

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 430 OF 2025

1. **Rajesh Khakar**
Indian Inhabitant, Age 55 years,
Residing at: A4, Tarapore Garden,
Oshiwara, Lokhandwala,
Andheri West, Mumbai-400 053
2. **Sameer Merchant**
Indian Inhabitant, Age 42 years,
Residing at: B1 Wing,
Flat No. 401, Serenity Complex
Oshiwara, Mumbai-400 053
3. **Dharmesh Dattani**
Indian Inhabitant, Age 48 years,
Residing at: 1302,
Krishna Heritage, M.G. Road,
Mumbai-400 067.

... Petitioners.

Versus

1. **The State of Maharashtra**
Through Kashigaon Police Station
Silver Sarita, Vinay Nagar,
Kashigaon, Mira Road (E),
Thane-401 107.
2. **Yogesh Dattatray Bagul**
15, 16, Gokul Bungalow,
Radha Nagari, Near ABB Circle,
Mahatma Nagar,
Nashik-422 008.
3. **The Commissioner of Police**
Mira-Bhayander, Vasai-Virar
9, Gaurav Galaxy, Mira Road East,
Mira Bhayander - 401 107.

... Respondents

Mr. Manoj S. Mohite, Senior Advocate a/w Mr. Amit Jajoo a/w Dr. Vedant Chhajed a/w Mr. Aman Marwah i/b IndusLaw for Petitioners.

Ms. S.S. Kaushik, APP for Respondent State.

Mr. Aditya Shamsunder Chandak a/w Ms. Niraja Joshi i/b. Ms. Indrayani Patani, for Respondent No. 2.

PSI Kiran Baghdane, Kashigaon Police Station.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 9TH APRIL, 2025
PRONOUNCED ON: 9TH MAY, 2025**

JUDGMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.
2. By the present petition, filed under Article 226 of the Constitution of India r/w Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “**BNSS**”), Petitioners seek quashing of the FIR bearing No.0339 of 2024 dated 17.10.2024 registered by the Kashigaon Police Station, Thane, (for short “**Impugned FIR**”), under Section 420 and 406 of the Indian Penal Code, 1860 (for short “**IPC**”).
3. Impugned FIR registered by the Respondent No.1- Kashigaon Police Station, refers to the Petitioners as Accused and the Respondent No. 2 as the Complainant / Informant.

Case of the Petitioners :-

4. Petitioners are Directors of Laxmi Dental Limited (for short “**the Company**”), engaged in the business of providing dental solutions, services and in creation of dental prosthetics. The Company in order to expand its operation, to carry out extensive research and development work for the dental products, etc., had established a division by name ‘Vedia Solutions’.

5. Respondent No.2 was associated with the Company for providing research and development services since the month of October 2017. Scope of service of the Respondent No.2, as also the other rights with respect to intellectual property, confidential information, trade secrets and other proprietary information of the Company, are recorded in an agreement dated 24.05.2019, executed by and between the Company and the Respondent No.2. In terms of the said agreement dated 24.05.2019, the Respondent No.2 was entitled to share in the profits of the ‘Vedia Solutions’ up to 45% inclusive of fixed monthly compensation. All proceeds and results of service rendered by the Respondent No.2 to the Company were deemed to be “work made for hire” by the Respondent No.2. Said agreement dated 24.05.2019 stipulated restrictive covenants such as confidentiality, non-compete and

non-solicitation, as a result of which, the Respondent No.2 was required to maintain the highest standard of ethical, moral and professional manner while performing his service. Respondent No.2 was required to refrain from any conduct which would tend to disparage the Company.

6. In accordance with the terms of the agreement dated 24.05.2019, Respondent No.2 along with his father assigned all their rights in the trademark / brand name and/or domain name of “TAGLUS” and “UL ALIGN” including their domain name, which was used for service deliverables by the Company. Assignment of the said rights were recorded under an Intellectual Property Assignment Agreement dated 24.05.2019, executed by and between Respondent No.2, his father Mr. Dattatraya Shankar Bagul and the Company. As per the said agreement, assignment was absolute, exclusive, perpetual and irrevocable in lieu of the consideration paid by the Company to the satisfaction of the Respondent No.2.

7. In the month of March 2022, the Company learnt that the Respondent No.2 and another former employee of the Company by name Mr. Sarthak Dinesh Patel had on 16.10.2019, set up a business entity viz “AIVI Innovations LLP”, which was conducting business that was competing with that of the Company, as also selling, dealing with

products / material similar to that of the Company. Respondent No.2 misused confidential information, proprietary data and other trade secrets of the Company. Respondent No.2 had ostensibly inducted his parents as partners in AIVI Innovations LLP. Said act/s of the Respondent No.2 was in breach of the agreement/s dated 24.05.2019.

