

Patel Engineering Limited Vs. The State Of Karnataka

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SooperKanoon Citation : sooperkanoon.com/1235549

Court : Karnataka

Decided On : Aug-06-2024

Judge : M.Nagaprasanna

Appeal No. : CRL.P 6513/2024

Appellant : Patel Engineering Limited

Respondent : The State Of Karnataka

Advocate for Pet/Ap. : Sri. K.G. Raghavan

Judgement :

1 R Reserved on :

23. 07.2024 Pronounced on :

06. 08.2024 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE06H DAY OF AUGUST, 2024 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA CRIMINAL PETITION No.6513 OF 2024 BETWEEN:

1. . PATEL ENGINEERING LIMITED A COMPANY WITHIN THE MEANING OF THE COMPANIES ACT, 2013 HAVING ITS REGISTERED ADDRESS AT: PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102 REPRESENTED BY ITS AUTHORIZED SIGNATORY SHRI BABASAHEB MANYASAHEB GHORPADE2. SHRI RUPEN PATEL S/O PRAVINBHAI PATEL MANAGING

DIRECTOR PATEL ENGINEERING LIMITED AGED ABOUT 58 YEARS, HAVING OFFICE AT PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102. 3 . SMT. KAVITA S. SHIRVAIKAR (NAME INCORRECTLY STATED IN FIR AS KAVITHA SHIRVAIKAR) 2 W/O SHRI SANJIV SHIRVAIKAR DIRECTOR AND CHIEF FINANCIAL OFFICER PATEL ENGINEERING LIMITED AGED ABOUT 53 YEARS, HAVING OFFICE AT PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102. 4 . SHRI RAHUL A. AGARWAL S/O SHRI ARUN KUMAR AGARWAL SENIOR GENERAL MANAGER- FINANCE PATEL ENGINEERING LIMITED AGED ABOUT 42 YEARS HAVING OFFICE AT PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102. 5 . SHRI AMOL S. WARKE S/O SURESH WARKE JOINT GENERAL MANAGER- FINANCE PATEL ENGINEERING LIMITED AGED ABOUT 44 YEARS HAVING OFFICE AT: PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102. 6 . SHRI SANDEEP S. SHETTY S/O SHRI SEENA SHETTY CONSULTANT FOR PATEL ENGINEERING LIMITED AGED ABOUT 51 YEARS HAVING OFFICE AT PATEL ESTATES V ROAD JOGESHWARI (WEST) MUMBAI - 400 102. ... PETITIONERS (BY SRI K.G. RAGHAVAN, SR. ADVOCATE A/W SRI MANU P. KULKARNI, ADVOCATE) 3 AND:

1. . THE STATE OF KARNATAKA THROUGH HEBBAGODI POLICE STATION NEAR HEBBAGODI BUS STOP HEBBAGODI TOWN, ANEKAL TALUK BENGALURU - 562 125 REPRESENTED BY STATE PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA BENGALURU - 560 001. 2 . SHRI SALMAN KHAN S/O REHAMAN KHAN AGED ABOUT 28 YEARS, RESIDING AT KAVERIYAPPA LAYOUT MILLERS TANK BUND ROAD BENGALURU - 560 052. ... RESPONDENTS (BY SRI B.N. JAGADEESH, ADDL. SPP FOR R-1; SRI KIRAN S. JAVALI, SR. ADVOCATE A/W SRI GAURAV N., ADVOCATE FOR R-2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. QUASH THE FIR NO. 422/2024 DATED 26.06.2024 REGISTERED BY HEBBAGODI POLICE STATION, ANEKAL SUB-DIVISION BENGALURU DISTRICT (ANNEXURE A) IPC 1860 (U/S. 406, 420, 506(2)) IN 2d ADDITIONAL CIVIL JUDGE (Jr. Dn.) AND JMFC COURT ANEKAL BENGALURU RURAL DISTRICT; B. QUASH THE COMPLAINT DATED 26.06.2024 FILED BY THE 4th RESPONDENT NO. 2 BEFORE THE RESPONDENT NO. 1 POLICE

(ANNEXURE B). THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 23.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA CAV

ORDER

(PER: THE HON'BLE MR JUSTICE M.NAGAPRASANNA) The petitioners/accused 1 to 6 are before this Court calling in question a crime in Crime No.422 of 2024 registered for offences punishable under Sections 406, 420 and 506(2) of the IPC pending before the II Additional Civil Judge (Junior Division) and JMFC, Anekal, Bengaluru.

2. Facts, in brief, germane are as follows:- 1st petitioner/Patel Engineering Company (the Company for short) is a Company incorporated under the provisions of the Companies Act, 2013 and is said to be engaged in construction of dams, bridges, tunnels, roads, piling works, industrial structures, 5 real estate and is said to be a public limited company in the Bombay Stock Exchange and the National Stock Exchange. The 2nd respondent is the complainant. The Company and the 2nd petitioner/the Chairman and Managing Director of the Company who is now said to be no more, owned certain properties measuring about 103 acres in various survey numbers in Hulimangala, Thirupalya and Maragondanahalli, Jigani Hobli, Anekal Taluk, Bengaluru (the aggregate property) and desirous of developing into an integrated township on the property had applied to the State Government seeking requisite permission to develop the lands as integrated township in the name and style of Neotown.

