

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.36788 of 2017 (O&M)

Reserved on : 5th July, 2023

Date of decision: 12th July, 2023

Kotak Mahindra Bank Limited

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep S. Cheema and Mr. Satish Sharma,
Advocates for the petitioner.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for the respondent No.1/State.

Mr. Vineet Sehgal, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J.

1. The petitioner, Kotak Mahindra Bank Limited (hereinafter referred to as, 'the Bank') is seeking quashing of FIR No.159 dated 31.12.2010 (Annexure P-23) under Section 420 IPC registered at Police Station Cantonment, Amritsar City along with all consequential proceedings arising therefrom including order dated 10.05.2017 (Annexure P-32) passed by the learned Judicial Magistrate 1st Class, Amritsar, vide which the cancellation report submitted by the investigating agency had not been accepted and further investigation had been ordered.

2. Learned senior counsel to lay a challenge to the FIR in question as well as to the impugned order, has inter alia submitted:-

- (i) That the petitioner is a banking division of Kotak Mahindra Group and provides a number of financial services through its various divisions, which function independently of each other. One of the divisions of the Bank, Corporate Advisory Group (for short, 'CAG'), was engaged in providing financial advisory services to Corporates. The services of CAG were only advisory in nature and did not envisage providing any financial assistance or any guarantee.
- (ii) That another division of the Bank, Asset Reconstruction Division (for short, 'ARD'), was into the business of purchasing Non-Performing Assets (for short, 'NPA') from banks and financial institutions, and their resolution. The same was being done by ARD as per the guidelines of Reserve Bank of India (for short, 'RBI') and laws of the land. Thus, evidently both CAG and ARD being separate divisions were performing distinct functions and their functions were not only independent but did not even overlap each other.
- (iii) That in the month of June 2006, CAG was approached by respondent No.2 (hereinafter referred to as, 'the complainant') for providing advisory services qua the debts

owed by the complainant to the Centurian Bank of Punjab Limited (for short, 'CBOP') and other banks. Qua the defaults made in repayment of loan, DRT proceedings were also initiated in the year 2007, against the complainant by the CBOP, for recovery of more than ₹ 33,95,07,968.00.

- (iv) That on 17.04.2007, an engagement letter was issued by CAG to the complainant, who paid an upfront fee of ₹ 2.00 lacs to CAG. The scope of engagement of CAG was limited to an advisory role and in rendering assistance to the complainant in tying up with investors to meet the funding for One Time Settlement (for short, 'OTS'). In the meantime, CAG was informed by the complainant that he was also negotiating with CBOP and was in the process of arriving at OTS for its debts. CAG was also requested by the complainant to look for investors for infusing funds in the said regard. However, despite best and earnest efforts by CAG, it was unable to find any investor, who was willing and ready to infuse funds as desired by the complainant. Acting in good faith, CAG informed the complainant about the ARD and suggested that it could explore the possibility of a buyout of the debts of the Company of the complainant by ARD itself. It was a mere suggestion given to the complainant by the CAG in its advisory capacity. Subsequently, vide email dated

18.09.2007, the complainant was also admittedly apprised that in case any transaction was to be made with ARD, it would be independent of the terms entered into between the parties vide letter dated 17.04.2007 and the CAG would still continue to act in its advisory capacity, to which the complainant put in a request for the terms of the proposal. Thereafter, it was only on the complainant giving a green signal, that ARD entered into a deed of assignment dated 27.09.2007 with CBOP for buyout of the debt of the Company of the complainant and the said takeover was welcomed by the complainant also.

- (v) That the complainant was fully aware of the DRT proceedings, which had been initiated by CBOP against it before the aforesaid deed of assignment was entered into between the Bank and CBOP. After acquiring the debts of the complainant, ARD filed an application for substitution of its name in place of CBOP, which was then allowed by the DRT Chandigarh vide order dated 06.11.2011. The application of ARD was allowed by DRT, Chandigarh vide order dated 03.04.2008. In support, attention of this Court has been drawn to Annexure P-4.
- (vi) That in the letter dated 06.11.2007 (Annexure P-5), the complainant himself offered ₹ 10.00 crores as settlement to ARD in respect of the debt assigned by CBOP to ARD. In

support attention has been drawn to Annexure P-6 dated 10.01.2008, which is an email sent by the complainant to ARD, wherein he reiterated that his Company was ready to settle the debts for an amount of ₹ 10.00 crores. Attention of this Court has also been drawn to Annexure P-7 dated 14.12.2007, wherein also the complainant again confirmed that he was willing to settle the matter as per the terms agreed upon vide Annexure P-6 dated 10.01.2008.

