

CRM-M-45835-2022
CRM-M-55249-2022

2024:PHHC:062632
2024:PHHC:062634

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : April 03, 2024
Date of Decision : May 06, 2024

I. CRM-M-45835-2022

Sanjay and others ...Petitioners

Versus

State of Haryana and another ...Respondents

II. CRM-M-55249-2022

Sunil Kumari and others ...Petitioners

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Mr. Akashdeep Singh, Advocate for the petitioners.
Mr. Randhir Singh, Addl. A.G., Haryana.
Ms. Puja Chopra, Advocate for respondent No2.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, both filed under Section 482 Cr.PC, involving similar facts; and amongst same parties.

2.1 In CRM-M-45835-2022, petitioners pray to quash FIR No.33 dated 10.02.2020 under Sections 420, & 406 IPC, registered at Police Station Rohtak Civil Lines, District Rohtak; and the report under

Section 173 Cr.P.C. filed under Sections 406, 420, 120B / 34 of IPC alongwith all the subsequent proceedings arising therefrom.

2.2 In **CRM-M-55249-2022**, prayer is to quash FIR No.267 dated 28.8.2019 under Sections 420, & 406 IPC, registered at Police Station Rohtak Civil Lines, District Rohtak; and the report under Section 173 Cr.P.C. filed under Sections 406, 420, 120B / 34 of IPC alongwith all the subsequent proceedings arising therefrom.

2.3 Petitioner Sanjay is in transport business. He alongwith his wife Sunil Kumari runs a transport company in the name of Jaishree Salasar Transport Pvt. Ltd. Petitioner Chander Singh is the father and petitioner Satish Kumar is the brother of Sanjay.

3.1 Facts are being noticed from **CRM-M-45835-2022**. It is contended that in order to expand the business of the firm, petitioner Sanjay, in his personal capacity took a loan from the respondent N: 2 – Kotak Mahindra Bank to purchase 03 trucks. Petitioner Chander Singh i.e., father of Sanjay is the co-borrower; whereas petitioner Satish Kumar i.e., brother of Sanjay is the guarantor. Initially, some installments were paid, but later on petitioner failed to pay rest of the installments and the account was declared as Non-Performing Asset (NPA). Copies of loan statements in respect of 03 trucks are *Annexures P-1 to P-3*. In order to recover the loan amount, the respondent – bank initiated arbitration proceedings. Awards were passed. In order to execute the awards, execution applications (*copies Annexures P-4 to P-6*) were filed before

learned Addl. District Judge, Jhajjar. But, those applications were either dismissed as withdrawn or were dismissed (*vide Annexures P-7 to P-9*) for the reason that no details of the property owned by the Judgment Debtors were filed. It is alleged that without disclosing anything about the arbitration proceedings, complainant-bank approached the court of Ld. Chief Judicial Magistrate, Rohtak and got registered the FIRs in question by moving application under Section 156(3) Cr.P.C.

3.2 FIR N: 33/2020 (*subject matter of CRM-M-45835-2022*) was got registered by the bank with regard to three trucks; whereas, FIR N: 267/2019 (*subject matter of CRM-M-55249-2022*) was got registered by the bank with regard to two trucks referred in FIR N: 267/2019 (*subject matter of CRM-M-55249-2022*), which were purchased in the name of the firm.

3.3 It is to be noted that the Two trucks were purchased in the name of the firm - Jaishree Salasar Transport Pvt. Ltd., in which Sunil Kumari is also the partner.

4. Learned counsel contends that intention of the petitioners was never to cheat the bank or to commit any breach of trust and it is a simple case of non-payment of EMIs, which has been converted into a criminal litigation by misusing the process of law. It is urged that in case of hypothecation, ownership of movable property and possession thereof remain with debtor and so, offence of criminal breach of trust as defined under section 405 of IPC, is not made out. It is contended further that

since ownership of the hypothecated vehicles vested in the petitioners, so question of misappropriation of said articles by the petitioners does not arise. It is also argued that there is no averment in the FIR to show that at the time of issuance of hypothecation documents, petitioners had any intention to cheat the complainant Bank and so, the offence of cheating is also not made out. It is further submitted that even if allegations made in the FIR are taken to be true, then also no criminal liability can be made out and at the best, it is a case of civil dispute arising out of breach of contract, which can be resolved by a competent civil court. To support his contentions, learned counsel for the petitioners has referred to **“Ranjit Singh v. State of Punjab”**, Law Finder Doc Id # 767521, **Rajnish Lathar v. State of Haryana**, 2008(1) RCR (Criminal) 801 (Pb & Hr HC) and **“M/s Deva Disc and Tiller v. Haryana Financial Corp.”**, 2003(1 RCR (Criminal) 722 (Pb & Hry HC).

