IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION (WP) NO.314/2024
WITH
CRIMINAL WRIT PETITION (WP) NO.315/2024.

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CRIMINAL WRIT PETITION [WP] NO.314/2024.

Mr. Najeem Haneefa Rawther
S/o. Haneefa Rawther, Age 47 years,
Occu.:- Business, Manappally,
Azhikathukizhakkathil, Ivarkala
Naduvile Muri, Kunnathoor Village,
Kunnathoor Taluka, Kollam, Kerala

.....PETITIONER

VERSUS

1] State of Maharashtra,
Through PSO Ambazari, having his,
office at Ambazari Police Station,
Nagpur.

2] Shri Lateesh Kumar S/o. Bharatan,
Age- 45 years, Residing at: plot No.
118, Ramnagar, Telangkhedi,
Ambazari, Nagpur.

.....RESPONDENTS

Mr. Nihalsingh Rathod, Advocate for the Petitioner.
Mr. K.R. Lule, A.P.P. for Respondent No.1/State.
Ms. Payal Lunawat, Advocate for Respondent No.2.

WITH

CRIMINAL WRIT PETITION [WP] NO.315/2024.

1] Shri Vijayan Pillai
S/o. Sonkara Pillai, Age 72, Occu.: Business,
Residing at: Kannankuzhi Muri,
Thamarkulam Village, Mavelikara,
District : Aalappuza, State : Kerala

2] Smt. Vijyakumari Vijayan Pillai,
W/o. Shri Vijayan Pillai, Age 61,
Occu.: Business, R/o. Vilayil House,
Residing at : Kannankuzhi Muri,
Thamarkulam Village, Mavelikara
District: Aalappuza, State : Kerala.

.....PETITIONERS

V E R S U S

1] The State of Maharashtra,
Through PSO Ambazari, having his office at
Ambazari Police Station, Nagpur,

2] Shri. Lateesh Kumar S/o. Bharatan
Age- 45 years, Residing at: Plot No.118,
Ramnagar, Telangkhedi, Amabazari, Nagpur,

.....RESPONDENTS

Mr. Nihalsingh Rathod, Advocate for the Petitioner.
Mr. K.R. Lule, A.P.P. for Respondent No.1/State.
Ms. Payal Lunawat, Advocate for Respondent No.2.

CORAM : ANIL L. PANSARE AND SIDDHESHWAR S. THOMBRE, JJ..

DATE OF RESERVING THE JUDGMENT: 22.09.2025
DATE OF PRONOUNCING THE JUDGMENT: 26.09.2025

JUDGMENT (PER: SIDDHESHWAR S. THOMBRE, J.)

Heard. Rule. Rule made returnable forthwith.

2. With consent of learned counsel for the parties, the petition is taken up for final hearing. Mr. K.R. Lule, learned APP for respondent No.1/State and Ms. Payal Lunawat, learned counsel for respondent No.2.

3. In both these writ petitions, the petitioners are challenging First Information Report (FIR) No.94/2024 registered with the Ambajari Police Station, Nagpur for an offence punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code, 1860 (for short "IPC"). Mr. Najeem Haneefa Rawther-Petitioner in Writ Petition No.314/2024 and Shri Vijayan Pillai S/o. Sonkara Pillai-Petitioner No.1 and Smt. Vijyakumari Vijayan Pillai-Petitioner No.2 in Writ Petition No.315/2024, are hereinafter referred as "petitioners".

The facts as is alleged in the First Information Report are as follows :

4. The respondent No.2, filed a complaint stating therein that, he was engaged in work of lamination and garage in the name of “M/s. S.S. Engineering and Fabrications”, and that his home town is Kayamkullum, Alapuzha District, Kerala. There were cordial relations between the informant and the petitioners, as they were staying near his home town and petitioners in Criminal Writ Petition No.314/2024, were running petrol pump in the name of “Jaya Fuels” since the year 2000. Later on in the year 2007, by way of power of attorney the operation of the said petrol pump was given to the petitioner-Mr. Najeem Haneefa Rawther. The informant further stated that in the year 2012 when the petitioners visited the informant at his residence at Nagpur, they offered him to invest an amount in their petrol pump business and it was assured that they would give 30% profit from the said business. Accordingly, the informant decided to invest the amount in the business of petrol pump. It was further stated that from the year 2012 to 2014 an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) was paid by him and when the informant started demanding 30% profits as assured by the petitioners, the petitioners ignored the phone calls of the complainant.