- (vii) That the complainant, for reasons very strange, did not execute the terms of the consent on one pretext or the other. Instead of making payment, as agreed upon, the complainant backed out of the commitment made for repayment of settlement by letter dated 18.03.2013 and further stated that the commitment made on behalf of the Company would stand withdrawn. Thereafter, in order to evade his liability, the complainant maliciously instituted a civil suit against the Bank. In support, attention has been drawn to a copy of the plaint, annexed as Annexure P-12. Thus, it was evidently a dispute of civil nature. Not only this, an application under Order VII Rule 11 CPC was also filed by the Bank, which was accepted by the Court and consequently, the plaint filed by the complainant was rejected. In support, learned senior counsel has drawn the attention of this Court to Annexure P-15.

- (viii) That the complainant filed a complaint before the Senior Superintendent of Police, Amritsar on 30.06.2008 with an oblique motive to harass and arm-twist the Bank. Notice was then issued by DSP, Civil Lines, Amritsar upon the Bank. After receipt of the aforementioned notice, the Bank approached this Court by way of CWP No.17522 of 2008. The aforementioned writ petition was disposed off by this Court by observing that since the matter was pending before the DRT, the DSP was not justified in issuing any notice under Section 160 Cr.P.C. upon the Bank, more so, when it seemed to be a case of purely civil nature. In support, learned senior counsel has drawn the attention of this Court to Annexure P-22.
- (ix) That as if it was not enough, on 31.12.2010, the complainant got the FIR in question lodged against the Bank and its officials under Section 420 IPC. The Bank was then constrained to move this Court and file CRM-M No.5689 of 2011 seeking quashing of the FIR in question. During the pendency of the above mentioned petition, a detailed investigation was carried out by the police and since no substance was found in the allegations levelled, a cancellation report was prepared. Hence, CRM-M No.5689 of 2011 was disposed of by this Court with liberty to the complainant to challenge the cancellation report.

Thereafter, the cancellation report, on being presented by the investigating agency before the trial Court, was rejected in a mechanical manner merely on the ground that the complainant did not agree with the cancellation report; and vide order dated 04.07.2013 (Annexure P-27), the trial Court ordered the police to re-investigate the matter. The aforesaid order was challenged by the Bank by way of CRM-M No.2621 of 2014. This Court disposed off the aforesaid petition vide order dated 10.09.2015 (Annexure P-31) by observing that the trial Court had failed to apply its mind before passing the order, and the matter was remanded back to the trial Court to decide it afresh.

- (x) That right from the time when the complainant approached the CAG in the year 2006, leaves no manner of doubt that firstly the essential ingredients necessary to constitute an offence under Section 420 IPC are woefully amiss in the case in hand. There cannot be said to be any dishonest intention on the part of the Bank to deceive the complainant in any manner whatsoever. It is a matter of record that it was the complainant, who himself had approached the ARD and still further, had also welcomed the takeover of its debts by ARD from CBOP. Therefore, the complainant was well aware from the word go that its debt had been purchased by ARD. Further, there is enough documentary

material on record to show that the complainant had himself expressed his willingness to settle the debt for an amount of ₹ 10.00 crores and had reiterated his willingness time and again, so much so, when the Bank had approached this Court to challenge reinvestigation dated 04.07.2013 ordered by learned Judicial Magistrate 1st Class, Amritsar, it was the complainant who had yet again approached the Bank for OTS vide letter dated 18.08.2009 (Annexure P-35). It has been asserted that the conduct of the complainant prior to the registration of the FIR and even thereafter, reveals that at no point in time, the Bank had practised deception upon the complainant, rather, the complainant had full knowledge and had always been willing to go through with the OTS for settlement of its dues. However, since he was unable to arrange the requisite funds, he backed out of the settlement and was evidently looking for excuses to pressurize the Bank to waive off its claim.

