

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 12 of 2024

With

IA No. CRAN 1 of 2024

With

CRAN 2 of 2024

(Assigned)

Rakesh Setia

Vs.

The State of West Bengal & Anr.

With

C.R.R. 14 of 2024

With

IA No. CRAN 1 of 2024

With

CRAN 2 of 2024

(Assigned)

Deepak Puri

Vs.

The State of West Bengal & Anr.

For the Petitioner
(CRR 12 of 2024)

:Mr. Milon Mukherjee, Sr. Adv.
Mr. Sabyasachi banerjee, Adv.
Mr. Avik Ghatak, Adv.
Mr. Rudrajit Sarkar, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Garima Agarwal, Adv.
Mr. Tamoghna Saha, Adv.
Mr. Fahad Imam, Adv.
Mr. Abinash Pradhan, Adv.

For the Petitioner
(CRR 14 of 2024)

:Mr. Sourav Chatterjee, Adv.
Mr. Soumya Nag, Adv.
Mr. Rudrajit Sarkar, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Garima Agarwal, Adv.
Mr. Tamoghna Saha, Adv.
Mr. Fahad Imam, Adv.
Mr. Abinash Pradhan, Adv.

For the State
(CRR 12 of 2024)

:Mr. Rudradipta Nanady, Adv.
Mr. Arijit Ganguly, Adv.
Mr. Asraf Mondal, Adv.
Mr. Nirupam Dhali, Adv.

For the State
(CRR 14 of 2024)

:Mr. Rudradipta Nanady, Adv.
Mr. Arijit Ganguly, Adv.
Mr. Nirupam Dhali, Adv.

For the opposite party no. 2
(CRR 12 & 14 of 2024)

:Mr. Suresh Kumar Shani, Adv.
Mr. Lokesh Sharma, Adv.
Mr. Sandip Chakraborty, Adv.
Mr. Arun Kumar Upadhyay, Adv.
Mr. Ajay Choubey, Adv.
Mr. Kaustav Das, Adv.

Heard on

:28.02.2024 & 29.02.2024

Judgment on

:13th March, 2024

Bibhas Ranjan De, J.

1. Both the CRR application numbers being CRR 12 of 2024 & CRR 14 of 2024 having identical facts and contentious issues are hereby decided via this common judgment.
2. This case was put into motion by a written complaint made by the opposite party no. 2 herein/complainant on 22.06.2023 with the officer in-charge of the Hare Street Police Station which gave rise to the instant case in the year 2023 being Hare Street Police Station Case no. 224 of 2023 dated 01.08.2023 under Sections 406/420/120B of the Indian Penal Code (for short IPC) corresponding to G.R. (S) 874 of 2023 presently pending before the Court of Ld. Chief Metropolitan Magistrate, Calcutta.
3. In the written complaint the opposite party no. 2 herein (in connection with CRR 12 of 2024 & CRR 14 of 2024 respectively) alleged inter alia that the accused persons namely Faizaan Pasa, Nabil Patel, I.A. Shah, Mr. Rakesh Setia (petitioner herein in connection with CRR 12 of 2024) and later on the sales executive representing Real Gem Build Tech Private Limited, Mr. Deepak Puri (petitioner herein in connection with CRR 14 of 2024) in furtherance of their

criminal conspiracy induced the opposite party no. 2 herein to purchase a flat in Tower-C, being no.-3601 at Gokhle Road, South, Prabha Devi, Mumbai for a consideration amount of Rs. 13,25,00,000/-. On being induced the opposite party no. 2 herein/complainant paid an amount of Rs. 8,00,000,00/- through different transactions. As per the agreement between the parties the said flat which was initially booked on 28.03.2012 was to be delivered within a period of three (3) years. On 29.10.2012 the dimensions of the said flat as well as the floor of the flat was changed by giving false statement. But, in spite of passage of the time the petitioners/accused (in connection with CRR no. 12 of 2024 and CRR no. 14 of 2024) neither delivered the said flat nor did they refund the money. Thus, the accused/petitioners as per flow of their criminal intent cheated the opposite party no. 2 herein/complainant for their wrongful gain and wrongful loss of the opposite party no. 2.

- 4.** Both the revision applications have been filed assailing the proceeding in connection with Hare Street Police Station Case no. 224 of 2023 dated 01.08.2023 under Sections 406/420/120B of the IPC corresponding to G.R. (S) 874 of

2023 presently pending before the Court of Ld. Chief Metropolitan Magistrate, Calcutta.

Issue to be decided:-

5. Only issue which falls for decision before this Court is that whether there was any attempt to give 'a cloak of criminal offence' to any dispute which is essentially of a civil nature.

Arguments advanced:-

6. With respect to CRR 12 of 2024, Ld. Senior Counsel, Mr. Milan Mukherjee, appearing on behalf of the petitioner assailed the above mentioned proceeding on the ground that on 19.04.2012 there was a contract relating to allotment of flat in Mumbai wherein the opposite party no. 2 herein/complainant intended to purchase a flat for a consideration amount of Rs. 13,25,00,000/-. But, from 18.03.2018 to 16.06.2019 several communications were made by the petitioner herein to the opposite party no. 2 herein, requesting the opposite party no. 2/company to make balance payment and execute and register a formal agreement for sale. But, the opposite party no. 2 herein kept on defaulting in payment which led to termination of the allotment on 27.06.2019. Refund of the balance amount has also been made by the petitioner herein after adjusting the balance amount after deduction of

forfeiture amount as per the contract dated 19.04.2012. There are various disputes still pending under the Consumer Protection Act before the National Consumer Disputes Redressal Commission, New Delhi and also Maharashtra Real Estate Regulatory Authority. All of the above mentioned disputes are purely civil in nature and usually tend to arise out of commercial relations. But, the instant criminal proceeding initiated by the opposite party no. 2 is clearly with a vindictive motive to give a criminal overtone to a purely civil and commercial dispute. It is further submitted that factum of civil litigation was suppressed in the FIR.

- 7.** Mr. Mukherjee has further contended that at the time of initial agreement dated 19.04.2012, petitioner was not a party and petitioner was not a party to the developer agreement and therefore question of initial deception does not arise.
- 8.** Before parting with, Mr. Mukherjee has also drawn my attention to the order dated 05.01.2024 passed by the Co-ordinate Bench and contended that on behalf of the opposite party no.2 herein it was submitted that they are mainly interested in punishing the petitioners who were willing to refund the principle amount of Rs. 6.04 crores by way of cheque.