5. It was further stated in the complaint that in the year 2014, petitioners again demanded an amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) and offered to sell "Jaya Fuels" Petrol Pump. Later on, informant got knowledge that the said petrol pump was already sold by the petitioners to some other persons and that some dispute was pending before the Court. Upon receiving this information, the informant demanded refund of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only), which was invested/paid and the profits accrued thereon. However, when the informant tried to make phone calls to the petitioners, they did not answer them and, the informant thought he was cheated. Therefore, he filed, a complaint with the Ambajari Police Station, Nagpur against the petitioners. Subsequently, the petitioners offered to pay an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only), with interest @18% thereon thereby wanting to settle the matter, and in lieu thereof, petitioners issued two cheques of the different banks, but unfortunately those dishonored with the remark "Stopped Payment" and "Account Closed". As the informant had invested an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) and on that 30% profit was assured, which was not paid by the petitioners, FIR came to be registered against the petitioners in both the petitions.

6. Mr. Nihalsingh Rathod, learned counsel for the petitioners strenuously submitted, that considering the allegations made in the FIR no offence is made out. He submitted that, as per the allegations made by the informant, the amount in question was paid prior to 10 years back i.e. 2012 to 2014. The informant has lodged FIR after a period of 10 years and the said delay has not been explained by the respondent No.2 and therefore, on this count alone, as the filing of FIR is after a period of 10 years the same is fatal to the prosecution case.

7. He further submitted that, considering the nature of the allegations, even if, taken as it is, no offence is made out as the entire transaction is civil in nature. The informant has tried to convert the civil dispute into criminal one. In fact, if the entire allegations are taken at its face value, no offence is made out against the petitioners.

8. Considering the entire allegations made against the petitioners, he invited our attention to the FIR registered against the petitioners. The petitioners specifically alleged that the petitioner No.1 and his wife i.e. petitioner No.2 (in Writ Petition No.315/2024) are running the petrol pump namely Jaya Fuels.

9. The learned counsel for the petitioners further submits that Mr. Vijayan Pillai one of the petitioner in Criminal Writ Petition No.315/2024 entered into an agreement of sale, along with installations, with one Smt. Sujata Thaj, by receiving an advance consideration. However, Smt. Sujata Thaj could not manage to raise sufficient funds to obtain the registered Sale Deed and therefore, with her permission Smt. Vijayakumari Vijayan Pillai another petitioner in Writ Petition No.315/2024 executed an agreement of sale of the land in favour of Shri Gopal Krishnan, who promised to pay the entire sale consideration within a period of 60 days with an understanding that Mr. Gopal Krishnan will be permitted to operate the petrol pump. However, Mr. Gopal Krishnan did not comply with his assurance and therefore, a dispute arose. Even Mr. Gopal Krishnan filed a civil suit i.e., Original Suit No.7/2015, before the Sub-Court, Mavelikkara, seeking a decree of specific performance against the petitioners Vijayan and Vijayakumari. The said suit was subsequently dismissed by the Competent Court, directing the return of advanced consideration amount. The petitioners have specifically stated that they had never asked the respondent No.2 to invest an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) and giving of profits of 30% from the income of the petrol pump business to the informant as is alleged in the FIR.

10. Learned counsel for the petitioners further invited our attention to the FIR No.54/2023 which was lodged by Mr. Gopal Krishnan, by alleging an online fraud of Rs.12,50,000/- (Rupees Twelve Lakhs Fifty Thousand Only) for the offence punishable under Sections 406 and 420 read with Section 34 of IPC, registered against the petitioners. He also submitted that, after perusal of FIR No.54/2023 and impugned FIR No.94/2023, there is no reference about the earlier FIR bearing No.54/2023. In the said complaint, the respondent No.2 never alleged about any such transaction and suppressed the information of complaint filed by the Mr.Gopal Krishnan. It was alleged that the Mr.Gopal Krishnan and respondent No.2 to harass the petitioners filed a false/frivolous complaint and, Mr.Gopal Krishnan is using the respondent No.2 as a front man to harass the petitioners.

11. Learned counsel for the petitioners submit that, in view of the allegations made in the FIR, no offence is made out. He urged that continuation of the criminal proceedings against the petitioners is nothing but misuse of the process of law. There is an inordinate delay in filing FIR and also dispute is civil in nature, he submits that delay is not explained and continuation of criminal proceedings is misuse of process of law. He relied upon the following Judgments :-

