

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO.50 of 2025**

1. Mr. JEREMIAS D'SOUZA,  
Son of Late Thomas D'Souza,  
aged about 72 years,  
Married, Indian National,  
having his Office at G-2,  
Utopia, 5, St. Andrew's Road,  
Bandra (W), Mumbai-400 050.

2. MRS. COLLETTE D'SOUZA,  
Wife of Jeremias D'Souza,  
aged about 64 years,  
Married, Indian National,  
having her Office at G-2,  
Utopia, 5, St. Andrew's Road,  
Bandra (W), Mumbai-400 050.

...PETITIONERS

***Versus***

1. STATE OF GOA  
THROUGH THE PUBLIC  
PROSECUTOR,  
High Court of Bombay at Porvorim,  
Penha de Franca, Goa 403 521.

2. STATE THROUGH THE POLICE  
INSPECTOR,  
Economic Offences Cell Police Station,  
Building No.7, B-1 & B-2, Police  
Quarters, Altinho, Panaji, Goa 403 001.

3. MRS. MANJEET VIRMANI,  
Wife of Yash Pal Virmani,  
aged about 63 years,  
Married, Indian National,

residing at A-298 A, Block — A,  
Near M. G. Road Metro Station,  
Sushant Lok-1, VTC, Galleria DLF-IV,  
PO: Galleria Dlf-iv, Sub District:  
Farrukh Nagar, Dist. Gurgaon,  
State Haryana— 122 009.

... RESPONDENTS

Mr Sudin Usgaonkar, Senior Advocate with Ms Snehlata Sahani  
and Ms Divya Parab, Advocates for the Petitioners.

Mr S. Karpe, Additional Public Prosecutor for Respondent Nos.1  
and 2/State.

Mr H.S. Kohli with Mr Chirag Angle, Advocates for Respondent  
No.3.

**CORAM : ASHISH S. CHAVAN, J.**

**Reserved on : 29<sup>th</sup> APRIL 2026**  
**Pronounced on : 18<sup>th</sup> MAY 2026**

**JUDGMENT :**

1. The Petitioners have invoked the inherent jurisdiction of this Court to quash and set aside the FIR bearing No.3/2025 dated 27.05.2025 lodged by the Economic Offences Cell (EOC) under Section 420 r/w 120-B of IPC, arraigning the Petitioners as Accused on the basis of a complaint filed by Respondent No.2.

2. The facts which are germane to the issue arising out of the present Petition can be summarised as under:

(i) On the basis of a written complaint dated 19.03.2025, the EOC registered FIR No.3/2025 for offences punishable under Section 420 r/w 120-B of IPC against the Petitioners.

(ii) The gravamen of the allegations against the Petitioners was that the Petitioners induced Mrs. Manjeet Virmani (Respondent No.3), Alekha Saikia and Jitesh Kapoor (hereinafter referred to as 'Complainants') into multiple fraudulent property transactions falsely claiming that they had a clear and marketable title while suppressing legal deficiencies such as pending inventory proceedings, tenancy disputes, and lack of legal authority to transfer ownership. The amount misappropriated by the Petitioners is approximately Rs.3,70,00,000/- (Rupees Three Crores Seventy lakhs only).

(iii) Giving details of as many as six transactions, on the basis of MOUs/Agreements that the Petitioners entered into with the Complainants, wherein the Petitioners allegedly induced the Complainants to part with the aforesaid amounts, the Complainants prayed for FIR to be registered and investigation to be conducted by the EOC.

**3.** The Respondent Nos.1 and 2/State have filed replies highlighting the investigation conducted so far.

**4.** Heard Mr Sudin Usgaonkar, learned Senior Counsel for the Petitioners, Mr S. Karpe, learned Additional Public Prosecutor for Respondent Nos.1 and 2/State and Mr Kohli, learned Counsel for Respondent No.3.

5. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, perused the records.

6. On behalf of the Petitioners, learned Senior Advocate Mr Sudin Usgaonkar, advanced following submissions.

*Firstly*, the Petitioners were the legal representatives of the owners of the properties and not the owners themselves. Therefore, any acts of omission or commission or representations, if any, were made by the owners and not by the Petitioners.

*Secondly*, that a commercial dispute between the Petitioners and the Respondent No.3 has been given the colour of a criminal offence.