9. In support of his contention, Mr. Mukherjee has relied on the following cases:-

- ***Haji Iqbal alias Bala through S.P.O.A V. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 946**
- ***Haji Iqbal alias Bala through S.P.O.A V. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 948**
- ***Anil Mahajan V. Bhor Industries Ltd. and another*** reported in **2005 (10) SCC 22**
- ***Hotline Teletubes and Components Limited and others V. State of Bihar and another*** reported in **2005 (10) SCC 261**
- ***Uma Shankar Gopalika VS State of Bihar and another*** reported in **2005 (10) SCC 336**
- ***Murari Lal Gupta VS Gopi Singh*** reported in **2005 (13) SCC 699**
- ***Veer Prakash Sharma VS Anil Kumar Agarwal & another*** reported in **2007 (7) SCC 373**
- ***V.Y. Jose and another VS State of Gujarat and another*** reported in **2009 (3) SCC 78**

- ***Dalip Kaur and others VS Jagnar Singh and another***
reported in **2009 (14) SCC 696**
 - ***Medmeme, LLC & others VS Ihorse Bpo Solutions Private Limited*** reported in **2018 (13) SCC 374**
 - ***Kunti and Anr. VS State of Uttar Pradesh And Anr***
reported in **2023 (6) SCC 109**
 - ***M M Carbon Products Private Limited V. State of Uttar Pradesh*** reported in **2019 SCC OnLine Cal 2715**
 - ***Jai Kumar Goyal & Others Versus State of West Bengal***
reported in **2023 SCC OnLine Cal 3728**
 - ***Jaimurty Minerals & Chemicals Pvt. Ltd. and Ors. Versus State of West Bengal & Anr. v.*** reported in **2023 SCC OnLine Cal 5708**
 - ***Raymond Ltd. (JKFT Division) Vs. H.V. Doshi & Brothers Pvt. Ltd.*** reported in **2006 SCC OnLine Cal 31**
- 10.** With respect to CRR 14 of 2024, Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the petitioner has adopted the argument advanced on behalf of petitioner with respect to CRR 12 of 2024. Mr. Chatterjee has submitted that opposite party no. 2 herein initially intended to purchase the flat and after payment of the token money flat was allotted to him and

thereafter he made part payment accordingly amounting to Rs. 8,00,000,00/-Referring to several communications Mr. Chatterjee has contended that the opposite party no. 2 herein never inclined to make the balance payment and execute and register a formal agreement for sale.

11. Mr. Chatterjee has submitted that petitioner was appointed a Development Manager but not the developer. For the first time on 18.03.2018 petitioner came into picture by executing a Development Management Agreement with Real Gem Build Tech Private Limited/Promoter and Vishma Realty Limited land owner of the said project. Thereby, Mr. Chatterjee has submitted that the petitioner cannot be held to be liable for initial deception. Mr. Chatterjee has referred to various communications between the parties whereby petitioner requested the complainant /opposite party no.2 herein for making balance payment and execution and registration of a formal agreement for sale.

12. In support of his argument, Mr. Chatterjee has referred to the cases relied on behalf of the petitioner of CRR 12 of 2024 and in addition to that Mr. Chatterjee has relied on the following cases:-

- ***Sushil Sethi and another Vs. State of Arunachal Pradesh and others*** reported in ***(2020) 3 Supreme Court Cases 240***
 - ***Sharon Michael and others Vs. State of Tamil Nadu and another*** reported in ***(2009) 3 Supreme Court Cases 357***
 - ***Keki Hormusji Gharda and others Vs. Mehervan Rustom Irani and another*** reported in ***(2009) 6 Supreme Court Cases 475***
 - ***Shiv Kumar Jatia Vs. State of NCT of Delhi*** reported in ***(2019) 17 Supreme Court Cases 193***
 - ***S.K.Alagh Vs. State of Uttar Pradesh and others*** reported in ***(2008) 5 Supreme Court Cases 662***
 - ***Maksud Saiyed Vs. State of Gujarat and others*** reported in ***(2008) 5 Supreme Court Cases 668***
 - ***Sunil Bharti Mittal Vs. Central Bureau of Investigation*** reported in ***(2015) 4 Supreme Court Cases 609.***
- 13.** Per Contra, Ld. Counsel, Mr. Suresh Kumar Shani, appearing on behalf of the opposite party no. 2 herein in connection with CRR 12 & CRR 14 of 2024 respectively, at the outset, has contended that the Petitioners knocked the door of

Maharashtra Real Estate Regulatory Authority (for short M.H.R.E.R.A) in spite of having knowledge of pendency of the dispute before the National Consumer Disputes Redressal Commission.

14. Mr. Shani submitted that the element of cheating does not solely depend on initial deception but may also appear subsequently.

15. Mr. Shani has further contended that FIR is not an encyclopedia but only a tool to put the law in motion. It is submitted that notice under Section 41A of the Code of Criminal Procedure was issued against the petitioners repeatedly but they did not pay any heed. Mr. Shani, referring to Section 156 (2) of the Code of Criminal Procedure has submitted that petitioner cannot at any stage question any proceeding of a Police Officer in any such case on the ground that case was one which such Officer was not empowered to investigate under this Section.

16. Before parting with, Mr. Shani has submitted that there is no impediment in proceeding with civil and criminal case arising out of same cause of action simultaneously. Accordingly it is submitted that the instant proceedings in connection with CRR 12 & CRR 14 of 2024 respectively for

quashing has no legs to stand as malafide acts of the petitioners squarely disclose the commission of offence of Cheating.

17. In order to further substantiate his contention Mr. Shani has relied on the following cases:-

- ***Directorate of Enforcement Vs. Niraj Tyagi & Ors. with Mohit Singh Vs. Reena Bagga & Ors. with Directorate of Enforcement Vs. M3M India Private Limited & Ors. reported in 2024 SCC OnLine SC 134***
- ***Lalita Kumari Vs. Government of Uttar Pradesh and others reported in (2014) 2 Supreme Court Cases 1***
- ***Abhinandan Jha and others Vs. Dinesh Mishra reported in 1967 SCC OnLine SC 107***
- ***Tahsildar Singh & Another Vs. State of U.P. reported in 1959 Supp (2) SCR 875***
- ***Rajesh Bajaj Vs. State NCT of Delhi and others reported in (1993) 3 Supreme Court Cases 259***
- ***Trisuns Chemical Industry Vs. Rajesh Agarwal and others reported in (1999) 8 Supreme Court Cases 686***
- ***K. Jagadish Vs. Udaya Kumar G.S. and another reported in (2020) 14 Supreme Court Cases 552***

- ***Medchl Chemicals & Pharma (P) Ltd. Biological E. Ltd. and others reported in (2000) 3 Supreme Court Cases 269***
- ***State of Punjab Vs. Pritam Chand and others reported in (2009) 16 Supreme Court Cases 769***
- ***Kamaladevi Agarwal Vs. State of W.B. and others reported in (2002) 1 Supreme Court Cases 555***
- ***Sri Krishna Agencies Vs. State of Andhra Pradesh and another reported in (2009) 1 Supreme Court Cases 69***
- ***Aneeta Hada Vs. Godfather travels and Tours Private Limited reported in (2012) 5 Supreme Court Cases 661.***

18. Ld. Counsel, Mr. Rudradipta Nandy, appearing on behalf of the State, produced the case diary before this court and submitted that the documents relied on behalf of the parties were collected during investigation. That apart, Mr. Nandy has submitted that there is sufficient evidence to proceed with the trial. In support of his argument, Mr. Nandy relied on a case of ***Kedar Nath Fatehpuria Vs. Captain Kishore Kumar Kejriwal*** reported in ***(2009) 2 C Cr LR (Cal) 119***

Cases referred to by the parties:-

19. ***Haji Iqbal (supra)*** handed down the following observation:-

“15. 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 (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 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.”