3. One Gulam Mustafa, of Gulam Mustafa Enterprises Pvt. Ltd., approached petitioners 1 and 2 being desirous of developing the said aggregate property. In terms of talks of the 2nd petitioner indulged with Gulam Mustafa, they enter into a Memorandum of Understanding (MoU for short) on 15-03-2016. The MoU was for the purpose of development of the property as noticed hereinabove. Post execution of MoU, the parties enter into sale deed and Joint Development

Agreements (JDAs for short) with regard to various 6 packets or parcels of lands in the property. Of the agreements so entered, the subject list concerns two particular agreements in Sy.No.30/1 measuring 32 guntas, Sy.No.30/3 measuring 33 guntas, Sy.No.31 measuring 1 acre 6 guntas, Sy.No.43 measuring 1 acre 32 guntas, Sy.No.44/6 measuring 35 guntas of Maragondanalli Village, Jigani Hobli (the Schedule property) and Sy.No.352 measuring 4 acres 38 guntas situated at Hullimangala Village, Jigani Hobli, Anekal Taluk, Bengaluru (Townsville property).

4. On 21-11-2017 the Company and Gulam Mustafa Infinite Dwelling (India) Private Limited (GM infinite) took finance assistance from State Bank of India for sanction of loan facility. The Company which was the legal owner of the land was insisted by the Bank to give a corporate guarantee towards the finance availed of by the other parties to the JDA. Based on the representations of all the parties, the Company agreed to give a corporate guarantee. The corporate guarantee was submitted by the Company to the Bank on 06-07-2018. After about 5 years of the JDA availing of the loan, the GM Infinite is said to have approached the Company 7 expressing its intention to purchase the schedule property through its group Company Azeem Infinite Dwelling (India) Private Limited (Azeem Infinite for short). These are the broad focus of the agreements that are entered into between the parties.

5. On 08-12-2022 another agreement or a term sheet comes to be signed for a buyout of certain packets of property as aforesaid. Since the Company had mortgaged the properties to State Bank of India and the loan became sticky, the Bank initiated SARFAESI proceedings in respect of the said property and sought to invoke the guarantee given by the Company to the full extent of ` 64,08,12,642/- . Since several disputes were impending between the parties, the Company sought to enforce the arbitration clause in the agreement by filing a petition under Section 9 of the Arbitration and Conciliation Act before the Commercial Court at Bengaluru in Commercial A.A.No.353 of 2023. Simultaneously the Company also filed a Commercial Original Suit in O.S.No.1159 of 2023 before the Commercial Court against State Bank of India seeking a declaration that no liability accrues upon the Company under a corporate guarantee and sought to determine the liability of the Company 8 under the guarantee. The said suit is pending before the

concerned Court. The State Bank of India filed an insolvency petition invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Company/1st petitioner before the NCLT, Mumbai. The said proceedings are pending. During the pendency of all these proceedings comes the impugned crime being registered by the 2nd respondent/complainant.

6. It is the averment in the petition that in the first week of June 2024 meetings were held between the 2nd petitioner, Mr. Yusuf Shareef and Mr. Gulam Mustafa and certain agreements were drawn between the parties. Alleging breach of those agreements and coercion in signing those agreements, the complainant registered the impugned complaint for offences punishable under Sections 406 and 420 of the IPC. Immediately on registration of the complaint, the Company and its office bearers are before this Court in the subject petition. During the subsistence of the petition, it appears that the 2nd petitioner dies. Therefore, the signatory to all the documents i.e., the 2nd petitioner is no more. 9

7. Heard Sri K.G. Raghavan, learned senior counsel appearing for the petitioners, Sri B.N. Jagadeesh, learned Additional Special Public Prosecutor for respondent No.1 and Sri Kiran S.Javali, learned senior counsel appearing for respondent No.2.

8. The learned senior counsel Sri K.G. Raghavan appearing for the petitioners would vehemently contend that a pure commercial transaction between the two is projected to be a crime by setting the criminal law into motion. The facts of the case would not attract even an iota of ingredients of Sections 406 and 420 of the IPC. He would submit that such commercial transactions which have been rendered a colour of crime should not be permitted to be continued, as it would become abuse of the process of law. He would further contend that crux of the complaint is that of `36/- crores that the complainant is said to have handed over pursuant to an agreement which was signed with eyes wide open and, therefore he cannot wriggle out of the agreement, that too by registration of the complaint. He would seek allowing of the petition. 10