- (xi) That it is essentially a dispute of civil nature and since the DRT is seized of the matter, there is nothing which would stop the complainant from raising all the issues before the appropriate forum. He submits that once the complainant had made an offer of ₹ 10.00 crores and had expressed his willingness to the terms and conditions, it did not lie in his mouth now to say that the Bank had kept it from them that

the NPA had been purchased for a much lesser amount than the OTS which was being offered to the complainant, more so, when the overall debt was over ₹ 33,95,07,968.00.

(xii) While drawing the attention of this Court to Annexure P-29, which is a judgment rendered by a Division Bench of this Court in CWP No.7187 of 2013 decided on 08.04.2013, learned senior counsel has also submitted that the complainant in the said writ petition had challenged the possession notice sent to him after the Bank had been assigned the debts belonging to the complainant. The Hon'ble Division Bench of this Court, while dismissing the said petition filed by the complainant, upheld the validity of the deed of assignment and also observed that there was no embargo on the Bank to seek recovery of the debts assigned to it. Thus, from the observations of the court, it was evident that there was not even a breach of contract, much less a fraud being played on the complainant. Rather it was the complainant, who had initiated criminal proceedings against the Bank with an ulterior motive to wriggle out of its liability to pay debt.

(xiii) Lastly the attention of this Court has been drawn to the impugned order dated 10.05.2017 vide which the trial Court has directed the police to reinvestigate the matter by submitting that the said order is in the teeth of order dated

10.09.2015 passed by this Court, as a perusal of the same would reveal that it has been passed in exactly the same terms as order dated 04.07.2013 which had earlier been set aside by the court. However, yet again the trial Court in the same mechanical manner, directed the police to further investigate the matter only on the ground that the complainant did not agree with it.

3. Per contra, learned counsel for the complainant/respondent No.2, while opposing the prayer and submissions made by the counsel opposite, has prayed for dismissal of the petition, on the grounds that the impugned order is a revisable order and the Bank could not have bye-passed the said remedy as provided under the provisions of law by straightaway approaching this Court under Section 482 Cr.P.C. He has further submitted that the FIR in question was registered only after a detailed preliminary enquiry had been conducted by senior police officials including the Additional Commissioner of Police, Amritsar which in turn had been approved by the Commissioner of Police, Amritsar, since there was prima facie sufficient evidence against the Bank with regard to the commission of an offence under Section 420 IPC.

4. While substantiating his arguments, learned counsel submits that CAG and ARD, no doubt were two different divisions but they both were working under the exclusive control of the Bank, hence, the Bank could not escape its responsibility. Learned counsel argues

that on the face of it there was a conflict of interest between the CAG providing financial guidance to the complainant to settle and get out of its debts; and ARD acquiring the debts of the complainant. It is highly inconceivable that where one division of the bank i.e. ARD was motivated to make a profit by acquiring the debts of the complainant; the other division i.e. CAG under the control of the same bank, would have acted in good faith to guide the complainant to get out of that debt. It has been further submitted that while CAG was acting as a consultant it failed to get investors and instead referred the complainant to ARD, which in turn purchased his loan account from CBOP for a mere ₹ 4.35 crores, which was a much lesser price than was portrayed to the complainant. However, OTS was offered to the complainant at a whopping 10 crores. Learned counsel has argued with vehemence that the modus operandi behind the entire operation was to extract unjustifiable money as on one hand, one of the divisions of the Bank, i.e. CAG, was being paid consultancy fees by the complainant to help him free his Company's properties of any charge and on the other hand, the other division i.e. ARD had stepped into the shoes of creditor of the complainant and sent it a possession notice to acquire the same properties. Learned counsel has submitted that all along, the complainant had been kept in the dark and was unaware of the actual transaction which took place between CBOP and it was evident that the complainant had been misled by the Bank as the latter had undervalued his properties, while seeking investors.