*Thirdly*, that arbitration proceedings are invoked and are pending by and between the Petitioners and the Complainants. Pointing out to various discrepancies in the allegations of the Complainants, it was argued that although the Petitioner No.2 had given NOC to Respondent No.3 in respect of the Sale Deed for Corjuem properties, but instead of executing a Sale Deed, Respondent No.3 filed a criminal case.

*Fourthly*, it was submitted that the actions of the Complainants were never to conclude the transactions but were only with the intent to harass the Petitioners with bogus complaints. Insofar as the Assagao property is concerned, the FIR was lodged on the basis of inventory proceedings, which were null and void. Describing six immovable properties in the Writ Petition,

it was submitted that all these properties have been inherited by the respective co-owners and Petitioners are merely property aggregators, who are mandated by the respective co-owners to take possession of the properties, clear the encumbrances and market the property in terms of the MOU executed between the owners and the Complainants. It was also submitted that the documents, including the MOUs, POAs, Bank Statements, etc., were submitted to the office of the EOC. However, the same were not considered by the Investigating Agency before registering the offence.

*Fifthly*, it was argued that over 30 crores worth of properties have been brought to completion by the efforts of the Petitioners and Respondent No.3 is mandated by the provisions of the MOU to purchase the said properties at the price stipulated in the MOUs. It is further the contention of the Petitioners that, despite being aware that several properties in question were encumbered and there was litigation with respect to the properties, the Complainants still entered into MOUs with the Petitioners. The Title Certificates, as well as the MOUs, were scrutinised by the Advocate for Respondent No.3 before the FIR was lodged. Relying on the title opinions of Advocates, copies of the Title Certificate, files of the properties and the compilation of documents provided to EOC, on behalf of the Petitioners, it was contended that going by the allegations in the complaint, no ingredients of cheating are made out against the Petitioners and, in view thereof, the impugned FIR and all proceedings emanating therefrom be quashed and set aside. It was submitted that all the transactions were backed by valid authorisation from the respective owners. Wherever there are multiple co-

owners, Power of Attorneys have been executed by such co-owners authorising one of the co-owners to enter into agreements with the Petitioners. In the case of Corjuem properties, one of the owners, through Power of Attorney, has executed an MOU directly with the Complainant. It was argued that while alleging delays, the Complainants never communicated about such delays for removal of defects to the Petitioners, nor have they made any demand for termination of the contract or refund of money paid.

*Lastly*, it was argued that there are no complaints from the actual owners revoking the MOUs executed by them with the Petitioners.

7. In response thereto, the learned Counsel for Respondent No.3 submitted that the dishonest intention of the Petitioners is evident from the inception of the transaction. The FIR discloses that at the time the Petitioners induced the Complainants to enter into six MOUs and part with a substantial sum of money, they were fully aware that they did not possess the documents of all the owners or co-owners of the concerned properties, that inventory proceedings and title-related litigations were pending and that the properties could not be legally alienated. Suppressing these facts, the Petitioners represented themselves as duly authorised to sell the properties and executed multiple MOUs, including overlapping MOUs, in respect of the same properties with different purchasers collecting consideration from each of them. The allegations thus disclosed a deliberate and fraudulent inducement at the very inception, attracting the ingredients of cheating. It was contended that the alienation of the immovable property in the State of Goa is governed

by inventory proceedings. In the absence of a final inventory decree, consent of all heirs or co-owners and the subsisting Power of Attorney, no lawful transfer of title is permissible. The FIR discloses that these mandatory prerequisites were absent and not disclosed to the Complainants. Relying on the replies filed by the State, it was pointed out on behalf of the Petitioners that the investigation reveals that the representations made by the Petitioners regarding title of land proposed to be sold vide MOUs executed between the Petitioners and the Complainants had defects in right of disposition of the owners and the recorded owners had not authorised the Petitioners to sell the land which was the edifice of the transaction negotiated between the parties. Arguing that the case does not fall within the parameters set out in ***State of Haryana V/s. Bhajan Lal***<sup>1</sup>, responding to the submission of the Petitioners that arbitration has been invoked and is pending between the parties, it was submitted that mere availability of a civil remedy does not bar criminal prosecution where the factual allegations, *prima facie*, disclose a criminal offence, as held in the case of ***M/s. Indian Oil Corporation V/s. M/s. NEPC India Ltd. and Ors.***<sup>2</sup>.