9. Per contra, the learned senior counsel Sri Kiran S.Javali appearing for the 2nd respondent/complainant would vehemently refute the submissions to contend that

it is not purely a commercial transaction but breach of trust. `36/- crores are handed over to the Company. The Complainant did not know that he had to fulfill the corporate guarantee or discharge the guarantee with the Bank. It is his submission that the complainant is an illiterate; he does not know what is in the agreement that he was forced to sign it. Therefore, it is a matter of trial for the petitioners to come out clean. It is his submission that given fact may give rise both civil and criminal laws. Merely because the action appears to be civil, the criminal proceedings should not be quashed. Both the learned senior counsel representing the petitioners and the respondents have relied on several judgments which would all bear consideration in the course of the order qua their relevance.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. 11

11. The afore-narrated facts are a matter of record, and too intricate they are. The agreements between the parties, the proceedings before the civil Court, commercial Court and their pendency are all a matter of record. A complaint comes to be registered by the 2nd respondent/complainant on 26-06-2024 alleging all the offences against the 2nd petitioner one Rupen Patel who is no more today. Since the entire issue now springs from the complaint, I deem it appropriate to notice it. It reads as follows: ZUMERA CONSTRUCTION PRIVATE LIMITED TO:
Date:

26. 06-2024 Hebbagodi Police Station, Electronic City, Bommasandra, Bengaluru, Karnataka 560 009. FROM: Mr.Salman Khan, Authorized Signatory of M/s Zumera Construction (P) Ltd. Aged about 28 years, Having office at No.22/1, Kaveriappa Lay-out, Millers Tank Bund Road, Bangalore-560052 Mob No:9845956999 Sub: Complaint against Patel Engineering Limited, Mr. Rupen Patel, Kavitha Shirvaikar, Rahul Agarwal, Amol Warke, Sandeep Shetty, Tamoojith (ICICI Bank Chief Manager) and their 17 banks consortium lenders for criminal conspiracy and 12 cheating to a sum of Rs.36,00,00,000/- (Rupees Thirty Six Crores only) in the form of sale consideration inducing us to buy the property bearing Sy.No.43, 35, 30/1, 30/3 & 31 measuring 5 acres 18 guntas of Maragondanahalli and Thirupalya village, Jigani Hobli, Anekal Taluk and after full

payment the aforesaid persons did not come forward to execute sale deed reg

Respected Sir, With reference to the above subject matter, we would like to submit your kind notice that, we have submitted a representation to the ICICI Bank and Mr. Rupen Patel on 04-07- 2023 expressing our interest to purchase the subject property for a total sale consideration of Rs.36/- crores along with EMD (Earned Money Deposit) of Rs.3,60,00,000/- (Rupees Three Crore Sixty Lakhs Only) deposited on the very same day and after detailed discussions held between me and Mr. Rupen Patel he agreed to sell the subject property for a sum of Rs.36 crores and simultaneously requested to the ICICI Bank vide his letter dated 28-07-2023 for issuance of NOC for sale of the subject property in favour of us. Simultaneously, the ICICI Bank issued a letter to Zumera Construction Pvt. Ltd. and Mr. Rupen Patel who is the director Patel engineering Limited stating that the Bank will issue a NOC subject to deposit of the total sale consideration of Rs.36,00,00,000/- (Rupees Thirty Six Crores only) in the escrow account No.039305006415 maintained with ICICI Bank Limited. Thus, we have deposited entire sale consideration of Rs.36/- crores to the ICICI Bank and requested to Rupen Patel to execute the sale deed in the name of M/s Zumera Constructions Pvt. Ltd. and in this regard, the meeting was called on by Mr. Rupen Patel in his office at Mumbai and accordingly, I went to their office on 6th May and requested to execute a sale deed in respect of the subject property. Immediately, Mr. Rupen Patel pointed his gun at my head and threatened me to sign the document papers which was already prepared by him and I have signed the documents shown by him under the threat of death and thereafter the 13 aforesaid Mr. Rupen Patel handed over one set of original papers to me. I am an un-educated and not even to write or read the contents of the said documents. Immediately, I went to my advocate office and shown the above said document and after gone through the said documents, I came to know that the aforesaid Rupen Patel has played fraud on me by imposing several conditions in order to execution of sale deed in the following manner: a) Discharge, Mr. Rupen Patel from the Corporate Guarantee dated 06-07-2018 execute by Patel Engineering in favour of the State Bank of India by making payment of Rs.45/- Crores or such amount required by the State Bank of India to discharge the corporate guarantee. b) Mr. Yousuf Shariff has given a guarantee to Mr. Rupen Patel that on the failure on the part of GM Infinite

