

Chandran Ratnaswami vs K.C. Palanisamy & Ors on 9 May, 2013

Equivalent citations: 2013 AIR SCW 2918, 2013 (6) SCC 740, 2013 CRI. L. J. 2938, AIR 2013 SC(CRI) 1317, 2013 (4) ABR 500, (2013) 3 CRILR(RAJ) 767, 2013 CRILR(SC MAH GUJ) 767, (2013) 7 SCALE 50, (2013) 55 OCR 856, 2013 CRILR(SC&MP) 767, 2014 (1) SCC (CRI) 447, 2013 (4) KCCR SN 361 (SC), 2014 (104) ALR SOC 4 (SC), 2014 (134) AIC (CN) 4 (SC), AIR 2013 SUPREME COURT 1952

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Bench: M.Y. Eqbal, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NO. __4540____ OF 2013
[Arising out of S.L.P.(C) No.13120 OF 2013]
CHANDRAN RATNASWAMI APPELLANT
VERSUS
K.C. PALANISAMY AND OTHERS RESPONDENTS
WITH
CRIMINAL APPEAL NOs. 736-737 OF 2013
(Arising out of S.L.P.(Crl.) Nos.3273-3274 OF 2013)
CHANDRAN RATNASWAMI APPELLANT
VERSUS
THE STATE & ANOTHER RESPONDENTS
AND
CRIMINAL APPEAL NOs. 731-733 OF 2013
(Arising out of S.L.P.(Crl.) Nos.1924-1926 OF 2013)
K.C. PALANISAMY APPELLANT
VERSUS
THE STATE & ANOTHER ETC. ETC. RESPONDENTS
WITH
CIVIL APPEAL NOs. 4537-4538 OF 2013
(Arising out of S.L.P.(C) Nos.11342-11343 OF 2013)
K.C. PALANISAMY APPELLANT
VERSUS
RAMASWAMY ATHAPPAN & OTHERS
ETC. ETC. RESPONDENTS
AND
CRIMINAL APPEAL NOs. 734-735 OF 2013
(Arising out of S.L.P.(Crl.) Nos.1947-1948 OF 2013)
PAUL RIVETT APPELLANT
VERSUS
THE STATE & ANOTHER RESPONDENTS

AND
CONTEMPT PETITION (CIVIL) NO. 166 OF 2013
IN
S.L.P. (CRL.) NO. 9853 OF 2010
CHANDRAN RATNASWAMI PETITIONER
VERSUS
V. BALAKRISHNAN & ANR. RESPONDENTS

J U D G M E N T

M.Y. EQBAL, J.:

Leave granted.

2. Since common questions of law are involved, these appeals have been heard together and are being disposed of by this common judgment. However, for the sake of convenience, the factual matrix giving rise to these cases as alleged in the civil appeal arising out of SLP(C) No. 13120 of 2013 is set out hereinafter.

3. The appellant – Chandran Ratnaswami, alleged to have settled in Canada since 1974, is an officer of Hamblin Watsa Investment Counsel, a wholly-owned subsidiary of Fairfax Financial Holdings Limited (in short, “Fairfax”) which is based in Canada and has also made investments in India worth more than USD 1 billion. The said appellant is also a Director on the Boards of various renowned companies including ORE Holdings Limited (in short, “ORE”), a Fairfax Group company, based in Mauritius, and has to travel to India on business commitments. The said holding company, ORE on 30th January, 2004 entered into a Joint Venture Agreement (JVA) with CG Holdings Private Limited (respondent No. 1 – K.C. Palanisamy’s company) and N. Athappan (a Singapore citizen) for constructing and developing a hotel property, a shopping complex and an IT Park of the properties owned by Cherran Properties Limited (CPL) and Vasantha Mills Limited (VML) (respondent No.1’s companies). ORE invested Rs.75 crores and got 45% in Cheran Enterprises Private Limited (CEPL). N. Athappan invested Rs. 4 crores and got 10% in CEPL. It is alleged that as CPL and VML have immovable assets, respondent No. 1 transferred shares of CPL and VML to CEPL instead of bringing money and got 45% share holding in CEPL. Respondent No. 1 is alleged to have swindled the said Rs. 75 crores that was deposited in the bank account contrary to the JVA and transferred the immovable assets of CPL and VML, subsidiaries of CEPL. Thereupon, ORE filed Company Petition No. 76 of 2005 before the Company Law Board, Additional Principal Bench, Chennai (in short, “the CLB”) on account of the alleged acts of oppression and mismanagement indulged in by respondent No. 1. The Company Law Board by order dated 13th August, 2008 directed respondent No. 1, CG Holdings Private Limited and CEPL to return the investment of ORE and N. Athappan amounting to Rs. 79 crores with 8% interest within one year, failing which the land of VML was to be transferred to ORE and N. Athappan. It was directed that once the aforementioned amount is paid, respondent No. 1 would take control of CEPL and its subsidiaries. The Company Law Board held as under:

“17. In view of the foregoing conclusions and in exercise of the powers under Sections 397 & 398 read with Section 402 and with a view to bringing to an end the grievances of CG Holdings, KCP, ORE and Athappan, the following order is passed:

CEPL shall return a sum of Rs. 75 crores and Rs. 4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum from the date of investment till the date of repayment within a period of 12 months in one or more instalments, commencing from 01.11.2008. While making the payment CEPL, CG Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter. CEPL CG Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with the SBI, Erode Main Branch, free of any liens or encumbrances towards refund of the investments of ORE and Athappan. VML shall not alienate or sell any of its immovable properties till full payment is made to ORE, in terms of this order. In the event of any failure to make the repayment within the specified time, CEPL CG Holdings, KCP and VML will duly convey the immovable properties of VML, namely, 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws, as consideration for reduction of capital and surrender of the shares of ORE and Athappan, upon which ORE as well as Athappan will deliver the share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries, if any, in favour of CG Holdings and KCP. CEPL is consequently authorized to reduce its share capital and in the meantime, operation of the impugned agreements is suspended, to expedite and ensure due completion of the modalities of exit by ORE and Athappan, thereby, bringing to an end the acts complained of in the present proceedings. CEPL shall ensure necessary statutory compliances till the whole process, in accordance with the aforesaid directions, is properly completed. The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exit of ORE and Athappan from CEPL.”

