

# Mamatha Duggal vs State Of Karnataka on 17 September, 2024

**Author: Suraj Govindaraj**

**Bench: Suraj Govindaraj**

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NC: 2024:KHC:38972  
CRL.P No. 9337 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2024

BEFORE

®

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ  
CRIMINAL PETITION NO. 9337 OF 2018 (482(Cr.PC)  
/ 528(BNSS) -)

BETWEEN

MAMATHA DUGGAL,  
D/O PREM CHAND DUGGAL,  
AGED ABOUT 47 YEARS,  
R/AT NO.26/501,  
EAST END APARTMENT,  
MAYUR VIHAR, PH-1 EXTENSION,  
DELHI-110095.

...PETITIONER

(BY SRI: UJJAWAL ANAND SHARMA., ADVOCATE FOR  
SMT. MADHURI GAIKWAD V.S., ADVOCATE)

AND

Digitally  
signed by  
PRAKASH N  
Location:  
HIGH  
COURT OF  
KARNATAKA

1. STATE OF KARNATAKA  
BY THE POLICE OF  
ASHOKNAGAR POLICE STATION,  
REPRESENTED BY:  
THE STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
BENGALURU-560 001.
2. B. SUBHASHCHANDRA SHETTY,  
AGED ABOUT 35 YEARS  
MANAGING DIRECTOR

PETE CHANNAPA INDUSTRIAL ESTATE,  
MAGADI MAIN ROAD, KAMAKSHIPALYA,  
BANGALORE-560079.

...RESPONDENTS

(BY SRI. K. NAGESHWARAPPA., HCGP FOR R1;  
SRI. S. SHAKAR SHETTY., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED SECTION 482 OF  
CRPC PRAYING TO QUASH THE FIR AGAINST HIM BEFORE  
THE ASHOK NAGAR POLICE STATION I.E., RESPONDENT  
NO.1 HEREIN IN CRIME NO.514/2017 FOR THE OFFENCES  
PUNISHABLE UNDER SECTIONS 406, 420 AD 34 OF IPC  
PENDING BEFORE THE LEARNED IV ADDITIONAL CHIEF  
METROPOLITAN, BANGALORE TO MEET THE ENDS OF  
JUSTICE.

THIS CRIMINAL PETITION COMING ON FOR ORDERS  
AND HAVING BEEN RESERVED FOR ORDERS ON  
16.07.2024, THIS DAY, THE COURT PRONOUNCED THE  
FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

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#### CAV ORDER

##### A. Background

1. The Petitioner is before this court seeking for the following reliefs:

"Quash the FIR against him before the Ashok Nagar Police Station i.e., Respondent No.1 herein in Crime No. 514/2017 for the offences punishable under Sections 406, 420 and 34 of IPC pending before the learned IV Additional Chief Metropolitan, Bangalore, to meet the ends of Justice."

2. Respondent No. 2 had lodged a complaint before Respondent No. 1, Ashok Nagar police station on 07.12.2017 claiming that he is the Managing Director of M/s. Confident Dental Equipment Limited, which is

the owner of a building bearing property No. 35/2 situated at Langford Cross Road consisting of 31 fully furnished rooms.

3. On 17.09.2012, one person calling himself as Mr.Nicu Iqbal, took the company's property on lease for residence/service apartment in the name of M/s. Nippon Infrastructure Company Pvt. Limited. Monthly rent was fixed at Rs. 6 lakhs with enhancement of

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5% for the first and second 11-month term and 7.5% for the last 11-month term, the lease being for 33 months.

4. Rentals were not paid from July 2014, the Directors were not available in the premises. Despite the expiry of the term, the properties have been held back by the accused. As on July 2014, there was a due of a sum of Rs. 2,70,50,000/- to be paid. The Directors of the company Mr. Iqbal and Mrs. Mamata Duggal, the Petitioner herein have absconded and certain others namely Javed Khan and Javed Rahmani are running the business and appropriating the income. Despite repeated requests, the staff are not furnishing any information regarding the whereabouts of Mr. Iqbal or Mrs. Mamata Duggal.

5. It is contended that the corporate veil has been used to cheat the lessor company. Further it is alleged that the accused are habitual offenders who have opened multiple sham companies to cheat owners of their premises and there is a modus operandi

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resorted to by them to abscond and take refuge under the corporate veil and cheat the concerned persons.

6. Along with the said complaint, a list of companies operated by Mr. Nicu Iqbal was attached, also the details of the mobile number and addresses were furnished. On the basis of the said complaint, F.I.R. Crime No. 514 of 2017 was registered on 07.12.2017 by the Ashok Nagar Police Station for the offences under section 406, 420 and 34 of the Indian Penal Code, 1860 against Mr. Nicu Iqbal, Mrs. Mamata Dugal, Javed Khan, Javed Rahmani and others. It is challenging the said registration of the F.I.R. that the Petitioners are before this court.

#### B. Submissions of Petitioners

7. The submission of Sri. Ujjawal Anand, learned counsel for the Petitioners is that,
- 7.1. There is no criminal liability of the Directors

when the company has not been made an

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accused in the F.I.R. His submission is that only the Directors have been arraigned as accused; the company is not arraigned as an accused. Therefore, in the absence of the company being arraigned as an accused, no criminal liability can be imputed to the Directors.

7.2. In this regard, he relies upon the decision of the Hon'ble Apex Court in S.K. Alagh -vs- State of Uttar Pradesh and others<sup>1</sup>, more particularly Para nos. 14, 16, 19 and 20 thereof, which are reproduced hereunder for easy reference:

14. Appellant 1 is the Managing Director of the Company. Respondent 3 was its General Manager. Indisputably, the Company is a juristic person. The demand drafts were issued in the name of the Company. The Company was not made an accused. The dealership agreement was by and between M/s Akash Traders and the Company.