8. On account of the misuse of the confidential information, trade secrets, etc. of the Company and continuing contractual breaches by the Respondent No.2, the Company on 18.04.2022 instituted a Commercial Suit No.243 of 2022, against Respondent No.2, before this Court seeking permanent injunction and damages quantified at Rs. 25,00,00,000/- (Rupees Twenty Five Crores Only). Along with the suit, Interim Application (L) No.12639 of 2022 seeking temporary injunction, appointment of a Court Receiver to make inventory, etc. was filed.

9. By *ex parte* ad-interim order dated 28.04.2022, passed in Interim Application (L) No.12639 of 2022, this Court appointed Court Receiver to make an inventory, seize, take possession, custody and control of the products lying with Respondent No.2 / AIVI and the partners of AIVI.

10. On 4th & 5th May, 2022, the Additional Special Receivers

under the aegis of the Court Receiver, Bombay High Court, made an inventory, seized, took possession and control of the products / material lying at the respective premises of the Respondent No.2 / AIVI. Court Receiver's Report No.157 of 2022 was filed before this Court in Commercial Suit No.243 of 2022.

11. On 19.05.2022, Respondent No.2 filed an Interim Application (L) No.16135 of 2022, seeking vacation of the ad-interim order dated 28.04.2022 passed by this Court in Interim Application (L) No.12639 of 2022.

12. Vide order dated 15.11.2022, this Court dismissed the Interim Application No.16135 of 2022 filed by the Respondent No.2.

13. On 14.05.2022, on the complaint filed by the Petitioners, the Boisar Police Station, registered an FIR No.182 of 2022 against the Respondent No.2, Mr. Sarthak Patel, Mr. Dinesh Patel, Mr. Akash Narale and Mr. Nilesh Pardeshi.

14. Respondent No.2 by his letter dated 15.09.2022, terminated the agreement dated 24.05.2019 and invoked arbitration, under the said agreement.

15. In the month of October 2022, the Respondent No.2 filed a Criminal Miscellaneous Application No.1762 of 2022 before the learned Judicial Magistrate First Class, Nashik, alleging commission of offense by the Petitioners, under Sections 420, r/w 34 and 120 (B) of IPC.

16. Vide order dated 20.03.2023, the learned Judicial Magistrate First Class Nashik after recording a finding that the dispute between the parties being a civil dispute of breach of contract, dismissed the Criminal Miscellaneous Application No.1762 of 2022 filed by the Respondent No.2. Respondent No.2 has filed Criminal Revision Application No.134 of 2023, before the learned Sessions Court Nashik, which is pending adjudication, as on the date of filling of this petition.

17. On 17.10.2024, the Respondent No.1 through Kashigaon Police Station, Mira Bhayendar, Thane on the basis of a complaint filed by the Respondent No.2, has registered the Impugned FIR against the Petitioners, under Sections 420 and 406 of Indian Penal Code, 1860.

18. Aggrieved, Petitioners are before this Court, seeking the following substantial reliefs:-

“b. That this Hon'ble Court be pleased to issue a Writ of Certiorari or any Writ, Order or Directions calling for the records and proceeding of FIR No. 339 of 2024 dated 17 October 2024 registered with the Kashigaon Police Station, Mira Road, Thane for offences under Section 420 and 406 of the

Indian Penal Code, 1860 and upon examining the legality, correctness and propriety of the same, this Hon'ble Court be pleased to quash and set aside the of FIR No. 339 of 2024 dated 17 October 2024 registered with the Kashigaon Police Station, Mira Road, Thane.”

Case of the Respondent No. 2 :-

19. The Respondent No.2 has filed affidavit-in-reply dated 07.04.2025 opposing the petition. Case of the Respondent No.2 as set up in the said reply *inter alia* is that : pendency of the Civil Suit does not affect rights of the Respondent No.2 to file criminal proceedings against the Petitioners, who have committed criminal breach of trust and have ousted the Respondent No.2 from the scene of the Company; that the Impugned FIR fulfills the ingredients for the offences registered; that “AIVI Innovations” is a Partnership Firm established on 01.04.2019, by Mr. Sarthak Dinesh Patel, Mr. Dinesh Arjun Patel, Smt. Sulochana Dattatray Bagul and Mr. Dattatray Shankar Bagul; that the Impugned FIR is a result of a well documented and escalating series of breaches, misrepresentations and betrayals by the Petitioners, who were in fiduciary and contractual relations with the Respondent No.2 under a binding service agreement dated 24.05.2019; that the Respondent No.2 was removed from the account signatories of the Company with its account with the ICICI Bank, Andheri Branch, in violation of clause 5.6 of the Service Agreement; that the Petitioners have not denied that the

Service Agreement dated 24.05.2019 required the holding of the 30% reserved from the profit margin; that the Impugned FIR was registered only after all attempts at reconciliation, arbitration and notice were ignored by the Petitioners; that since inception it was the *modus* of the Petitioners not to keep any funds in the account of 'Vedia Solutions' and to transfer all monies in different accounts of the Petitioners; that the Respondent No.2 discharged all professional responsibilities from 2019 till the termination of the agreement in September 2022; that instead of resolving the problem the Petitioners resorted to defensive legal tactics in order to shield themselves from liabilities; and that the acts of the Petitioners have resulted in loss to the Respondent No.2.