8. The learned Additional Public Prosecutor, Mr Karpe, argued in terms of the replies filed by the State. The replies point out that the Petitioners induced the Complainants to enter into multiple fraudulent property transactions, falsely claiming that they had a clear and marketable title while concealing legal deficiencies such as pending inventory proceedings, tenancy

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<sup>1</sup> 1992 Supp (1) SCC 335

<sup>2</sup> (2006) 6 SCC 736

disputes and lack of legal authority to transfer the ownership, thereby cheating the Complainants to the tune of Rs.3,70,00,000/- (Rupees Three Crores Seventy Lakhs only). The investigation further reveals that six different MOUs were executed between the Complainants and the Petitioners. Towards the execution of these six MOUs, the Respondent No.3 has in all received payments of Rs.3,40,00,000/- (Rupees Three Crores Forty Lakhs only). Investigation reveals that the documents furnished by Petitioner No.1 are manipulated in such a way so as to hide the address, Aadhaar and PAN details of various persons whose names are reflected in the said documents. With regard to the Siolim – Marna, Bardez property, the names of three unconnected persons are appearing in the occupants column of Form I and XIV of the said property. There is nothing on record to show that one of the occupants has given any POA or authorisation to M/s. K.C. Construction Company (of which the Petitioners are partners) to enter into MOU with prospective buyers. In fact, the said occupant has revealed in his statement that he has not given any authority to M/s. K.C. Construction Company to enter into a transaction with respect to the said property. The replies further reveal that all the POAs are in the favour of the individual name of the Petitioner No.1 and not in the name of M/s. K.C. Construction Company. Thus, M/s. K.C. Construction Company was not authorised to enter into MOU with the Complainant in respect of the said property. Copy of the POA dated 23.10.2021 furnished by the Petitioner No.1 to the Police is manipulated in order to hide the address, Aadhaar and PAN details of the persons whose names are reflected in the POA. During the course of

investigation, it has come to light that the Petitioners have duped another person to the extent of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) by adopting the same *modus operandi* in respect of the same property. Thus, the Petitioners have, on the strength of the same false representation, induced multiple persons to part with substantial sums of money towards consideration of the same property by executing overlapping MOUs in respect of the same property. The investigation carried out so far by the Police discloses the commission of the offence, *prima facie*, qua the Petitioners. The veracity of the allegations in the complaint are required to be ascertained after concluding the investigation.

9. Appreciating the rival submissions of the parties, the question that falls for consideration before this Court is whether the allegations made in the complaint and the FIR taken at face value discloses a *prima facie* offence punishable under Section 420 read with 120-B of IPC against the Petitioners, whether the continuation of the proceedings against the Petitioners would amount to an abuse of law and whether the material collected during investigation, not adverting to the defence, if any, of the Petitioner would fall squarely within the parameters set out in the landmark judgment of the Hon'ble Supreme Court in *State of Haryana V/s. Bhajan Lal (supra)*.

10. Examining the allegations made by the Complainants against the Petitioners in the complaint which forms the basis of the impugned FIR, the following facts emerge distinctly.

*Firstly*, that the case of the Complainants, in essence, seems to be that the Complainants were induced to enter into different transactions with the Petitioners vide six MOUs executed between them on the strength of certain representations made by the Petitioners. In a nutshell, the representations made by the Petitioners were that they were aggregators claiming to have rights of disposition in respect of land proposed to be sold in different parts of Goa, claiming themselves to be authorised by owners of the respective properties. The Petitioners further represented that the properties being offered for sale were unencumbered and with a clear title, with the right of disposition with the Petitioners or likely to be made so within a short time. Relying on the aforesaid representations, it is the case of the Complainants that they were induced to pay an amount of approximately Rs.3,70,00,000/- (Rupees Three Crores Seventy Lakhs only) to the Petitioners over a period of time. The details of the properties, dates of the corresponding MOUs and the representations made to the respective MOUs on behalf of the Petitioners are culled out by the Complainants in their complaint. A tabular representation of the aforesaid details is as under:

