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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 24.05.2024*
Pronounced on: 01.07.2024

+ **W.P.(CRL) 325/2024 & CRL.M.A. 2973/2024**

M/S ATS INFRASTRUCTURE LIMITED &
ORS.

..... Petitioners

Through: Mr. Arunabh Chowdhary
Senior Advocate with Mr. A.K.
Chaudhary, Mr. Ritik Malik,
Ms. Geetanjali Setia, Mr.
Akhil Suri, Ms. Manisha Suri
and Mr. Vikrant Narula,
Advocates

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Nandita Rao, ASC for the
State with Mr. Amit Peswani,
Advocate
Inspector Nikesh Kumar, P.S.
E.O.W.
Mr. Rahul Mehra, Sr.
Advocate with Mr. Piyush
Singh, Mr. Akshay Srivastava,
Mr. Alankrit Bhatnagar, Mr.
Suryansh Vashisth and Mr.
Chaitanya, Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioners, by way of this petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of



Criminal Procedure, 1973 ('*Cr.P.C.*'), seek quashing of FIR No. 61/2021, registered at Police Station Economic Offences Wing, Delhi for offences under Sections 406/420/120B of the Indian Penal Code, 1860 ('*IPC*') and the proceedings arising there from.

2. **Factual backdrop** of the case is that a complaint was lodged by the complainant i.e. respondent no. 2, against M/s ATS Infrastructure Limited, and its Directors namely Sh. Getamber Anand, Sh. Puneet Arora and Sh. Udaivir Anand, and M/s ATS Housing Private Limited and its Director namely Sh. Vipul Maheshwari Kumar. It is alleged that in 2017, Sh. Getamber Anand, the Promoter and Director of the accused companies, had induced the complainant to invest in the real estate industry. He had allegedly made tall claims about the companies' extensive experience and success, convincing the complainant through a series of representations to invest in a residential project with promises of significant profits. It is alleged that he had asserted that the accused companies were leading real estate developers in the National Capital Region, and had allegedly persuaded the complainant to invest in the 'ATS Pristine' project situated in Sector-150, Noida, Uttar Pradesh. He had also allegedly assured the complainant that in return for the investment, the complainant would be allotted apartments in the project as security. Additionally, he had promised to buy back the apartments at a premium price after thirty-six months from the investment date. Initially skeptical, the complainant was convinced by Sh. Getamber Anand's promise of executing a Memorandum of Understanding (MOU) to formalize the buy-back scheme. The MOU



had a clause that the accused company would take full responsibility for purchasing the apartments after thirty-six months and would issue a post-dated cheque as part of the buy-back offer. Based on these representations, the complainant had invested Rs. 2,62,50,000/- in the project. On 27.06.2017, an MOU was executed between the complainant and the accused companies. In exchange for the investment, the accused company had allotted four apartments in the ATS Pristine project as security. It is stated that the MOU had detailed the payment of Rs. 2,00,47,500/- via cheque and an additional amount to be deposited as tax deducted at source. The MOU further stated that the accused company had agreed to purchase the apartments for Rs. 14,07,20,000/- with Rs. 8,36,60,000/- to be paid to the complainant. Consequently, a post-dated cheque for Rs. 8,28,23,400/- signed by Sh. Getamber Anand, was issued, with the remaining amount to be deposited as TDS. However, it is alleged that when the complainant had deposited the said cheque on 28.06.2020, it was dishonored. It is further alleged that attempts to contact Sh. Getamber Anand for resolution were futile as he had refused to honor the MOU. It is alleged that the accused persons had fraudulently induced the complainant to invest in the scheme with no intention of fulfilling the buy-back agreement. It is also the case of complainant that the issuance of the post-dated cheque, knowing it would be dishonored, demonstrated a premeditated intent to defraud her. It is further alleged that though repeated assurances, both oral and written, had been given to the complainant, the accused had never intended to buy back the apartments, and had thus caused significant financial



loss to the complainant. It is alleged that the directors of the accused companies, acting in conspiracy, had caused wrongful loss to the complainant and wrongful gain to themselves. On the basis of these allegations, the present FIR was registered against the petitioners herein.