4. Cross appeals were filed by the parties before the High Court of Judicature at Madras and the High Court vide order dated 5th August, 2011 confirmed the order dated 13th August, 2008 passed by the CLB, in the following terms:

“54. On analysis of various aspects, Company Law Board concluded that it was no longer possible for the parties to carry out joint venture business of CEPL as per the terms of JVA. Only to have smooth exit of ORE and Athappan, the Company Law Board passed the order directing CEPL to repay Rs. 75 Crores and Rs. 4 Crores invested by ORE Holdings and Athappan respectively. By perusal of the order of Company Law Board, in our considered view, Company Law Board has elaborately gone into the issues arisen between the parties even though those objections were filed under Sections 397 and 398 of the Companies Act. As demonstrated infra, there are commonality of issues raised in both the Company Petitions, O.S. No.90 of 2007 and the petition filed before I.C.C. seeking for arbitration.

55. Criminal Cases:- The learned counsel for appellants Mr. Karthik Seshadri contended that the purport of the criminal proceedings are different and initiating of criminal complaints does not amount to waiver of arbitration. Of course, a party does not waive his right to invoke arbitration by filing criminal complaints. But what is relevant is the allegations in the plethora of criminal complaints filed at the instance of the appellants/father of KCP/respondents.

Both parties have made serious allegations of cheating, forgery, falsification of records, etc., against one another. Even before the arbitral Tribunal, the same allegations are made. The Honourable Supreme Court and the Madras High Court have held that the arbitration is not the appropriate forum if allegations of fraud, misappropriation and complicated facts are involved.

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84. By a careful reading of the order of Company Law Board in C.P. Nos.65 and 76 of 2005, it is clear that the alleged breach of Clause 9.2 has been elaborately dealt with. Company Law Board dealt with not only the issues pertaining to the oppression and mismanagement of CEPL and also the larger issues arising between the parties. Only to ensure smooth exit of ORE and Athappan, the order dated 13.8.2008 came to be passed by the Company Law Board. It is pertinent to note that KCP had not challenged the said order of Company Law Board.

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112. As pointed out earlier, several criminal cases have been filed and number of quash petitions also came to be filed. Of course a party does not waive his right to invoke the arbitration of the dispute by filing of criminal complaints. When a party deliberately chooses not to adopt a particular course of action, the arbitration agreement becomes inoperative and as the parties have waived or abandoned the arbitration clause, by invoking the jurisdiction of Civil Court, the doctrine of waiver applies. The appellants had the option to go before ICC even in 2005 but the appellants chose to file C.P. No.65 of 2005 and also stoutly defended C.P. No.76 of 2005 filed by ORE Holdings. Even in C.P. No.76 of 2005, the appellants have not sought for reference to arbitration. By agitating the matter before the Company law Board for nearly two years, and filing the Civil Suit in O.S. No.90 of 2007 before District Munsif's Court, Kangeyam, by their conduct the appellants must be deemed to have given a go bye to the arbitration clause.

113. The parties have been engaged in pitched battle before the Company Law Board and orders were passed by the Company Law Board on 13.8.2008. When the matter was pending before the Company Law Board, the Company Law Board has passed interim orders at various stages. The learned counsel for plaintiffs would submit that even settlements/proposals have been made disclosing parties intentions and discovery process has been utilized. We find much force in the contention of the respondents that Athappans and Ore have spent consideration time and money before the Company Law Board. In so far as O.S. No.90 of 2007 pending before District Munsif's Court, Kangeyam, the suit is ready ripe for trial and the respondents are diligently defending the same. Having initiated proceedings before various forums, cannot now seek to invoke arbitration as

an additional remedy.

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120. Company Appeal Nos. 21,25 to 27 and 29 of 2009:- The gist of order in C.P. Nos.65 and 76 of 2005 dated 13.8.2008 is that:-

CEPL, KCP and C.G.Holdings were to return Rs. 75 Crores to ORE and Rs. 4 Crores to Athappan. The money was to be paid within a period of one year starting 1.11.2008 with 25 percent of the same, being paid every year.

CEPL, KCP and C.G.Holdings were to utilize Rs. 20 Crores maintained in the fixed deposit at State Bank of India, Erode to pay ORE and Athappan. In the event of failure to pay the money the property of VMC situated in Coimbatore is to be transferred to ORE and Athappan in the proportion of 17.15 acres and 7.80 acres respectively. Until then VML was refrained from dealing with the property.

On receipt of money, ORE and Athappan were to surrender their shares in CEPL and CEPL shall accordingly be permitted to reduce its share capital.

The parties were given liberty to approach Company Law Board for limited purpose of overcoming difficulties in implementation of the said order.

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145. As per Order of Company Law Board amount invested by ORE has to be refunded which of course, must be in accordance with applicable laws: be it compliance with FEMA or other Regulations, ORE, being a foreign investor- an entity of foreign origin , as per FEMA, cannot own immovable property in India. Compliance of FEMA or other applicable regulations cannot be bypassed. By the order dated 3.8.2009, Company Law Board modified its earlier order directing VML to execute the sale deed conveying immovable properties of 17.15 acres to the nominee of ORE and thereby modified its earlier order. The Order of the Company Law Board modifying its earlier order directing VML to convey the properties to 'nominee of ORE' is to be modified to the effect that any such conveyance should be subject to applicable laws and regulations and with required approval/permission to be obtained by ORE from the competent authorities. The Order of the Company Law Board in C.A. No.155 of 2008 is to be modified to that extent.

146. Company Appeal Nos. 21 and 29 of 2009 preferred by ORE and Company Appeals Nos. 25 and 26 of 2009 preferred by N. Athappan and R. Athappan are allowed. Company appeal No.27 of 2009 is disposed of modifying the order of Company Law Board dated 3.8.2009 in C.A. No.155 of 2008 to the effect that the conveyance of immovable properties to nominee of ORE is subject to all applicable

laws and regulations and if need be, with necessary approval/permission to be obtained by ORE from the competent authorities.”

5. ORE and N. Athappan filed execution petitions before the CLB in December 2011 and the same are stated to be pending as on date.