> *"1. **Suresh Vs. Mahadevappa Shivappa Danannava** and Another reported in **(2005) 3 Supreme Court Cases 670** :-*
>
> > ***9.*** *It is pertinent to notice that the alleged agreement to sell was executed on 25-12-1988. A legal notice was issued to the appellant herein on 11-7-1996 calling upon the appellant to execute the sale deed in respect of the premises in question. Thus the complaint was submitted after 7-1/2 years of splendid silence from the date of the alleged agreement to sell i.e. 25-12-1988. It is*

further to be noticed that the appellant herein responded to the legal notice dated 11-7-1996 by his reply dated 18-7-1996 through his lawyer specifically denying the alleged agreement and the payment of Rs 1,25,000 as advance. Nothing was heard thereafter and the complainant after keeping quiet for nearly 3 years filed private complaint under Section 200 CrPC before the IVth Additional CMM, Bangalore on 17-5-1999. The learned Magistrate on the same date directed his office to register the case as PCR and referred the same to the local police for investigation and to submit a report as per Section 156(3) CrPC. A charge-sheet was filed on 4-8-2000 by the police against the appellant-Accused 1 only for offence under Section 420 IPC. The learned Magistrate took cognizance of the alleged offence under Section 190(1)(b) CrPC and issued summons to the accused-appellant herein. Aggrieved by the aforesaid process order dated 4-8-2000 passed by the Magistrate, the appellant-accused preferred the above criminal revision which was dismissed by the High Court for the reasons stated therein.

11. *As already noticed, the complaint was filed on 17-5-1999 after a lapse of 10-1/2 years and, therefore, the very private complaint filed by Respondent 1 is not at all maintainable at this distance of time. It is the specific case of Accused 1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 CrPC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring Accused 1-appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court for issuance of process and the proceedings itself.*

12. *We, therefore, set aside the impugned order of the High Court and of the Magistrate. The complaint is liable to be dismissed on the question of inordinate laches on the part of the complainant himself. Viewed from any* *angle, we do not find any good reasons to maintain the order passed by the learned Single Judge of the High Court confirming the orders of the Magistrate. Accordingly, this appeal stands allowed and the judgment and order dated 17-2-2004 in Criminal Revision Petition No. 932 of 2000 of the High Court of Karnataka at Bangalore is set aside.*

2. Thermax Limites and Others Vs. K.M. Johny and Others reported in (2011) 13 Supreme Court Cases 412 :-

34. *The principles enunciated from the abovequoted decisions clearly show that for proceeding under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding.*

43. *The courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the courts below ought g to have appreciated that Respondent 1 was trying to circumvent the jurisdiction of the civil courts which estopped him from proceeding on account of the law of limitation.*

49. *The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable and contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in th light of Section 482 of the Code, the High Court ought to have quashed thos proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial*

> *Magistrate, First Class, Pimpri in CC No. 12 of 2002 on 20-8-2007 and the judgment of the High Court dated 11-1-20081 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent 1 herein is quashed.*

3. Deepak Gaba and Another Vs. State of Uttar Pradesh and Another reported in (2023) 3 Supreme Court Cases 423 :-

> *28. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471 IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained band should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in Thermax Ltd. v. K.M. Johny 12, as it refers to earlier case laws in copious detail."*

In Suresh Vs. Mahadevappa Shivappa Danannava (*supra*), the Hon'ble Apex Court, concluded that Section 420 of IPC is not made out on the ground of delay and laches and the dispute being of civil nature, thereby quashed and set-aside the orders of Magistrate and the High Court.

The Hon'ble Apex Court in the matter of Thermax Limites and Others Vs. K.M. Johny and Others (*supra*), cautioned the Courts regarding the difference between civil and criminal wrongs. There can be a situation, where the allegations may contain both civil and criminal grounds. Court must cautiously examine the facts to ascertain whether they only constitute a civil wrong or if the ingredients of the criminal wrong are missing and thereby, quashed the order passed by the Magistrate.

The Hon'ble Apex Court in the matter of Deepak Gaba and Another Vs. State of Uttar Pradesh and Another (supra) has held that in number of cases the parties are invoking jurisdiction of Criminal Courts by filing the criminal complaint though allegations are purely civil in nature. Therefore, the law laid down by the Hon'ble Apex Court in the above referred judgments, are squarely applicable to the present case.

12. Mr. K.R.Lule, learned APP submits that upon the receipt of complaint from the respondent No.1 i.e. the Investigating Agency lodged the FIR and investigation commenced. The investigating agency, recorded statement of the complainant as well as the earlier and present manager of Jaya Fuels. The investigating agency collected the documents in the matter of such agreement between the parties, Bank Details of account of complainant and other property details as well as cheques which were dishonored.