SUBMISSIONS:-

20. Mr. Manoj S. Mohite, learned Senior Advocate for the Petitioners has advanced the following arguments:

- (i) The Impugned FIR reveals an attempt made by the Respondent No.2 in collusion with the Respondent No.1 to convert, what could at the best be a civil dispute into a criminal case, intent and motive being of wreaking vengeance upon the Petitioners. Breach of contract, if any, is entirely a civil dispute falling within the jurisdiction of the Civil Court. Civil dispute

between the Company and the Respondent No. 2 in respect of the agreement referred to in the Impugned FIR is sub-judice in Commercial Suit No.243 of 2022.

(ii) Pendency of the civil proceedings on the very same documents, that form the basis of the Impugned FIR clearly demonstrates that the Impugned FIR is bogus, erroneous and does not disclose commission of any cognizable offence/s warranting initiation of any criminal proceedings. At any rate, offences of cheating and / or criminal breach have not been made out in the complaint / Impugned FIR.

(iii) Respondent No.2 had filed Criminal Miscellaneous Application No.1762 of 2022 before the learned Judicial Magistrate First Class, Nashik, making similar/identical allegations, as made in the Impugned FIR, against the Petitioners. Said proceedings was dismissed by the learned Judicial Magistrate First Class, Nashik on the ground that the dispute between the parties is entirely civil in nature that arose out of the breach pertaining to the agreement dated 24.05.2019. That in the complaint dated 17.10.2024 / Impugned FIR, there is not even a whisper about the civil proceedings pending in this Court. Further,

Respondent No.2 has suppressed filing of the Criminal Miscellaneous Application No.1762 of 2022 in Nashik, making identical allegations.

(iv) No offense as also no cause of action or any alleged incident took place within the jurisdiction of Kashigaon Police Station, as such Kashigaon Police Station could not have registered the Impugned FIR. Reliance is placed on paragraph No.11 (kk) of the memo of the petition to demonstrate the high-handed acts of the Police Officers and the harassment caused to the Petitioner No.1 upon registration of the Impugned FIR. Mr. Mohite submits that the Police Authorities have acted *malafidely*, without even conducting a preliminary inquiry, have registered the Impugned FIR, reasons being extraneous. Reference is made to the proceedings filed by the Petitioners before the Maharashtra State Human Rights Commission Mumbai and the order dated 03.12.2024 passed by the Maharashtra State Human Rights Commission Mumbai, on the said complaint.

(v) By referring to the documents produced along with the petition, it is submitted that the Impugned FIR is an afterthought and a counterblast by the Respondent No.2. At any rate the

Impugned FIR is filed with *malafide* intentions and ulterior motives, by giving a criminal flavour to a civil dispute, thus an abuse of the process of law.

(vi) Reliance is placed on the following decisions:

- a) State of Haryana and Ors. Vs. Bhajanlal and Ors.¹
- b) Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Ors.²
- c) Mitesh Kumar J. Sha Vs. State of Karnataka and Ors.³

21. Ms. S. S. Kaushik, learned APP for the Respondent - State, during the course of hearing has placed on record copy of Impugned FIR; notings of Investigating Officer, Senior Police Inspector Kashigaon Police Station and Assistant Commissioner of Police; letter dated 17.10.2024 from the office of Deputy Commissioner of Police, Mira Road, Thane; General Diary details dated 18.03.2025; notice under Section 35 (3) of the BNSS; and the statement dated 21.10.2024 of Mr. Rajesh Khakar recorded by the Kashigaon Police Station. Learned APP has advanced the following arguments:

- a) Upon receipt of the complaint dated 17.10.2024, the

¹ (1992) Supp (1) SCC 335

² (2021) 19 SCC 401

³ (2022) 14 SCC 572

Respondent No.1 placed the same before the Superiors for obtaining permission to register the offence. Impugned FIR was registered upon permission dated 17.10.2024 received from the Deputy Commissioner of Police, as evident from the documents, today produced before this Court.

b) Complaint dated 17.10.2024 filed by the Respondent No.2 disclosed commission of cognizable offences under Sections 420 and 406 of the IPC, warranting registration of the Impugned FIR. Notice under Section 35(3) of the BNSS was issued to the Petitioners to remain present for investigation. She submits that the investigation is at a preliminary stage, as such investigation Officer should be given opportunity to thoroughly investigate the matter. By relying on the Impugned FIR she submits that the petition be dismissed.