16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

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(2008) 5 SCC 662 | 2008 INSC 202

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19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhy [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] .)

20. We may, in this regard, notice that the provisions of the Essential Commodities Act, the Negotiable Instruments Act, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, etc. have created such vicarious liability. It is interesting to note that Section 14-A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the Explanations appended to Section 405 of the Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company. (See Maksud Saiyed v. State of Gujarat [(2008) 5 SCC 668 : (2007) 11 Scale 318] .)

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7.3. He relies upon the decision of the Hon'ble Apex

Court in Aneeta Hada -v- Godfather Travels

and Tours Private Limited<sup>2</sup>, more particularly

para nos. 1, 3, 52 and 58 thereof, which are reproduced hereunder for easy reference:

1. In Criminal Appeals Nos. 838 and 842 of 2008, the common proposition of law that has emerged for consideration is whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") without the company being arraigned as an accused. Be it noted, these two appeals were initially heard by a two-Judge Bench and there was difference of opinion [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2008) 13 SCC 703 : (2009) 3 SCC (Cri) 845] between the two learned Judges in the interpretation of Sections 138 and 141 of the Act and, therefore, the matter has been placed before us.

3. The core issue that has emerged in these two appeals is whether the Company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could have been prosecuted for offences punishable under the aforesaid provisions without the Company being arraigned as an accused.

52. At this juncture, we may usefully refer to the decision in U.P. Pollution Control Board v. Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] . In the said case, the company was not arraigned as an accused and, on that score, the

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(2012) 5 SCC 661 | 2012 INSC 187

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High Court quashed the proceeding against the others. A two-Judge Bench of this Court observed as follows: (SCC p. 690, para 6)

"6. ... Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a



prosecution against Modi Industries Ltd., the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in para 2 has to be construed in the light of the averments contained in paras 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."

Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s Modi

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Distilleries was arraigned as a party instead of M/s Modi Industries Ltd. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated.

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in

the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

7.4. He relies upon the decision of this Hon'ble Court

in Sanjay Goel -v- State of Karnataka<sup>3</sup>,

more particularly para 4, 12 and 15 thereof,

which are reproduced hereunder for easy reference:

4. The learned counsel appearing for the petitioner would submit that the petitioner is in no way connected to the offence alleged against him as he

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is the Director (Finance) of M/s S & S Property Management Private Limited (for short 'the Company') and was not responsible for day-to-day management of the said Company and the Company is not an accused in the case at hand. The petitioner cannot be prosecuted for the alleged offence committed by the Company. He would further contend that the Company was responsible for housekeeping and maintenance of Carlton Towers and the petitioner cannot be prosecuted for the fire accident which occurred in Carlton Towers. The report of the Deputy Chief Electrical Inspector makes it clear that the fire occurred in the premises of M/s Technomic Power Station and the prosecution is initiated against the petitioner for the act committed by a third party. The petitioner at the time when the fire accident took place was not even in the country and was abroad and cannot be prosecuted for such

offences alleged when he was not even present at the place and time when the offence had occurred.

12. It is not in dispute that the petitioner is one of the Directors of the Company and the Company is not arraigned as an accused. The Company not being arraigned as one of the accused and only the Director of the Company being arraigned, the complaint cannot be maintainable and the proceedings cannot be continued in the light of the law laid down by the Three Judge Bench of the Apex Court in the case of ANEETA HADA v. GODFATHER TRAVELS AND TOURS PRIVATE LIMITED - (2012) 5 SCC 661. Therefore, the complaint against the petitioner who is the Director of the Company without arraigning the Company as a party was not even maintainable

15. In the light of the judgment of the Apex Court in the case of ANEETA HADA and the law laid down

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by this Court in the afore-extracted judgments, the petitioner cannot be held to be responsible for the act of other accused. Therefore, continuance of the proceedings against the petitioner would result in miscarriage of justice and be an abuse of the process of law.

7.5. He submits that the Directors of a company are not vicariously liable for the actions of the company. If at all, any amounts are due or any cheating has been committed, it is by the company and not by the Directors, more so not by the Petitioner herein.

7.6. There is no specific allegation which has been made against the Petitioner as a director or

otherwise of the company. In the absence thereof, no proceedings can be continued against the Petitioner.

7.7. In this regard, he relies upon the decision of the Hon'ble Apex Court in Sunil Bharti Mittal - v- Central Bureau of Investigation<sup>4</sup>, more particularly para nos. 42, 43, 44, 45.1 and 45.7

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(2015) 4 SCC 609 | 2015 INSC 18  
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thereof, which are reproduced hereunder for easy reference:

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is

Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because

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of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

45.1.Jethsur Surangbhai v. State of Gujarat [1984 Supp SCC 207 : 1984 SCC (Cri) 474] : (SCC pp. 210-11, para 9)

"9. ... With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject-matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for

convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected

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with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for Items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tahsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course

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of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as Item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant."

(emphasis supplied)

45.7.Keki Hormusji Gharda v. Mehervan Rustom Irani [(2009) 6 SCC 475 : (2009) 2 SCC (Cri) 1113] : (SCC pp. 480-81, paras 16-19)

"16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

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18. In Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] this Court held as under: (SCC p. 760, para 28)

'28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.'

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure."