5. He submits that it is only when the complainant came to know that the Bank had purchased his NPA for ₹ 4.35 crores from CBOP, he insisted upon the Bank to reveal the actual amount that had been paid. However, the Bank, for reasons but obvious, never informed him about the same. He argues with vehemence that there was sufficient incriminating evidence on record, which would constitute all the necessary ingredients to constitute offences under Sections 409, 420, 511, 120-B IPC, as malafides on the part of the Bank were writ large from the very beginning, and the same would have to be appreciated in the light of there being a fiduciary relationship between the Bank and the complainant, and thus, all confidential information ought to have been shared by the Bank, so that the complainant could have bailed out his Companies from the financial crisis which he was facing. Learned counsel has thus, submitted that the Bank created such circumstances by eliminating all other options, which compelled the complainant to agree to a settlement in the sum of ₹ 10.00 crores along with other related charges and fees etc. The non-disclosure by the Bank to the complainant and defrauding him instead to pay ₹ 10.00 crores for this investment was clearly a case of cheating.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. At the outset, a challenge has been laid by the learned counsel for the complainant qua the maintainability of the present petition. This Court does not find any merit in the submissions made by

the learned counsel for the complainant/respondent No.2 in this regard that an alternative remedy of revision is available against the order directing further investigation. The Hon'ble Supreme Court, in **'Prabhu Chawla vs. State of Rajasthan & another'** 2016 (4) RCR (Criminal) 270, while upholding the law laid down by it in **'Dhariwal Tobacco & others vs. State of Maharashtra & another'** 2009 (2) SCC 370 has held as under:

"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

Hence, in view of the law laid down by the Hon'ble Supreme Court, the instant petition is maintainable under Section 482

Cr.P.C. Moreover, the Bank is also seeking quashing of the FIR in question, for which the only remedy available to it would be under Section 482 Cr.P.C.

8. The first prayer which has been made by the Bank is for quashing of the impugned order dated 04.07.2013 vide which the trial Court had rejected the cancellation report submitted by the investigating agency and directed the reinvestigation of the matter. Admittedly, earlier, the investigating agency, after concluding its investigation, filed a cancellation report dated 04.02.2013 (Annexure P-26) before the learned Judicial Magistrate 1st Class, Amritsar. However, the learned Judicial Magistrate 1st Class while rejecting the cancellation report, directed reinvestigation vide order dated 04.07.2013 (Annexure P-27). The order directing reinvestigation was challenged before this Court. This Court vide order dated 10.09.2015 (Annexure P-31) passed in CRM-M No.2621 of 2014 set aside the order dated 04.07.2013 (Annexure P-27) and remanded the matter back to the Court concerned directing it to decide it afresh on merits. Thereafter, the impugned order dated 10.05.2017 (Annexure P-32) was passed by the learned Judicial Magistrate 1st Class, Amritsar, whereby yet again the cancellation report was rejected and the investigating agency was directed to further investigate the case **“from all angles”**. A perusal of the impugned order dated 10.05.2017 reveals that the learned Judicial Magistrate 1st Class directed further investigation only because the complainant disagreed with the cancellation report submitted by the investigating

agency. Apart from this, no reason, much less cogent was spelt out by the learned Judicial Magistrate 1st Class, Amritsar as to what had persuaded his judicial conscience to reject the cancellation report. In this regard a reference may be made to the observations made by the Hon'ble Supreme Court in '**State through CBI vs. Raj Kumar Jain**' JT 1998 (5) SC 127, observed as under:

“As regards the directions for further investigation, it is, of course, true that the Special Judge has power to so direct if he finds, on consideration of the police report that the opinion formed by the Investigating Officer seeking discharge of the respondent is not based on full and complete investigation, as observed by this Court in Abhanandan Jha Vs. Dinesh Mishra [AIR 1968 SC 117]. Unfortunately, however, in issuing the above direction the Special Judge has not given any reason whatsoever which prompted him to direct further investigation nor does it appear that he has gone through the police report and its accompaniments.”