20. *Haji Iqbal* (supra) held as follows:-

*“3. There is something more to add to the aforesaid and the same goes to the root of the matter. We take notice of the fact that for the alleged act of gang rape of 2018, the FIR came to be lodged sometime in the year 2022 i.e. after almost a period of four years. We do not propose to say anything in regard to delay in lodging the FIR as the trial against the other accused persons is in progress. The Trial Court on its own will examine this aspect. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. [See : *Raju v. State of Madhya Pradesh*, (2008) 15 SCC 133]*

14. *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 (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 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.”

21. In **Anil Mahahjan (supra)** it was observed:-

“3. The allegations in the complaint are that a memorandum of understanding (MOU) dated 16-8-2000 was executed between the accused and the complainant for the period 16-8-2000 to 30-11-2000, which, inter alia, stipulated that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods by M/s Shikhar Enterprises or its sister concern. The accused had two firms, namely, (1) M/s Shikhar Enterprises, and (2) M/s Gulshan Agencies at Delhi. The complainant delivered 56,94,120 reels of steel grip tapes valued at Rs 3,38,62,860 to the accused during the period 19-8-2000 to 20-11-2000 and out of this amount, the accused made only part-payment of Rs 3,05,39,086 leaving balance amount of Rs 33,23,774. The allegations are that after making this payment, the accused did not make further payment despite repeated demands and started giving reasons such as cash-flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. After making the aforesaid averments in the complaint, it is concluded that the MOU was signed with mala fide and criminal intention of grabbing money and goods from the complainant's Company. The averments made in that regard are as under:

“From the above it is very clear that MOU was signed by the accused with mala fide and criminal intention of grabbing money and goods from the complainant's Company and to deceive, cheat and cause wrongful loss to the complainant's Company, but the complainant was not aware of the criminal intention of the accused while execution of above MOU.”

6. The order of the Magistrate was challenged before the Court of Session. The learned Additional Sessions Judge, Pune, by order dated 19-10-2001 has set aside the order of

the Magistrate issuing process. It has been stated by the learned Additional Sessions Judge in the order that:

“In this case there is no allegation that the accused made unlawful representation. Even, according to the complaint, they entered into memorandum of understanding. Grievance seems to be that the accused failed to discharge obligations under the MOU. In the complaint, there was no allegation that there was fraud or dishonest inducement on the part of the applicant and thereby the opponent parted with the property.”

Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

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

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

22. Hotline Teletubes (supra) handed down the following:-

“2. This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Sections 406 and 420 of the Penal Code, 1860 (for short “IPC”). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under Section 406 or 420 IPC. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same.”

23. Uma Shankar Gopalika (supra) held as follows:-

“3. The short facts are that Madhusudan Ram Gupta, Respondent 2 filed a complaint in the Court of the Chief

Judicial Magistrate, Dhanbad bearing Complaint Case No. 88 of 1998 for prosecution of M/s Gopalika Finance Corporation Limited, Sitarampur within the district of Burdwan and its two Directors, namely, the appellant and his brother Vijay Shanker (since deceased) under Sections 420/120-B IPC alleging therein, inter alia that M/s Gopalika Finance Corporation Ltd. (hereinafter referred to as "the Corporation") was engaged in the business of financing the purchase of vehicles under the hire-purchase scheme and the complainant who was desirous of purchasing a truck approached the accused persons for financial assistance in the year 1991 whereupon the appellant and his brother Vijay Shanker agreed to finance the purchase of truck by the complainant on hire-purchase agreement. Pursuant to the aforesaid agreement, the complainant made over his part of the investment by paying a sum of Rs 1,60,000 to the appellant. He also handed over various documents to the appellant. Thereafter, on payment of balance price of the vehicle to the dealer by the financier, chassis was made over to the complainant, who spent a sum of rupees one lakh for building body of the truck whereafter the truck started plying. The complainant could repay only three instalments to the financier. In the meantime on 30-11-1991 the truck in question loaded with goods became traceless, for which the matter was reported to the police as well as the insurance company. The complainant submitted a claim before the insurance company to the tune of Rs 4,20,000. According to the complainant, thereafter on 20-7-1995, the appellant called upon him at his Sindhri house and induced him to permit the appellant to handle the insurance claim, which request was acceded to by the complainant on assurances given by the appellant that when the claim of Rs 4,20,000 is received from the insurance company, out of that a sum of Rs

2,60,000 which the complainant was entitled to receive would be paid to him. Upon this assurance a complaint was made by the accused persons before the West Bengal Consumer Grievances Redressal Forum in which the complainant was also made a party and by order dated 23-7-1996 the entire claim was allowed and the insurance company was directed to pay Rs 4,20,000 with interest accrued thereon and pursuant thereto the insurance company issued a cheque for Rs 4,20,000 in favour of the Corporation which was encashed by the appellant but out of the said amount a sum of Rs 2,60,000 was never paid to the complainant in spite of assurances given to him by the appellant which necessitated filing of the complaint for prosecution of the accused persons.

6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present

case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused.”

24. Murari Lal Gupta (supra) enunciated the following ratio:-

“1. The respondent, Gopi Singh, filed a criminal complaint against the petitioner herein complaining of an offence under Sections 406 and 420 IPC. According to the complaint, the petitioner has a property in Delhi in respect of which he entered into an agreement to sell in favour of the respondent for a consideration of Rs 4.50 lakhs. An amount of Rs 3.50 lakhs was paid. The balance of Rs 1 lakh was to be paid at the time of registration of sale deed and delivery of possession. Thereafter, the petitioner did not honour the agreement in spite of three legal notices having been given. According to the respondent, the petitioner has thus cheated him.

6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after

hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent.”

25. Veer Prakash Sharma (supra) held:-

“ 8. The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case. Section 405 of the Penal Code reads, thus:

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

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.”