| Sr. No. | Date of MOU | Survey No.                 | Description of Property                                                 | Payment advanced (in rupees) |
|---------|-------------|----------------------------|-------------------------------------------------------------------------|------------------------------|
| 1       | 09.01.2024  | 137/19 Village Assagao     | Property admeasuring 800 sq. mts., situated at Village Assagao.         | 1,30,00,000/-                |
| 2       | 13.02.2024  | 74/20 Village Siolim-Marna | Property admeasuring 1,675 sq. mts., situated at Village Siolim, Marna. | 35,00,000/-                  |

|    |            |                                               |                                                                                                                    |             |
|----|------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-------------|
| 3  | 23.02.2024 | 95/1<br>Village<br>Arpora<br>Nagoa            | Property admeasuring 4,681 sq. mts., situated at Village Arpora Nagoa.                                             | 55,00,000/- |
| 4  | 28.02.2024 | 59/5 &<br>59/9<br>Village<br>Siolim-<br>Marna | Property admeasuring 50 sq. mts., and 450 sq. mts., respectively, situated at Village Siolim-Marna.                | 20,00,000/- |
| 5  | 16.03.2024 | 151/7 &<br>151/12<br>Village<br>Corjuem       | Property known as “Vancasanachi muddy” all together admeasuring 1,125 sq. mts., situated at Village Corjuem.       | 75,00,000/- |
| 6. | 03.06.2024 | 153/18<br>Village<br>Assagao                  | Property known as “VALLE” bearing Cadastral Survey No. 868 admeasuring 1,250 sq. mts., situated at Village Assagao | 25,00,000/- |

Acting on the aforesaid complaint, the Economic Offences Cell, Panaji, registered the impugned FIR and commenced investigation.

**11.** *Secondly*, that during the course of investigation, the Investigating Officer has unearthed several acts of omission and commission by the Petitioners on the basis of which, the learned Additional Public Prosecutor representing the State submitted that the investigation conducted so far, *prima facie*, discloses commission of the offences as alleged in the complaint. The scrutiny of the documents furnished by Petitioner No.1 to the Investigating Officer yielded the following acts of omission and commission:

i) Some of the documents supplied by the Petitioner No.1 are manipulated in such a way so as to mask/hide the address, Aadhaar and PAN details of various persons whose names are reflected in the said documents,

ii) With regard to the property situated in Survey No.74/20, Village Panchayat of Siolim - Marna, it is noticed that the names of three persons are appearing in the occupants column of Form No.I and XIV of the said property. There is nothing on record to show that one of the occupants has given any authorisation or Power of Attorney to M/s. K.C. Constructions and Company, the partnership firm of the Petitioners, to enter into an MOU with prospective buyers. This fact has been corroborated by the same occupant in his statement before the Police by further stating that the Regular Civil Suit is pending in the Court of the Civil Judge, Senior Division, Mapusa, with regard to the title of the property. After scrutinising the copies of POAs dated 07.10.2017 and 23.10.2021 furnished by Petitioner No.1, the Investigating Officer has observed that these POAs are in the individual name of Petitioner No.1 and not in the name of M/s. K.C. Constructions and Company. This demonstrates, *prima facie*, that M/s. K.C. Constructions and Company had no authority to enter into any MOU with the Complainants on the basis of the POAs.

iii) With regard to the property situated in Survey No.95/1, Arpora Nagoa, investigation reveals that the names of seven persons appear in the occupants column. The MOU is executed between M/s. K.C. Constructions and Company and six persons. From the MOU it is apparent that M/s. K.C.

Constructions and Company is giving the authority to develop the said plot for constructing villas with a garden and parking facilities thereon. The MOU also mentions that nothing in the said MOU shall be construed as a transfer or sale of the said property to M/s. K.C. Constructions and Company. However, the MOU executed by the Petitioners with the complaint shows that M/s. K.C. Constructions and Company (through its partners, the Petitioners) had collected payment of Rs.55,00,000/- (Rupees Fifty Five Lakhs only) from the Complainants and agreed to transfer the said property for a total price of Rs.21,00,00,000/- (Rupees Twenty One Crores only). Thus, the investigation, *prima facie*, reveals that M/s. K.C. Constructions and Company and its partners, i.e. the Petitioners, have made deceitful and false representations to the Complainants with the knowledge that these representations were false.