Dwelling (India) Private Limited/ Mr. Gulam Mustafa to pay an amount of Rs.45/- Crores to State Bank of India on such an event Mr. Yousuf Shariff is under obligation to pay the aforesaid amount to the SBI and after payment of the aforesaid sum, Mr. Rupen Patel shall execute a formal sale deed in respect of the subject property. It is submitted that during the time of purchase of the subject land there was no conditions regarding to the payment of discharge the above said debts which was entered between Mr. Rupen Patel and Gulam Mustafa and we have no way concerned to the aforesaid GM Infinite/ Gulam Mustafa and also no knowledge regarding the internal communications /documents executed between Mr. Rupen Patel and Gulam Mustafa, hence the aforesaid conditions would not apply for the execution of sale deed and I have signed the aforesaid bogus documents under threat of death and hence the said documents would not consider as a valid documents and hence my advocate directed me to file a criminal case against him and therefore there was some delay for filing of this complaint. It is submitted that the ICICI Bank and their consortium lenders (17 Banks) has received total sale 14 consideration of Rs.36/- crores on behalf of Mr. Rupen Patel and after receipt of the entire consideration, we have submitted several letters through e-mail communications directing them to direct Mr. Rupen Patel to execute sale deed in the name of M/s Zumera Construction Pvt. Ltd. but till date there was no action taken in this regard and hence all of them have cheated to us by inducing me to pay the huge amount of Rs.36/- crores and after full payment they are not ready to complete the sale transactions in order to cheat us. He has also frauded to many banks and cheated many other public persons also has many other cases under criminal and other offences against him, Cases mentioned below; I. Crime No.574/2014 filed in additional Civil Judge Junior Division, Anekal, Bangalore Rural District for the offence under Section 323, 406, 420, 506 read with Section 149 of IPC. II. The CBI has registered the case against him and the F.I.R No.RC0042022 A0005 dated 20-04-2022 for the offence punishable under Section 5(1)(D) and Section 5(2) of the Jammu Kashmir Prevention of Corruption Act and under Section 120(b) of IPC. III. W.P.No.(C) 699 of 2024 filed in High Court of Jammu Kashmir and Ladakh at Jammu. IV. The securities of exchange board of India have registered the case against Rupen Patel UTM/GM/CFD28/2019-20 UNDER SECTION111) AND112) h of securities of

exchange board of India act. V. Income tax Appellate Tribunal has registered the case against Rupen Patel, Deputy Commissioner of Income- Tax CC25 ayakharbhavan M.K. Road, Mumbai. And its ITA No.3071 and 3072/2015 Mumbai for the offence punishable under Section 135 (c) of IT Act. VI. Commercial appeal No.60 of 2024 in High Court of Karnataka. 15 VII. Income tax Appellate Tribunal has registered the case against Rupen Patel under ITA No.2845/ & 2068/ MUM/2017 and C.O. No.265 & 355/MUM/2018 and ITA No.7260/MUM/2018 in Mumbai appeal Between Patel Engineering Limited v. Praham India LLP and others. Hence, we are requesting you to register the complaint against Patel Engineering Limited, Mr. Rupen Patel, Kavitha Shivaikar, Rahul Agarwal, Amol Warke, Sandeep Shetty, Tamoojith (ICICI Bank Chief Manager), Angan and their 17 banks consortium lenders for the offence punishable under Section 420, 406, 505(2) and other provisions of Indian Penal Code for criminal conspiracy, cheating and other offences in the ends of justice. Thanking you, Yours truly, M/s Zumera Construction Pvt. Ltd. Sd/- Authorised Signatory.

(Emphasis added)

The complaint is registered before the jurisdictional Police on the score that the 2nd petitioner has defrauded many Banks, cheated many other persons and cases against him are pending all over. Therefore, it is urged that investigation be conducted on registration of the complaint against several persons who are all office bearers of the 1st petitioner/Company. The complaint has a history, facts of which are narrated hereinabove. What led to registration of crime is the agreement that is entered into between 16 the parties on 06-06-2024. Certain covenants of the agreement are germane to be noticed and they read as follows: NOW THIS AGEEEMENT FOR SALE WITNESSETH AS UNDER:- 1. The Recitals above form an integral part of this Agreement and are not repeated in the operative part only for the sake of brevity and should be deemed to be incorporated in the operative part also as if the same were set out hereunder and reproduced verbatim.

2. In the premises aforesaid and in consideration of the aggregate sum of Rs.36,00,00,000/- (Rupees Thirty Six Crores only) agreed to paid by the Purchaser to the Second Vendor, the Vendors do and each of them doth hereby

irrevocably agreed to sell, assign, transfer and convey all their respective right, title, interest, share, claim and demand in to upon the Schedule Property on as is where is basis together with the benefits of the Said Approvals and all rights of and incidental thereto.