With the above submissions, prayer is made to quash the FIR, challan and all subsequent proceedings.

5. As per reply filed by respondent-bank, the accused in collusion and conspiracy with each other dismantled and misappropriated/disposed of the vehicles in question, which had been hypothecated in favour of the bank and utilized the proceeds thereof without any knowledge or consent of the bank. They even did not produce the vehicles for inspection or otherwise before the officials of the bank, which clearly indicate their dishonest, fraudulent and malicious

intention to cause financial loss to the respondent No.2-bank.

6.1 Learned counsel for respondent No.2-bank contends that it is only the petitioners, who could disclose the information about the whereabouts of the hypothecated vehicles and simply because civil proceedings were initiated against the petitioners, cannot be a ground to quash the FIR, when criminal element is clearly present. It is urged that as per hypothecation documents, petitioners being the borrowers, held hypothecated vehicles as exclusive property of the Bank as a trust. Thus, it is not open for the petitioners to say that they are owner of hypothecated assets. Learned counsels submits that acts of petitioners in dismantling and disposing off the hypothecated vehicles, without the consent of Bank amounts to criminal breach of trust and so, offence under section 406 of the IPC is made out.

6.2 Learned counsel further submits that there are allegations in the FIR that petitioners mis-appropriated proceeds of hypothecated assets, and thus, offence under section 403 of the IPC is made out. Learned counsel contends further that the petitioners by making wrong promise had induced the Bank to sanction loan and thereafter, without consent of the Bank dismantled and disposed of the hypothecated vehicles, thus causing loss to the Bank and therefore, offence under section 420 of the IPC is also made out.

6.3 Learned counsel contends further that apart from Section 406, 403 and 420 IPC, petitioners have also committed offences under

Sections 421 & 425 IPC and that it will be a matter of trial, as to which of the offences are proved.

6.4 Learned counsel for complainant bank submits that it is well settled that nature and scope of civil proceeding are different from criminal proceeding and so, merely because the allegations relates to commercial transactions or breach of trust, for which a civil remedy is available, cannot be a reason to quash the criminal proceeding. It is submitted that if the given facts makes out both civil and criminal wrong, then in that case both proceeding can proceed simultaneously.

Prayer is made for dismissal of the petition.

7. Respondent No.1-State in its status report submits that complainant bank had sent legal notices through its counsel to the petitioners to produce the vehicles for inspection, but they did not do so and rather, it was told that they had dismantled all the vehicles and had used the amount and that they will not pay a single penny and that after conclusion of investigation, final report under Section 173 Cr.P.C. has already been filed.

8. I have considered submissions of both the sides and have appraised the record.

9. In order to quash the FIR, it is necessary to consider, whether the allegations made by the complainant prima facie make out an offence or not. It is not necessary to scrutinize the allegations for the purpose of

deciding, as to whether such allegations are likely to be upheld in the trial or not.

10. As per bare allegations, the three vehicles had been hypothecated with the complainant-bank. The loan account was declared NPA. The arbitration awards were passed, but the executions were dismissed in default or dismissed, as details of property of the J.Ds (petitioners) were not provided. Specific allegation in the FIR is that accused were served notices to produce the hypothecated vehicles for inspection as per the agreements, but accused did not do so and rather, told that they had dismantled the vehicles and had used the amount and that they will not pay a single penny. The question is that whether these allegations make out a case under Sections 406 or 420 IPC.

11. In CRM-M-45835-2022, as far as petitioner-accused Sunil Kumari is concerned, there is neither any allegation nor any case is made out against her. She was not the loanee. The loans were taken by petitioner Sanjay in his personal capacity as is evident from Annexures P-1 to P-3. Petitioner Chander Singh was the co-borrower; whereas petitioner Satish was the guarantor. Even the execution proceedings for implementation of arbitration awards were filed against these petitioners only. So much so, even in the FIR, prayer was made to take action against these petitioners. Besides, the hypothecated trucks were in possession of petitioners, i.e. loanee and the co-borrower. Petitioner Satish as guarantor under a contract, is liable under civil law for non-payment by the

borrowers but cannot be prosecuted on criminal side for dismantling and disposing of the hypothecated vehicles.