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7.8. He relies upon the decision of the Hon'ble Apex

Court in Ravindranatha Bajpe -v- Mangalore

Special Economic Zone Limited5, more



particularly para nos. 7.1, 8, 8.3 and 9 thereof,

which are reproduced hereunder for easy reference:

7.1. Except the above allegations, there are no further allegations in the complaint. It was not even the case on behalf of the complainant that at the time when the compound wall was demolished and trees were cut, Accused 2 to 5 and 7 & 8 were present. Except the bald statement that Accused 2 to 5 and 7 & 8 have conspired with common intention to lay the pipeline within the schedule properties belonging to the complainant, without any lawful authority and right whatsoever and in furtherance they have committed to trespass into the schedule properties of the complainant and demolished the compound wall, there are no other allegations that at that time they were present. Accused 2 to 5 and 7 & 8 are stationed at Hyderabad. There are no further allegations that at the command of A-2 to A-5 and A-7 & A-8, the demolition of the compound wall has taken place. All of them are arraigned as an accused as Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director respectively. Therefore, as such, in absence of any specific allegations and the specific role attributed to them, the learned Magistrate was not justified in issuing process against Accused 1 to 8 for the

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offences punishable under Sections 427, 447, 506 and 120-B read with Section 34IPC.

8. In Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] , it is observed by this Court in paras 42 to 44 as under : (SCC p. 638)

"(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused

person

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 :

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(2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and

management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

8.3. As held by this Court in India Infoline Ltd. [GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] , in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A-1 and A-6, without any specific role attributed and the role played by them in their capacity, they cannot be

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arraigned as an accused, more particularly they cannot be held vicariously liable for the offences committed by A-1 and A-6.

9. From the order passed by the learned Magistrate issuing the process against the respondents herein, Accused 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against Respondents 2 to 5 and 7 and 8. Merely because Respondents 2 to 5 and 7 and 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing

and setting aside the order passed by the learned Magistrate issuing process against Respondents 1 to 8 herein -- original Accused 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120-B read with Section 34 IPC.

7.9. He relies upon the decision of the Hon'ble Apex

Court in Maksud Saiyed -v- State of Gujarat

and others<sup>6</sup>, more particularly para 13 thereof, which is reproduced hereunder for easy reference:

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13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

7.10. His next submission is that the Petitioner has already tendered her resignation as the director of the company which had taken the premises on lease on 03.04.2017. The FIR was registered on 07.12.2017, eight months after her resignation and on that ground, he submits that a criminal complaint cannot be lodged or criminal proceedings initiated as regards a

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director who has resigned from the company post her resignation.

7.11. His further submission is that the Petitioner is not a signatory to the lease agreement dated 17.09.2012, the Petitioner was not in-charge of the day-to-day affairs of the company. She is not even a resident of Bangalore but a resident of New Delhi and as such, was not aware of the on-goings of the company and she cannot therefore be prosecuted for the offences alleged against the other director. There is a default on part of the lessor in making payment of the property tax, it is for that reason that the BBMP had sealed the premises. In that background, the company was unable to carry on its

business and as such, the lease rentals were not paid. The contributory factor being of the lessor, the Directors of the lessee company cannot be made liable for any criminal offences.

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7.12. His submission is that the entire gamut of the transactions are in the nature of civil commercial transactions, at the most, the complainant can claim for monies which are due as regards which the complainant has already initiated arbitral proceedings, where an award has been passed and the same is now pending in execution. The complainant has chosen both the methodology of execution of an award as also filing of a criminal complaint of which the sole purpose and intention being to put pressure on the Petitioner to part with huge sums of money, which are not in fact due.

7.13. Any dispute between a landlord and tenant cannot amount to a criminal offence and in this regard, he relies upon the decision of the Hon'ble Apex Court in Neetu Singh -vs- State of U.P.7, more particularly unnumbered para

thereof, which is reproduced hereunder of for  
easy reference:

"Learned counsel for respondent No.3 states that there are huge arrears of rent which have to be recovered. It will be open to respondent No.3 to take recourse to such civil remedy as is available to him in law".

7.14. He also refers to the decision of this Hon'ble

Court in Safalaboobakar -v- State by  
Cubbon Park Police Station and another<sup>8</sup>,

more particularly para nos. 3 to 6 thereof which  
are reproduced hereunder for easy reference:

3. The second respondent and his mother are the owners of the premises in which the petitioner firm Hayati Ventures is a tenant. The said venture is represented by the petitioner. A dispute regarding payment of rent is generated between the two. According to the complainant a sum of Rs.31,50,000/- is still due by the petitioner to the complainant. The complaint itself narrates that it is filed for recovery of arrears of rent and therefore, the offences punishable under Sections 506 and 420 of the IPC are alleged.

4. The Apex Court in the case of NEETU SINGH V. STATE OF UTTAR PRADESH<sup>1</sup> has held that failure to pay rent may have civil consequence, but cannot become a subject matter of crime for offence 14 punishable under Section 420 of the IPC, as no ingredient of Section 415 of the IPC can be found

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in a case where arrears of rent is claimed. The Apex Court has held as follows:

"We are of the opinion that no criminal offence is made out, even if we accept the factual assertions made in the complaint, which was registered as the First Information Report. Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code, 1860 (for short, "IPC"). Mandatory legal requirements for the offence of cheating Under Section 415 and that of misappropriation Under Section 403 IP C are missing.

In view of the aforesaid position, the First Information Report is quashed.

On the question being put to the counsel for the appellants, it has been stated that the Appellants have vacated the property. Learned Counsel for the Respondent No. 3 disputes this statement, and States that the Appellants have not handed over physical vacant possession of the property to Respondent No. 3.

Be that as it may, in view of the statement made by the learned counsel for the appellants, respondent No.3 is at liberty to enter into possession of the property without violating any law.