3. That in pursuance of the foregoing covenants, the Purchaser, as agreed have on this day paid and deposited the Total Sale Consideration of Rs.36,00,00,000/- (Rupees Thirty Six Crores only) to the ICICI Bank (less TDS thereon of Rs.36,00,000), on behalf of Vendors towards the purchase of the Schedule Property in the following manner: A) Rs.3,60,00,000/- (Rupees Three Crores Sixty Lakhs only) dated 10-07-2023 paid by way of Demand Draft vide DD No.007761 drawn on HDFC Bank, Millers bhRoad Branch, Bangalore. B) Rs.4,00,00,000/- (Rupees Four Crores only) paid by way of RTGS vide UTR No.HDFCR52023091688317397 dated 16-09-2023 drawn on HDFC Bank, Millers Road Branch, Bangalore. 17 C) Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only) paid by way of RTGS vide UTR No.HDFCR52023092500363089 dated 25-09-2023 drawn on HDFC Bank, Millers Road Branch, Bangalore. D) Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) paid by way of RTGS vide UTR No.HDFCR52020092790957561 dated 27-09-2023 drawn on HDFC Bank, Millers Road Branch, Bangalore. E) Rs.19,14,00,000/- (Rupees Nineteen Crore Fourteen Lakhs only) paid by way of RTGS vide UTR No.HDFCR5202404159826700 Dated 15-04-2024 drawn on HDFC Bank, Millers Road Branch, Bangalore. F) Rs.6,00,00,000/- (Rupees six crore only) paid by way of RTGS vide UTR No.HDFCR52024060162515151 dated 01-06-2024 drawn on HDFC Bank, Millers Road Branch, Bangalore. G) Rs.36,00,000/- (Rupees Thirty Six Lakhs only) is the total sale consideration amount and it will be paid towards Income Tax within a stipulated period as per the provisions of Section 194-1A of the Income Tax Act, 1961 before registration of Deed. H) The physical possession is being handed over to the Purchaser from the date of this Agreement.

4. The Vendors shall, in fulfillment of the following condition for which the Purchaser and its Chairman Mr. Yousuf Shairff has given a guarantee to Vendor No.2 that on failure on the part of GM Infinite Dwelling (India) Private Limited/Mr. Gulam Mustafa to pay within a period of 60 days from the execution of the present

Agreement, the Purchaser shall pay the said dues as per the below mentioned conditions within a period of 15 days and shall execute and enter into a formal Sale Deed in favour of the Purchaser and shall put the Purchaser in quiet, vacant, exclusive and peaceful possession of the Schedule Property, free from any lien, attachments, acquisitions, encumbrance, assignments or trust of any nature whatsoever and shall also simultaneously hand over to 18 the Purchaser all original title deeds pertaining to the Schedule property:- (i) discharge the Vendor No.2 from the Corporate Guarantee dated 6th July, 2018 executed by the Vendor No.2 along with others in favour of the State Bank of India by making payment of Rs.45,00,00,000/- (Rupees Forty Five Crores only) or such amounts required by the State Bank of India to discharge the Corporate Guarantee.

5. The Vendors agree that the Purchaser shall have an option to sell the schedule property to a third party, if the third party is willing to make the payment of Rs.45,00,00,000/- (Rupees Forty Five Crores) or such amounts required by the State Bank of India to discharge the Corporate Guarantee of PEL. The Vendor No.2 shall have an option to issue a letter to the Purchaser to negotiate for the sale of the said Schedule Property to a third party at no cost and damages to the Vendors.

(Emphasis added)

The conditions in the agreement are as afore-noted. One such condition is discharge of Vendor No.2, the 1st petitioner herein from the corporate guarantee dated 06-07-2018 executed by him in favour of State Bank of India by making a payment of ` 45/- crores. The party agreed to the said condition. After execution of the document comes the afore-quoted complaint on the score that the complainant has been defrauded by inclusion of a clause, which the complainant did not know.

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12. The Company and the complainant are in dispute in several proceedings. The 2nd petitioner is no more today and nothing can be driven against the 2nd petitioner, who is the signatory to all the documents. Who are caught in the cross-fire are the office bearers of the Company. The cross-fire needs to be doused not by setting the criminal law into motion, but by other methods available in law, as

this is purely a commercial transaction arising out of an agreement between the parties and the allegation is regarding the contents of the agreement. What is alleged is violation of Sections 406 and 420 of the IPC. The said sections read as follows: 406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. 420. Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. 20 For an offence under Section 406, the ingredients under Section 405 are necessary to be present and for an offence under Section 420, the ingredients of Section 415 are required to be present. They read as follows: 405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust. Explanation 1.-A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid. Explanation 2.-A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established

under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid. 21 415. Cheating.-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. Section 405 mandates entrustment of a property and its misappropriation with dishonest intention. There is neither entrustment nor misappropriation, as the parties have agreed to certain terms and conditions. An agreement between the parties would not mean the offence or cannot be alleged of criminal breach of trust merely because there is breach of conditions of agreement. Section 415 mandates luring of the complainant by the accused with a dishonest intention right from the inception. This is again would not become applicable to the facts of the case at hand, as the dispute arises out of an agreement.