6. While the proceedings before the CLB were pending, respondent No. 1 started filing multiple criminal complaints. On 27th February, 2006, respondent No. 1 filed a complaint before the Economic Offences Wing, Chennai (EOW) against ORE, Fairfax, Prem Watsa, Ramaswamy Athappan, Chandran Ratnaswami (appellant herein), Paul Rivett, M/s. Odyssey America Reinsurance Corporation and N. Athappan making them accused Nos. 1 to 8 inter alia on the following allegations:

“Through this strategic acquisition accused No. 1, through Accused No. 7 and Accused No. 4 through Accused No. 8 acquired substantial ownership and management rights in VML and CPL also. The complainant states that the sole objective of the sacrifice made by the complainant of his highly valuable prime immovable properties is the assurance of the Accused No. 3, 4, 5 & 6 that about Rs. 375 crores would be brought into the JV Company as investment and loans and projects worth thousands of crores would be commenced.

The complainant states that, as per the joint venture agreement dated 30.1.2004, M/s. Odyssey America Reinsurance Corporation, the 7th accused herein which is a subsidiary company of the Fair Fax Group and the Accused No. 2 had agreed to extend a Corporate Guarantee in favour of the lender for arranging the syndicated credit facility of US\$ 65 Million (approximately Rs. 300 crores) to the JV company. In confirmation of the said fact the Accused No. 2, 3 and 4 and 8 while signing the JV agreement, cleverly included in the same, a model draft of the Irrevocable Corporate Guarantee Agreement to be furnished by the 7th accused in favour of the lender and even signed the said draft so as to make believe the complainant in no uncertain terms about their intention to honour their commitments. Thus, the joint venture business could commence only upon the 1st accused arranging for the syndicated credit facility of US\$ 65 million, on the strength of the Corporate Guarantee to be given by the 7th accused.

xxx xxx xxx On the one hand the accused had miserably failed to organize the funds even after the complainant had parted with the ownership rights over valuable properties held by him through VML and CPL and on the other hand they defrauded and cheated the complainant by not organizing the promised funds, upon the receipt of which alone, the complainant would be able to commence the projects worth thousand of crores.

.... From the above, it is therefore evident that the consideration of entering into the JV agreement was the promise and assurance that the accused 2 to 6 shall also

arrange for a loan of Rs. 300 crores in addition to the share investment of Rs. 75 crores as stipulated under the JV agreement.

xxx xxx xxx Thus the accused have induced the complainant to enter into an agreement under the guise of a joint venture agreement which was conceived in pursuance of a criminal conspiracy with an intention of cheating. In addition to the above, the accused 4 and 8 have also obtained a gratification, amounting to approximately Rs. 37.40 cr.

from the complainant, by getting the shares of the companies allotted to them to a discounted rate, as consideration for facilitating the joint venture and for arranging the term loan thereby making wrongful gains to themselves while causing wrongful loss to the complainant. Moreover after receiving the said consideration in the form of shares at a discounted value, the accused 4 and 8 have now joined hands with M/s ORE Holdings Ltd. for gaining an illegal majority in the JV company and have thus defrauded the complainant of several crores of rupees.

Therefore, the accused Nos. 1 to 7 have committed various offences under section 120-B, read with sections 409, 420, 405, 471 and 389 among other provisions of the Indian Penal Code, which amount to the offences of Criminal Conspiracy, Cheating, Criminal Breach of Trust, making False Representation and Promises and Extortion by putting the fear of accusation of offences against the complainant among others, and have induced the complainant to part with the shares of his company and the control over the valuable immovable properties owned by him through VML and CPL on the strength of the false promises and assurances made by the accused.”

7. Since the Economic Offences Wing refused to take any action, the Respondent No.1 filed Criminal O.P. No. 9791 of 2006 before the High Court seeking direction to EOW to take action, which petition was later withdrawn. Thereafter, he filed a similar private complaint (Criminal M.P. No. 6096 of 2006) for offences under Sections 406, 406 r/w 109, 420, 467 r/w 420 IPC before the Judicial Magistrate, Perundurai which was dismissed on 13th March, 2007 holding the same to wreak vengeance and observing as under:

“7. On a careful consideration of the aforesaid complaint, depositions, and Exhibits it is unbelievable to state that the respondents have cheated and committed breach of trust, the complainant who is a former member of the Legislative assembly, a former member of the parliament and running business houses which have properties worth of the more than 100 crores of Rupees. Because, no documents were filed to show that the shares of Rs. 10/- face value of the Cheran Properties were sold in the market for Rs.60/- and the shares of Rs.10/- face value of the Vasanthi Mills were sold at Rs.105/-. It is not believable that the shares of Rs. 10/- face value was transferred to the same value of Nandakumar and paid about Rs. 22 crores as commission, as the complainant himself has admitted in the complaint that some of the respondents and the complainant have started a Joint Venture Company. The memorandum of understanding/Joint venture agreement is not submitted for the perusal of the court. In the memorandum of understanding the details to the investment of each of the

parties, the shares allotted to each of them, the relief to the parties when the conditions are violated, and the court which has jurisdiction to entertain such matter. The failure to file the memorandum of understanding in the court, and the failure to give the reasons for not filing the same is not acceptable.

8. It is clearly seen from the deposition of the petitioner and the complaint that the respondents have arranged for about 17 million American Dollars through a firm Odyssey. It is also seen that the said sum is with the Cheran Holdings Private Limited and the affidavit filed in the Hon'ble High Court at Delhi confirms the same, while examining details, it is seen that a sum of 17 million American Dollars have come to Cheran Holdings Limited in which the complainant is a share holder. Hence the petitioner complainant might not have sustained any loss. There is no explanation in the complaint as to whether after the receipt of 17 million American Dollars, it was invested in the business. In the first meeting of the petitioner with the respondents, it was agreed that foreign investments are to be made accordingly the same has been done. It is seen from the deposition of the petitioner that 17 million American Dollars, it is not believable that the respondents have cheated the petitioner/complainant.