26. V.Y. Jose (supra) laid down the following:-

“14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;*
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.

18. *Reliance has also been placed by Mr Jain on Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] wherein Thomas, J. opined: (SCC p. 263, para 10)*

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

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

27. Dalip Kaur (supra) opined-

“ 9. *The ingredients of Section 420 of the Penal Code are:*

“(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.”

28. Medmeme, LLC (supra) expressed-

“12. *After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations contained in the complaint are to be taken on their face value. The complaint gives a clear impression that it was primarily a case where the respondent*

had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered.”

29. Kunti (supra) highlighted:-

“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.

13. In view of the above, the impugned judgment and order dated 18-10-2019 [Kunti v. State of U.P., 2019 SCC OnLine All 7183] passed by the High Court of Judicature at Allahabad, refusing to quash the FIR in question and Case No. 6695 of 2012 arising out of Case Crime No. 421 of 2012 under Sections 406, 420, 467, 468, 417 and 418IPC bearing No. 32337 of 2013 is set aside. The appeal is allowed.”

30. M M Carbon Products Private Limited (supra) enunciated as follows:-

“ 4. I have perused the allegations advanced by the complainant/opposite party No. 2 in the petition of complaint, wherefrom it is evident that the complainant company from time to time advanced money to the accused company for procurement of calcined petroleum coke (hereinafter referred to as coke) from Numaligarh Refineries and the accused company supplied the same to the complainant company. It is further contended that out of the total sum advanced a major portion of the amount was adjusted towards the coke supplied. A substantial sum was refunded to the complainant company by the accused persons and a sum of Rs. 6,59,219/- remained due. The grievance as reflected from the petition of complaint is with respect to the non-

refund of this amount which inspite of being demanded was not paid by the accused/petitioners.

5. *In Anil Mahajan v. Bhor Industries Ltd. reported in (2005) 10 SCC 228, it has been held as follows:—*

“..... The allegations are that after making this payment, the accused did not make further payment despite repeated demands and started giving reasons such as cash-flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. After making the aforesaid averments in the complaint, it is concluded that the MOU was signed with mala fide and criminal intention of grabbing money and goods from the complainant's Company.

The substance of the complaint is to be seen. Mere use of the expression “cheating” in the complaint is of no consequence. Except mention of the words “deceive” and “cheat” in the complaint filed before the Magistrate and “cheating” in the complaint filed before the police, there is no averment about the deceit, cheating of fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three cores was paid and for balance, the accused was giving reasons as above-noticed. The additional

reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.”

6. *In Hotline Teletubes and Components Ltd. v. State of Bihar reported in (2005) 10 SCC 261, it has been held as follows:—*

“This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Sections 406 and 420 of the Penal Code, 1860 (for short “IPC”). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under Section 406 or 420 IPC. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same.”

7. *In Uma Shankar Gopalika v. State of Bihar reported in (2005) 10 SCC 336, it has been held as follows:—*

“..... It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.”

8. *In Murari Lal Gupta v. Gopi Singh* reported in (2005) 13 SCC 699, it has been observed as follows:—

“..... Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred titled in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie.”

9. *In Vir Prakash Sharma v. Anil Kumar Agarwal* reported in (2007) 7 SCC 373, it has been held as follows:—

“..... Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.”

10. *In V.Y. Jose v. State of Gujarat* reported in (2009) 3 SCC 78, it has been held as follows:—

“..... For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence

under Section 420 of the Penal Code can be said to have been made out.

A matter which essentially involves disputes of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short cut of executing a decree which is non-existent. The superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts.”

11. *In Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. reported in (2000) 3 SCC 269, it has been held as follows:—*

“The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they

“are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is anathema to suppose that when a

civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.”

12. *In Sau. Kamal Shivaji Pokarnekar v. State of Maharashtra reported in 2019 SCC OnLine SC 182, it has been held as follows:—*

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

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

13. *On an analysis of the judgments referred to above, it would be transparent that in order to make out a prima facie case, the ingredients of the offence must be spelt out in the complaint. In the case at hand, the complainant in the complaint stated that the transactions have been taking place continuously for a considerable period of time, a major sum of the money advanced, was either adjusted by way of supplying of coke or by being refunded, the grievance of the complainant is in respect of very small quantum of money being not refunded. As has been settled by the Hon'ble Apex Court that mere non-payment would not give rise to an offence of cheating or criminal breach of trust and in this case, it is seen that there was no occasion for the complainant to be allured by any mis-representation or by conduct, it can be said by any stretch of imagination that the accused from the very inception did have any intention to either supply the goods or refund the amount, which was in excess. The complainant has also failed to distinguish between mere breach of contract and offence of cheating or criminal breach of trust. The judgments, relied upon by the Ld. Advocate for the opposite party No. 2, do not support her case, as in Medchl Chemicals & Pharma (P) Ltd. (supra), the Hon'ble Apex Court was dealing with a case where there were false representations made by the accused which resulted in financial losses and thereby wrongful loss incurred to the complainant.”*

31. Jai Kumar Goyal (supra) held:-

“15. *Through catena of decisions Hon'ble Apex Court has held that mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of*

inducement. The subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to criminal prosecution for cheating** unless fraudulent, dishonest intention is shown at the beginning of the transaction.

16. After delving into the facts and circumstances of this case and also keeping an eye to the decisions relied on behalf of the parties to this revision applications, it is primarily a case where the opposite party no. 2 had alleged breach of contract on part of the petitioner in not making entire payments for the services rendered. On the other hand, it is an admitted fact that, considerable amount was paid by the petitioner to the opposite party/company for the services rendered. It is pertinent to mention here that evidence so far collected during course of investigation also substantiates payment of considerable amount. There was also an allegation by the opposite party no. 2 in the 156(3) complaint that the petitioner company threatened and used criminal intimidation to the representatives of the opposite party no. 2/company which remained uncorroborated by the evidence collected so far during investigation also. As a result, claim of initial deception on part of the petitioners to induce the opposite party no. 2 while entering into the work order agreement also stands nullified.”

32. Jaimurty Minerals (supra) highlighted:-

“24. There is no allegation in the plaint under Section 200 of the Cr. P.C. that at the time of agreement petitioners/accused made any false or misleading representation. Had it been so petitioners/accused would not have paid Rs. 25,67, 349.07p in response to supply Lam Coke of Rs. 30,26,950.07p. In terms of same logic opposite party/complainant cannot be said to have been induced fraudulently or dishonestly to deliver the Lam Coke. Therefore, question of cheating under Section 420 of the IPC cannot be the issue in this case.

25. In catena of decisions Hon'ble Apex Court held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would

amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same even cannot amount to cheating. In the case in hand, I do not find any initial deception let alone development of intention later.