22. Mr. Aditya Shamsundar Chandak, learned Advocate for the Respondent No.2 has advanced the following arguments:

a) Mere pendency of civil proceedings would not prevent the Respondent No.2 from filing criminal proceedings against the Petitioners, more so when the Petitioners are guilty of committing crime of criminal breach of trust.

b) The Impugned FIR is not a mechanical or vindictive action against the Petitioners. Complaint was filed against the Petitioners as the Petitioners have committed breach of the fiduciary and contractual relationship, under the agreement dated 24.05.2019.

c) That the timing of Impugned FIR, though latter then the Petitioners' civil suit, the same reflects a natural escalation of events and not retaliatory litigation. Reliance is placed on the contents of the affidavit in reply dated 07.04.2025 filed by the Respondent No.2 in paragraph Nos. 12 and 13, which are extracted herein under:

“12. I say that it is denied that the FIR is malicious, retaliatory, or frivolous in any form. The facts disclosed in the FIR are based on a long, carefully documented chronology of events involving the Petitioner's breaches, concealment of financial data, illegal appropriation of trust property (i.e., the 30% reserve fund), and continued refusal to comply with basic fiduciary obligations. The FIR is not a counterblast to any civil proceedings, but rather a consequence of premeditated misconduct that gave rise to a distinct and cognizable offence under criminal law.

13. I say that the Petitioner has never denied that the Service Agreement required the holding of a 30% reserve from the profit margin, nor that it was required to be reconciled and returned upon termination. There is no dispute over the existence of this clause, only silence over its execution. The FIR was registered only after all attempts at reconciliation, arbitration, and notice were deliberately ignored by the Petitioner. The timing of the FIR, though later than the Petitioner's civil suit, reflects a natural escalation of events and not retaliatory litigation.”

23. From the rival contentions of the parties, the question that

falls for consideration in the present petition is:-

a) Whether the complaint dated 17.10.2024 filed by the Respondent No.2, disclosed information in relation to the commission of cognizable offence, warranting registration of the Impugned FIR, under Sections 420 and 406 of the IPC?

24. In the case of Rikab Birani and Anr. Vs. the State of Uttar Pradesh and Anr⁴, the Hon'ble Supreme Court, taking note of the Court being flooded with cases where Police register an FIR, conduct investigation and even file charge-sheet(s), in under serving cases, explained the difference between a breach of contract and the criminal offence of cheating. In paragraph Nos.12 to 21 the Hon'ble Supreme Court after relying on various decisions has observed as under:-

“ 12. Thereupon, the appellants, Rikhab Birani and Sadhna Birani, preferred a petition under Section 482 of the Cr.P.C. before the High Court,⁶ which was dismissed by the High Court, vide the impugned order dated 09.05.2024, notwithstanding the aforesaid facts, stating that at that stage, only a prima facie case was to be seen in the light of the law laid down by this Court.

13. We are constrained to pass this detailed speaking order, as it is noticed that, notwithstanding the law clearly laid down by this Court on the difference between a breach of contract and the criminal offence of cheating, we are continuously flooded with cases where the police register an FIR, conduct investigation and even file chargesheet(s) in undeserving cases.

14. During the last couple of months, a number of judgments/orders have been pronounced by this Court, especially in cases arising from the State of Uttar Pradesh, deprecating the stance of the police as well as the courts in

4 2025 SCC Online SC 823

failing to distinguish between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offence under Sections 420 and 406 of the IPC, the ingredients of which are quite different and requires mens rea at the time when the contract is entered into itself to not abide by the terms thereof.

15. *In Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another,*⁷ this Court quoted an earlier decision in *Mohammed Ibrahim and Others v. State of Bihar and Another,*⁸ wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. *Reference was also made to the decision in V.Y. Jose and Another v. State of Gujarat and Another*⁹ and it was observed:

“7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no

offence has been made out in them complaint. This Court in *V.Y. Jose (supra)* placed reliance on several earlier decisions in “*Hira Lal Hari Lal Bhagwati v. CBI*”, “*Indian Oil Corporation v. NEPC India Ltd.*”, “*Vir Prakash Sharma v. Anil Kumar Agarwal*” and “*All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*”.”

17. This Court, in *Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another*,¹⁰ highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.

18. In *Kunti and Another v. State of Uttar Pradesh and Another*,¹¹ this Court referred to *Sarabjit Kaur v. State of Punjab and Another*¹² wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.

19. It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature.¹³ The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure.¹⁴ Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.

20. In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh,¹⁵ this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are *ex facie* outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in *Thermax Limited and Others v. K.M. Johny and Others*,¹⁶ which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the

complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.

“21 Lastly, we would refer to another detailed judgment of this Court in *Sharif Ahmed v. State of Uttar Pradesh*¹⁷, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:

“36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.”