9. Undoubtedly, it is a settled principle of law that a Judicial Magistrate is not bound to accept the cancellation report filed by the investigating agency and if the Court is not satisfied with the investigation, then it is fully competent to order the investigating agency to carry out further investigation under Section 156 Cr.P.C. However, the aforesaid discretion can not be exercised by the Court in a mechanical and an arbitrary manner but it must be a result of due deliberation and sound exercise of judicial discretion. It would be most pertinent to observe here that the reasons recorded constitute the soul of

judicial decisions in a democratic welfare State which is governed by the rule of law. A judicial decision which is devoid of reasons, would reflect arbitrariness and non application of judicial mind. While discarding a cancellation report and directing further investigation, it is thus, the bounden duty of the Magistrate to record some cogent reasons, which may not necessarily be detailed but should reflect application of judicial mind.

10. From a perusal of the impugned order, it is apparent that the said order has unfortunately been passed by the learned trial court in the teeth of the order of this Court dated 10.09.2015, wherein categorical directions had been issued to the trial Court to record cogent reasons for directing further investigation which it had failed to do while passing the impugned order. Hence, merely because the complainant had disagreed with the cancellation report, which in any case, he would have, could not have been the sole ground for discarding/rejecting the cancellation report and ordering further investigation. It was imperative upon the Judicial Magistrate 1st Class to examine the cancellation report, independent of the complainant's disagreement and thereafter, accept or reject it by recording cogent reasons in support of his order. Therefore, in the opinion of this Court, the impugned order directing for reinvestigation deserves to be set aside.

11. Coming to the next prayer made by the Bank to quash the FIR in question; it is a settled principle of law that the powers under

Section 482 Cr.P.C. are to be used not only sparingly but with a great deal of circumspection in order to prevent the abuse of the process of the Court and to secure the ends of justice.

12. Hon'ble the Apex Court, in '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, has laid down the following factors to be considered while adjudicating upon a prayer for quashing FIR:-

- “(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 concerned Act (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 concerned Act, 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.”***

13. A perusal of the above guidelines laid down by the Hon’ble Supreme Court makes it abundantly clear that this Court, in exercise of its inherent powers under Section 482 Cr.P.C., can quash an FIR which does not prima facie disclose the commission of a cognizable offence or the FIR, on the face of it, comes across as being frivolous, vexatious and oppressive.

14. Adverting to the case in hand, as per allegations the complainant approached the Bank to avail its advisory services as he was looking forward to entering into an OTS with the creditor Banks of his Company, and it was after due discussions and deliberations, the complainant signed the indicative term sheet in February, 2007. Subsequently, the engagement letter dated 17.04.2007 (Annexure P-1) was also issued by the Bank to the complainant. The Bank stated that it would endeavour to raise funds for Phase-I within a reasonable time.

Thereafter, an official of the Bank sent an email to the complainant

intimating that limiting the exposure of investors to Phase-I would be in their interest in view of the low value of real-estate in Punjab. In August, 2006 the complainant was then able to finalize the OTS with CBOP and on the assurance of the Bank to raise funds, he started putting payments of about ₹ 7.00 crores with CBOP. However, as the Bank failed to arrange funds, ultimately, the CBOP cancelled the OTS on 04.09.2007 for the reason that the complainant had been unable to pay the amount agreed upon between the parties. Thereafter, the complainant received an email dated 18.09.2007 from an official of the CAG of the Bank whereby he was informed that the ARD could initially buy the debt of the complainant from CBOP. The CBOP, vide its letter dated 28.09.2007 informed the complainant of having assigned the total debt to the Bank vide deed of assignment dated 27.09.2007 (Annexure P-2). Thereafter, the complainant thanked the Bank and in a meeting held on 03.10.2007 with the latter, the former expressed willingness to repay the amount invested by it in Phase-I and in fact, paid to CBOP, in a time bound manner. Subsequently, the complainant was duly informed during a meeting that the Bank incurred ₹ 10.00 crores in purchasing the debt from CBOP. After discussing and finalizing the formalities, the Bank made an offer to repay the amount of ₹ 10.00 crores along with interest @ 16% p.a. within 12 months. Complainant also requested the Bank for approval/sanction letter but he was not conveyed the same. Thereafter, the complainant purportedly learned from some **“independent and reliable sources”**, that the