9. It is seen that on orders of Hon'ble High Court, Delhi in C.P. No.292/2004, a sum of Rs. 78 crores has to be deposited and Cheran Enterprises and Cheran Holdings Limited have not deposited in the Bank Accounts. The reasons adduced by the complainant was hold an important post in the Cheran Group of Companies for not depositing the sum into the Bank, do not seem to be accepted. Moreover, Chandran Ratnaswami has obtained powers from the petitioner for the conduct of the case and as such, he has to face the consequences of the orders of the court. On that aspect also, the petition would sustain.

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12. The petitioner on 23.9.2005 sent an e-mail to the State Bank of India to give Bank guarantee to BSNL, that when he approached the Bank, he came to know that Chandra Ratnaswami and Athappan Ramaswamy have sent independent letters to the Bank requiring that the request of the petitioner should not be accepted. It cannot be considered by the Court as a criminal act. It can be considered as an act of safe guard in the trade. The proceedings between the petitioner and respondents are of civil nature relating to contract Act and Company Law. If the conditions therefore are violated, the petitioner has to seek remedy under Contract Act or Company Law. Instead the filing of this case terming the respondents as accused the court considers that it cannot be accepted.

13. On world level, the foreign investments made in each country enhance the economy and it is a day to day commercial activities. The petitioner and the respondents and some others, with an intention to establish a joint venture company having done so, have to take steps for the developmental activities, and one party should not, with intention to wreak vengeance against the other should not, term them as accused and approach the court, and this court cannot accept it. Because, the petitioner has not handed over any property to the respondents under section 406 IPC. Hence there is no ingredient for breach of trust. In the circumstances that the respondents have

arranged for 17 million American Dollars, that Chandran Ratnaswamy himself has agreed to the Rs.78 crores case in the Hon'ble High Court, Delhi that the petitioner has not mentioned in the complaint that date, time and place where he was cheated, that like wise, the Respondent cheated the petitioner and thereby he sustained loss, and that there are no ingredients for sections 420, 467 read with 420 are found in the complaint or depositions. Therefore, no prima facie case to show that the respondents with criminal intention indulged in criminal activities is found in the complaint, or depositions or documents.

14. Hence, for the reasons as aforesaid, this petition is dismissed under Section 203 of Cr. P.C.”

8. Respondent No. 1 then filed another similar complaint before Judicial Magistrate, Kangayam suppressing the fact of filing earlier complaints and the order dated 13th March, 2007 passed by the Magistrate Perundurai, whereupon the Crime Branch, Erode was directed to register an FIR. Accordingly, FIR No. 7 of 2007 was registered by Police Station DCB, Erode under Sections 120-B, 420, 169, 408, 409 IPC, but the case was said to have been closed on 20th May, 2009 and the police filed the Closure Report. Meanwhile, Criminal O.P. Nos. 12695 and 19384 of 2007 had been filed for quashing the FIR by the persons shown as accused in the said FIR, in which the High Court vide order dated 8th February, 2010 frowned upon the conduct of respondent No. 1 in the following terms:

“3. It is brought to the notice of this court by the learned Senior Counsel Mr. Habibullah Basha, appearing for the accused/petitioners 1 to 3 in Crl.O.P. No.12695 that the de facto complainant, on the very same allegations preferred a complaint in C.C. No.1096 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate Court at Perundurai and the said court was pleased to pass an order of dismissal under Section 203 Cr.P.C. It is impressed upon this court that such dismissal came about after consideration of the complaint and the statement of the witnesses and on finding no ground to proceed thereon.

4. Though in view of the submission made by the learned Government Advocate (Crl.side) nothing survives for consideration in the matter, this Court would frown upon the conduct of the defacto complainant in indulging in repeated harassment of the petitioners. The criminal original petitions shall stand closed. Consequently, connected miscellaneous petitions are closed.”

9. The respondent then preferred Special Leave Petition in the Supreme Court being SLP (Crl.) No. 9853 of 2010 against the order dated 8th February, 2010, which was dismissed by this Court on 22nd November, 2010 with liberty to pursue protest petition, if any, said to be pending on the file of the Judicial Magistrate, Kangayem. It is alleged that no protest petition was pending on that day.

10. Though in different context, respondent No.1, K.C. Palanisamy, filed three writ petitions against the State of Tamil Nadu, Superintendent of Police, Economic Offences Wing, Chennai, Director General of Police, State of Tamil Nadu, Union of India, Central Bureau of Investigation and Reserve Bank of India, in which respondent No.1 prayed for issuance of writ of mandamus directing the

respondents in writ petitions for investigation as also for transfer of investigation and FIR making allegations against another Company, DAIL. In the said writ petitions, the contention of the writ petitioner was that he was the resident of Coimbatore and former Member of Legislative Assembly of the State of Tamil Nadu and Managing Director of the Company viz. CEPL. The said Company was formed for the purpose of sharing a Joint Venture between the CG Holdings Private Limited, ORE Holdings Limited, Mauritius and one N. Athappan. As part of the Joint Venture business CEPL looked for acquiring a Telecom Company called DAIL which was a Delhi based Company involved in the business of International Long Distance Telephony Services and Internet Services. In those writ petitions, a common counter affidavit was filed by the respondents refuting all the averments made in the three writ petitions and stated that more than nine cases were pending against the respondent No.1, writ petitioner. In the order dated 19th October, 2011 passed by the Madras High Court in those three writ petitions, the numbers of cases pending against the writ petitioner were mentioned in para 19 of the order, extracted hereunder:

“19. The cases pending against the petitioner in various provisions of IPC including Section 420 IPC, there were as many as 9 cases in Coimbatore alone. They are as follows:-

“a) Coimbatore City Crime Branch Cr. No.37/99 u/s. 420 IPC.

- b) Coimbatore City Crime Branch
Cr. No.17/2000 u/s. 420 IPC.
- c) Coimbatore City Crime Branch
Cr. No.62/2000 u/s. 420 IPC.
- d) Coimbatore City Crime Branch
Cr. No.18/2001 u/s. 420 IPC.
- e) Coimbatore City Crime Branch
Cr. No.25/2001 u/s. 420 IPC.
- f) Coimbatore City Crime Branch
Cr. No.29/2001 u/s. 384 IPC.
- g) Coimbatore City Crime Branch
Cr. No.20/2002 u/s. 467, 468, 471
472 and 477(A), IPC.
- h) Coimbatore Economic Offences Wing
Cr. No.03/2001 u/s. 408 IPC.