ANALYSIS:-

25. In matters regarding registration or non-registration of First Information Report (FIR), what is necessary is only that the information given to the police must disclose the commission of a cognizable offense. The Hon’ble Supreme Court in the case of *Lalita Kumari Vs. Government of Uttar Pradesh and Ors.*⁵, has crystallized the law on the registration of FIR, and the situations/ cases in which preliminary inquiry is permissible as also the safeguards to be followed in such cases.

26. Controversy in the present petition revolves around the information given by the Respondent No.2 to the Respondent No.1 in the

⁵ (2014) 2 SCC 1

complaint dated 17.10.2024. Reference to the said complaint dated 17.10.2024 would be useful as such the same is transcribed herein below:-

“COMPLAINT

Date: 17/10/2024

I, Yogesh Dattatreya Bagul, aged 44 years, residing at Plot No. 15, 16, Gokul Bungalow, Radha Nagari Vikas Colony, ABB Circle Mahatma Nagar, Nashik Mobile No. 9403230233 remains present at Kashigaon Police Station and file the complaint as under.

I reside with my parents, namely Shri. Dattatraya Shankar Bagul, age 83 years and mother namely Mrs. Sulochana Bagul, aged 75 years, and wife, named Mrs. Anita Bagul. I run a cosmetics business, which is our means of livelihood.

In the year 2017, I was working as a professor at Mahavir Mahavidyalaya's Sanghvi College, Mhasrul, Nashik, at an Engineering College. While working, I was conducting research to produce raw materials needed for dental treatment. For that research, I required a dental furnace. So, I started looking online to find a dental furnace. At that time, I found the contact number of Rajesh Khakkar from Lakshmi Dental Export Pvt. Ltd., Mira Road East, Taluka and District Thane, on the internet. I called the number and provided information about myself, mentioning that I needed the dental furnace for my research and that I wanted to purchase it. At that time, they told me to meet them in-person and called me to Mira Road at Park Hotel, Kashigaon, Mira Road East.

When I went there, Rajesh Khakkar was accompanied by two individuals. They introduced themselves as Sameer Merchant and Dharmesh Dattani and told me that all three of them were owners of Lakshmi Dental Export Pvt. Ltd. After I shared information about my research with them, they requested that I leave my job and work with their company. When I refused, they assured me and promised to make me a partner. In November 2017, I left my job and joined their company. They appointed me as a consultant at their Illusion Dental Laboratory, Mira Co-op Industrial Estate, behind Maruti NX Showroom, Mumbai-Ahmedabad Road, Mira Road East.

Between July 2018 and September 2018, they were facing issues in manufacturing sheets for their company. I informed them about my father, Dattatreya Bagul, who owns a plastic manufacturing company called Datta Enterprises and showed them some samples. I also mentioned that they had received an order of 1 lakh American dollars in September 2018. I informed my father about this, and after my father showed them the plastic samples, they liked them. Then, they enticed us with an offer to give them the brand name "Jalsthan" and work together to expand the product, export it, and that they would make me a partner in their company.

On 24/05/2019, my father, Dattatreya, and I handed over the brand "Jalsthan" to Rajesh Khakkar, Sameer Merchant, and Dharmesh Dattani. We, along with Rajesh Khakkar and Sameer Merchant, formed a company named "Solution Division of Lakshmi Dental Export Pvt. Ltd." We opened an ICICI Bank account in the name of Vidya Solution Division of Lakshmi Dental Export Pvt. Ltd., branch Morya Estate, Andheri Link Road, account number 102805001852.

Later, an agreement was drawn up on a ₹500 stamp paper between Lakshmi Dental Export Pvt. Ltd., Vidya Solution Division of Lakshmi Dental Export Pvt. Ltd., and me. It was stated that I would handle the company's operations, supervision, and that I would receive 45% of the company's profits. It was also mentioned that no withdrawals or addition of new members would be made without written consent from any of us. Furthermore, Lakshmi Dental would provide some machinery for my research, for which I agreed to pay 3% of the sales price as rent.

In 2022, disagreements arose between Rajesh Khakkar, Sameer Merchant, Dharmesh Dattani, and me over financial transactions. Therefore, I visited the ICICI Bank, Morya Estate, Andheri Link Road, Mumbai, to inquire about account number 102805001852 related to Vidya Solution Division of Lakshmi Dental Export Pvt. Ltd. The bank manager informed me that both my father, Dattatreya Bagul, and I had been removed from the account since 2021 and that new member Mrs. Jigna Rajesh Khakkar had been added without our consent. Upon reviewing the bank statements, I discovered that the amounts credited to the company account were transferred by Rajesh Khakkar, Sameer Merchant, and Dharmesh Dattani to the account of their Illusion Dental Lab without our knowledge.

When I confronted them about this, they filed a complaint against me at Boisar Police Station. I then realized that Rajesh

Khakkar, Sameer Merchant, and Dharmesh Dattani conspired together, gained the trust of me and my father, and removed us from the company's ICICI bank account without any written consent. They also included Jigna Rajesh Khakkar in the account without our permission. From January 2022 to May 2022, they failed to pay me my agreed-upon 45% share of the company's profits, resulting in a total financial fraud of ₹90,00,000 (ninety lakh rupees) against me. Therefore, I have come to the police station today to file a complaint against them.