12. As such, no case to prosecute petitioner Satish Kumar, the guarantor, is made out in any of the two FIRs. However, as far as petitioner Sunil Kumari is concerned, no case to prosecute her, is made out, only in CRM-M-45835-2022, pertaining to loan for 3 trucks taken by petitioner Sanjay in personal capacity. In CRM-M-55249-2022, she being also the partner of the firm, her case is to be examined alongwith other partner i.e., Sanjay. Further discussion is on basis of facts pertaining to CRM-M-45835-2022.

13. Coming to the case qua petitioners, who are loanee and co-borrower, in ***“C.B.I., New Delhi v. Duncans Agro Industries Ltd., Calcutta”, 1996(3) R.C.R.(Criminal) 60***, accused got cash credit from the Bank against hypothecation of goods and subsequently, disposed of the hypothecated goods. It was held that in case of hypothecation, the ownership of the goods still remains with the person, who hypothecated the goods and case was basically a matter of civil dispute. As such, no offence of criminal breach of trust under Section 405 IPC was made out. The Hon'ble Supreme held as under:-

“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405 Indian Penal Code. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in

violation of law or in violation of contract. **The expression 'entrusted' appearing in Section 405 Indian Penal Code is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.** The expression 'trust' in Section 405 Indian Penal Code is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. **When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit.** In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a *floating charge* was made on the goods by way of security to cover up credit facility. In our view, in such a case **for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.**”

14. In “*M/s Indian Oil Corporation v. M/s NEPC India Ltd. & Ors.*”, *Law Finder Doc Id # 123163*, the accused hypothecated the goods to secure repayment of amounts due to creditors. The possession of goods remained with accused, who disposed of the same. The Hon'ble Supreme Court discussed the provision of Section 405 IPC and as to whether entrustment is a hypothecation. It was held as under:

“17. We will next consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405 which is extracted below:

"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".

A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

19. The question is whether there is 'entrustment' in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note: we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (**if such proceeds are identifiable and available**). The following definitions of the term 'hypothecation' in P. Ramanatha Aiyar's Advanced Law Lexicon (Third (2005) Edition, Vol. 2, Pages 2179 and 2180) are relevant:

"Hypothecation: It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated asset whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee."

"Hypothecation' means a charge in or upon any movable property, existing in future, created by a borrower in favour of a secured creditor,

without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property. (Borrowed from Section 2(n) of Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002)"

But there is no 'entrustment of the property' or 'entrustment of dominion over the property by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor."

15. In ***Rajnish Lather's case (supra)***, accused took loan from financial institution against hypothecation of Plant and Machinery. He could not repay the loan due to the losses suffered by him. However, he removed the hypothecated machinery & stocks for not making payment. It was held that no offence under Sections 406 and 420 IPC, was made out. This Court relied upon "***Sunita Bajaj v. Punjab and Sind Bank***", ***1998(1) RCR (Criminal) 129 (P&H)***, wherein it has been held as under:-

"It has been laid down by the Hon'ble Supreme Court that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused. With the execution of the documents of loan creating hypothecation in favour of the bank, of floating charge is created on the grounds which were supposed to be purchased ultimately by the loanee. The ownership of these goods always remains with the loanee. For the sake of argument if some undertaking is given by the loanee in the loan documents itself that the hypothecated goods shall not be disposed of without the consent of the Bank, still it cannot be said that the property in respect of which the criminal breach of trust is alleged to have been committed was the property of the Bank. Only the right of recovery of the amount has been conferred upon the Bank, but by no stretch of imagination it can be stated that any beneficial interest has been transferred in

favour of the Bank by creating loan documents vide which the loanee was supposed to purchase the goods from the loan amount.

16. It is clear from the above-mentioned decisions of Hon'ble Supreme Court and that of this court that the word 'entrusted', as used in Section 405 IPC, has to be understood in a wider sense. All that is necessary is that the ownership or beneficial interest in the property, which is subject matter of the offence, should be in some persons other than the accused. In the case of mortgage or hypothecation, the ownership does not pass to the person, in whose favour the mortgage or hypothecation is created, but it does create 'a beneficial interest' in favour of such a person, and in case, such property is disposed of, without his consent and in violation of the terms of the agreement in that regard, prima facie, the offence of criminal breach of trust can be said to be made out.

17. The purpose of executing a hypothecation deed, in simple terms, is to secure the due repayment of the loan availed from the Bank. The hypothecation means creation of a charge in favor of the Bank that subsists during the tenure of the loan facility. Once the loan amount is repaid to the satisfaction of the Bank, the subject matter under hypothecation stands discharged from the charge of the Bank. However, in the event of default by the borrower and subsequent classification of the loan account as NPA, the Borrower is bound to keep safe the subject matter of hypothecation for the beneficial interest of the Bank i.e., towards the satisfaction of the dues.