- i) Coimbatore City Crime Branch
Cr. No.26/2003 u/s.406 IPC.”

11. In para 20 of the order dated 19th October, 2011, the Court observed that the modus operandi of the writ petitioner was to defraud a person or entity and thereafter approach the Courts with multiple petitions in order to distract attention from his own misdeeds.

12. The High Court dismissing all the afore-mentioned three writ petitions observed as under:-

“28. However, this Court is not inclined to accept the request made by the petitioner. The petitioner is not an innocent party in filing such complaints and he himself has not obeyed the order passed by the Delhi High Court in the application for winding up and asking him to refund the amount siphoned off by him which was obtained as a loan by DAIL. Parties who come to court must come with clean hands. Not only the petitioner has come to this Court with unclean hands, but he himself being an accused in several cases had also suppressed the entire proceedings of the Delhi High Court including the order directing the company to retransfer the money siphoned off from DAIL.

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31. In the present case, the petitioner has filed series of Crl.Ops including the prayer which has been made in the writ petitions and they were negatived by this Court more than once. All that this Court held was that investigation should be conducted by the State Police and a report should be filed expeditiously and that has been done in this case as noted in the counter affidavit filed by the second respondent.

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34. Therefore, in the light of the above, there is no case made out to grant any direction sought for by the petitioner either in the first writ petition or to call for a report from RBI as demanded in the second writ petition or for any direction to the Central Government to take steps to retransfer the funds siphoned off from this country. The petitioner has not made out any prima facie case for grant of any such direction and he has suppressed the information relating to winding up proceedings before the Delhi High Court. The petitioner himself is not a person above board and faced with several criminal cases under Section 420 IPC not only as revealed in the affidavit filed in support of the petition for impleadment but also as noted by this Court in the decision cited in Ramaswamy Athappan’s case (cited supra). The

petitioner himself is guilty of several commissions and omissions and at his instance no direction can be granted by this Court.

35. In view of the above, all the three writ petitions will stand dismissed. However, there will be no order as to costs.

Consequently, connected miscellaneous petitions are closed.”

13. Curiously enough, on 2nd January, 2012, respondent No. 6 - Superintendent of Police, Tiruppur allegedly in collusion with respondent No. 1 and relying upon the order dated 22nd November, 2010 reopened FIR No. 7 of 2007 and ordered re-investigation. Charge-sheet being CC 162 of 2012 ultimately came to be filed by respondent No. 5 - Dy. Superintendent of Police, District Crime Records Bureau, Erode before the Judicial Magistrate, Erode-III on 11th September, 2012 inter alia against Paul Rivett, Chandran Rathnaswami, Ramasamy Athappan, Nandakumar Athappan, M/s. Fairfax Financial Holdings Limited, M/s. Hamin Watsa Investment Council, Odyssey America Reinsurance Corporation and ORE Holdings Limited showing them respectively as accused Nos. 2, 3, 4, 6, 8, 9, 11 and 12 for committing offences under Sections 120-B, 420, 409 read with 109 IPC.

14. On the basis of aforesaid chargesheet, the Judicial Magistrate on 12th September, 2012 issued summons returnable on 12th October, 2012. On 26th September, 2012, the Dy. Superintendent of Police filed a report stating that he searched for the accused in Chennai and Mumbai but could not ascertain their whereabouts and accordingly prayed for issuance of Non- Bailable Warrants (NBWs) which were issued by the Judicial Magistrate, Erode on 27th September, 2012. Based upon the NBWs, the Superintendent of Police issued a Look-Out Circular on 9th January, 2013 against the appellant. Unaware of all this, the appellant landed in India and was detained by the immigration authorities. He filed a writ petition being W.P. No. 1764 of 2013 and on 22nd January, 2013 the High Court passed an interim order restraining appellant's detention and directed to post the writ petition on 29th January, 2013. SLP filed against this order was disposed of on 24th January, 2013 observing that the High Court had itself posted the matter on 29th January, 2013. On 29th January, 2013, the High Court directed the appellant to surrender before the trial court and pray for recall of NBWs vide order passed in Criminal O.P. No. 2283 of 2013 filed by him for quashing the chargesheet i.e. CC 162 of 2012. Crl.M.P. No. 3 of 2013 was also filed in Criminal O.P. No. 2283 of 2013 alleging fraud committed by the opposite party. On the same day, Crl.M.Ps. No. 3 in Criminal O.P. No. 2166 of 2013 filed by Ramasamy Athappan & N. Athappan and Criminal O.P. No.2282 of 2013 filed by Paul Rivett also came up before the High Court and they were also directed to surrender before the Judicial Magistrate No. III, Erode. Finally on 1st February, 2013 the High Court directed in respect of the appellant (petitioner in Criminal O.P. No. 2283 of 2013), Ramasamy Athappan & N. Athappan (petitioners in Criminal O.P. No. 2166 of 2013) and Paul Rivett (petitioner in Criminal O.P. No. 2282 of 2013) as under:

“5. Considering the submissions made by all the parties and also considering the facts and circumstances of the case, the order dated 29.01.2013 is modified as follows:

“The petitioners are directed to appear before the trial Court on or before 08.03.2013 and on such appearance, the warrant, if any, shall be recalled. If the offences are non-bailable in nature, the petitioners are directed to file bail application before the trial Court along with a bond for a sum of Rs. 10,000/- (Rupees ten Thousand) with two sureties each for like sum to the satisfaction of the trial court and on such sureties, the trial court shall dispose the bail applications on the same day. The petitioners are at liberty to file to withdraw the lookout application before this Court, if they are advised to do so.

With the above directions, these petitions are disposed of.”