buyout of loan from CBOP by the Bank was for an amount less than ₹10.00 crores and thus, the Bank had misrepresented and cheated the complainant qua the same. On 19.10.2007, the complainant withdrew the earlier offers made to repay and declared all those offers as null and void. The complainant, vide letter dated 18.03.2008 (Annexure P-9), requested the Bank officials to supply him the relevant documents qua the claim of the amount invested and paid by them to CBOP on his behalf. However, no reply was sent. The complainant then sent a legal notice dated 09.04.2008 to the Bank seeking documentary evidence of the amount invested and paid for buyout of the debt. It was alleged that the intention of the Bank was to cheat and derive undue gains by causing losses to the complainant from day one by winning its confidence so as to make the OTS fail by extending false promises of arranging finances, so as to create a situation to further their cause and prevent the complainant from exploring other options and by harassing the complainant to such an extent by raising excessive demands, as a result of which he succumbed to the pressure tactics of the Bank. It was also stated that the Bank officials had committed a fraud by violating the agreement dated 17.04.2018. The complainant also filed a civil suit on 03.05.2008 against the Bank before the Civil Court at Amritsar.

15. In the FIR in question, it has been alleged that the Bank has committed the offence attracting the mischief of Section 420 IPC, which for facility of reference is reproduced below:

“420. Cheating and dishonestly inducing delivery of property Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

16. A perusal of the above reproduced provision reveals that the necessary ingredients to attract the mischief of offence under Section 420 IPC are that (i) there must be some deception practiced upon the complainant by the accused, (ii) the person so cheated must have been dishonestly induced to deliver some property, and (iii) make, alter or destroy valuable security or anything signed or sealed, capable of being converted into a valuable security. These ingredients are indispensable to attracting the mischief of Section 420 IPC. What lies at the heart of Section 420 IPC is *mens rea*, which must be present right at the inception of the transaction pursuant to which a person has been defrauded. In this regard, it would be apposite to refer to the observations made by the Hon’ble Supreme Court in **‘International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd. and others’ (2016) 1 SCC 348:**

“The making of a false representation is one of the essential ingredients to constitute the offence of cheating

under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.”

17. Prima facie, on a bare reading of the FIR in question, it is evident that the aforesaid ingredients to attract the mischief of offence under Section 420 IPC, are clearly missing in the case in hand. There is not even a single allegation, much less by way of a whisper about there having been any delivery of property by the complainant to the Bank or any alterations or destruction of any valuable security or anything signed or capable of being converted into a valuable security having been made/done by the Bank, which fact has also not been disputed by the learned counsel for the complainant.

18. It is a matter of record that the complainant himself approached CAG for advisory services and signed an engagement letter. The CBOP, vide its letter dated 28.09.2007 informed the complainant of having assigned the total debt to the Bank vide deed of assignment dated 27.09.2007 (Annexure P-2). In an email dated 01.10.2007 (Annexure P-3), the complainant not only welcomed the acquisition of its debts by ARD but also thanked it assuring to pay the amount required for OTS. Attention has also been drawn to Annexure P-5 wherein, it has been reflected that it was the complainant himself who had offered to pay ₹ 10.00 crores to the ARD of the Bank. It

becomes apparent from Annexure P-6 to P-8, that the complainant had time and again shown his willingness to settle its debt with ARD at ₹10.00 crores. It was the complainant himself, who without enquiring about the actual cost incurred by the Bank in acquisition of his debt, had willingly made the offer to pay ₹ 10.00 crores as OTS. Therefore, when the sequence of events is seen in its entirety, prima facie the offence under Section 420 IPC is not made out.

19. It would also be relevant to discuss the conduct of the complainant pre and post registration of the FIR, which clearly hints towards a desperate attempt by a borrower to prevent his creditor from recovering the debt by initiating criminal proceedings to prosecute the officials of the Bank so as *“to bring the financial institution on its knees”*. In the aforementioned regard, it would be apposite to point out the certain admitted facts, which in turn would throw light on the conduct of the complainant to show that the prosecution had indeed been instituted with a malafide intent and an ulterior motive so as to pressurize the Bank to settle the debt for *‘favourable amount’*.

In the civil suit instituted by the complainant against the Bank, he had nowhere averred much less by way of a whisper in his plaint (Annexure P-12) that the officials of the Bank had cheated or played a fraud upon him.