3. **Learned Senior Counsel for the petitioners**, seeking the quashing of the FIR, argues that M/s ATS Housing Private Limited the developers of the project 'ATS Pristine' in Noida, had been approached by the respondent no. 2 in 2017 to invest in the project. It is stated that the respondent no. 2 had secured four units by paying Rs. 2,00,47,500/-, and Rs. 2,02,500/- towards TDS, as part purchase consideration. On the same day, the respondent had approached M/s ATS Infrastructure Limited to purchase these units, resulting in a Tripartite Memorandum of Understanding between M/s ATS Housing Private Limited, respondent no. 2 and M/s ATS Infrastructure Limited. According to the MoU, M/s ATS Infrastructure Limited had agreed to purchase the units for Rs. 14,07,20,000/-, by paying Rs. 8,36,60,000/- to the respondent no. 2 and Rs. 5,70,60,000/- to M/s ATS Housing Private Limited. It is submitted that a post-dated cheque for Rs. 8,28,23,400/- was issued to the respondent no. 2 as assurance for the purchase after 36 months. It is argued that the accused companies had been engaged in constructing and developing residential projects, and the Raheja family, including respondent no. 2, had entered into various agreements with them. It is contended that there was a slight delay in the project due to unforeseen circumstances, including the Covid-19



pandemic, and at this point of time, the ATS family and the Raheja family was engaged in talks for amicable resolution of their disputes. It is further argued that while discussions for an amicable settlement were ongoing, the respondent no. 2 had wrongfully presented the post-dated cheques for encashment, which were dishonored. The respondent no. 2 had then initiated proceedings under Section 138 of Negotiable Instruments Act, 1881, which are pending before the Court of learned Metropolitan Magistrate in New Delhi.

4. It is argued on behalf of petitioners that the respondent no. 2, despite admitting that the dispute was of a commercial nature, had misused the state police machinery by filing a criminal complaint with the Economic Offences Wing in Delhi, leading to the registration of present FIR. It is submitted that the FIR was registered mechanically, ignoring that the essential ingredients of criminality were not present and that the dispute was purely civil. It is also stated that the respondent no. 2 had deliberately concealed the pending proceedings in the cheque dishonor case and filed the FIR with the ulterior motive of harassment and extortion. It is further submitted that there is a significant delay in filing the FIR, which was lodged four years after the alleged inducement in the year 2017.

5. It is also argued that the offences under Sections 406 and 420 of IPC are contradictory to each other, and cannot form part of the same transaction, and further that neither offence under Section 406 nor under Section 420 of IPC is made out in the facts of the present case, which at best, can reveal a case of breach of contract or failure to fulfil a promise in the contract, insufficient to initiate any criminal



proceedings. It is therefore argued that the present case is a fit case for quashing of FIR and thus, present petition be allowed. In support of his arguments, learned Senior Counsel has also placed reliance on several case laws.

6. On the other hand, **learned Senior Counsel appearing on behalf of respondent no. 2** argues that the FIR was registered after a thorough preliminary inquiry, clearly establishing *prima facie* offences against the accused persons, including petitioner no. 1, which warrants a thorough investigation to ensure justice for the Respondents. It is argued that all the provisions/offences of IPC invoked by the police are clearly made out from a bare reading of the FIR. It is submitted that the status reports dated 23.01.2024 filed in W.P. (CRL) No. 3648/2023 and 3729/2023 highlights the following key points: (i) The MOUs between the respondents and petitioners obligated the petitioners to pay a total of Rs. 14,27,59,000/- to the respondents in those cases. In present case, this amount is Rs. 8,36,60,000/-. It is argued that this assurance was a premeditated strategy to induce investment from the respondent, ultimately benefiting the petitioners financially. (ii) The petitioners have created third-party rights over the units allotted to the respondents in those matters, and there is strong apprehension that through same *modus operandi*, the respondent no. 2 herein has also been left without her money or the units, and petitioners have achieved significant financial gains at the respondents' expense.

7. It is stated that the petitioners were involved in day-to-day affairs of petitioner/company and were either holding position of a



Director or were designated as key managerial person in the petitioners company. It is stated that Mr. Puneet Arora (petitioner no. 3) is holding the position of Director of the petitioner company since 30.09.2016. It is further stated that Mr. Udaivir Anand (petitioner no. 4) is holding the position of Managing Director in the petitioner company starting from October, 2018 till date, and prior to being appointed as Managing Director, he had been working with accused company in different capacities, which aspect also needs to be further investigated by the police in the instant case. It is argued that the petitioners herein had obtained a stay on investigation in the connected matters case by misleading to this Court in believing that the petitioners in those cases were neither the Directors, nor involved in day-to-day affairs of the petitioner company by relying upon the latest master data of company, and even the investigation in the present case is still at nascent stage despite passing of three years.