Learned Counsel for respondent No.3 states that there are huge arrears of rent which have to be recovered. It will be open to respondent No.3 to take recourse to such civil remedy as is available to him in law.

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Recording the above, the impugned order is set aside and the appeal is allowed quashing the First Information Report. The question when the Appellant vacated the property and arrears of rent, etc. are left open to be decided in civil proceedings.

All pending applications are also disposed of."

Therefore, the very registration of crime by the complainant suffers from want of tenability.

5. The added circumstance is that the 2nd respondent-complainant has filed suits against the petitioner firm, one seeking recovery of arrears of rent and the other seeking the petitioner's ejection from the property. Having approached the Civil Court for redressal of his grievances, rightly so, could not have at the same time set the criminal law in motion. Therefore, it becomes a case where a civil dispute is dressed with a colour of crime.<sup>6</sup>

8 For the aforesaid reasons, the following:

#### ORDER

(i) Criminal Petition is allowed.

(ii) Crime in FIR No.77/2021 dated 16.09.2021 registered by the Cubbon Park Police Station, against the petitioner stands quashed. The observations made in the course of this order are only for the purpose of consideration of the case on hand under Section 482 of Cr.P.C. This would not come in the way or bind the pending civil suit between the parties.

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NC: 2024:KHC:38972 7.15. He again reiterates that a civil dispute has been given a cloak of criminality. An FIR has been filed as an after-thought at a belated stage on 07.12.2017 post the initiation of arbitral proceedings. The dispute as regards non- payment of lease rental arose in the year 2014, the lease having expired in July 2015, the FIR was filed on 07.12.2017. An award was passed in an arbitration proceeding on 17.10.2017 in A.C. No. 2 of 2016. Thus, the complainant having succeeded in a civil proceeding, the question of initiating criminal proceedings would not arise. In that background, he submits that the subject matter of the FIR is a pure civil dispute and no criminal element is available.

7.16. The criminal complaint has been filed as a weapon of harassment. There is no criminal element in the complaint filed and as such, this court ought to quash the proceedings. In this

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NC: 2024:KHC:38972 regard, he relies upon the decision of the Hon'ble Apex Court in Naresh Kumar -v- State of Karnataka<sup>9</sup>, more particularly para nos. 4, 6, 7 and 8 thereof, which are reproduced hereunder for easy reference:

4. Having heard the learned counsel for both the parties, we are of the considered view that the findings of the High Court on this aspect are not correct. We do not agree with the findings arrived at by the High Court for two reasons. Firstly, the dispute between the parties is primarily, civil in nature. It is after all a question of how many bicycles the complainant had assembled and the dispute between the parties is only regarding the figure of bicycles and consequently of the amount liable to be paid. This is a civil dispute. The complainant has not been able to establish that the intention to cheat the complainant was there with the appellants right from the beginning.

Merely because the appellants admit that only 28,995 bicycles were assembled, but they have admittedly paid an amount of Rs. 62,01,746/- to the complainant, which is of a much higher number of bicycles, would not prove that the intention of the appellants right from the beginning was to cheat. This amount i.e. the additional amount of Rs. 26 lacs have been paid by the appellants pursuant to a settlement. The reasons and the logic for arriving at a settlement are quite different. In this case it seems, it is primarily to bring a quietus to the dispute and to have peace and to avoid litigation. The mere fact that the appellants have paid an additional amount (2024) SCC Online SC 268 | 2024 INSC 196

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NC: 2024:KHC:38972 pursuant to the settlement, cannot be presumed as an act of cheating. Moreover, the complainant does not deny the fact that a settlement was reached between the parties though he says he was coerced into the settlement. He does not dispute that the additional amount paid by the appellants under the terms of the compromise deed, which is an amount of Rs. 25,75,442 (after deducting TDS) was received by the complainant, as this amount has been received in a bank transaction through NEFT on 29.12.2017. The allegation that the complainant was coerced into a settlement, looks unlikely for two reasons. First, there is no FIR or Complaint that the complainant was coerced into this settlement. Secondly, this amount was duly accepted by the complainant.

6. In the case of Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of

preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has

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NC: 2024:KHC:38972 happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

(emphasis supplied)

7. Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P.*, (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty v. State of West Bengal*, 2023 SCC OnLine SC 90, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

8. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in *Sarabjit Kaur v. State of Punjab*, (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in *Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise. 7.17. He relies on the decision of the Hon'ble Apex Court in *Paramjeet Batra -v- State of*

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NC: 2024:KHC:38972 Uttarkhand and others<sup>10</sup>, more particularly para nos. 8, 9, 12 and 13 thereof, which are reproduced hereunder for easy reference:

8. Though the complaint attributes forgery and fabrication of documents to the appellant and other accused and states that the appellant has grabbed the profit of the running business and threatened Respondent 2, it appears to us to be essentially a civil dispute. Basic grievance of Respondent 2 is that the appellant has not given him accounts of the business. Respondent 2 has made a reference to the written agreement under which the appellant was appointed as Manager to manage his business. The appellant has annexed a copy of the agreement dated 1-1-2002 to the appeal. The agreement discloses that the appellant was to receive 25% of the net profit as salary. The agreement also notes that the appellant received Rs 10,000 in cash for the purchase of raw materials.

9. Admittedly, the appellant has filed Civil Suit No. 23 of 2002 against Respondent 2 in the Court of the Civil Judge (Junior Division), Khatima for permanent injunction claiming that he is a tenant of the shop in question. In that suit, he filed an application for temporary injunction. Copy of the order dated 22-12-2004 passed on that application ordering status quo is also annexed to the appeal. The order indicates that the appellant and Respondent 2 have filed documents in the said suit. While granting status quo order, the trial court has observed that the said documents will have to be proved by the appellant and Respondent 2 and, hence, it is necessary to (2013) 11 SCC 673

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NC: 2024:KHC:38972 maintain status quo during the pendency of the suit.

