2023: PHHC: 112007
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.44830 of 2016 (O&M)

Reserved on: 9th August, 2023
Date of decision: 22nd August, 2023

Lal Chand Sharma

… Petitioner

Versus

State of Haryana & another

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Farhad S. Kohli, Advocate for the petitioner.

Mr. Rahul Mohan, Sr. Dy. Advocate General, Haryana
for the respondent/State.

Mr. Kshitij Sharma, Advocate along with
Complainant/respondent No.2 in person.

MANJARI NEHRU KAUL, J.

1. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of FIR No.92 dated 11.02.2015 under Sections 406, 420 IPC registered at Police Station Ballabgarh City, District Faridabad.

2. Learned senior counsel for the petitioner inter alia contends:-

(i) That the dispute between the parties is essentially of a civil nature, as it pertains to an Agreement to Sell which was entered into between them on 19.08.2014 for a sale consideration of ₹ 3.35 crores. As per the allegations levelled in the FIR (Annexure P-1), after receipt of ₹ 2.26 crores from the complainant pursuant to the Agreement to Sell dated 19.08.2014, the petitioner had refused to get the sale deed executed in his favour.

(ii) That it is not even the case of the complainant that he had paid the entire sale consideration agreed upon between the parties. Rather the prime grievance of the complainant was that after receipt of part payment of the sale consideration, the petitioner had failed to perform his part of the agreement. Therefore, in the circumstances, at best the case of the complainant against the petitioner could be one of subsequent breach of contract and not a case of cheating under Section 420 IPC.

(iii) That 'dishonest intention' at the first instance, which is an essential ingredient to constitute the offence of cheating, is clearly missing in the case in hand as there was no allegation levelled, even by way of a whisper, that the petitioner had any malafides to cheat the complainant at the time when the Agreement to Sell in question, was entered into. Still further, no dishonest intention could be imputed to the petitioner as it was a matter of record that an amount of ₹ 76.00 lacs had been returned by him to the complainant vide RTGS, which fact had not even been disputed by the complainant.

(iv) That the law is settled in the said regard that mere subsequent breach of contract would not be enough to attract the mischief of an offence under Section 420 IPC. The remedy available to the petitioner in the circumstances, would be only under the civil law as all the liabilities and rights accruing to the parties under the Agreement to Sell would be within the domain of the Civil Court to adjudicate upon, as to whether there had been any breach of contract and whether the complainant/plaintiff would be entitled to a decree of specific performance. It was a matter of record that the complainant had already availed of his civil remedy by filing a suit for specific performance which had been decreed in his favour on 31.01.2023. Even a reading of the prayer made by the complainant in the FIR was for "getting the registry executed", which was identical to the relief which had already been availed of, by the complainant in the civil suit. Thus, it was clear that the dispute was essentially civil in nature, and the FIR in question was just a ploy to arm twist the petitioner and thus, an abuse of the process of law.

(v) That it had been alleged that the petitioner as per the Agreement to Sell, was supposed to clear dues towards HUDA from the amount received by the complainant, but, he had failed to do so. As per the Agreement to Sell

(Annexure P3), there was neither any such condition stipulated therein nor any material to substantiate the allegations levelled by the complainant.

(vi) That further in the FIR, neither were there any allegations qua clubbing nor forgery levelled, and they had been raised by the complainant only in his reply. In the challan submitted by the police (Annexure P-2), a categoric finding had been given by the investigating agency that no offence under Section 467 IPC was made out which stood corroborated by the report received from the Forensic Science Laboratory. There was no shred of evidence to show the commission of the offences alleged and it was thus obvious that the criminal proceedings, which had been launched by the complainant were on the face of it, vexatious, instituted only with an ulterior motive, to wreak vengeance upon the petitioner.

3. Per contra, the learned counsel appearing for State assisted by the complainant/respondent have prayed for dismissal of the instant petition in view of the allegations levelled. Further, learned counsel for the complainant, while opposing the prayer and submissions made by the learned senior counsel, contends:

(i) That the malafides on the part of the petitioner to deceive the complainant was present from the very beginning because instead of clearing the dues of SCO No.96, on which pretext the petitioner had obtained ₹ 2.26 crores from the complainant, he had instead used that amount to clear his dues towards SCO No.95, which shop was also owned by the petitioner. Furthermore, a deception had been played by the petitioner upon the complainant, at the very first instance, as he did not even have the authority to transfer the SCO in question on the date when the Agreement to Sell was entered into as SCO Nos.95 and 96 had been clubbed and could not have been sold separately, which fact was intentionally concealed from the complainant.