26. *Section 405 of Cr. P.C. deals with the definition of criminal breach of trust. According to Section 405 IPC two ingredients are to be satisfied to justify the offence punishable under Section 406 of the IPC. Those are entrustment and misappropriation. In our case, dispute is over the unpaid amount of goods supplied to the petitioners/accused by the opposite party/complainant. Therefore, the issue in this case does not match with the dispute in hand.*

27. *In the aforesaid view of the matter, I find that it is a fit case where I should exercise inherent jurisdiction under Section 482 of CrPC.”*

33. *Sushil Sethi (supra)* laid down the following:-

“8.2. *It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and*

Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

34. Sharon Michael (supra) stated:-

“18. The liability of the Company is, therefore, a civil liability. It is also not a case where although a prima facie case had been made out disclosing commission of an offence, the court is called upon to consider the defence of the accused. The first information report itself refers to the documents. They can, therefore, be taken into consideration for the purpose of ascertaining as to whether the allegations made in the complaint petition read as a whole, even if taken to be correct in its entirety, discloses commission of any cognizable offence or not. As admittedly Respondent 2 was the supplier of garments which were found out to be defective in nature, we are of the opinion that the dispute between the parties is civil in nature.”

35. Keki Hormusji Gharda (supra) highlighted:-

“16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to

do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.”

36. Shiv Kumar Jatia (supra) held:-

“19. The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] . In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

20. Though there are allegations of negligence on the part of the hotel and its officers who are incharge of day-to-day affairs of the hotel, so far as appellant-Accused 2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions

under Sections 336, 338 read with Section 32 IPC. Taking contents of the final report as it is we are of the view that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Ltd., which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant-Accused 2. Applying the judgment in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] we are of the view that the said view expressed by this Court, supports the case of appellant-Accused 2.

21. *By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that,*

even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

37. S.K. Alagh (supra) handed down the following ratio:-

“19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] .)”

38. Muksud Saiyed (supra) enunciated:-

“ 13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to

make requisite allegations which would attract the provisions constituting vicarious liability.”

39. Sunil Bharti Mittal (supra) held:-

“ (iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241]*, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable

Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

40. *Raymond Ltd. (supra)* stated:-

“30. The suppression of material facts in the petition of complaint is a vital and serious matter for which the Court can treat that the complainant came to Court not with clean hands. In this connection the decisions cited by Mr. Mukherjee for the petitioner are pertinent. In Sundar Das Loghani v. Fardun Rustom Irani (supra), a Division Bench of this Court affirmed the order of discharge by the learned Magistrate in a case in which the learned Magistrate after hearing both sides and examining some documents reached the conclusion that the complainant petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest one.”

41. *Niraj Tyagi (supra)* observed:-

“15. The High Court passed the following impugned Order on 13.07.2023 in Criminal Misc. Writ Petition No. 10893 of 2023:—

“19. In view of the above, we are of the opinion that the petitioners have made out a case for grant of the interim as relief prayed for. Accordingly, in furtherance of the protection

granted by the Apex Court to the petitioners by the order dated 4th July, 2023, while disposing of the Contempt Petition (Civil) No. 774 of 2023, it is provided that further proceedings, including summoning of the officers, consequent to the F.I.R. No. 197 of 2023 dated 15.4.2023 under Sections 420, 467, 468, 471 and 120-B - IPC, Police Station Beta-2, Greater Noida, Gautam Budh Nagar, registered by Respondent No. 2 and consequent ECIR No. ECIR/HIU-I/06/2023 registered by Respondent No. 4, shall remain stayed so far as it confines to the petitioners only and no coercive action shall be taken against them.”

20. *In our opinion, it's a matter of serious concern that despite the legal position settled by this Court in catena of decisions, the High Court has passed the impugned orders staying the investigations of the FIRs and ECIR in question in utter disregard of the said settled legal position. Without undermining the powers of the High Court under Section 482 of Cr. P.C. to quash the proceedings if the allegations made in the FIR or complaint prima facie do not constitute any offence against the accused, or if the criminal proceedings are found to be manifestly malafide or malicious, instituted with ulterior motive etc., we are of the opinion that the High Court could not have stayed the investigations and restrained the investigating agencies from investigating into the cognizable offences as alleged in the FIRs and the ECIR, particularly when the investigations were at a very nascent stage. It hardly needs to be reiterated that the inherent powers under Section 482 of Cr. P.C. do not confer any arbitrary jurisdiction on the High Court to act according to whims or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In a way, by passing such orders of staying the investigations and restraining the investigating agencies from*

taking any coercive measure against the accused pending the petitions under Section 482 Cr. P.C., the High Court has granted blanket orders restraining the arrest without the accused applying for the anticipatory bail under Section 438 of Cr. P.C.

22. “...

33.14. *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], has the jurisdiction to quash the FIR/complaint.*

33.15. *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*

33.17. *Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can*

consider what was weighed with the High Court while passing such an interim order.”

42. Lalita Kumari (supra) depicted as follows:-

“120. *In view of the aforesaid discussion, we hold:*

120.1. *The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3. *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 [Ed.: This correction is based on para 120.7 as corrected vide order in *Lalita Kumari v. State of U.P.*, (2023) 9 SCC 695.] *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

120.8. *Since the General Diary/ Station Diary/ Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”*

43. Abhinandan Jha (supra) held:-

“9. *From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and method of conducting the investigation, are left entirely to the police, and the Magistrate, so far as we can see, has no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, in-charge of a police station, or to the officer making an investigation, that, there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate, Section 169 says that the officer shall release the accused, if in custody, on his executing a bond to appear before the Magistrate. Similarly, if, on the other hand, it appears to the officer, in-charge of a police station, or to the officer making the investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is*

required, under Section 170, to forward the accused to a Magistrate; or, if the offence is bailable, to take security from him for his appearance before such Magistrate. But, whether a case comes under Section 169, or under Section 170, of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate, under Section 173, in the manner indicated therein, containing the various details. The question as to whether the Magistrate has got power to direct the police to file a charge-sheet, on receipt of a report under Section 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report.

10. In this connection, we may refer to certain observations, made by the Judicial Committee in *King Emperor v. Khwaja Nazir Ahmed* [LR 71 IA 203] and by this Court, in *H.N. Rishbud and Inder Singh v. State of Delhi* [(1955) 1 SCR 1150]. In *Nazir Ahmed case* [LR 71 IA 203], Lord Porter observes, at p. 212, as follows:

“Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.”

These observations have been quoted, with approval, by this Court, in State of West Bengal v. S.N. Basak [AIR 1963 SC 447] . This Court in Rishbud and Inder Singh case [(1955) 1 SCR 1150] observes, at p. 1156, as follows:

“Investigation usually starts on information relating to the commission of an offence given to an officer in-charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in-charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes all the proceedings under the Code for the collection of evidence conducted by a police officer.”