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

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent

2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.

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NC: 2024:KHC:38972 7.18. The decision of the Hon'ble Supreme Court in Mitesh Kumar J. Sha -v- State of Karnataka and others<sup>11</sup>, more particularly para nos. 24, 34, 38 and 45 thereof, which are reproduced hereunder for easy reference:

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?

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 (2022) 14 SCC 572 | 2021 INSC 675

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NC: 2024:KHC:38972 regarding a criminal breach of trust or cheating is made out.

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 SCC 736 : (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."

45. In view of the above facts and discussions, the impugned order dated 13-8-2019 [Ramanlal M. Sha v. State of Karnataka, 2019 SCC OnLine Kar 3504] passed by the High Court of Karnataka is set aside. The impugned FIR No. 185 of 2016 dated 29-3-2016 and proceedings in CC No. 20609 of 2017 on the file of VIth Additional CMM, Bengaluru, in pursuance of charge-sheet dated 29-3-2017 against the appellants for the offences under Sections 406, 419, 420 read with Section 34IPC stands quashed.

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NC: 2024:KHC:38972 7.19. The decision of the Hon'ble Apex Court in Anil Mahajan -v- Bhore Industries Ltd. And another<sup>12</sup> more particularly para nos. 8 and 10 thereof, which are reproduced hereunder for easy reference:

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

10. We have examined the complaint and it is clear from its substance that present is a simple (2005) 10 SCC 228

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NC: 2024:KHC:38972 case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in Alpica Finance Ltd. case [(2001) 3 SCC 513 : 2001 SCC (Cri) 565] were rightly applied by learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant.

7.20. The decision of the Hon'ble Apex Court in All Cargo Movers (India) Private Limited and others -v- Dhanesh Badarmal Jain and Another<sup>13</sup> more particularly para nos. 8, 11 and 16 thereof, which are reproduced hereunder for easy reference:

8. It is furthermore not in dispute that a suit has been filed by the respondent herein on the Original Side of the Bombay High Court which has been marked as Suit No. 1861 of 1997.

11. The said suit is still pending. More than one year after filing of the said suit i.e. on or about 6-5-1998, a complaint petition was filed wherein, inter alia, it was alleged:

"Thereafter in and subsequent to September 1996, the complainant was shocked to learn that the accused have delivered away the goods materials of the complainant's above-described six (2007) 14 SCC 776 | 2007 INSC 1063

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NC: 2024:KHC:38972 consignments without presentation of and securing the original six bills of lading, which were still with the complainant and not negotiated i.e. paid off by the purchasing party and thus the accused in abetment of each other and acting in common concern have committed

criminal breach of trust by causing criminal misappropriation of the valuable property of the complainant and have committed offences punishable under Sections 407, 34 and 114 IPC.

By issuing their said bills of lading in acceptance and compliance with the complainant's invoices, the accused represented, assured and induced the complainant to believe that the complainant's goods materials delivered to the accused by the complainant would be delivered by the accused to the receiving party only 'to order' i.e. only on the presentation of original bills of lading to the party receiving the delivery of the goods materials. If the accused had not represented to the assured and induced the complainant, he would not have risked his goods materials of the value of US \$98,715.29 (i.e. Rs 38,49,896.31, at dollar rate about Rs 39) to be delivered to the accused. Thus, the accused have in abetment and concert of each other, cheated the complainant and committed offences under Sections 420, 34 and 114 IPC."

16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not

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NC: 2024:KHC:38972 constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. 7.21. His submission is, at the most, it could be contended that there is breach of contract. A breach would not give rise to an offence under the criminal laws requiring the initiation of criminal proceedings.

7.22. The lessee had initially paid the lease rentals and it is only after the sealing of the property that the lease rentals could not be paid. There is no intention to cheat as sought to be alleged

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NC: 2024:KHC:38972 by the complainant from the inception, attracting the offence under section 420 of the IPC and in this regard, he relies upon the decision of the Hon'ble Apex Court in Sarabjit Kaur -v- State of Punjab and another<sup>14</sup>, more particularly para nos. 13 and 14 thereof, which are reproduced hereunder for easy reference:

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. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not (2023) 5 SCC 360 | 2023 INSC 188

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NC: 2024:KHC:38972 meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court.

14. Hence, in our opinion the impugned order [Sarabjit Kaur v. State of Punjab, 2020 SCC OnLine P&H 5291] passed by the High Court deserves to be set aside. The petition filed by the appellant for quashing of FIR is ordered to be allowed. As a consequence, FIR No. 430 dated 16- 10-2017 and all the subsequent proceedings therewith are ordered to be quashed. The appeal is, accordingly, allowed.

7.23. He relies upon the decision in Vijay Kumar Ghai and others -v- State of West Bengal and Others<sup>15</sup>, more particularly para nos. 38 and 40 thereof, which are reproduced hereunder for easy reference:

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 SCC 168 : 2000 SCC (Cri) 786] , the distinction between mere breach of (2022) 7 SCC 124 | 2022 INSC 325

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NC: 2024:KHC:38972 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.

40. Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Sections 405 and 420IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420IPC can be said to have been made out. In the instant case, there is no material to indicate that the appellants had any mala fide intention against the respondent which is clearly deductible from the MoU dated 20-8-2009 arrived at between the parties.

7.24. His submission is that for the very same claim of non-payment of arrears of rent, arbitration proceedings having been initiated, the complainant having succeeded in the said arbitration proceedings and award having been passed, the said award is now subject matter of execution proceeding in Execution Case No.