15. The appellant surrendered on 4th February, 2013 and NBWs were recalled by the Judicial Magistrate III, Erode. However, the immigration authorities did not allow the appellant to leave India on 5th February, 2013 stating that the court proceedings were pending. In the meanwhile, writ petition being W.P. No. 2739 of 2013 was filed by Ramaswamy Athappan praying to issue a writ of mandamus or any other writ, order or direction in the nature of a writ of mandamus forbearing the Superintendent of Police, Tiruppur (Tamilnadu) and Ministry of Home Affairs, New Delhi including its constituent officers at all airports from acting upon the non- bailable arrest warrant dated 27th September, 2012 issued against the petitioner (Ramaswamy Athappan) in respect of chargesheet CC No. 162 of 2012 pending on the file of Judicial Magistrate-III, Erode and the alleged Look Out Notice dated 9th January, 2013 issued by the Superintendent of Police and consequently from in any manner restraining/restricting the petitioner’s entry into or exit out of India. Similar writ petition being W.P. No. 2740 of 2013 was also filed by the appellant – Chandran Ratnaswami who additionally prayed for directions to DSP, SP, MHA and respondent No. 1 herein K.C. Palanisamy to jointly and severally pay compensation of Rs. 10 crores to him for his illegal detention on 22nd January, 2013.

16. On 26th February, 2013, the High Court again directed the appellant to appear before the trial court by passing the following order in W.P. Nos. 2739 & 2740 of 2013 and Criminal O.P. Nos. 2166, 2282 and 2283 of 2013:

“10. Accordingly, Mr. Chandran Ratnaswami the accused should appear before the learned Judicial Magistrate, where CC No. 162/2012 is pending, within a period of two weeks from today to comply with the following:

(i) he must file an affidavit of undertaking before the court that he would not evade the due process of law and ensure his appearance as and when required;

(ii) he should execute his own bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and two cash sureties of Rs.5,00,000/- (Rupees Five Lakhs only) each to the satisfaction of the learned Judicial Magistrate-III, Erode on the same day.

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13. In this case, non-bailable warrant has been recalled on 04.02.2013 on the accused surrendering before the learned Magistrate.

For non-compliance of the orders passed by this Court, I am inclined to pass the above order directing them to appear before the Court for the purpose of filing an affidavit and furnishing surety.”

17. On 11th March, 2013, this Court granted stay of chargesheet i.e. CC 162 of 2012 by an order passed in SLP(Crl.) Nos. 1947-1948 of 2013 which have been filed by Paul Rivett, an other accused in the chargesheet CC 162 of 2012, challenging the orders dated 29th January and 1st February, 2013 respectively in Criminal O.P. No. 2282 of 2013 and Crl.M.P. No.3 of 2013 in Criminal O.P. No. 2282 of 2013. Paul Rivett is Law Officer in the Fairfax Group and is a Canadian citizen and he has also been made an accused in the chargesheet CC 162 of 2012. NBWs as well as the Look Out Notice were issued against Paul Rivett also.

18. On 12th March, 2013, the appellant prayed before the Single Judge of High Court that he may be permitted to file affidavit of undertaking there as proceedings in the trial court were stayed by this Court which prayer was opposed by respondent No. 1 on 13th March, 2013 urging that this Court was seized of the matter and the Single Judge could not pass any order. However, the Single Judge passed an order dated 14th March, 2013 in M.P. No. 2 of 2013 in W.P. No. 2740 of 2013 filed by the appellant seeking recall of the Look Out Notice and directed the appellant to file the affidavit of undertaking before the High Court and to furnish security deposit of Rs. 25 lakhs and permitted him to travel.

19. Challenging the above order of the Single Judge, respondent No. 1 filed a writ appeal being W.A. No. 517 of 2013 which was allowed by a Division Bench of the High Court vide order dated 22nd March, 2013 setting aside the order dated 14th March, 2013 passed by the Single Judge and observing:

“12. From the above narrated facts it is evident that the first respondent has not filed bail application while surrendering himself before the Judicial Magistrate No.III, Erode, for recalling the Non- bailable Warrant and the fact remains, till date he has not obtained any order of anticipatory bail/bail.

13. The appellant challenged the interim order dated 26.2.2013 passed in Crl. O.P. No.2166, 2282 and 2283 of 2013 before the Hon’ble Supreme Court in SLP (C) Nos. 1924-1926 of 2013. Accused No.2 in the said C.C. No.162 of 2012 viz. Paul Rivett filed SLP (Crl) No.1947-1948 of 2013 and prayed to quash the proceedings pending before the Judicial Magistrate Court No.III, Erode and also prayed for an interim order to dispense with his personal appearance before the Judicial Magistrate Court No.III, Erode in connection with C.C. No.162 of 2012.

The Hon’ble Supreme Court refused to pass any interim order in the applications filed by the appellant herein.

14. Insofar as the applications filed by Paul Rivert (A-2), the Hon'ble Supreme Court refused to stay the order passed by this Court dated 29.01.2013 and 01.02.2013 in Crl. O.P. 2282 of 2013 and granted stay of the proceedings in CC 162 of 2013 pending on the file of Judicial Magistrate Court No.III, Erode, pending further orders. The prayer for dispensing with his appearance was not granted. The appellant thereafter filed Crl. M.P. Nos.5810 to 5812 of 2013 in SLP (Crl.) No.1924-1926 of 2013 and prayed for restraining the first respondent from leaving India, pending SLP direct the first respondent to surrender his passport before the Judicial Magistrate Court No.III, Erode No order was passed in the said petition and the matter is adjourned to 3.4.2013 before the Supreme Court for further hearing.

15. The first respondent thereafter moved this High Court to pass orders in M.P. No.2 of 2013 which was allowed by the learned single Judge holding that since CC No.162 of 2012 is stayed by the Hon'ble Supreme Court and the NBW having been recalled, the basis of the Lookout Notice has gone." xxx xxx xxx

18. On a perusal of the prayer made in the writ petition, it is evident that the first respondent has challenged the Look-out Notice issued on 9.1.2013 and consequently prayed for payment of compensation. The learned Single Judge in the above miscellaneous petition has held that the Look-out Notice dated 9.1.2013 is cancelled and allowed the first respondent to leave India after filing undertaking affidavit and deposit a sum of Rs. 25 lakhs.

19. It is not in dispute that the very same issues regarding the Look out Notice and the prayer to quash CC No.162 of 2012 pending on the file of JM III Court, Erode, which was filed at the instance of another accused (A-2 Paul Rivert) are posted for hearing before the Hon'ble Supreme Court on 3.4.2013. Admittedly the matter is seized of by the Hon'ble Supreme Court and only on interim stay of the proceedings in CC No.162 of 2012 was ordered by the Apex Court, that too at the instance of A-2 in the above C.C. No. 162 of 2013, and the prayer to dispense with the appearance of A-2 was not granted. If the order of the learned single Judge dated 14.3.2013 is to be implemented immediately, it may be difficult to secure the presence of the first respondent in the criminal case.