iv) Statement of a witness recorded during the course of investigation has revealed that the property situated at Survey No.74 located at Siolim Bardez, which was offered for sale by the Petitioners to the said witness, is the same property that is offered for sale to the Complainants in the present case. The said witness has admitted to have paid an amount of Rs.35,00,000/- (Thirty Five Lakhs only) as an advance to the Petitioners in respect of the same property. This demonstrates that the Petitioners have entered into MOUs with multiple persons in respect of the same property and on the strength of false representations induced them to part with substantial sums of money. The investigation is underway to unearth the extent of such instances.

v) Investigation has yielded that the Petitioners have used the same *modus operandi* in respect of property bearing Survey No.95/1 of Village Arpora Nagoa, which was offered for sale to the aforesaid witness as well as the Complainants in the present case and substantial monies were taken from the aforesaid witness as well as the Complainants in this case on the strength of the representations which the Petitioners knew to be false. The Petitioners have collected a sum of Rs.1,07,00,000/- (Rupees One Crore Seven lakhs only) from the Complainants in the present case and around Rs.58,50,000/- (Rupees Fifty Eight Lakhs Fifty Thousand only) from the aforesaid witness. These facts, which transpired during the course of investigation, clearly establish the ingredients of the offence of cheating and criminal conspiracy.

*Thirdly*, as seen from the replies of the State, the investigation is at a nascent stage. There are more than sixty owners related to the said properties. The Investigating Agency is examining whether these owners/co-owners have given any authority to the Petitioners to enter into any MOU with prospective buyers like the Complainants and to accept the payment from them. The Investigating Agency is in the process of recording statements of witnesses, verifying documentary material and examining the authenticity of POAs, receipts and the related records.

*Fourthly*, the investigation also reveals that the Petitioners have suppressed pending inventory proceedings, civil suits and title disputes, and simultaneously dealt with multiple purchasers in respect of the same

properties while accepting substantial sums from them, being fully aware that no legitimate transfer could be effected.

**12.** Dealing with the submissions of the respective parties, the Petitioners have submitted that they were merely property aggregators, who were mandated by the respective owners to take possession of the properties, clear the encumbrances and market the property in terms of the MOUs executed between the owners and the Complainants. Therefore, any acts of omission or commission or representations, if any, were made by the owners and not by the Petitioners. The allegations in the complaint and the investigation carried out by the Police, however, reveal, *prima facie*, that the Complainants were induced to enter into different transactions with the Petitioners, which were reduced into writing vide six MOUs executed between the Petitioners and the Complainants, on the strength of certain representations, which were made by the Petitioners. The Petitioners represented that they were authorised by the owners of the respective properties and that the properties being offered for sale were unencumbered and with a clear marketable title with the right of disposition with the Petitioners or likely to be made so within a short time. Relying on these representations, the Complainants were induced to pay an amount of approximately Rs.3,70,00,000/- (Rupees Three Crores Seventy Lakhs only) to the Petitioners over a period of time. The investigation has exposed the falsity of the representations made by the Petitioners. Some of the documents supplied by the Petitioner No.1 to the Police are manipulated in such a way so as to hide the address, Aadhaar and PAN details of various person whose names are reflected in the documents. Investigation has further

revealed that the Petitioners have used the same *modus operandi* in respect of the same property with another person. The statement of the said person recorded by the Police clearly reveals that he was also duped by the Petitioners to the extent of Rs.35,00,000/- (Rupees Thirty Five Lakhs only), which he paid as an advance to the Petitioners in respect of the same property. Thus, investigation indicates that the Petitioners have entered into MOUs with multiple persons in respect of the same property to induce them to part with substantial sums of money. The investigation has also revealed that the Petitioners have suppressed pending inventory proceedings, civil suits, title disputes and simultaneously dealt with multiple purchasers with respect to the same property. At the time of making the representations, the Petitioners were aware that they did not possess authority from all the owners, that inventory proceedings and title related litigations were pending, which made legal alienation of the properties impermissible. Suppressing these facts and representing themselves to be duly authorised to sell the properties, the Petitioners not only induced the complainants but also another individual to part with substantial sums of money. Thus, *prima facie*, the Petitioners have practised fraud and deception at the very inception of their dealings with the Complainants. It is not the case that there is a subsequent breach of promise or a failure to adhere to the terms of the MOUs and thus the essential ingredients of the offence of cheating, namely deception/fraud from the inception of the transaction, are disclosed, *prima facie*, qua the Petitioners. Dealing with the issue of quashing of an FIR alleging cheating, the Hon'ble