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NC: 2024:KHC:38972 2860/2016, necessary orders could be passed therein and there will be no need for criminal proceedings to continue, let alone against the Petitioner who has had no role to play in the transactions.

7.25. On the basis of the above, he submits that the petition is required to be allowed and the criminal proceedings registered in crime No. 514 of 2017 is required to be quashed. C. Submissions of Respondents

8. Sri. Anil Shetty, learned counsel appearing for the Complainant would submit that, 8.1. The allegation in the complaint filed by the complainant is not only as regards any recovery of money or non-payment of money, it is also as regards the misuse of the corporate veil resorted to by the Directors of the company in as much as the specific allegation that had been made is that the Directors of the company have

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NC: 2024:KHC:38972 opened several companies and all those companies have involved themselves in nefarious activities in cheating innocent third parties like the complainant. There would be a larger investigation which is required to be held by the jurisdictional police.

8.2. The contents of the complaint having made out offences, it is for the jurisdictional police to investigate the matter and submit a report. The Petitioner cannot be scared of such an investigation if she has not involved herself in any offence, the jurisdictional police would investigate and submit a report as regards her non-involvement. This court ought not to at this stage intercede in the matter in respect of a First Information Report registered by the jurisdictional police and ought to permit

the investigation to proceed.

8.3. As regards the company not being made a party, he submits that the complainant has

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NC: 2024:KHC:38972 categorically stated in para 1 of the complaint that the lease was taken in the name of M/s Nippon Infrastructure Company Pvt. Ltd. And in page 2 of the complaint, it is stated that they are using the corporate veil to cheat the lessor company and certain others with a modus operandi to take refuge under the corporate veil and a list of nearly nine companies have been provided along with the complaint. 8.4. The complaint referring to the company of which the Petitioner is a Director, the fact that the jurisdictional police have not registered the complaint against the company cannot put the complainant at a disadvantage. The complainant has made all the allegations which are required to be made which would have required M/s Nippon Infrastructure Company Private Limited to be arraigned as an accused, the police not having done that, the Petitioner

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NC: 2024:KHC:38972 cannot be allowed to take undue advantage of the same.

8.5. He submits that not only Nippon Infrastructure Company Private Limited, but the allegations have been made against nine other companies and all these nine companies and its directors are required to be investigated as regards the offences committed by them. It is only after the investigation is completed, could this court decide on the culpability or otherwise of the Petitioner, and at that stage if a charge sheet has not been filed, no proceeding would continue against the Petitioner. However, if the charge sheet is laid, a challenge to the same if made could be considered by this Court on the basis of the available material.

8.6. As regards the distinction drawn between the arbitration and the criminal proceeding, he submits that the arbitration proceedings were initiated for recovery of monies, the criminal

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NC: 2024:KHC:38972 proceedings have been initiated for defrauding the complainant and several others. The cause of action for both the matters being different, the complainant can maintain both, a civil proceeding and a criminal proceeding as regards the allegations made.

8.7. Again, he submits that even though the arbitral proceedings are relating to the recovery of monies due, the same would not in any manner absolve the Petitioner of the criminal liability. He submits that the Petitioner is a Founder- Director of M/s Nippon Infrastructure Company Pvt. Ltd., it is only the Petitioner and Mr. Iqbal who are the Directors, there are no other Directors of the said M/s Nippon Infrastructure Company Pvt. Ltd., , thus, it cannot be said that the Petitioner is not aware of the on- going's of the company, there being only two signatories, balance sheets to be

signed by only two Directors and by both the Directors. The

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NC: 2024:KHC:38972 Petitioner cannot claim that she residing in Delhi could/did not know the on-goings of the company. There being only two Directors, both the Directors would be responsible for all the criminal actions committed by the company and by themselves acting for and on behalf of the company. In that background he submits that the decisions in S.K. Alagh's case, Aneeta Hada's case and Sanjay Goel's case would not be attracted in the present matter. 8.8. His submission is, that the Petitioners have on their own as also on behalf of the company defrauded people like the complainant and several others. Thus, the liability is not only a vicarious liability on behalf of the company but also the personal criminal liability of the Petitioner and the other accused. Thus, in that background he submits that the decision in Sunil Bharati Mittal's case, Ravindranath Bhajpe's case and Maqsud Syed's case

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NC: 2024:KHC:38972 would not be attracted to the present case. There needs to be a detailed investigation conducted by the jurisdictional police as regards involvement of each of the accused. 8.9. Lastly, he submits that the subject matter is not just a civil dispute, but the Directors have absconded, were not available to be contacted, they have handed over the property to certain third-parties and similar kind of actions have been resorted to by these Directors and the companies in respect of other properties belonging to other individuals. The complainant has set in motion by bringing these to the notice of the police who are required to investigate the matter, ascertain the truth and thereafter file a report as may be necessary. 8.10. The allegations are not restricted to the lease agreement but the allegations go beyond that as regard usurpation of the property of the complainant, handover of the property without

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NC: 2024:KHC:38972 permission to a third-party, usage of the property for and on behalf of the accused and the third-parties deriving benefit from and out of the property of the complainant, which are all matters which require to be investigated and cannot be said to be mere civil disputes. 8.11. He relies upon the decision of the Hon'ble Apex Court in State of Madhya Pradesh -v- Shilpa Jain and others<sup>16</sup>, more particularly para nos. 2.3 and 11 thereof, which are reproduced hereunder for easy reference:

2.3. The dispute between the parties seemingly attained finality, however, pursuant to a complaint received on 17.02.2015, an investigation was carried out by the Tehsildar, Khategaon, whereunder it was revealed that 11 (eleven) sale transactions had been carried out by private persons in respect of the Suit Property i.e., nazul land belonging to the State Government of Madhya Pradesh. Notably, the investigation also revealed that the aforesaid transactions were carried out fraudulently i.e., (i) without the requisite documentation and / or on the basis of forged and fabricated

documentation; (ii) on the basis of an erroneous certificate dated 21.06.2010 issued by the Original Plaintiff; and (iii) in connivance with certain identified government  
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NC: 2024:KHC:38972 officials. Accordingly, in view of the aforesaid, a complaint dated 25.07.2015 came to be furnished by the Tehsildar, Khategaon to the investigating agencies (the "Complaint")

11. Having considered the materials on record, we are of the considered opinion that neither does the present case satisfy any of the parameters laid down by this Court in Bhajan Lal (Supra) warranting the exercise of jurisdiction under Section 482 of the CrPC vis-à-vis the quashing of an FIR; and nor can the allegation(s) levelled against the accused person(s) be classified as 'purely civil in nature' or merely 'cloaked as a criminal offence'. Undoubtedly, the genesis of the present dispute emanates from civil proceedings qua the possession of the Suit Property, however, the dispute in its current avatar i.e. as is discernible from the allegation levelled against the Respondents in the FIR, has certainly undergone a metamorphosis into a criminal dispute which ought not to have been scuttled at the threshold, and in fact ought to have been considered on its own merits, in accordance with law. 8.12. By relying on the above, he submits that though the genesis of a criminal complaint may emanate from a civil proceeding or a contract, however the dispute having attained criminal elements requiring criminal proceedings to be initiated and as such, the said proceedings cannot be quashed.

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NC: 2024:KHC:38972 8.13. He relies upon the decision of the Hon'ble Apex Court in State of Hayana and others -v- Ch. Bhajan Lal and others<sup>17</sup>, more particularly para 31 thereof, which is reproduced hereunder for easy reference:

31. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-

qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified

by Section 112 of the Code AIR 1992 SC 604 | 1990 INSC 363

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NC: 2024:KHC:38972 of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

8.14. He submits that whenever any credible information involved as regards commission of a cognizable offence is made known to a police officer, he is required to register a case and thereafter carry out investigation, which is what has happened in the present case and this Court ought not to intercede in the matter and quash the proceedings.

8.15. For all the aforesaid reasons, he submits that the above petition is required to be dismissed and the jurisdictional police be directed to carry out investigation in a time bound manner.

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9. Heard Sri. Ujjawal Anand Sharma for Smt. Madhuri Gaikwad. V.S., learned counsel for the Petitioner, Sri. K. Nageshwarappa, learned HCGP for Respondent No.1 and Sri. Anil Shetty, learned counsel for Respondent No.2. Perused papers. D. Points for Consideration

10. The points that would arise for consideration are:

1. Whether non-registration of a complaint against a company would entitle the Directors of the company to claim that without a company being made a party to a criminal complaint, proceedings cannot continue against the Directors, more so when in the complaint the company has been accused but it is the police who have not registered the complaint against the company?
2. Whether initiation of arbitral proceedings would by itself lead to quashing of a criminal complaint on the ground that the dispute between the parties is civil and commercial in nature?
3. Whether in the present case, the Petitioner has established that she is not in-charge of the day-to-day affairs of the company requiring this court to quash the criminal proceedings against her?

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4. Whether any grounds have been made out by the Petitioner for quashing of the criminal proceedings against her?

5. What order?

11. I answer the above points as under:

12. Answer to Point No.1: Whether non-registration of a complaint against a company would entitle the Directors of the company to claim that without a company being made a party to a criminal complaint, proceedings cannot continue against the Directors, more so when in the complaint the company has been accused but it is the police who have not registered the complaint against the company?

12.1. The submission of Sri. Ujjawal Anand Sharma., learned counsel for the petitioner is that the lessee being a company, allegation being made as regards the transaction between the lessor and the lessee, the company not having been arraigned as an accused, the proceedings against the director viz., the petitioner is not maintainable. In this regard various decisions cited supra have been relied upon.

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NC: 2024:KHC:38972 12.2. The submission is that without arraigning a company as an accused there is no vicarious liability which can be imposed on the petitioner and as such the petitioner cannot be proceeded against.

12.3. There can be no dispute as regards the decisions which have been relied upon and the principles laid down therein. The decisions in S.K. Alagh, Aneeta Hada, Sanjay Goel, Sunil Bharti Mittal were all relating to vicarious liability of a director. Similar is the situation in Ravindranatha Bajpe and Maqsd Syed's case. They were decisions where the allegations made were against the company, the company was required to be arraigned as a party-accused. Without doing so, a complaint was filed against the directors. 12.4. In the present case, the allegation is against the individuals more so as regards the

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NC: 2024:KHC:38972 Petitioner and one Mr. Nicu Iqbal who were the only directors of M/s Nippon Infrastructure Company Pvt. Ltd with whom the complainant had entered into a lease transaction.

12.5. The allegation specifically is that the said Mr. Nicu Iqbal and the Petitioner have been making use of or rather abusing the corporate veil, incorporating several companies in order to defraud the complainant and several others. In this regard, specific averments have been made in the complaint

by naming M/s Nippon Infrastructure Company Pvt. Ltd as also by providing a list of companies. The complainant, therefore, has discharged his obligation of naming the company and the directors in the complaint. However, the complaint has been registered by the jurisdictional police only against the directors and not against the company, no fault can be

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NC: 2024:KHC:38972 found with the complainant in that regard. The complainant having categorically detailed out, the name of the company and the allegations made against the company and its directors. 12.6. The Petitioner cannot take advantage of the same and seek for quashing of the proceedings merely on account of the company not having been arraigned as a party in the FIR. It is for the investigating officer during the course of investigation to arraign any other person or entity as an accused. If he comes to a conclusion that, such person or entity has also committed any offence.