(ii) That on the target date, when the petitioner got his presence marked in the Tehsil office, he did not have the authority to transfer the SCO in question on account of non-clearance of dues. It was thus, clear that by marking his presence in the Tehsil office, the petitioner had just tried to create defence in his favour.

(iii) That in the Agreement to Sell (Annexure P-3), it had been clearly stipulated that there was no legal hindrance in the sale of the property in question, and it was obvious that it was a false averment made by the petitioner as there in fact existed two legal impediments in transferring the SCO in question, which had been concealed from the complainant i.e. (a) that though the Agreement to Sell stipulated that petitioner would clear all his dues qua the property in question, however, it had not been done by the petitioner till this day and (b) that the SCOs No.95 and 96 had been clubbed, and thus SCO No.95 could not have been sold without being de-clubbed.

(iv) That the criminality was writ large on the part of the petitioner as during the preliminary enquiry, prior to the registration of the FIR in question, the petitioner just to wriggle out of his liability had produced one Agreement to Sell dated 19.08.2014 of an amount of ₹ 6.35 crores claiming it to be an Agreement to Sell, which had been entered into between the parties and denying the one on which the complainant was placing reliance. During the preliminary enquiry, it was found that the Agreement to Sell produced by the petitioner was forged. Further, in order to stall the claim of the complainant, the petitioner had also filed a civil suit on the basis of the forged Agreement to Sell, which had been dismissed on 31.01.2023 by the Civil Court concerned.

(v) That albeit there were no allegations in the FIR levelled qua the clubbing of the SCOs or forgery, however, these facts came to light and to the notice of the complainant subsequent to the registration of the FIR. In general parlance, when a person is deceived, the only direct consequence of such deception is non-performance of the contract, and the reasons for the non-performance could have thus, come to light only after investigation was carried out. The FIR could not be expected to be an encyclopaedia but only a starting point of the criminal proceedings and the complainant could not have been expected to disclose all the facts in the FIR, which were previously unknown to him.

(vi) That from the very beginning, on account of the influence wielded by the petitioner, the police had intentionally been diluting the allegations levelled by the complainant, for which reason, the complainant was left with no other option but to approach this Court which led to the constitution of a Special Investigation Team (SIT).

(vii) That though the police filed challan without adding offences under Section 467/468 etc. IPC however, the complainant then moved this Court against the same, whereby liberty was given to him to raise all pleas qua the addition of offences under Sections 467/468 etc. IPC before the trial Court. While the complainant was in the process of raising all his pleas before the trial Court and the case was fixed for consideration of charge, the petitioner intentionally approached this Court and as a result of which, the proceedings before the trial Court were stayed vide order dated 12.01.2017 passed by this Hon'ble High Court.

(viii) That though the complainant had availed of his civil remedy, however, it was a matter of record that the FIR had been registered on 11.03.2015 i.e. prior in time to the filing of the civil suit dated 06.03.2017. As per the settled law, there was no bar to the complainant pursuing both his criminal and civil remedies simultaneously.

(ix) That under Section 482 Cr.P.C. once multiple questions of fact were raised, coupled with the challan having been presented, the FIR in question could not be quashed without disputed questions of fact being put to trial.

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

5. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of FIR. Before proceeding further, it would be relevant to refer to the parameters laid down by Hon’ble the Supreme Court in **‘State of Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604,** while adjudicating upon a prayer for quashing of an 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.**

6. Adverting to the case in hand, the allegations levelled in the FIR (annexed as Annexure P-1) are as follows:

"To, District Police Commissioner Sir, Sector No.21 C, Faridabad, Subject: Application regarding initiation of appropriate action against the accused for commission of cheating by receiving amount fraudulently respect of S.C.O. No.95, Shopping Centre, Sector No.2, Faridabad and not executing registered deed thereof. Sir, the applicant had entered into an agreement to sell for purchase of one S.C.O. No.96 area 137.5 Square Meter, a shopping Centre situated at Sector No.2 Faridabad with the seller Lal Chand Sharma s/o Sh. B.D. Sharma Resident of House No.21, Sector No.31, Faridabad in writing on 19.08.2014 in presence of witnesses and above named Lal Chand Sharma received the amount from me in concern of above mentioned property, which was received by saying that I have to clear huge dues to HUDA Department, prior to execution of Registered Sale Deed I shall clear all the