13. As observed in the course of the order, there are several proceedings pending between the parties. It was always open to the 22 complainant to initiate civil proceedings in a manner known to law and not set the criminal law into motion on breach of agreements, on the specious plea that he is unlettered. On the said the score, permitting further investigation even, in the case at hand, would run foul of the judgment of the Apex Court in the case of VIJAY KUMAR GHAI v. STATE OF WEST BENGAL¹ where in it is held as follows: 27. Section 405 IPC defines criminal breach of trust which reads as under: 405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such

trust, or wilfully suffers any other person so to do, commits criminal breach of trust. The essential ingredients of the offence of criminal breach of trust are: (1) The accused must be entrusted with the property or with dominion over it, (2) The person so entrusted must use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation, 1 (2022) 7 SCC12423 (a) of any direction of law prescribing the mode in which such trust is to be discharged, or; (b) of any legal contract made touching the discharge of such trust.

28. Entrustment of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, in any manner entrusted with property. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

29. The definition in the section does not restrict the property to movables or immovables alone. This Court in *R.K. Dalmia v. Delhi Admn.* [*R.K. Dalmia v. Delhi Admn.*, (1963) 1 SCR253: AIR 1962 SC1821] held that the word property is used in the Code in a much wider sense than the expression movable property. There is no good reason to restrict the meaning of the word property to movable property only when it is used without any qualification in Section 405.

30. In *Sudhir Shantilal Mehta v. CBI* [*Sudhir Shantilal Mehta v. CBI*, (2009) 8 SCC1 (2009) 3 SCC (Cri) 646]. it was observed that the act of criminal breach of trust would, inter alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

31. Section 415 IPC defines cheating which reads as under: 415. Cheating.-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. The essential ingredients of the offence of cheating are:

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.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under: 420. Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved: (i) The representation made by the person was false. (ii) The accused had prior knowledge that the representation he

made was false. (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made. (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in *R.K. Vijayasathya v. Sudha Seetharam* [*R.K. Vijayasathya v. Sudha Seetharam*, (2019) 16 SCC739: (2020) 2 SCC (Cri) 454]., the ingredients to constitute an offence under Section 420 are as follows: (i) a person must commit the offence of cheating under Section 415; and (ii) the person cheated must be dishonestly induced to: (a) deliver property to any person; or b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

37. The following observation made by this Court in *Uma Shankar Gopalika v. State of Bihar* [*Uma Shankar Gopalika v. State of Bihar*, (2005) 10 SCC336: (2006) 2 SCC26(Cri) 49]. with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7) 6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled 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 the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482Cr PC which it has erroneously refused.

38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC168:

2000. SCC (Cri) 786]. , the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants. (Emphasis supplied) Later, the Apex Court in the case of *MITESH KUMAR J.SHA v. STATE OF KARNATAKA*² has held as follows: Issues 24. Having perused the relevant facts and contentions made by the appellants and the respondents herein in our considered opinion, the following three key issues require determination in the instant case: (i) Whether the necessary ingredients of the offences punishable under Sections 406, 419 and 420 are prima facie made out?. (ii) Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?. (iii) Whether the dispute is one of entirely civil nature and therefore liable to be quashed?. Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?.

25. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the appellants herein had been charged with, are prima facie made out. The

relevant sections read as follows:

2. (2022)¹⁴ SCC57228 405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust. Explanation 1.-A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid. Explanation 2.-A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid. *** 406. Punishment for criminal breach of trust.-Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. *** 419. Punishment for cheating by personation.- Whoever cheats by personation shall be punished with 29 imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any

person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

26. In the instant case, the complaint levelled against the appellants herein is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under Section 405 of the Penal Code, 1860, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under Section 415 of the Penal Code, 1860, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed dishonest intention, as a precondition for even prima facie establishing the commission of the said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.

27. Coming to the facts of the case at hands, the contested contention between the parties is that the builder company had sold four excess flats beyond its share, in terms of the JDA and supplementary agreement entered into between the parties. Respondent 2 contends that builder company which was entitled to sell only 9 flats in its favour, has instead executed sale deed for 13 flats in total. Thus, the company simply could not have sold the flats beyond 9 flats for which it was authorised and resultantly cannot evade criminal liability on a mere premise that a civil dispute is already pending between the parties. 30

28. The appellants on the other hand contend that in terms of a subsequent MoU dated 19-2-2015, it was mutually agreed between the parties, that partial payment for a loan amount borrowed by Respondent 2 from Religare Finvest Ltd., would be paid out from the sale proceeds of the said development project undertaken by both the parties. Pursuant to this MoU, the appellants had agreed to get an NOC for 15 flats by making payment of Rs 40,00,000 for each flat.

29. The key contention, and also the central point of dispute, made by the appellants is that, it was specifically agreed between the parties that the appellants would be entitled to sell additional flats beyond their share, as adjustments for payment made to Religare Finvest Ltd. on behalf of Respondent 2. It is further contended that Respondent 2 had also agreed to execute a ratification deed to the JDA and GPA eventually, which would have formally authorised the appellants to sell additional apartments.