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22. On the above said background and in the light of the decision cited supra, we are of the considered view that the order passed by the learned single Judge in M.P. No.2 of 2013 in W.P. No.2740 of 2013 dated 14.3.2013 is liable to be set aside, and accordingly set aside. The writ appeal is allowed. Consequently, the first respondent is entitled to get refund of the amount deposited by him on 15.3.2013 pursuant to the interim order of the learned single Judge No costs. Connect M.P. No.1 of 2013 is closed."

20. Hence, this appeal arising out of SLP(C) No. 13120 of 2013 by the appellant – Chandran Ratnaswami. S.L.P.(Crl.) Nos. 3273-3274 of 2013 have also been filed by the same appellant (an accused in Chargesheet CC 162 of 2013) against orders dated 29th January, 2013 and 1st February, 2013 respectively in Criminal O.P. No. 2283 of 2013 and Crl.M.P. No.3 of 2013 in Criminal O.P. No. 2283 of 2013. In these SLPs, notice has not been issued and they are fresh ones.

21. Criminal Appeals arising out of S.L.P.(Crl.) Nos. 1924-1927 of 2013 have been filed by K.C. Palanisamy [respondent No. 1 in civil appeal arising out of SLP(C) No. 13120 of 2013] challenging the order dated 26th February, 2013 in Criminal O.P. Nos. 2283, 2282 and 2166 of 2013 and Civil Appeals arising out of S.L.P.(C) Nos. 11342-11343 of 2013 (D.No.7366/2013) have been filed challenging the order dated 26th February, 2013 in Writ Petition Nos. 2739 and 2740 of 2013. In these matters, the appellant – K.C. Palanisamy has challenged the said High Court's order by which the accused have been exempted from filing proper bail application under the Criminal Procedure Code.

22. Contempt Petition (C) No. 166 of 2013 in S.L.P.(Crl.) No. 9853 of 2010 has been filed by the applicant – Chandran Ratnaswami for wilful and deliberate violation and disobedience of order dated 22nd November, 2010 by re-opening the closed FIR No. 7 of 2007. In this contempt petition, notice has not been issued and it is a fresh one.

23. Mr. K.K. Venugopal, learned senior counsel appearing in SLP(C) No.13120 of 2013 assailed the impugned order passed by the Division Bench and also the orders passed in criminal proceedings as being illegal and wholly without jurisdiction. Learned counsel drew our attention to the entire facts of the case discussed hereinabove and submitted that respondent No.1 filed a series of complaints which have either been dismissed or quashed or stayed by the High Court or this Court. Learned counsel submitted that the criminal courts including the High Court have completely failed and erred in not condemning respondent No.1 for approaching the courts to obstruct the proceedings before the learned Single Judge of the Madras High Court. Learned counsel submitted that the disputes arose with regard to the Joint Venture Agreement between the parties have been finally adjudicated by the Company Law Board and the High Court, but respondent No.1 instead of complying with the directions of the Company Law Board and High Court started filing frivolous criminal cases against the appellant, which were either quashed or stayed by the High Court. Learned counsel seriously assailed the conduct of the Superintendent of Police, who directed reinvestigation in a matter which was finally closed. Learned counsel submitted that the Division Bench failed to note that the entire efforts of the respondent in prosecuting the appellant are serious abuse of the process of the Court. Learned counsel referred the allegations made in the complaint petition and submitted that the whole object of filing those complaints are nothing but to pressurize the appellant and to harass him. Learned counsel then submitted that the whole procedure in the proceedings initiated against the appellant is violative of Article 21 of the Constitution of India. It was contended that the conduct of respondent No.1 is deplorable and the same is contemptuous amounting to deliberate obstruction of the judicial proceedings and an abuse of the process of the Court. Learned counsel lastly contended that the Division Bench has erroneously set aside the order of the learned Single Judge on the ground that the issue was pending in this Court.

24. Mr. Mukul Rohatgi, learned senior counsel appearing in SLP(Crl.) Nos.1947-48 of 2013 after narrating the entire facts in the case and the sequence of events submitted that the continuation of criminal proceedings and the submission of the charge-sheet is the result of the wrong understanding of the order by Superintendent of Police, Tiruppur, who directed reinvestigation in a matter which was closed. Learned counsel, therefore, submitted that the order for reinvestigation passed by the Superintendent of Police is totally illegal, void and contemptuous. It was contended

that series of complaints filed by respondent No.1 has either been dismissed or quashed or stayed by the High Court and that respondent No.1 has the propensity to abuse the legal process and utilize it as a tool to wreak vengeance against others involved with the CEPL so that the appellants' Company does not pursue the Company Law Board proceedings. Learned counsel submitted that it has been the modus operandi of respondent No.1 to file false and bogus complaints and utilize the same to harass and coerce the appellant. Lastly, learned counsel submitted that the dispute raised by the respondent is purely a civil dispute but it has been given the colour of criminal act with the sole objective to implicate and detain these two appellants, who are foreigners, in criminal cases and not to allow them to travel outside India.

25. Mr. C.A. Sundaram, learned senior counsel appearing for one of the appellants contended that it is a matter of record that every single complaint filed by respondent No. 1 has been either dismissed or quashed or stayed by the High Court or this Court and respondent No. 1 has the propensity to abuse the legal process and utilize it as a tool to wreak vengeance against others involved with CEPL so that the appellant's company does not pursue the Company Law Board proceedings. Learned counsel contended that it has been the modus operandi of respondent No. 1 to file false and bogus criminal complaints and to utilize the same to harass and coerce the appellant. Respondent No. 1 had malafidely filed a complaint CC 157/07 before the Judicial Magistrate, Perundurai. This was an ingenious case where respondent No. 1 deliberately and fraudulently signed and issued a cheque from the CEPL account to his own company, namely, Cherraan Constructions Limited (CCL) for Rs. 5 crore (when there was no transaction, liability to the payee or authority to issue the cheque) and then caused the cheque to be dishonoured. Promptly, CCL filed a Section 138 NI Act complaint against the appellant and the other Director of CEPL etc. but did not make respondent No. 1 an accused. The Madras High Court quashed this complaint in Criminal O.P. No. 29737 of 2007.