12.7. At this stage, it cannot be said that there is no complaint filed against the company when in fact there have been serious allegations which have been made that sham companies have been established by Mr. Nicu Iqbal and the

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NC: 2024:KHC:38972 Petitioner as also the company has been named in the complaint.

12.8. Thus, I answer point No.1 by holding that non-

registration of a complaint against a company would not entitle the directors of the company to claim that without a company being made a party to the criminal complaint, proceeding cannot continue against the directors, when in the complaint submitted to the police details of the company and the allegations against the company have been clearly stated but the police have not registered a complaint against the company.

13. Answer to Point No.2: Whether initiation of arbitral proceedings would by itself lead to quashing of a criminal complaint on the ground that the dispute between the parties is civil and commercial in nature?

13.1. The submission of Mr. Ujjwal Anand Sharma., learned counsel for the Petitioner is that the dispute between the parties are civil in nature

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NC: 2024:KHC:38972 filed only to harass the Petitioner and the other accused. Arbitral proceedings have already been initiated, an award has been passed against the company, the same is pending in execution. Therefore, a criminal complaint would not be maintainable.

13.2. The submission of Sri. Anil Shetty., learned counsel for the Complainant-Respondent No.2 is that it is not merely recovery of money, the complaint is as regards cheating and other offences which have been resorted to by the Petitioner, the other directors and certain others where under the property of the complainant had been handed over to third- parties without permission of the complainant and the property was being used by such third parties without the consent or concurrence of the complainant.

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NC: 2024:KHC:38972 13.3. Further allegations made is that sham companies had been established to cheat the complainant. The said submissions when taken as a whole would indicate that there are serious allegations which have been made against the Petitioner and other directors of M/s Nippon as also allegations made against other Sham companies, a list of which has been enclosed along with the complaint. These allegations stand on a different footing than the claim for money by the complainant. There could be certain situations where a complainant could maintain both a civil remedy and a criminal remedy exclusive to each other, merely because a civil proceeding has been initiated would not debar a criminal proceeding. 13.4. The present petition has been filed at the FIR stage, investigation not being complete, I am of the considered opinion that at this stage it

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NC: 2024:KHC:38972 cannot be said that no criminal offence is made out against the Petitioner requiring quashing of the proceedings.

13.5. Thus, I answer point No.2 by holding that the initiation of arbitral proceedings would by itself not lead to a quashing of a criminal complaint, on the ground that the dispute between the parties is civil and commercial in nature when there are allegations made in the complaint which prima facie indicate criminal offences being committed.

14. Answer to Point No.3: Whether in the present case, the Petitioner has established that she is not in-charge of the day-to-day affairs of the company requiring this court to quash the criminal proceedings against her? 14.1. Though it is contended by Sri. Ujjwal Anand Sharma., learned counsel for the Petitioner that the Petitioner is not in charge of the day- to-day affairs of the company requiring the quashing of the proceedings. At the same

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NC: 2024:KHC:38972 breath he has also contended that the non- payment of monies by the lessee M/s Nippon is on account of the sealing of the premises due to non-payment of property tax by the complainant.

14.2. There are detailed submissions made as regards the arbitral proceedings, the award passed therein, the execution proceedings filed etc., which would not have been to the knowledge of the petitioner if she was not in charge of the affairs of the company, the knowledge of these facts itself



negatives the contention taken up that she is not in-charge of the affairs or day-to-day affairs of the company.

14.3. If that be so, the submission that the Petitioner is not aware of the day-to-day affairs or is not in-charge of the day-to-day affairs cannot at this stage be believed. This being more so for

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NC: 2024:KHC:38972 the reason that M/s Nippon had only two directors, the Petitioner and Mr. Nicu Iqbal both of them being the founding directors. There being only two directors it cannot at this stage be presumed that the Petitioner was not in-charge of or not aware of the day-to-day functioning of the company. 14.4. Be that as it may, the allegations are not only as regards the company but the manner in which the Petitioner and Mr. Nicu Iqbal have entered into various transactions by setting up of Sham companies and usurping the properties of the Petitioner by handing over the same to third parties. All these allegations would in my considered opinion require an investigation to be carried out and it is only after the investigation is complete can these aspects be considered.

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NC: 2024:KHC:38972 14.5. Hence, I answer point No.3, by holding that in the present case the Petitioner has not established that she is not in charge of the day- to-day affairs or is not aware of the day-to-day affairs of the company requiring the criminal proceeding against her to be quashed, but to the contra the submissions made itself would indicate that she is not only aware of but in-charge of the day to day affairs of the company.

15. Answer to Point No.4: Whether any grounds have been made out by the Petitioner for quashing of the criminal proceedings against her?

15.1. In view of my findings to Point Nos.1 to 3, the grounds taken up by Sri. Sri. Ujjwal Anand Sharma not being acceded to, I am of the considered opinion that there are no grounds made out for quashing of the criminal proceedings against the Petitioner.

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16. Answer to Point No.5: What Order? 16.1. In view of my findings to Point Nos.1 to 4, no grounds having been made out, the petition stands dismissed.

16.2. Liberty is however reserved to the Petitioner to approach this Court once investigation is complete, if a charge sheet is laid against her.

SD/-

(SURAJ GOVINDARAJ) JUDGE LN/SR