30. Nonetheless, the ratification deed was never made and Respondent 2 subsequently even revoked the GPA unilaterally, contending that the terms of JDA were not followed. It was only after revocation of GPA that the company filed an application for arbitration seeking interim orders to restrain Respondent 2 from alienating the disputed property. Simultaneously, while this dispute was pending adjudication before the arbitrator Respondent 2 filed a criminal complaint against the appellants.

31. At this juncture, it further becomes pertinent to mention that eventually though both the parties partly succeeded before the arbitrator, in terms of their respective claims, the arbitrator observed that GPA indeed could not have been revoked unilaterally at the instance of Respondent 2. Aggrieved, Respondent 2 thereafter even preferred a challenge to the award passed by the arbitrator. Moreover, pending arbitration proceedings issue regarding selling of excess flats at the instance of the appellants, was also withdrawn by Respondent 2 seeking liberty to pursue his claim with regard to selling of four excess flats in pending civil proceedings. 31

32. Upon a careful assessment of such facts, by no stretch can it be concluded that the appellants herein have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent 2. Here, it must also be borne in mind that subsequent to the revocation of GPA, it was the appellants herein who had first resorted to arbitration proceedings on 2-3- 2016 for redressal of dispute between the parties, to which Respondent 2 had accordingly filed his statement of objections dated 9-3-2016. It was only on 29-3-2016 that Respondent 2 had filed the FIR in question bearing Crime No.185/2016 against the appellants. Moreover,

it was Respondent 2 who had withdrawn his prayer with respect to selling of four excess flats by the appellants, only to pursue the same in civil proceedings.

33. At this stage, by placing reliance on the judgment of this Court in *Priti Saraf v. State (NCT of Delhi)* [*Priti Saraf v. State (NCT of Delhi)*, (2021) 16 SCC142:

2021. SCC OnLine SC206 and *Sri Krishna Agencies v. State of A.P.* [*Sri Krishna Agencies v. State of A.P.*, (2009) 1 SCC69: (2009) 1 SCC (Civ) 18 : (2009) 1 SCC (Cri) 241]. , it has been further submitted by Respondent 2 that the appellants cannot evade a criminal case by merely contending that the person whose property has been sold has filed a civil suit for recovery of the property, or that the dispute had been referred to arbitration.

34. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even *prima facie* made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

35. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs. 32 Whether sale of excess flats even if made amounts to a mere breach of contract?.

36. This Court in *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC168:

2000. SCC (Cri) 786]. , has observed : (SCC p. 177, para

15) 15. 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 to 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.

37. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under Sections 405, 419 and 420 is not made out, the case at hand, in our considered opinion is a suitable case necessitating intervention of this Court. Whether the dispute is one of entirely civil nature and therefore liable to be quashed?.

38. Having considered the relevant arguments of the parties and decisions of this Court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this Court, by way of an observation rendered in Indian Oil Corpn. v. NEPC India Ltd. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC736: (2006) 3 SCC (Cri) 188]. , as under : (SCC p. 749, para

14) 14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

39. It was also observed : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC736: (2006) 3 SCC (Cri) 188]. , SCC pp. 748-49, para

13) 13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is

obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

40. On an earlier occasion, in *G. Sagar Suri v. State of U.P.* [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC636:

2000. SCC (Cri) 513]. , this Court has also observed : (SCC p. 643, para

8) 8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under 34 Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

41. Furthermore, in the landmark judgment of *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC335:

1992. SCC (Cri) 426]. regarding exercise of inherent powers under Section 482Cr PC, this Court has laid down the following categories of instances wherein inherent powers of the Court can be exercised in order to secure the ends of justice. These are : (SCC pp. 378-79, para

102) 102. (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 the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

42. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the abovesaid judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the appellants under Section 482Cr PC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal colour to it. (Emphasis supplied) Following the aforesaid judgments, the Apex Court in the case of KUNTI v. STATE OF UTTAR PRADESH³ has held as follows: . . .

6. Vide the impugned judgment dated 18-10-2019 [Kunti v. State of U.P., 2019 SCC OnLine All 7183], the learned Single Judge dismissed the application under Section 482Cr PC, not accepting the argument on the part of the appellant, that

the present Respondent 2 had an alternative remedy in the nature of a civil suit for the execution of the sale agreement. Relying on, in V. Ravi Kumar v. State [V. Ravi Kumar v. State, (2019) 14 SCC568 (2020) 1 SCC (Cri) 401]. , the prayer for quashing has been refused. 3 (2023) 6 SCC10936 7. It has been urged by way of this appeal arising out of SLP, that the agreement to sell was void ab initio, in light of Section 157-A, Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, whereby a person belonging to a Scheduled Caste cannot transfer property to any person not of a Scheduled Caste without prior permission of the Collector or District Magistrate concerned. Further it has been urged that the instant FIR has been lodged four years after the slated date of the execution of the sale deed. It is also submitted that the present agreement to sell is forged and in respect thereof, a report to the Senior Superintendent of Police stands filed.