dues to the concerned and I shall transfer above mentioned property in your name as clear title condition. Sir, the above named seller has not done this as one date and I have kept on requesting him on repeated occasions to get the registered sale deed executed in my name and according to above mentioned agreement, last date for execution of registered sale deed has also elapsed. Keeping in view the last date of sale deed, I had served a legal notice to the above named accused but he has not replied back till date intentionally. Sir I have requested on repeated occasions for getting the registry executed in my favour and finally we contacted him on 10.11.2014 and asked him to get the registry executed upon which he flatly refused for getting the registry executed and threatened and said do whatever you want to and what you can do now and with your money I shall manage everything in my favour, everything is saleable in Government Offices, wherever you shall go against me, I shall use the money and shall not execute the Registry in your favour at all. It is therefore, respectfully prayed before your goodself that the registry in respect of above mentioned property may kindly be arranged to be executed in my favour, in the eventuality of not being so, fraud and breach of trust case may be registered against the accused person so that other people may also get lesson out of it. Note for purchase of above mentioned property from above named accused person, till date I have incurred sum of ₹ 2,26,00,000/- Rupees Two Crore Twenty Six Lacs only. Copies of Agreement and notice are annexed herewith. I shall be grateful to you."

7. The FIR in question was registered on 11.02.2015. Initially, after investigation was carried out by the investigating agency, a cancellation report was prepared by the police, aggrieved by which the complainant approached this Court. Subsequently, a Special Investigation Team (SIT) was formed by the police and challan (Annexure P-2) was presented under Sections 420, 406 IPC. While recording his statement under Section 161 Cr.P.C., the complainant had also alleged as under:

(i) That the petitioner had demanded money from the complainant to clear the dues of SCO No.95, pursuant to which ₹ 50.00 lacs had been paid to him on three occasions, i.e. on 20.08.2014, 21.08.2014 and 25.08.2014.

(ii) That on 25.08.2014, after the petitioner took ₹ 50.00 lacs from the complainant, he demanded more money. When the complainant enquired as to whether dues of HUDA had been cleared by the petitioner, he was told by the latter that neither would he give the SCO in question to the complainant nor return his money. Thereafter, seeing the conduct of the petitioner, a doubt crept up in the mind of the complainant and on making further enquiries from the HUDA office, he learnt that the petitioner, instead of clearing dues of shop in question i.e. SCO No.96, had deposited the amount to clear dues of SCO No.95, which was also owned by him. The complainant thus, alleged that the petitioner had fraudulently obtained money from him on the pretext of clearing dues of SCO No.96.

(iii) That on 01.10.2014 i.e. the target date, the complainant along with balance sale consideration went to the Tehsil Office to get the sale deed executed, however, the petitioner failed to turn up.

(iv) After registration of the case, when the parties were called by the police, the petitioner deposited ₹ 75.00 lacs in the bank account of the complainant, through RTGS.

(v) On 12.12.2014, the petitioner issued a legal notice to the complainant wherein he attached a forged Agreement to Sell of ₹ 6.35 crores qua the SCO in question. The forged Agreement to Sell was not even attested by any witness.

(vi) The petitioner, while instituting the civil suit against the complainant, made a false averment that he had returned ₹ 1.50 crores to the complainant.

8. For facility of reference, it would be apposite to reproduce the provisions of Section 420 IPC, which reads as thus, since the petitioner has been challaned for commission of offences under Sections 420 and 406 IPC.

> *"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."

9. A perusal of the above reproduced provisions of Section 420 IPC reveal that the necessary ingredients to attract the mischief of an offence punishable under Section 420 IPC are:

(i) That there must be deception on the part of the accused to cheat the complainant.

(ii) That the person so cheated must have been dishonestly induced to deliver some property, or to make, alter or destroy the whole or any part of a valuable security.

10. The most crucial ingredient to attract the mischief of an offence under Section 420 IPC is *mens rea*, i.e. the intention to deceive, which must be present and discernible at the very inception of the transaction, qua which cheating has been alleged.

11. During the course of arguments, it was submitted on behalf of the complainant that the factum of outstanding dues qua SCO No.96 towards HUDA had been concealed from him and it was only subsequently the complainant learnt about the same when he made enquiries in the office of HUDA. However, in the same breath, the complainant took a self-contradictory stand by contending that the petitioner had received an amount of ₹ 2.26 crores from him on the pretext of clearing the outstanding dues of SCO No.96, towards HUDA

but the petitioner had instead cleared dues of SCO No.95. It is thus, evident that the complainant has been trying to blow hot and cold in the same breath, which can certainly not be permitted. A perusal of the allegations levelled in the FIR clearly reveals that the complainant was well aware about the dues owed by the petitioner to HUDA qua SCO No.96, as he had agreed to advance the amount in question to the petitioner only for clearing those dues. Still further, it also needs to be noticed that there was no such condition stipulated in the Agreement to Sell, that the money received by the petitioner was for clearance of dues towards HUDA, in respect of SCO No.96. Even if one goes through the allegations levelled by the complainant in the FIR in question and his statement recorded under Section 161 Cr.P.C., the petitioner had undertaken to clear the dues towards the SCO in question i.e. SCO No.96, before the target date. However, some dispute had arisen between the parties on 25.08.2014, that is much prior to the target date, due to which neither the balance sale consideration was paid nor the sale deed executed.