Again, after a reference to some of the provisions in Chapter XIV of the Code, it is observed at p. 1157:

“Thus, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under Section 173.... It is also clear that the final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in-charge of the police station.”

44. Tahsildar Singh (supra) laid down the following ratio:-

“ 9. Diverse and conflicting views were expressed by courts on the interpretation of Section 162 of the Code of Criminal Procedure. A historic retrospective of the section will be useful

to appreciate its content. The earliest Code is that of 1872 and the latest amendment is that of 1955. Formerly Criminal Procedure Code for Courts in the Presidency towns and those in the mofussil were not the same. Criminal Procedure Code, 1882 (10 of 1882) consolidated the earlier Acts and prescribed a uniform law to all courts in India. It was superseded by Act 5 of 1898 and substantial changes were made by Act 18 of 1923. Since then the Code stands amended from time to time by many other Acts. The latest amendments were made by Act 26 of 1955 which received the assent of the President on 10-8-1955, and by notification issued by the Central Government its provisions came into force on and from 1-1-1956. We are not concerned in this case with the amending Act of 1955, but only with the Act as it stood before the amendment of 1955.

10. In Act 10 of 1872 the section corresponding to the present Section 162 was Section 119 which read:

“An officer in charge of a police station, or other police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case, put him by such officer, other than questions criminating himself.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.”

This section enables a police officer to elicit information from persons supposed to be acquainted with facts, and permits him to reduce into writing the answers given by such persons, but excludes the said statement from being treated as part of the record or used as evidence. Act 10 of 1882 divided the aforesaid Section 119 into two sections and numbered them as Sections 161 and 162, which read:

“161. Any police officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than

questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

“162. No statement, other than a dying declaration, made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of Section 27 of the Indian Evidence Act, 1872.”

The first two paragraphs of Section 119 of Act 10 of 1872 with slight modifications not relevant for the present purpose constituted the corresponding paragraphs of Section 161 of Act 10 of 1882; and the third paragraph of Section 119 of the former Act, with some changes, was made Section 162 of the latter Act. There was not much difference between the third paragraph of Section 119 of the Act of 1872 and Section 162 of the Act of 1882, except that in the latter Act, it was made clear that the prohibition did not apply to a dying declaration or affect the provisions of Section 27 of the Indian Evidence Act, 1872. The Code of 1898 did not make any change in Section 161, nor did it introduce any substantial change in the body of Section 162 except taking away the exception in regard to the dying declaration from it and putting it in the second clause of that section. But Section 162 was amended by Act 5 of 1898 and the amended section read:

“(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence:

Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the court shall, on the request of the accused, refer to such writing, and may then, if the court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof; and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32 clause (1) of the Indian Evidence Act, 1872.”

For the first time the proviso to Section 162 introduced new elements, namely : (i) The right of the accused to request the

court to refer to the statement of a witness reduced to writing; (ii) a duty cast on the court to refer to such writing; (iii) discretion conferred on the court in the interests of justice to direct that the accused be furnished with a copy of the statement; and (iv) demarcating the field within which such statements can be used, namely, to impeach the credit of the witness in the manner provided by the Indian Evidence Act, 1872. From the standpoint of the accused, this was an improvement on the corresponding sections of the earlier Codes, for whereas the earlier Codes enacted a complete bar against the use of such statements in evidence, this Code enabled the accused subject to the limitations mentioned therein, to make use of them to impeach the credit of a witness in the manner provided by the Indian Evidence Act. On the basis of the terms of Section 162 of Act 5 of 1896, two rival contentions were raised before the courts. It was argued for the prosecution that on the strength of Section 157 of the Evidence Act the right of the prosecution to prove any oral statement to contradict the testimony of any witness under that section was taken away by Section 162 of the Code of Criminal Procedure which only provided that the writing shall not be used as evidence. On the other hand it was contended on behalf of the accused that when the statement of a witness was admittedly reduced into writing, it would be unreasonable to allow any oral evidence of the statement to be given when the writing containing the statement could not be proved. The judgment of Hosain, J. in the case of *Rustam v. King Emperor* [(1910) 7 ALJ 468] and the decisions in *Fanindra Nath Banerjee v. Emperor* [(1908) 36 Cal. 281] , *King Emperor v. Nilakanta* [(1912) 35 Mad 247] and *Muthukumaraswami Pillai v. King Emperor* [(1912) 35 Mad 397] represent one side of the question, and the judgment of Knox, J. in *Rustam v. King Emperor* [(1910) 7 ALJ 468] and the observations of Beaman, J. in *Emperor v. Narayan* [(1907) 32 Bom 111] represent the other side. A Division Bench of the Bombay High Court in *Emperor v. Hanmaraddi Bin Ramaraddi* [(1915) 39 Bom 58] after noticing the aforesaid decisions on the question, ruled that the police officer could be allowed to depose to what the witness had stated to him in the investigation for the purpose of corroborating what the witness had said at the trial. In that context, Shah, J. observed at p. 66:

“The point is not free from difficulty which is sufficiently reflected in the diversity of judicial opinions bearing on the question.”

Presumably, in view of the aforesaid conflict, to make the legislative intention clear the section was amended by Act 18 of 1923. Section 162 as amended by the aforesaid Act reads:

“(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the court shall, on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness but for the purpose only of explaining any matter referred to in his cross-examination:

Provided, further that, if the court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.”

Sub-section (1) of the substituted section attempted to steer clear of the aforesaid conflicts and avoid other difficulties by the following ways : (a) Prohibited the use, of the statement, both oral and that reduced into writing, from being used for any purpose at any inquiry or trial in respect of any offence under investigation; (b) while the earlier section enabled the accused to make use of it to impeach the credit of a witness in the manner provided by the Indian Evidence Act, 1872, the new section enabled him only to use it to contradict the

witness in the manner provided by Section 145 of the said Act; (c) the said statement could also be used for the purpose of only explaining any matter referred to in his cross-examination; and (d) while under the old section a discretion was vested in the court in the matter of furnishing the accused with a copy of an earlier statement of a prosecution witness, under the amended section, subject to the second proviso, a duty was cast upon the court, if a request was made to it by the accused, to direct that the accused be furnished with a copy thereof. The effect of the amendment was that the loopholes which enabled the use of the statement made before the police in a trial were plugged and the only exception made was to enable the accused to use the statement of a witness reduced into writing for a limited purpose, namely, in the manner provided by Section 145 of the Indian Evidence Act, 1872, and the prosecution only for explaining the matter referred to in his cross-examination. The scope of the limited use also was clarified. Under the old section the statement was permitted to be used to impeach the credit of a witness in the manner provided by the Indian Evidence Act; under the said Act, the credit of a witness could be impeached either under Section 145 or under Section 155(3). While the former section enables a witness to be cross-examined as to a previous statement made by him in writing without such writing being shown to him, the latter section permits the discrediting of the witness by proof of his previous statement by independent evidence. If a statement in writing could be used to discredit a witness in the manner provided by those two sections, the purpose of the legislature would be defeated. Presumably in realisation of this unexpected consequence, the legislature in the amendment made it clear that the said statement can only be used to contradict a witness in the manner provided by Section 145 of the Evidence Act. By Act 2 of 1945, the following sub-section (3) was added to Section 161:

“The police officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement of each such person whose statement he records.”