8. We notice that the agreement to sell had been duly registered at the office of the Deputy Registrar, 1st, Office at Bulandshahr, and the complaint filed by the appellant, purporting that the same was forged, was filed on 11-5-2012, which is, incidentally, the same as the date of the reply to the legal notice sent by Respondent 2 herein, dated 8-5-2012, and is also four years from the date of the agreement.

9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This Court recently, in Sarabjit Kaur v. State of Punjab [Sarabjit Kaur v. State of Punjab, (2023) 5 SCC360 , observed that : (SCC p. 363, para

13) 13. 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 up promise will not be enough to initiate criminal proceedings.

10. A two-Judge Bench of this Court in ARCI v. Nimra Cerglass Technics (P) Ltd. [ARCI v. Nimra Cerglass Technics (P) Ltd., (2016) 1 SCC348: (2016) 1 SCC (Cri) 269]. , while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on the part of

37 the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In *Vijay Kumar Ghai v. State of W.B.* [*Vijay Kumar Ghai v. State of W.B.*, (2022) 7 SCC124: (2022) 2 SCC (Cri) 787]. , one of us, (Krishna Murari J.) observed in reference to earlier decisions as under : (SCC pp. 139-40, paras 24-25) 24. This Court in *G. Sagar Suri v. State of U.P.* [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC636:

2000. SCC (Cri) 513]. observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in *Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC736: (2006) 3 SCC (Cri) 188]. noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (*Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC736 (2006) 3 SCC (Cri) 188]. , SCC p. 749, para

13) 13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

12. Having regard to the above well-established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue.

13. In view of the above, the impugned judgment and order dated 18-10-2019 [*Kunti v. State of U.P.*, 2019 SCC OnLine All 7183]. passed by the High Court of Judicature at Allahabad, refusing to quash the FIR in question and Case No.6695 of 2012 arising out of Case Crime No.421 of 2012 under 38 Sections 406, 420, 467, 468, 417 and 418IPC bearing No.32337 of 2013 is set aside. The appeal is

allowed. (Emphasis supplied) The Apex Court in the case of VIJAY KUMAR GHAI (supra) has held that breach of agreement can never be a subject matter of criminal law set into motion, as such cases would be unjustifiably of a civil nature. In the light of the facts obtaining in the case at hand, as narrated hereinabove and the judgments rendered by the Apex Court quoted supra, if further proceedings are permitted to continue, it would undoubtedly become an abuse of the process of law and result in miscarriage of justice. The issue would be whether a FIR without permitting investigation could be quashed in such cases. This is also answered by the Apex Court in the case of MITESH KUMAR J.SHA (supra) holding that where the dispute is one of entirely civil nature, the crime should not be permitted to be investigated even.

14. In the aforesaid facts, it becomes germane to notice the judgment of the Apex Court in the case of MAHMOOD ALI v. 39 STATE OF UTTAR PRADESH⁴ wherein the Apex Court has held as follows: . . .

13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr PC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due

care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Cr PC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance 4 2023 SCC OnLine SC95040 the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC522 a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:- 5. 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 power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that 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.

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC866:

1960. Cri LJ1239 this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para

6) (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction; (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged; 41 (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.. (Emphasis supplied) 15. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No.127 of 2022 dated 04.06.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed. (Emphasis supplied) The Apex Court holds that when petitions are filed under Section 482 of the Cr.P.C., or under Article 226 of the Constitution to get the FIR quashed, essentially on the ground that it is either frivolous, vexatious or instituted with ulterior motives to wreak 42 vengeance or civil disputes or commercial transactions are projected to be a crime, the Court while exercising its jurisdiction under Article 482 of the Cr.P.C., should not restrict itself only to such of the cases, but is empowered to take into account overall circumstances and answer whether the crime should be permitted to be investigated into or not.

15. In the light of the afore-elucidated law by the Apex Court, I deem it appropriate to exercise the jurisdiction under Section 482 of the Cr.P.C. and obliterate the Damocles sword that hangs on the head of these petitioners, in the light of the fact that a pure commercial transaction or breach of an agreement between the parties is sought to be given a colour of crime; added to the fact that the signatory to all the documents, the 2nd petitioner is no more.

16. For all the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed. 43 (ii) The crime in Crime No.422 of 2024 registered by Hebbagodi Police Station, Anekal Sub-Division, Bangalore District and pending before the II Additional Civil Judge (Junior Division) & JMFC, Anekal, Bangalore Rural District stands quashed. (iii) The quashment of the proceedings will not come in the way of any mode of resolution of dispute to be instituted by the complainant against the petitioners. (iv) The observations made in the course of the order are only for the purpose of consideration of the case of the petitioners under Section 482 of the Cr.P.C., which would not bind, guide or influence any pending or to be instituted proceedings before any fora between the parties. Sd/- (M. NAGAPRASANNA) JUDGE Bkp CT:MJ

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