the same has been booked, acknowledged and C-Form declaration has been submitted to the Tax Authorities, which confirms the Tri-Party Agreement has been acted upon and thereafter, the 3rd party - M/s.Applied Digital Signal Processing (P) Ltd., is to continue the Turn

Key Agreement. Whatever disputes thereafter arises would be only a commercial civil dispute and not a criminal case, as regards the petitioners are concerned. This Court in Criminal Original Petition in Crl.O.P.31361 of 2020 filed by A11 held that that the mandatory requirement of Section 202 Cr.P.C.,is not fulfilled. The Apex Court in plethora of judgments time and again held that the Court must be conscious before initiating criminal cases, when the disputes have predominantly civil flavour. From the background of disputes between the parties, which might be a civil wrong and necessarily not always considered to be a criminal act. It is also held that it has been a growing tendency of the complainant's attempting to give cloak of criminal offence to matters which are essentially and purely civil in nature. The Apex Court in the case of ***G.Sagar Suri Vs. State of U.P., and Indian Oil Corporation Vs.NEPC India Ltd and Others***) had considered these aspects, observed that criminal case cannot be proceeded on mere asking without proper materials and the facts leading to justification. Further, in the case of ***Prashant Bharti Vs. State (NCT of Delhi)*** reported in ***(2013 (9) SCC 293),*** the Apex Court has observed four steps to be followed before quashing of the criminal proceedings under Section 482 of Cr.P.C., as under:-

> "(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
>
> (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
>
> (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
>
> (iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

Thus, taking these guidelines along with the facts and materials of this case, this Court finds the above case answers all the steps in affirmative.

21. Considering the entire facts and circumstances of the case

and a reading of the criminal complaint submitted by the private complainant, this Court is of the view that it is a commercial, civil dispute involving alleged non-performances of contractual obligations between the Private Complainant and the accused. Arraying the Petitioners herein as A14 to A-17 in the present case is totally unjust and with oblique motives. The whole dispute, arising out of written contractual obligations between the Parties, is of a civil nature. Mere breach of contract cannot give rise to criminal prosecution for cheating, unless dishonest intention is shown right from the beginning of transaction. The matter in question is purely of civil nature, which has been given a criminal colour by the complainant in order to take advantage of relatively quick relief granted in criminal case in contrast to civil dispute. Hence, this Court is inclined to quash the proceedings in C.C.No.2726 of 2014.

22. In view of the forging discussions, the proceedings in C.C.No.2726 of 2014, pending on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai, is hereby quashed, as against the petitioners/A14 to A17.

28.07.2023

Index : Yes/No
Internet : Yes/No
mpk/vv2

To

1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

1.The Inspector of Police,
R-8 Vadapalani Police Station,
Vadapalanai,
Chennai – 26.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

MPK/VV2

CRL.O.P.No.31125 of 2014

28.07.2023