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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5721/2023, CRL.M.A. 9507/2024**

EKGF KIDSKOOL LLP THROUGH ITS PARTNERS.....Petitioners
Through: **Mr. Anupam Kumar Mishra,**
Advocate.

versus

NEETU PRAKASH & ORS.Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
16.08.2024

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1. By way of the present petition, petitioners seek setting aside of the order dated 30.05.2023 passed in CrI.A. 120/2023 whereby the Appellate Court upheld the order of dismissal of the petitioner's complaint under Section 200 Cr.P.C. passed by the Ld. Judicial Magistrate vide order dated 20.12.2022.
2. Before proceeding further, it is pertinent to note that petitioners are the complainants, who had preferred the complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. A perusal of the requisitioned Trial Court Record would show that on the application being filed, the learned Judicial Magistrate directed the concerned SHO for filing of an Action Taken Report (ATR). On 05.12.2022, petitioners' statements were recorded in court to the effect that they did not wish to press prayer with respect to their application under Section 156(3) Cr.P.C. and in view of the said



statement, the case was proceeded under Section 200 Cr.P.C. Pre-summoning statements of *Ms. Pratima Pal* (petitioner No.1) and *Mr. Navneet Kumar* (petitioner No.2) were recorded as CW1 and CW2 respectively.

In the complaint, it was claimed that the petitioners had reached an oral understanding with the respondents to run a play school in the name of '*Kidskool*'. The entire complaint was premised on WhatsApp chats exchanged between the parties which, according to the petitioners formed the underlying agreement between them. It was alleged that the petitioners had invested certain sums of money and the parties had also acted upon in terms of the said oral understanding. Subsequently, disputes arose between the parties on 09.06.2022 when the respondents refused to share the books of accounts and profits. The dispute further arose on various other dates. According to the petitioners, the disputes between the parties though settled on 13.06.2022 however, it again re-surfaced later in the month. The petitioners on being removed from the official WhatsApp group, made a formal complaint to the SHO, P.S. Palam Village on 03.07.2022. It was also claimed that the petitioners were assaulted on 04.07.2022. Further, on 19.07.2022, the petitioner No.1 were restrained and assaulted by respondent No.1 when petitioners had visited the school premises. Petitioners' pre-summoning evidence was recorded on 05.12.2022. In the pre-summoning evidence, the petitioners reiterated their allegations. During the course of hearing, it is informed that petitioners have also taken recourse by filing a civil suit being CS (COMM.) 170/2023 thereby seeking infringement of trade mark, recovery and declaration that petitioners were the prior user of the mark. The said suit is statedly pending for consideration before the



District Court, Dwarka Courts, New Delhi.

3. Learned counsel for the petitioners contends that vide the impugned orders, learned Judicial Magistrate as well as Appellate Court failed to appreciate that a reading of the complaint alongwith pre-summoning evidence would make out a case under the aforesaid provisions. Further in the ATRs, it was mentioned that respondents had admitted to receiving the money.

4. I have gone through the complaint filed before the SHO, complaint filed before the Court under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C., ATRs as well as the pre-summoning evidence of petitioner Nos. 1 and 2.

5. The entire complaint is premised on an oral understanding between the parties. Petitioners have claimed that the same is inferable from a reading of the WhatsApp chats exchanged between the parties however, Ld. Judicial Magistrate, after going through the voluminous chats reached to a conclusion that no specific agreement for starting an LLP or its ownership was reached between the parties. Though the parties may have agreed to work with each other, however, ingredients of offence of cheating are not made out. A fraudulent or dishonest inducement is an essential ingredient, to constitute the offence of cheating. In the present case neither CW1 nor CW2 in their testimony have narrated any instance which would indicate any inducement on part of the respondents. In this regard the learned Trial Court also relied on the decision in Vijay Kumar Ghai v. State of West Bengal and Others, reported as **(2022) 7 SCC 124**.

6. During the course of submissions, when the learned counsel for the petitioners was asked about the alleged forgery, it was contended that the



respondents had misused the petitioners' domain name. Further, on the aspect of wrongful restraint and criminal intimidation, the petitioners have stated that the allegations relate to incidents on 29.06.2022, 04.07.2022 and 19.07.2022. The impugned order of Ld. Magistrate records that neither any details of the incident nor any mention of the ingredients of criminal intimidation are spelled out either in any complaint or in the pre-summoning evidence. Learned Judicial Magistrate came to the conclusion that the material that came on record didn't make out any case under Sections 506/339/352 IPC and dismissed the complaint. Pursuant to which, the said order was assailed before the Sessions Court but it also reached the same conclusion. It is no longer *res integra* that for a complaint to be maintainable for the offence of cheating there has to be an allegation of inducement. Neither the reading of the complaint nor the pre-summoning evidence would show any allegation of inducement. For the offence of criminal breach of trust, there is no allegation that pertains to 'disposing of' property by dishonest means. Coming to the further allegation of confinement/restraint or criminal intimidation, the complaint is bereft of any details. The respondents' stand was noted in the ATR that the money invested by the petitioners was returned. The disputes that arose between the parties appear to be purely civil and commercial in nature.

In Sarabjit Kaur v. The State of Punjab & Ors. reported as (2023) 5 SCC 360, the Supreme Court had emphasized that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. It was further observed that criminal



proceedings are not meant to be used for settling scores or pressurize parties to settle civil disputes.

7. To the same extent are the observations of the Supreme Court in Usha Chakraborty & Ors. v. State of West Bengal & Ors. reported as **2023 SCC OnLine SC 90** and Naresh Kumar & Anr. v. The State of Karnataka & Anr reported as **2024 SCC OnLine SC 268**.

8. Keeping in mind the settled principle of law in the above-noted cases, I concur with the findings of Courts below and find no ground to interfere with the impugned order.

9. Consequently, the petition is dismissed alongwith pending application.

MANOJ KUMAR OHRI, J

AUGUST 16, 2024

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