12. Though the complainant argued that the factum of clubbing of the SCOs had been withheld from him by the petitioner, however, no allegation qua the clubbing of the SCOs was mentioned in the FIR in question or even in the statement of the complainant recorded, under Section 161 Cr.P.C. It would not be out of context to observe here that akin to the clearance of the dues, clubbing of the SCOs could not be termed as a permanent impediment on the sale of the SCO in question,

as the clubbed SCOs could have still been de-clubbed by moving an application in the said regard. Furthermore, as per the arguments raised by the complainant himself, in the civil suit instituted by the petitioner for cancellation of the Agreement to Sell in question dated 19.08.2014, the petitioner had moved an application for de-clubbing of the SCOs in question on 20.08.2014, i.e. the very next day of entering into the Agreement to Sell, which however, had been subsequently withdrawn by him, on the pretext that the deal stood cancelled. Had there been any intention on the part of the petitioner to deceive the complainant, there would have been no need for him to move an application for de-clubbing the SCOs in question.

13. Still further, a perusal of the complainant's statement recorded under Section 161 Cr.P.C. reveals that the dispute had arisen between the parties on 25.08.2014, that is much prior to the target date, on account of the refusal by the complainant to accede to the demands of the petitioner for further payment towards sale consideration, as the complainant claimed to have come to know that the petitioner had cleared dues of SCO No.95 instead of SCO No.96, out of the money which he had received from him. Due to the non-payment of remaining sale consideration, the petitioner in turn refused to get the sale deed executed.

14. Thus, it is abundantly clear from the above sequence of events that at best, the case put forth by the complainant is one of a subsequent breach of contract and not one of cheating, as the intention

to deceive at the first instance i.e. at the inception of the transaction, is clearly amiss in the case in hand. It is settled law that subsequent conduct of the accused alone cannot determine his liability, more so, when there is neither any allegation in the FIR nor any material to show any malafides on the part of the petitioner when he entered into the Agreement to Sell with the complainant.

15. It would be apposite to observe here that there is a marked distinction between 'subsequent breach of contract' and 'an offence of cheating'. Mere subsequent breach of contract would not attract criminal liability under Section 420 IPC and the only recourse available to the aggrieved party would be to approach the Civil Court, which in the case in hand, has already been availed of by the complainant.

16. In **'Hridaya Rangan Pd. Verma vs. State of Bihar' (2000) 4 SCC 168,** Hon'ble the Supreme Court has drawn a clear distinction between an offence under Section 420 IPC and subsequent breach of contract. The relevant observations of the Hon'ble Apex Court are extracted as follows:

> *"15. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. in the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second*

class of acts, the inducing must be intentional but not fraudulent or dishonest.

16. 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 of 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.

17. 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 Indian Penal Code 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 and others v. Bhajan Lal and others, 1991(1) RCR*

(Criminal) 383 (supra) and as such warrants interference by the Court. Reading the averments 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 the complaint. All that the respondent No. 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 No. 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 No. 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."*

17. Hon'ble the Supreme Court in **'Kunti vs. State of Uttar Pradesh' 2023 (6) SCC 109,** while dealing with facts which are quite similar to the facts of the instant case, held as under:

"9. However, ***we do not find*** *the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil*

nature. This court recently, in ***Sarabjit Kaur v. State of Punjab and Anr. 2023 SCC OnLine 210****, observed that "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."*

10. A two-judge bench of this Court in ***ARCI v. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348****, while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the of time of entering into the transaction with the complainant, then criminal liability would be attached.*

11. In ***Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124****, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:*

> *"24. This Court in* ***G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513]*** *observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.*
>
> *25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in* ***Indian Oil Corpn. [Indian Oil Corpn. v.***

> ***NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188]*** *noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (**Indian Oil Corpn. Case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188]**, SCC p. 749, para 13)*
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> *"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."*
>
> *12. Having regard to the above well-established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue."*

18. Therefore, in the light of the above discussion, this Court has no hesitation in holding that an offence punishable under Section 420 IPC cannot be said to be made out against the petitioner.