This sub-section restored the practice obtaining before the year 1923 with a view to discourage the practice adopted by

some of the police officers of taking a condensed version of the statements of all the witnesses or a precis of what each witness said. It is not necessary to notice in detail the changes made in Section 162 by Act 26 of 1955 except to point out that under the amendment the prosecution is also allowed to use the statement to contradict a witness with the permission of the court and that in view of the shortened committal procedure prescribed, copies of the statements of the prosecution witnesses made before the police during investigation are made available by the police to the accused before the commencement of the inquiry or trial. The consideration of the provisions of the latest amending Act need not detain us, for the present case falls to be decided under the Act as it stood before that amendment.

11. *It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention. The Act of 1898 for the first time introduced an exception enabling the said statement reduced to writing to be used for impeaching the credit of the witness in the manner provided by the Evidence Act. As the phraseology of the exception lent scope to defeat the purpose of the legislature, by the Amendment Act of 1923, the section was redrafted defining the limits of the exception with precision so as to confine it only to contradict the witness in the manner provided under Section 145 of the Evidence Act. If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e., the interest of the accused.”*

- 45. *Rajesh Bajaj*** (supra) held that High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail.
- 46. *Trisuns Chemical Industry*** (supra) held that arbitration proceeding cannot thwart criminal proceedings. The arbitrator is not competent to adjudge an offence. It was further held that Magistrate taking cognizance of offence need not have territorial jurisdiction to try the case.
- 47. In *K. Jagadish*** (supra) it was held that the same set of facts may give rise to remedies in civil as well as in criminal proceedings. The party availing the civil remedy cannot be said to have been precluded from setting in motion the proceeding in criminal law.
- 48. *Medchl Chemicals*** (supra) handed down the principle that at the time of exercising power under Section 482 High Court has to examine the complaint as a whole without going into the merits into the allegation made therein. Such proceeding cannot be quashed, if prima facie case is made out disclosing the ingredients of the offence alleged against the accused.
- 49. *Kamal devi*** (supra) laid down the principle that inherent power under Section 482 should be exercised sparingly. When

trial court found that the complainant had made out a prima facie case against the accused persons, of forgery of document, High Court was not justified in quashing the criminal proceedings merely on the ground that the same document was under scrutiny by it in a civil proceeding.

50. *Aneeta Hada (supra)* handed down the principle:-

“64. Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the Director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, Criminal Appeal No. 1483 of 2009 is allowed and the proceeding against the appellant is quashed. As far as the Company is concerned, it was not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the Director. As a logical sequitur, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the Company in the present form are quashed.”

51. *Kedar Nath Fatehpuria (supra)* observed:-

“49. It may be pointed out in this context that establishment of those facts or the value of such correspondences is required to be examined when evidence is adduced before the learned Court below. It may be premature on the part of this Court to enter into an exhaustive discussion to consider the acceptability of such contentions. The decision of this High Court in Tara Dutta v. The State & Anr. (supra) prevents this Court from entering into any such exercise.

52. It is not clear to me as to how such forfeiture can at all be resorted to by the petitioners particularly when no such

clause can be shown to be available in the agreement entered into between the parties.”

Analysis:-

52. To begin with, I propose to focus on the matters to be considered at the time of exercising jurisdiction within the provision of section 482 of CrPC in terms of principle laid down in ***Haji Iqbal*** (supra).

53. ***Haji Iqbal*** (supra) suggested that at the time of exercising jurisdiction under Section 482 of CrPC, the Court will not only look into the averments made in the complaint with due care and circumspection but also other attending circumstances emerging from the record of the case. It was also suggested that the Court is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in course of investigation.

54. Keeping an eye on the aforesaid principle, I find it necessary to lay out admitted facts of this cases which runs as follows:-

- Petitioner with respect to CRR 12 of 2024, namely Rakesh Setia, is the President, Sales of Keystone Realtors Limited.
- Petitioner with respect to CRR 14 of 2024 is working for

gain as Senior Manager of M/s. King Maker Developers Private Limited. The opposite party no. 2/ in connection with both the revision applications is Mr. Manoj Kumar Kasera working for gain at Blooming Mining Private Company Limited.

- There was commercial relationship between the parties with regard to allotment of a flat in Mumbai for a consideration amount of Rs. 13,25,00,000/- which was initiated at the behest of the opposite party no. 2 herein through a contract dated 19.04.2012 wherein the same was accepted by the petitioner/company in connection with CRR 12 of 2024 and subsequently allotment was made in favour of the opposite party no. 2 herein/company.
- On 29.10.2012 there was a change in the floor as well as dimension of the proposed flat and as a sequel price also got revised.
- On 31.03.2015 again there was a change in the orientation of the said flat and subsequently price also got further revised.
- On 18.03.2018 a development management agreement got executed by Real Gem Buildtech Private Limited and

Bhisma Realty Limited in favour of King Maker Developers Private Limited.

- In between the tenure of 18.03.2018 to 10.06.2019 several communications were made by the petitioners/company to the opposite party no. 2 herein in order to make balance payment and execute and register a formal agreement for sale.
- On 27.06.2019 allotment got terminated after repeated default by the opposite party no. 2 in making the balance payment.
- In the month of September, 2019 consumer complaint was filed by the opposite party no. 2 herein before the National Consumer Disputes Redressal Commission (for short N.C.D.R.C.), New Delhi with a prayer to set aside the termination letter dated 27.06.2019 and refund of Rs. 07,89,67,778 (rupees Seven crores eighty nine lacs sixty seven thousand seven hundred and seventy eight only) together with a sum of Rs. 67,84,574 (rupees sixty seven lacs eighty four thousand five hundred and seventy four only) which was paid by the opposite party no. 2 herein as

interest to its bank along with the interest @ 18% per annum. Proceeding of which is still pending.