From 2017 to June 2022, at Western Park Hotel, near Western Express Highway, Kashigaon, Mira Road East, Thane District, Rajesh Khakkar, Sameer Merchant, and Dharmesh Dattani misled me by promising partnership. They established Vidya Solution Division of Lakshmi Dental Export Pvt. Ltd. with me, took over my father Dattatreya's brand "Jalsthan," signed a company agreement, and from January 2022 to May 2022, they did not pay me my 45% share. Instead, they transferred the money to their Illusion Dental Lab account, defrauding me of ₹90,00,000 (ninety lakh rupees). Moreover, in 2021, they removed both my father and me from the company's bank account without any written notice. Hence, I am filing this legal complaint against them."

27. Gist of the complaint dated 17.10.2024 is that the Petitioners / the Company and the Respondent No.2 entered into an arrangement of a commercial nature pertaining to the business of the Company. Agreement evincing the arrangement was executed by the parties. There is no dispute with regards to the agreement/s executed between the parties during the said commercial transaction and the terms and conditions of the said agreement/s. Respondent No.2 was to be remunerated by the Company for the service provided by the Respondent No. 2. Interse disagreement over financial transaction between the Petitioners and Respondent No.2, resulted in the

Respondent No.2 and his father, without their consent, being removed from the Company account with ICICI Bank. Respondent No.2 was not paid his share of profits by the Company, resulting in financial loss of Rs. 90,00,000/- being caused to the Respondent No.2.

28. Information on the basis of which the Impugned FIR is registered by the Respondent No.1, is the complaint dated 17.10.2024. From the reading of the complaint dated 17.10.2024, it is evident that the Respondent No.2 is alleging breach of the agreement/s. Grievance in the complaint dated 17.10.2024 appears to be non-payment of amounts agreed to be paid to the Respondent No.2, by the Company in terms of the agreement dated 24.05.2019. Respondent No.2 alleges breach of the fiduciary and contractual relationship by the Petitioners/ the Company. Entire genesis of the complaint dated 17.10.2024 / Impugned FIR is the breach of a commercial contract / terms and conditions of the agreement and the loss caused to the Respondent No.2, arising out of such breach.

29. The complaint dated 17.10.2024 / Impugned FIR are silent in the context of the intention of the Petitioners since the inception of the transaction being dishonest and/ or there being any deception played on the Respondent No.2, by the Petitioners at the very inception. Without adding or subtracting anything, from the averments made in the

complaint dated 17.10.2024 and accepting the allegations made therein to be true, than also the essential ingredients for offence of cheating under Sections 415 / 420 of IPC are absent. In the case of Municipal Corporation of Delhi Vs. Ramkishan Rohatgi and Ors.⁶, the Hon'ble Supreme Court in paragraph No.10 has observed as under:-

“10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting any-thing, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

30. Assuming for the sake of arguments that the intention to cheat had developed later on, the same cannot amount to cheating. Thus, from examination of the allegations in the Impugned FIR, we find that filling of the complaint dated 17.10.2024 is an attempt on the part of the Respondent No.2 to wreak vengeance against the Petitioners, apparently to settle a pure civil dispute, with no criminal profile. Respondent No.2 has made an attempt to give a criminal flavour to a dispute which is essentially of a civil nature. In the circumstances, the Respondent No.1 was not justified in registering the Impugned FIR.

31. Though, the Respondent No.1 has also registered an offense under Section 406 of IPC, the complaint dated 17.10.2024 /Impugned

⁶ 1983 (1) SCC 1

FIR do not disclose the ingredients of Section 406 of IPC. An offence under Sections 420 and 406 of IPC cannot be charged together since for the offence of cheating it is a pre-requisite that dishonest intention must exist at the inception of any transaction, whereas in the case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrust another with property as per law. The complaint dated 17.10.2024/ Impugned FIR fails to meet any of these conditions.

32. In the case of Delhi Race Club (1940) Limited Vs. State of Uttar Pradesh and Anr.⁷, the Hon'ble Supreme Court has observed that the distinction between the offence of criminal breach of trust and cheating is a fine one. Paragraph No. 43 of the said judgment reads as follows:

“43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

33. In the case of Vesa Holdings Private Limited and Anr. Vs. State of Kerala and Ors.⁸, the Hon'ble Supreme Court in paragraph

⁷ (2024) 10 SCC 690

⁸ (2015) 8 SCC 293

Nos.12 and 13 has observed as under:-

“12. From the decision cited by the appellant, the settled proposition of law is 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 other words 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, 1860 can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show 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. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

34. In the case of Hridaya Ranjan Prasad Verma and Ors. Vs. State of Bihar and Anr.⁹, the Hon’ble Supreme Court in paragraph No.15 has observed as under:-

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist

⁹ (2000) 4 SCC 168

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.”