8. As far as reliance on behalf of petitioners, on the decision passed by Co-ordinate Bench in case of *Shiv Kumar v. State of NCT of Delhi* CRL.M.C. 1537/2023 is concerned, it argued on behalf of respondents that in case of *Shiv Kumar* (*supra*), CIRP had been initiated and claims of financial creditors had been accepted. However, in the present case, the respondent no. 2 herein did not approach the NCLT. It is also pointed out that the respondent no. 2 had filed the criminal complaint soon after the dishonoring of post dated cheques, unlike the significant delay in case of *Shiv Kumar* (*supra*). Further, it is pointed out that in the said case, charge sheet had been filed whereas in the present case, the investigation is still at



the initial stages even after three years.

9. It is also argued that the petitioners herein have withheld returns of Rs. 8,36,60,000/- and misappropriated the invested funds without offering possession of the units or returning any money to the respondents. It is thus submitted that the intention of the petitioners was dishonest from the inception, as evident from the contents of FIR. It is argued that the Hon'ble Apex Court in several decisions has held that investigation in *prima facie* cognizable offences should not be thwarted at the initial stage, and quashing powers should be exercised sparingly in rare cases. Therefore, it is prayed that a fair investigation against the petitioners should be conducted to trace actions of cheating and misappropriation, bringing justice to the respondents, including elderly individuals, and thus, the present petition be dismissed.

10. **Learned ASC appearing on behalf of the State i.e. respondent no. 1** argues that there are serious allegations against the petitioners and the investigation is still underway and chargesheet is yet to be filed in this case. It is argued that considering the allegations in this case, no case for quashing of FIR is made out. Reference is also made towards the status reports filed by the State in other connected writ petitions wherein quashing of FIRs having similar allegations has been sought. It is submitted that in those status reports, it has been reported that during the course of enquiry/investigation, it had become evident that the units allotted to the complainants under buy back scheme had been sold to third parties without prior permission of the complainants, and the



complainants had neither been given possession of the allotted units nor they had got back their invested amount, and the post dated cheques issued by the accused company to the complainants had already been dishonored. It is also submitted that there are several other criminal cases registered against the present accused persons/petitioners. Therefore, it is prayed that the present petition be dismissed in the interest of justice and for securing the interest of the complainant.

11. This Court has **heard** arguments addressed by learned Senior counsel appearing on behalf of the petitioners as well as learned ASC appearing on behalf of the State and learned Senior Counsel appearing on behalf of the complainants/respondents. The material placed on record by the either side has also been perused and considered.

12. The petitioners herein have approached this Court, by invoking Article 226 of the Constitution of India and Section 482 of Cr.P.C., for the purpose of seeking quashing of the FIR registered against them, on the basis of complaint filed by the respondents. The law with respect to exercise of power under Section 482 of Cr.P.C. or Article 226 of Constitution, insofar as quashing of an FIR is concerned, is well-settled. The Hon'ble Apex Court, through catena of judgments, has also laid down several guidelines and summed up principles to be followed by the Courts while deciding a petition seeking quashing of FIRs and criminal proceedings. Before advertng to the merits of the present case, it shall be thus appropriate to first take note of few such important decisions.



13. In case of *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426, the Hon'ble Apex Court had observed that except in exceptional circumstances, where non-interference would result in miscarriage of justice, the Court sought not to interfere at the stage of the investigation of an offence. Further, the principles which were laid down by the Hon'ble Apex Court, to be followed while adjudicating a petition seeking quashing of criminal proceedings, are as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.



4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. The Hon’ble Apex Court in case of *Union of India v. Prakash P. Hinduja*(2003) 6 SCC 195 has held that the Courts should not interfere with the investigation or during the course of investigation i.e. till the filing of a report under Section 173 of Cr.P.C., by exercise inherent jurisdiction. The relevant observations in this regard are extracted hereunder:

“20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency.”