18. In present case, by executing the hypothecation documents

by the petitioners, beneficial interest was created in favour of the complainant Bank, in respect of three specific and definite vehicles by clearly mentioning their Chassis, Engine & Registration Number, as is evident from *Annexure P1 to P3*. There are specific allegations that when asked to do so, by way of legal notice, petitioners even did not produce the vehicles for inspection before the officials of the bank and rather, petitioners dismantled and disposed of the hypothecated vehicles, without the consent of Bank. After the classification of the loan account of the Petitioner no. 1 and 2 as NPA, they were clearly under the contractual obligation to retain the hypothecated vehicles for the satisfaction of the dues of the Complainant bank. Despite the fact that complainant bank issued legal notices to the petitioners to produce the hypothecated vehicles as per the agreements, they did not do so and rather, told that they had dismantled the vehicles and had used the proceeds and that they will not pay a single penny.

19. After the classification of the loan account of the Petitioner no. 1 and 2 as Non Performing Asset (NPA), the hypothecated vehicles can be construed as substratum of a trust created by them to repay the loan amount borrowed from the Complainant Bank. By executing hypothecation documents in favor of the Bank, the Petitioner no. 1 and 2 had voluntarily undertaken a contractual obligation to keep the hypothecated vehicles secured for the benefit of the Complainant Bank, in case their loan account turned NPA on account of their default. Once

the hypothecated vehicles go into trust by documentation for the benefit of the complainant bank, the original owner will not have any right unless the hypothecated vehicles are free from the trust.

20. Thus, prima facie, petitioners committed criminal breach of trust in respect of definite hypothecated property, the beneficial interest of which had been created in favour of the complainant bank, attracting Section 406 IPC.

21. In *C.B.I., New Delhi v. Duncans Agro Industries Ltd., (supra)* and *M/s Indian Oil Corporation v. M/s NEPC India Ltd (supra)*, accused got cash credit from the Bank against hypothecation of goods and subsequently, disposed of the hypothecated goods. In *Rajnish Lather's case (supra)*, accused had hypothecated Plant and Machinery & stocks. Thus, floating charges were created i.e., a security interest or lien over a group of non-constant assets, which change in quantity and value. Thus, these were not the cases of creating trust in respect of any certain & definite property. As such, all these authorities are distinguishable on facts and so, don't advance the case of petitioners.

22. Coming to allegation of cheating under Section 420 IPC, cheating is defined u/s 415 IPC as under:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely

to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

23. As will be evident from above definition, the essential ingredients of the offence of 'cheating are:

(i) deception of a person either by making a false or misleading representation or by other action or omission

(ii) fraudulent or dishonest inducement of that person

a) to either deliver any property or

b) to consent to the retention thereof by any person or

c) to intentionally induce that person to do or omit to do anything, which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

24. In “*M/s Indian Oil Corporation v. M/s NEPC India Ltd (supra)*”, Hon'ble Supreme Court held as under:-

“28. In *Hridaya Ranjan Prasad Verma (supra)*, this Court held:

"On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest in determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for

cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

25. In the facts and circumstances of present case, by dismantling or disposing of the hypothecated vehicles, it cannot be said that offence of cheating is made out, because when loan was disbursed against hypothecation of vehicles, there was no misrepresentation or dishonest inducement; otherwise petitioners would not have paid any instalments at all, which is not the case here. Since petitioners - accused had paid some of the installments as is evident from the loan statements (*Annexures P-1 to P-3*), so it cannot be said that accused had the intention to defraud the complainant-bank since beginning, which is one of the necessary ingredient to attract Section 420 IPC. As such, Section 420 IPC is not made out.

26. However, there is merit in the contention of learned counsel for the respondent-bank to the effect that *prima facie*, offence under Sections 421 and 425 IPC would be made out.

27. Section 421 IPC reads as under:-

“421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.—Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby

prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

28. To make out an offence under Section 421 IPC, following essentials are required:

- a) Dishonest or fraudulent removal, concealment or delivery to any person, or transfer or cause to be transferred to any person,
- b) without adequate consideration,
- c) any property,
- d) intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person.

29. Thus, for commission of an offence under Section 421 IPC, there should be dishonest or fraudulent removal, concealment or delivery or transfer *of any property*, without adequate consideration, to prevent the distribution of that property according to law among his creditors.

30. In present case, there are allegations of fraudulent dismantling and disposal of trucks, though owned by the accused – borrowers, but which were hypothecated with the complainant bank, i.e., the creditor of the accused-borrower, with clear intention to prevent the bank from recovery of its dues recoverable by the bank by sale of hypothecated vehicles and so, prima facie, offence under Section 421 IPC will be made out.