35. Records placed before us indicate pendency of a civil dispute between the Company and the Respondent No.2, subject matter of the dispute being the transactions arising out of the agreement dated 24.05.2019. Though, the complaint dated 17.10.2024, is silent on the civil dispute, however, the Respondent No.2 who has chosen to file the affidavit-in-reply dated 07.04.2025 in paragraph Nos.5 and 13 has referred to the said civil dispute. Interim reliefs are operating against the Respondent No.2 in the said civil proceedings. Mr. Aditya Shamsundar Chandak, learned Advocate for the Respondent No.2 does not dispute the pending civil proceedings and the interim orders passed in the said proceedings. Contention of Mr. Aditya Shamsundar Chandak, learned Advocate for the Respondent No.2 is that the pendency of civil suit does not affect the right of the Respondent No.2 to file criminal proceedings. Petitioners claim that Respondent No.2 having committed breach of the agreement by violating the terms relating to confidentiality, non compete and non solicitation, whereas the Respondent No.2 in the complaint alleges disagreements over financial transactions of the Company and non-payment of the entitlement of the Respondent No.2 in terms of the

agreement. Thus, apparently the entire controversy revolves around the performance / non-performance of the terms and conditions of the agreement and breach of terms of the said agreement. We are in agreement with the submission of Mr. M. Mohite, that Respondent No.2 by the complaint dated 17.10.2024 has given a criminal profile to a matter which at the best could be a civil dispute.

36. Fact of the Respondent No.2 having filed Criminal Miscellaneous Application No.1762 of 2022 before the learned Judicial Magistrate First Class, Nashik, making allegation similar to the allegations made in the Impugned FIR as also the fact of the Criminal Miscellaneous Application No.1762 of 2022 being dismissed, do not find mention in the complaint dated 17.10.2024. Respondent No.2 in defense, submits that a Criminal Revision Application filed against the said order is pending, before the Revisional Court. Said explanation of the Respondent No.2, does not appear to be *bonafide*, for the simple reason that subject matter of the Criminal Miscellaneous Application No.1762 of 2022 and Impugned FIR being the same, disclosure of the earlier proceedings was necessary, more so, when the said Criminal Miscellaneous Application No.1762 of 2022 was dismissed by a Competent Criminal Court on a finding that the dispute was a pure civil

dispute of a breach of contract and there was no element of either deception or misappropriation of money.

37. The Hon'ble Supreme Court in the case of Vijay Kumar Ghai and Ors. Vs. State of West Bengal and Ors.¹⁰, has held that filing of multiple complaints by same party against same accused in respect of same incident amounts to an abuse of process. In paragraph Nos.14 and 15, the Hon'ble Supreme Court has observed as under:

“14. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent 2 filed two complaints i.e. a complaint under Section 156(3) CrPC before the Tis Hazari Court, New Delhi on 6-6-2012 and a complaint which was eventually registered as FIR No. 168 under Sections 406, 420, 120-B IPC before PS Bowbazar, Calcutta on 28-3-2013 i.e. one in Delhi and one complaint in Kolkata. The complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place of occurrence in order to create a jurisdiction.

15. A two-Judge Bench of this Court in Krishna Lal Chawla v. State of U.P.¹⁹ observed that multiple complaints by the same party against the same accused in respect of the same incident is impermissible. It held that permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case.”

38. Contention of Ms. S. S. Kaushik, learned APP for the State that the investigation being at a preliminary stage, this Court ought not to exercise jurisdiction under Section 528 of BNSS, is liable to be

¹⁰ (2022) 7 SCC 124

rejected for more than one reason. *Firstly*, the allegations in the Impugned FIR taken at the face value do not disclose commission of any offence either under Section 406 or 420 of IPC. *Secondly*, there is no absolute rule that when the investigation is at the nascent stage the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 528 of BNSS. In the case of Imran Pratapgadhi Vs. State of Gujrat and Anr.¹¹, the Hon'ble Supreme Court in paragraph No.37 has observed as follows:

*“37. We fail to understand how the High Court concluded that the message was posted in a manner that would certainly disturb social harmony. Thereafter, the High Court gave a reason that the investigation was at a nascent stage. There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage. If such embargo is taken as an absolute rule, it will substantially curtail the powers of the High Court which have been laid down and recognised by this Court in the case of **State of Haryana v. Bhajan Lal**.”*

39. Mr. M. Mohite, learned Senior Advocate for the Petitioners has raised serious contentions on the conduct of the Police Authorities in the context of entertaining the complaint dated 17.10.2024 and registering the Impugned FIR on the basis of the same. He alleges