20. It needs to be observed that after the civil suit had been filed by the complainant, the Bank served a notice on 07.05.2008 asking the complainant to pay a sum of ₹ 39,73,40,000/- as OTS. It was

only subsequent to the receipt of this huge demand by way of the aforesaid notice, the complainant filed a complaint alleging cheating against the Bank on 30.06.2008 before the Senior Superintendent of Police, Amritsar. The timing of filing the complaint by the complainant i.e. after receipt of notice dated 07.05.2008, thus, raises eyebrows and serious doubts.

21. The complainant sent a letter dated 09.05.2015, i.e. after initiation of criminal proceedings, with an offer to pay ₹4.35 crores as one time full and final settlement towards the claims of the Bank. While making the offer, it was stated that on approval of OTS by the Bank, and on payment being made by the applicant Bank, he would withdraw all the proceedings initiated against the Bank. The complainant also asked the Bank not to proceed with the OA before the DRT Chandigarh, on acceptance of the OTS proposal, and also to withdraw all other proceedings. It becomes clear that the complainant had always been willing to settle its debts with ARD but just on its own terms and had no objection to its debts being acquired by ARD, therefore, it cannot be said that a fraud had been played upon the complainant by the Bank in any manner. The averments made in the FIR along with the fact that the complainant had offered to withdraw the criminal proceedings, had his offer of ₹ 4.35 crores as OTS been accepted by the Bank, hints towards the malafides on the part of the complainant.

22. The Hon'ble Supreme Court in '**Vesa Holdings and another vs. State of Kerala and others**' 2015 (2) RCR (Criminal) 442, has held that criminal proceedings should not be encouraged when it is found to be malafide and an abuse of the process of the Court.

23. The Hon'ble Supreme Court in '**Indian Oil vs. NEPC India Ltd.**' 2006 (3) RCR (Criminal) 740 has observed that any effort to settle a civil dispute and claims by exerting pressure through criminal prosecution should be discouraged and deprecated. Similarly, Hon'ble the Supreme Court, in '**Kapil Aggarwal vs. Sanjay Sharma & others**' 2021 (2) RCR (Criminal) 238, has held that Section 482 Cr.P.C. was enacted to ensure that criminal proceedings do not generate into weapons of harassment.

24. Therefore, when circumstances are considered in their entirety, it appears that a dispute which is essentially of civil nature, has been malafidely given the colour of criminality. In this regard, a reference may be made to the decision of the Hon'ble Supreme Court in '**Paramjeet Batra vs. State of Uttrakhand & others**' 2014 (6) RCR (Criminal) 187, wherein it has been held as under:

“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High

Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

25. The complainant had voluntarily entered into an agreement with the CAG to avail its advisory services and in case the complainant felt and was dissatisfied on account of deficiency in services of CAG, there was nothing which prevented him from taking recourse to other remedies available under the civil law. However, the complainant further willingly approached the ARD instead of exploring other options. Similarly, if the complainant was aggrieved by the conflict of interest between the two divisions of the Bank, even then the remedy does not lie in criminal law.

26. In the present case, the complainant had also availed of various civil remedies available to him by instituting a civil suit before a Civil Court at Amritsar, proceedings before the DRT Mumbai, and a Civil Writ Petition before this Court. Hence, in view of the law laid down by Hon’ble the Apex Court in **Paramjeet Batra’s case (supra)**, criminal proceedings cannot be permitted to continue.

27. A defaulting borrower cannot be permitted to abuse the process of law so as to evade making payment to his creditor. If a borrower is allowed to take recourse to criminal law in such a manner,

it would have the inherent potential to adversely affect the marrows of the economic health of the nation as was also observed in the following terms by the Hon'ble Apex Court in '**Priyanka Srivastava vs. State of UP**' 2015 (2) RCR (Criminal) 1034:

“1. The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the Court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the Court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurize in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one- time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.”

28. In view of the circumstances, as enumerated hereinabove, coupled with the principles of law laid down by the Hon’ble Supreme Court, the petition stands allowed and the FIR (Annexure P-23) along with all consequential proceedings arising therefrom including the order (Annexure P-32) are hereby quashed.

(MANJARI NEHRU KAUL)
JUDGE

July 12, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No