31. Coming to Section 425 IPC, it reads as under:

425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the

destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations:

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.”

32. Necessary ingredients of the section are:

- (i) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person;
- (ii) causing destruction of some property or any change in the property or in the situation thereof; and
- (iii) the change so made destroying or diminishing the value or utility or affecting it injuriously.

33. Discussing the scope of Section 425 IPC, Hon'ble Supreme Court held in **“M/s Indian Oil Corporation v. M/s NEPC India Ltd (supra)**, as under:-

“For the purpose of Section 425, ownership or possession of the property are not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from

illustrations (d) and (e) to Section 425. The complaints clearly allege that NEPC India removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of 'mischief'. Here again, we are not concerned with the proof or ultimate decision.”

34. In the present case, the three hypothecated trucks were in possession of the accused. Notices were sent to them to produce the said hypothecated trucks for inspection. They failed to do so, rather disclosed that they had dismantled the same and disposed of the same. The said act *prima facie*, makes out a case under Sections 421 and 425 of IPC, though, it will be matter of evidence as to how the prosecution is able to prove these offences. At the stage of considering the quashing of the FIR, the Court is required only to look into the allegations made in the complaint/FIR by taking them to be at their face value. It has been clearly alleged in the FIR that when the accused were asked to produce the vehicles with the office of the complainant for inspection, they told that they had dismantled the vehicles and amount has been used.

35. The principle relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash the complaint and criminal proceedings have been stated and reiterated by Hon'ble Supreme Court in several decisions.

In **M/s Indian Oil Corporation's** case (supra), it was noticed as under:-

“9 . The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre*,

1988(1) RCR (Criminal) 565: [1988(1) SCC 6921, State of Haryana v. Bhajanlal. 1991(1) RCR (Criminal) 383: [1992 Supp (1) SCC 3351, Rupan Deol Bajaj v. Kanwar Pal Singh Gill. 1995(3) RCR (Criminal) 700: (1995(6) SCC 1941. Central Bureau of Investigation.v. Duncans Agro Industries Ltd., 1996(3) RCR (Criminal) 60: [1996(5) SCC 5911, State of Bihar v. Rajendra Agrawalla, 1996(1) RCR (Criminal) 530: [1996(8) SCC 1641. Rajesh Bajaj v. State NCT of Delhi. 1999(2) RCR (Criminal) 160: (1999(3) SCC 2591, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., 2000(2) RCR (Criminal) 122: [2000(3) SCC 269), Hridaya Ranjan Prasad Verma v. State of Bihar. 2000(2) RCR (Criminal) 484: [2000(4) SCC 1681. M. Krishnan v. Vijay Kumar. 2001(4) RCR (Criminal) 405: [2001(8) SCC 6451, and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque. 2004(4) RCR (Criminal) 937: 2005(1) Apex Criminal 75: 12005(1) SCC 1221. The principles, relevant to our purpose are:

- (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.
- (ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
- (iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.
- (iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so

bereft of even the basic facts which are absolutely necessary for making out the offence.

- (v) A given set of facts may make out (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

36. Coming to the contention of learned counsel for the petitioners that since the matter relates to commercial transaction and breach of contract, so a civil remedy was available, which has already been availed by the complaint bank in this case and therefore, the criminal proceeding are liable to be quashed, it has no merit. As noticed by Hon'ble Supreme Court in *Indian Oil Corporation case (supra)*, a given set of facts may make out:(a) purely a civil wrong; (b) purely a criminal offence:(c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings.

37. Thus, merely because an act has a civil profile, is not sufficient to denude it of its criminal outfit. Reference may also be made to **“Rajesh Bajaj v. State “ JT 1999(2) SC 112.** In **“Medchi Chemicals & Pharma P.P) Ltd. v. M/s. Biological E. Ltd.” JT 2000(2) SC 426,** it has been held that simply because of the fact that there is a remedy provided for breach of contract, that does not by itself to clothe the Court to fore-close criminal prosecution at their threshold. Both criminal and civil law remedy can be pursued in diverse situations and they are not mutually exclusive but clearly coextensive and essentially differ in their content and consequences. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred.

38. On account of entire discussion as above, this court does not find the present cases to be fit for quashing of the FIRs or the subsequent proceedings, except petitioner Satish Kumar, the guarantor in both the cases; and petitioner Sunil Kumari only in CRM-M-45835-2022.

The petitions are disposed of accordingly.

May 06, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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