15. In the decision reported as *Skoda AutoVolkswagen India Private Limited v. State of Uttar Pradesh* 2020 SCC OnLine SC 958, it was held as under by the Hon'ble Apex Court:

“40. It is needless to point out that ever since the decision of the Privy Council in *King Emperor v. Khwaja Nazir Ahmad*, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in *State of Haryana v. Bhajan Lal*, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

42. In *S.M. Datta v. State of Gujarat* this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In *S.M. Datta*, this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”

16. The principles governing quashing of FIRs and criminal proceedings were summed up by the Hon'ble Apex Court in case of *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra* (2021) 19 SCC 401 after analysing catena of judicial precedents. The relevant observations of the decision are extracted hereunder:



“13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad, the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

13.2. Courts would not thwart any investigation into the cognizable offences;

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

13.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

13.6. Criminal proceedings ought not to be scuttled at the initial stage;

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

13.9. The functions of the judiciary and the police are complementary, not overlapping;

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;



13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

13.13. The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

13.14. 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 the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

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

17. In all the aforesaid decisions, the Hon’ble Supreme Court has clearly laid down that the recourse to quashing of an FIR has to be taken in rarest of rare cases, and this power should be used sparingly



more so when the investigation of a case is at its initial stage.

18. In the present case, the learned Senior counsel for the petitioners has taken this Court through various documents, contracts and MOU entered between the parties and has argued that from the bare perusal of the same, it is clear that no case is made out either under Section 406 or Section 420 of IPC. This Court, having gone through the judgments of the Hon'ble Apex Court and the principles laid therein, is of the opinion that the investigation in the present case is at its initial stage. The police after conducting preliminary enquiry had registered the FIR since *prima facie*, it appeared that cognizable offence were committed by the petitioners herein.

19. This Court has also gone through the contents of the FIR, agreement(s) entered between the parties, and the status report filed on record by the State in the connected matters. The records of the case reveal that the petitioners herein were holding crucial positions in the company in question at the relevant point of time, when they had *prima facie* induced the complainants to invest in the project in question with buyback option. The status report filed in connected matters, wherein identical allegations have been leveled by the complainants therein in respect of similar buy-back schemes, also reveals that as per the initial investigation conducted in those cases, it has been discovered that the units which were to be given to the complainants therein as per the MOU and the options thereunder, have already been alienated and have been given to third parties. This Court finds merit in the argument of learned Senior Counsel for the respondent no. 2 that there is apprehension that accused persons



would have adopted similar *modus operandi* in this case also and only a proper investigation can unearth the truth.

20. The investigation is at a nascent stage and without investigation, it cannot be ascertained as to whether or not there was intention on part of the accused persons i.e. the petitioners to dupe the complainant of her hard-earned money on the pretext of providing higher returns through the buyback scheme. At this stage, the complainant has categorically alleged that the accused persons had induced the complainant to invest in the 'ATS Pristine' project by presenting a buy-back scheme with false promises. They had issued post-dated cheques as part of the said scheme but later, when the cheques were eventually deposited, they were dishonored. The accused persons had then allegedly refused to honor the agreement, causing significant financial loss to the complainant, who allege that the accused persons had no intention of fulfilling their obligations and had planned to defraud her from the beginning.

21. As far as the argument regarding transaction relating to the year 2017 and delay in registration of FIR is concerned, this Court is of the view that the same is without any merit since though the agreement was entered into between the parties in 2017, the complainant was to get her returns after a period of 36 months, for which post-dated cheques had been issued by the accused persons, and thus, the complainant had filed the present complaint only after the cheques handed over to her by the accused persons had got dishonored and the accused persons had allegedly refused to be return her money.



22. As revealed from record and status report filed by the State in connected matters, there are other FIRs also registered against the petitioners, wherein similar allegations of duping the complainants under the pretext of buy back scheme have been levelled.

23. In this Court's opinion, the FIR has been registered against the petitioners for offences such as criminal breach of trust, cheating, etc., however, only the investigation can lead to the truth of the matter. In these circumstances, guided by principles laid down by the Hon'ble Apex Court in cases of *Neeharika Infrastructure (P) Ltd. (supra)* and *Bhajan Lal (supra)*, this Court is of opinion the FIR in question cannot be quashed at this stage and the investigation by the police will only bring out the clarity, including the issue as to whether any case is made out under the relevant sections of law or not. Needless to say, if no such commission of offence will be made out, the police will be at liberty to file an appropriate report under Section 173 of Cr.P.C.

24. Thus, in view of foregoing discussion, the present petitions alongwith pending applications are accordingly dismissed.

25. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 01, 2024/P