- On 18.01.2020 proceeding was initiated against the opposite party no. 2 herein by the petitioners before the M.H.R.E.R.A. seeking confirmation of the termination of allotment. Proceeding of which is still pending.
- A cheque for refund of the balance amount of Rs. 6,04,48,085 (Rupees six crores four lacs forty eight thousand eighty five only) was tendered by the petitioners to the opposite party no. 2 herein.
- An application was filed by the opposite party no. 2 herein before the NCDRC in the aforementioned pending proceeding praying for a direction upon the petitioners to refund the forfeited amount. Such application is still pending.
- On 01.08.2023 FIR was registered by the Hare Street Police Station.

55. Pursuant to the ratio of ***Haji Iqbal*** (supra) this Court is to look into the overall facts and circumstances mentioned hereinabove.

56. Before delving deeper into the merit of the present case, it is pertinent to discuss about the purported letter dated 19.04.2012 addressed by opposite party no. 2/company to the petitioners. From careful perusal it has come to my notice that in Clause 8 (a) of the said letter the opposite party no. 2/company has clearly stated that if they commit default in payment of any of the installments as specified in para 6 (i & iv) on their respective due date, in such an event the petitioner/company shall be entitled to forfeit an amount not exceeding 20% of the total deposit of the flat and shall return the balance, if any, without any interest that too only after the sale proceeds are received from a new purchaser for the said apartment. This letter was duly signed and authorized by the Director of the opposite party no. 2/company which enhances the probability of the authenticity of the said letter to be true.

57. Now, I would like to recall the argument advanced by Mr. Chatterjee regarding liability of the petitioners representing the Company. Cases relied on this issue laid down the principle to the effect that company has to be made a party and vicarious liability of the directors and other management officials cannot be imputed automatically unless there is

specific act attributed to the director or any other person allegedly in control and management of the company.

58. It is true that company was not made an accused in this case but the allegation made against the petitioners representing the company. That apart, the trial Court has jurisdiction to exercise power under Section 319 to implead the company if not added at the time of registration of FIR. The facts dealt with by the cases on this issue are not identical with that of ours.

59. Ratio of the cases relied on behalf of the opposite party no. 2 herein can be summarized in brief as follows:-

- If averments in the complaint prima facie make out a case for investigation, the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail.
- Quashing of complaint on ground that complaint disclosed a commercial and money transaction is not justified as many a cheating is committed in the course of commercial or money transaction.
- Magistrate, taking cognizance of offence is not required to have territorial jurisdiction to try the case.

- In order to quash a complaint the High Court has to examine the complaint as a whole without delving into the merits of the allegations made therein. If a prima facie case is made out from the disclosure of the ingredients of the offence alleged against the accused the Court should not quash the complaint.

60. The cases relied on behalf of the petitioners in connection with both the revision applications focused on the issue that mere failure of a person to keep up the promise subsequently, a culpable intention right at the beginning, i.e., when he made the promises cannot be presumed. Ratio of the decisions is that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

61. Keeping an eye on the facts and circumstances delineated in paragraph 54 and also keeping an eye to the decisions relied on behalf of the parties to the revision applications, it is primarily a case where opposite party no. 2 herein in connection with both the revision applications had alleged breach of contract on the part of the petitioners in neither handing over the allotted flat as prescribed nor refunding the entire amount paid by the opposite party no. 2

in favour of the petitioners for ownership of the said flat. It is admitted fact that considerable amount was paid by the opposite party no. 2 at the time of allotment of the flat and also subsequently through different transactions. It is also worthy to mention that evidence so far collected during investigation also substantiates allotment of flat and payment of considerable amount. But, allegation of criminal conspiracy, fraud and inducement has not been substantiated by the evidence collected during investigation.

62. Before going into the merit in terms of no love lost relationship between the parties I propose to focus on the nitty-gritty of the Provisions of Section 420 & 406 of the IPC as under:-

“ S. 420. 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.

S. 406. Whoever commits [criminal breach of trust](#) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Read more at: <https://devgan.in/ipc/section/406/>”

63. Section 420 deals with the offence of cheating and dishonestly inducing delivery of property. This offence is committed when a person dishonestly induces another person to deliver any property to any person, ought 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 valuable security.

64. On the other hand, nuts and bolts of Section 406 IPC is when a person entrusted with property or with dominion over property dishonestly misappropriates or converts to his own use that property or uses or disposes of that property in violation of any direction of law, the same is said to be an offence of criminal breach of trust.

65. Having given my careful thought to the provision in terms of principle laid down by the Hon'ble Apex Court, I am of the view that mere breach of contract cannot give rise to criminal prosecution whereas fraudulent or dishonest intention is the basis for the offence of cheating.

66. It is also pertinent to remind ourselves the trite law that just because a civil remedy may be available to the complainant, that itself cannot be a ground to quash a criminal proceeding. Therefore, I am not agreeable with Mr.

Mukherjee as well as Mr. Chatterjee who tried to nose around about the adverse effect because of suppression of pending civil litigation in the FIR.

67. However, in terms of ratio of referred cases (supra) it is apt to notice that in order to invoke Sections 406 & 420 of the IPC, it is essential that the complainant should prima facie establish the presumption of **intention** in the mind of the petitioners to **cheat** and/or **defraud** the complainant/opposite party no. 2 herein right from the **inception**. And such an alleged act should have resulted in wrongful loss for the complainant/opposite party no. 2 herein and wrongful gain for the petitioners.

68. The facts available on record and depicted in paragraph 54 is not disputed by Mr. Shani.

69. The alleged breach was made out on the basis of complaint before NDCRC in the year 2019, whereas the FIR was filed with improved version making allegations of cheating and criminal breach of trust against petitioner for the first time in the year 2023. Mr. Mukherjee as well as Mr. Chatterjee on behalf of the petitioner has drawn my attention to the relevant portion of the order dated 05.01.2024 of the Co-ordinate Bench which is quoted below:-

“ ... According to Ld. Advocate, appearing on behalf of the opposite party no. 2, it has been submitted that he is interested in punishing the offenders and not regarding the money for which he would take steps for recovery the Civil Court...”

- 70.** The criminal courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly 5 (Five) years after the last date fixed for registration of the sale deed.
- 71.** The sequence of facts delineated in paragraph 54 do not suggest any kind of initial deception or entrustment or misappropriation at the behest of the petitioners.
- 72.** In such circumstances, allowing the proceeding to continue would be a gross abuse of process of Court. Hence, in my opinion, the impugned proceeding is liable to be quashed.
- 73.** As a sequel, FIR dated 01.08.2023 and all subsequent proceeding there with are ordered to be quashed.
- 74.** Both the revision applications being no. CRR 12 of 2024 & CRR 14 of 2024 are accordingly allowed.
- 75.** Pending applications, if there be any, stand disposed of.
- 76.** Interim order, if there be, also stands vacated.

- 77.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 78.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]