¹¹ Criminal Appeal No.1545 of 2025

malafides against the Police Authorities. According to him, the allegations in the complaint dated 17.10.2024 being of the year 2022 and said allegations being in the nature of a commercial dispute, the least that was expected from the Respondent No.1 was a preliminary inquiry in the matter. He places reliance on paragraph No.120.6 of the decision in the case Lalita Kumari (supra). The learned APP in response to the said submission, contends that the Impugned FIR was registered pursuant to the permission granted by the superiors of the Respondent No.1. She refers to the letter dated 17.10.2024 of the Deputy Commissioner of Police. We find the said contention on behalf of Respondent No.1 to be unsustainable in law. The said act of the Respondent No.1 is contrary to the law laid down in the case of Lalita Kumari (supra). Provisions of Section 154 of Cr.P.C. (Section 173 of BNSS) which deals with registration of FIR, do not refer to permission being required from the superiors by the Investigation Officer. The requirement of law as crystallized in Lalita Kumari (supra) is disclosure of information of commission of a cognizable offence, for registration of an FIR.

40. Rikab Birani and Anr. (supra) was a case before the Hon'ble Supreme Court wherein Appellants (Rikab Birani and Anr.) had entered into an oral agreement to sell a godown to Respondent No.2 (Shilpi

Gupta) for a consideration of Rs. 1,35,00,000/-. Respondent No.2 claimed to have paid an amount of Rs.19,00,000/- as part sale consideration to the Appellants. According to the Appellants, Respondent No.2 was required to pay 25% of the total sale consideration amount on or before 15.09.2020 which she had failed to pay. Cheque of Rs.10,00,000/- given by Respondent No.2 to the Appellants had bounced. On 03.09.2021, the Appellants sold the property at a lower price of Rs.90,00,000/-, thereby suffering a loss of Rs.45,00,000/-. Respondent No.2 approached the Metropolitan Magistrate Kanpur for registration of an FIR. The Metropolitan Magistrate Kanpur dismissed the said application by order dated 26.04.2022 holding that it was a civil matter and no criminal offence was made out. Respondent No.2 thereafter filed another criminal complaint on 14.06.2022 before the Metropolitan Magistrate Kanpur which was again dismissed on 14.07.2023 holding the matter being of a civil nature. Notwithstanding the same, the Respondent No.2 approached the Police Station Harbans Mohal, District Kanpur Uttar Pradesh and got an FIR No.78 of 2023 dated 22.07.2023 registered against the Appellants for the offences punishable under 420, 406, 354, 504 and 506 of IPC, Investigation Officer filed Charge-Sheet on 12.09.2023. Petition preferred by the Appellants under Section 482 of Cr.PC was dismissed by the High

Court. The facts of Rikab Birani and Anr. (supra) are close to the facts of the case in hand.

41. For the reasons recorded herein above, we are satisfied that the allegations made in the complaint dated 17.10.2024 / Impugned FIR, even if accepted in their entirety do not *prima facie* constitute any offence against the Petitioners. Initiation / filing of criminal proceedings by the Respondent No.2 amounts to abuse of process, as the records placed before us indicate that the said criminal proceedings are initiated with malice for wreaking vengeance. If the criminal proceedings are allowed to continue against the Petitioners, the same will be abuse of process of law and result in miscarriage of justice.

42. The affidavit-in-reply dated 07.04.2025 filed by the Respondent No.2 In this petition indicates the dispute which is subject matter of the complaint dated 17.10.2024 to be a civil dispute.

43. In the case of Achin Gupta Vs. State of Haryana and Anr.¹², the Hon'ble Supreme Court in paragraphs Nos.19 and 20 has observed as under:

“19. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed

¹² 2024 SCC OnLine SC 759

before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

20. The investigation of an offence is the field exclusively reserved for the police officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII Cr.PC. While exercising powers under Section 482 CrPC. The court does not function as a court of appeal or revision. As noted above, the inherent jurisdiction under the section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

44. In the case of *Paramjeet Batra Vs. State of Uttarakhand and Ors.*¹³, the Hon’ble Supreme Court in paragraph No.12 has observed as under:-

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has

¹³ 2013 (11) SCC 673

happened in this case, the High court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

45. The decisions of the Hon’ble Supreme Court relied by the Petitioners supports the case of the Petitioners. Case of the Petitioners would fall within the paramaters mentioned in 102(1), (2) and (7) in the case of Bhajan Lal (supra).

46. The ingredients of cheating as defined under Section 415 of IPC and criminal breach of trust under Section 405 of IPC are not made out even after accepting the allegations in the complaint at their face value.

47. The **Writ Petition is allowed in terms of prayer clause (b).**
The Impugned FIR bearing No.0339 of 2024 dated 17.10.2024 registered by the Kashigaon Police Station, is quashed and set aside.

48. There shall be no orders as to cost.

49. It is clarified that the observations/findings given are in the context of quashing of the complaint/Impugned FIR.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)