13. Learned APP submitted that the Investigation Officer went to Kerala and investigated the matter, however, the whereabouts of the petitioners could not be traced, and he stated that the investigation is still in progress. He further submitted that it is apparent, from the statement of the informant and the documents collected by the Investigating Officer, which reveals that the amount invested by the informant was not returned to him. He further pointed out that the FIR No.54/2023 for an offence punishable under Sections 406 and 420 read with Seciton 34 IPC was registered against the petitioners and on that count it was stated that the petitioners are having criminal antecedents and specifically stated that the present petitioners having not returned the amount to the informant and the cheques being dishonored on that count, learned APP submits that there is *prima-facie* involvement of the petitioners and prayed to dismiss the complaint.

14. Ms. Payal Lunawal, learned counsel for the respondent No.2, vehemently opposed the prayer of petitioners and pointed out that the petitioners, since the beginning, with a dishonest intention cheated the complainant and in-spite of an assurance given by them, neither the principal amount was returned, nor 30% profit was paid by the petitioners. The learned counsel for the respondent No.2 further stated that she has already filed an application before this Court and brought to the notice regarding the forgery committed by the petitioners. She invited our attention to the letter dated 15.10.2022, at page No.384 of the record and pointed out that the petitioners informed the respondent No.2 and accepted their liability of an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) with an interest accrued thereon @18% and relying on the said letter, the counsel for respondent No.2 submitted that the petitioners have cheated the respondent No.2 and prayed to dismiss both the petitions.

15. After hearing learned counsel for the petitioners, learned APP and learned counsel for the respondent No.2, we have gone through the documents filed by all the parties and after considering the submissions advanced, it is necessary to refer to the law laid down by the Hon'ble Apex Court in the case of State of Haryana and Others Vs. Bhajanlal and Others reported in 1992 Supp (1) Supreme Court Cases 335, wherein, the Hon'ble Apex Court has laid down the principles for quashing of FIR. The guidelines specified by the Hon'ble Court in Bhajanlal's case (*supra*) are as follows :-

> *"(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 FIR 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 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 FIR 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 provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceedings 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."

The Hon'ble Apex Court in the Bhajanlal's case (*supra*) has held that the extra-ordinary powers under Article 226 or the inherent powers under Section 482 of the Code, should be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and the Hon'ble Apex Court has laid down the guidelines wherein such power should be exercised.

After going through the guidelines, we hold that the allegations made in the First Information Report lodged by the respondent No.2, if taken at their face value and accepted in its entirety, do not *prima-facie* constitue an offence or make out case against the accused as the dispute is purely civil in nature. In view of the allegations made in the complaint, in our considered opinion, the same does not constitute cognizable offence, so as to justify the registration of the case and any investigation thereon, and therefore, to secure the ends of justice under extra-ordinary jurisdiction, the FIR is liable to be quashed.

16. We have gone through the contents of the FIR as well as the documents placed on record. We notice that all the transactions as stated by the respondent No.2, pertains to the year 2012 to 2014. Thereafter, till the year 2024, there was not a single complaint filed by the respondent No.2, alleging cheating at the hands of petitioners.

17. After going through the specific contentions raised by the respondent No.2 in FIR, it is very clear that the respondent No.2 in clear terms has stated that petitioners have assured the informant on the investment of an amount of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) an assured profit of 30%. Therefore, if on the amount which was invested, profit was not paid, in such case, the respondent No.2 would have a remedy to initiate a civil proceeding to recover the said amount.

18. In the matter in hand, there appears no element of cheating. The offence punishable under Sections 406 and 420 read with Section 34 of IPC is not made out against the petitioners. In view of facts emerging from the record, it is clear that the parties are governed by their respective agreement/assurance and if there is any breach, then the parties are entitled to avail civil remedies available under the law. The criminal proceeding cannot be used to recover the amount, and to settle their civil dispute. Even if, the entire allegations made by the respondent No.2 are taken, as it is, on its face value, no offence is made out against the petitioners. The proceedings are civil in nature, and it is not proper to convert the same into the criminal proceedings. Therefore, considering the above referred facts and the law laid by the Hon'ble Supreme Court in State of Haryana Vs. Bhajanlal (supra), the continuation of the criminal proceedings against the petitioners is a misuse of the process of law. Therefore, in view of the above mentioned facts, we are inclined to allow both the writ petitions. Hence, we pass the following order :-

ORDER

(i) Criminal Writ Petition No.314/2024 and Criminal Writ Petition No.315/2024 are hereby allowed.

(ii) FIR bearing Crime No.94/2024 registered with Ambajari Police Station, Nagpur for an offence punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code, 1860, against the petitioners, is hereby quashed and set-aside.

Rule is made absolute.

(SIDDHESHWAR S. THOMBRE, J.) **(ANIL L. PANSARE , J.)**