Supreme Court in the matter of *Hridaya Ranjan Prasad Verma V/s. State of Bihar*<sup>3</sup>, observed thus:

*“13. Cheating is defined in Section 415 of the Code as:*

*“415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.*

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

*The section requires—*

- (1) deception of any person;*
- (2)(a) fraudulently or dishonestly inducing that person*
  - (i) to deliver any property to any person, or*
  - (ii) to consent that any person shall retain any property; or*
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

*14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*

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<sup>3</sup> 2000 (3) Supreme 13/(2000) 4 SCC 168

*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 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.”*

**13.** The Petitioners have argued that the commercial dispute between the Petitioners and the Complainants has been given the colour of a criminal offence by the Police. However, the allegations in the FIR and the material collected by the Investigating Agency, as highlighted in the preceding paragraph, establish, *prima facie*, the ingredients necessary to attract the offence of cheating. A profitable reference can be made to the judgment of *M/s. Indian Oil Corporation V/s. M/s. NEPC India Ltd. and Ors.* (supra), where the Hon’ble Supreme Court, while dealing with the power of the High Court to quash criminal proceedings, has observed as under :

*“9(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere*

*fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”*

**14.** The Petitioners have also urged that arbitration proceedings are invoked and pending by and between the Petitioners and the Complainants. It is a trite law that in certain cases the very same set of facts, which may give rise to remedies in civil as well as criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion proceedings in criminal law, as observed by the Hon’ble Supreme Court in the matter of ***K. Jagadish V/s. Udaya Kumar G.S. and Anr.***<sup>4</sup>.

**15.** *Lastly*, the Petitioners have contended that there were several discrepancies in the MOUs, the Complainants were aware of the legal deficiencies, pending inventory proceedings, tenancy disputes, etc. and the complaints are filed against the Petitioners only to harass them. It is again a settled position of law that at the stage of quashing of an FIR, the uncontroverted allegations in the complaint, FIR and the material collected by the investigation have to be seen. The veracity of the allegations must not be examined and disputed questions of fact, being triable issues, should be best left to be tested on the touchstone of a trial. In other words, this Court cannot conduct an exercise of examining whether the Complainants were aware of the legal deficiencies, as sought to be canvassed by the Petitioners.

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<sup>4</sup> (2020) 14 SCC 552

16. While setting out the parameters of quashing of an FIR, the Hon'ble Supreme Court has held that 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 an offence and make out a case against the accused, the inherent powers ought not to be exercised by this Court. In the judgment of *M/s Neeharika Infrastructure Private Limited V/s. State of Maharashtra and Ors.*<sup>5</sup>, the Hon'ble Supreme Court summarising the principles of law, dealing with the parameters for exercise of the inherent powers under Section 482 of CrPC (Section 528 of BNSS, 2023) and/or under Article 226 of the Constitution of India has observed that :

*“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of King Emperor V/s. Khawaja Nazir Ahmad – AIR 1945 PC 18, the following principles of law emerge:*

- i) 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;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) 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;*
- iv) 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*

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<sup>5</sup> 2021 Supreme (SC) 199

*the context of the death penalty, as explained previously by this Court);*

*v) 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;*

*vi) Criminal proceedings ought not to be scuttled at the initial stage;*

*vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*

*viii) 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.*

*ix) The functions of the judiciary and the police are complementary, not overlapping;*

*x) 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;*

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

*xii) 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;*

*xiii) 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;*

*xiv) 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 V/s. State of Punjab- AIR 1960 SC 866 (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and*

*xv) 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 the light of the aforesaid facts, submissions and the guiding principles of the Hon’ble Supreme Court, this is not a fit case to quash the FIR and the proceedings emanating therefrom, invoking the inherent and writ jurisdiction of this Court. As a consequence thereof, the Petition stands rejected. Rule is discharged.

**18.** It is clarified that observations made by this Court shall not be construed as an expression of opinion on the guilt or otherwise of the

Petitioners. The Trial Court shall not be influenced by any of the observations made hereinabove.

**ASHISH S. CHAVAN, J.**