19. Apart from the alleged commission of offence under Section 420 IPC, challan has also been presented against the petitioner for offence under Section 406 IPC.

Section 405 IPC defines offence of 'breach of trust' which is reproduced as under:

> *"405. Criminal breach of trust*
>
> *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."*

20. A minute reading of the above extracted provisions of Section 405 IPC leaves no manner of doubt that the basic ingredient necessary to constitute an offence punishable under Section 405 IPC would be entrustment of property. However, in the instant case, a perusal of the allegations levelled in the FIR reveals that neither is there any allegation nor any material to show any entrustment of any property by the complainant to the petitioner. Hence, no offence punishable under Section 406 IPC is also made out against the petitioner.

21. The complainant has also raised an argument that apart from commission of offence under Sections 406/420 IPC, the petitioner had committed offence of forgery, as he had produced a forged Agreement to Sell, dated 19.08.2014, for a sum of ₹ 6.35 crores, which

was in fact never entered into, between the parties. To substantiate his arguments, the complainant has placed reliance on the preliminary enquiry conducted by the police prior to the registration of the FIR in question.

22. It needs to be reiterated that when a prayer is made for quashing of an FIR and subsequent proceedings arising therefrom, this Court in the exercise of its inherent jurisdiction under Section 482 Cr.P.C., has to restrict itself to the allegations contained in the FIR and the final report/challan presented by the police under Section 173(2) Cr.P.C. as all the material collected during investigation would form part of the said challan. This Court, in the instant case, cannot take into account the preliminary enquiry, carried out by the police, as admittedly it is not a part of the police report. Moreover, a perusal of the police report presented under Section 173(2) Cr.P.C. reveals that no substance was found qua the offences alleged under Section 467/468 IPC. Still further, neither the original Agreement to Sell, which allegedly was a forged document, was ever taken into possession by the police during investigation, nor any report from the Forensic Science Laboratory (FSL) was received qua the same. In the circumstances, this Court does not find any merit in the contentions of the complainant qua the allegations of forgery levelled against the petitioner.

23. Still further, in the present case, a perusal of the FIR reveals that the primary prayer made by the complainant was for getting the sale deed executed which admittedly was identical to the

prayer made in the Civil Suit instituted by him against the petitioner. In addition, an alternate prayer was also made by the complainant to register an FIR against the petitioner "so that other people may also get a lesson out of it". It would be pertinent to notice that it is a matter of record that prior to the registration of the FIR in question, the petitioner returned ₹ 76.00 lacs to the respondent through RTGS and was also willing to return the remaining amount. However, it was the complainant himself, who refused to accept the offer by stating that since he had instituted a complaint, he would take recourse to his legal remedy against the petitioner.

24. In the wake of the above discussion, it does appear that the FIR in question may have been lodged with an ulterior motive to give a criminal colour to a dispute which clearly comes across as being of a civil nature.

It would be relevant to refer to the observations made by the Hon'ble Apex Court in **'Mahmood Ali vs. State of UP' 2023 Live Law (SC) 613**, wherein it was held as under:

> *"12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under section 482 of the Code of Criminal Procedure, 1973 (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such*

circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under section 482 of the CrPC, 1973 or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

25. The Hon'ble Supreme Court, in a catena of judgments, has observed that any effort to settle a civil dispute by exerting pressure through criminal prosecution should be discouraged and deprecated. Section 482 Cr.P.C. was enacted to ensure that criminal proceedings should not be generated into weapons of harassment as was held by the Hon'ble Supreme Court in **'Kapil Aggarwal vs. Sanjay Sharma & others' 2021 (2) RCR (Criminal) 238.**

It would also be apposite to refer to the observations made by Hon'ble the Supreme Court, in **'Paramjeet Batra vs. State of Uttrakhand' (2013) 11 SCC 673** wherein it was held as thus:

> *"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."*

26. This Court, therefore, has no hesitation in holding that the dispute between the parties is essentially of a civil nature, for which the complainant has availed of his civil remedy and a decree for specific performance has already been passed in his favour.

27. In the facts and circumstances as enumerated hereinabove, continuation of the criminal proceedings in FIR No.92 dated 11.02.2015 under Sections 406, 420 IPC registered at Police Station Ballabgarh City, District Faridabad (Annexure P-1) as well as all consequential proceedings arising therefrom, would be nothing but an abuse of the process of the Court, and thus, the same are hereby quashed. The petition is accordingly allowed.

(MANJARI NEHRU KAUL)
JUDGE

August 22, 2023
rps

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