26. Mr. Karthik Sheshadri, learned counsel appearing for the respondent, on the other hand in support of continuance of criminal proceedings, submitted that the respondent - complainant made out a case in the complaint for prosecuting the appellant for cheating and misappropriation of money. With regard to the filing of FIR being No.7 of 2007, learned counsel submitted that immediately after the FIR was lodged, the appellants approached the High Court of Madras and got an order of stay for further investigation in Criminal O.P. No. 12695/2007 and Criminal O.P. No.19384 of 2007 and consequently all further investigation of the crime alleged came to be stayed. Appellants also filed a case for quashing of the FIR before the Madras High Court. Learned counsel vehemently argued that FIR No.7/2007 was never closed at any point of time and, therefore, the direction for the reinvestigation was perfectly justified. Based on the investigation, charge-sheet was filed. According to the learned counsel, the Superintendent of Police passed order for the reinvestigation only because no investigation was ever conducted because of the stay granted by the High Court. While justifying the legality and validity of reinvestigation, learned counsel submitted that even without permission of the Magistrate, Police Officer can direct further investigation. In support of that, learned counsel relied upon the decision of this Court in State of Bihar & Another vs. J.A.C. Saldanna and Others, AIR 1980 SC 326. Lastly, learned counsel submitted that when the charge-sheet makes out a case then civil liberty is not the appropriate remedy for the aggrieved person.

27. In the light of factual situation and having gone through the entire facts and the sequence of events in the criminal proceedings before the criminal courts and the orders passed time to time by such courts, the question that falls for consideration is as to whether continuance of such criminal proceedings is an abuse of the process of the Court.

28. Before we embark upon dealing with the issue posed before us, we would like to discuss the principles laid down by various courts as to when continuance of criminal proceeding will amount to abuse of process of the Court.

29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of *Connelly vs. Director of Public Prosecutions*, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In *Hui Chi-Ming vs. The Queen* [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

31. In the leading case of *Bennett vs. Horseferry Road Magistrates' Court*, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or

(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

32. In *R. vs. Derby Crown Court ex p Brooks*, (1985) 80 Cr.App.R. 164, Lord Chief Justice Ormrod stated: "It may be an abuse of process if either

(a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."

33. Lord Justice Neill in *R. vs. Beckford*, [1996] 1 Cr.App.R. 94: [1995] R.T.R. 251 observed that: “The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried.” What is unfair and wrong will be for the court to determine on the individual facts of each case.

34. This Court in *State of Karnataka vs. L. Muniswamy and Others*, (1977) 2 SCC 699 observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703 of SCC):

“7.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.” This case has been followed in a large number of subsequent cases of this Court and other courts.

35. In *State of Haryana and Others vs. Bhajan Lal and Others*, 1992 Supp.(1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of Cr.P.C. under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure

the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102) “102. (1) (2)

(3) (4)

(5)

(6).....

(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.”

36. This Court in Zandu Pharmaceutical Works Ltd. and Others vs. Mohd. Sharaful Haque and Another, (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8) “8. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/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.”

37. In Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court 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: (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.”

38. In the case of Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, (2007) 12 SCC 1, this Court after considering series of decisions observed:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute

itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

XXX XXX XXX

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.”

39. In *G. Sagar Suri and Another vs. State of U.P. and Others*, (2000) 2 SCC 636, this Court 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.

40. In the case of *S.N. Sharma vs. Bipen Kumar Tiwari and Others*, AIR 1970 SC 786 (at p.789), this Court has stated thus:

“7. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code.”

41. In the case of *State of West Bengal and Others vs. Swapan Kumar Guha and Others*, AIR 1982 SC 949 while examining the power of a police officer in the field of investigation of a cognizable offence,

Chandrachud, C.J. has affirmed the view expressed by Mathew, J. and observed as follows: (at p.958 of AIR) “22. There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code.”

42. In the case of Uma Shankar Gopalika vs. State of Bihar and Another, (2005) 10 SCC 336, this Court has held as under:

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. 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. Apart from that there is no other allegation in the petition of complaint. 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 there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

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-B IPC 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 482 CrPC which it has erroneously refused.”

43. Coming back to the instant case from the affidavits filed by the parties, the facts which come into light are that the appellant-Chandran Ratnaswami settled in Canada since 1974. He is holding executive posts in various companies based in Canada and has made investment in India worth more than 1 billion USD. He is also a Director on the Board of various renowned companies including ORE Holdings Limited based in Mauritius. The said company ORE entered into a Joint Venture Agreement (JVA) with C.G. Holdings Private Limited (respondent No.1 – K.C. Palanisamy’s Company) and N. Athappan for constructing and developing a hotel property, shopping complex etc. owned by Cherran Properties Limited (CPL) and Vasantha Mills Limited (VML). ORE invested Rs.75 crores and got 45% in Cheran Enterprises Private Limited (CEPL). Athappan invested Rs. 4

crores and got 10%.

44. Disputes arose between the parties when respondent No.1 alleged to have transferred shares of CPL and VML to CEPL instead of bringing money and got 45% shareholdings in CEPL. Respondent No.1 allegedly swindled the said 75 crores deposited by the appellant Company ORE and transferred the immovable assets of CPL and VML, subsidiaries of CEPL.

Consequently, ORE filed Company Petition before the Company Law Board on account of alleged acts of oppression and mismanagement indulged by respondent No.1. The matter before the Company Law Board was hotly contested and finally the Company Law Board by order dated 13th August, 2008 directed respondent No.1, CG Holdings and CEPL to return the investment of appellant Company ORE and Athappan with 8% interest. On payment of money it was directed that respondent K.C. Palanisamy will take control of CEPL and its subsidiaries. Clarification Petition was also disposed of by Company Law Board on 13th August, 2008.

45. Both the parties moved the Madras High Court by filing appeals and those Company Appeals were finally disposed of on 5th August, 2011 and the order passed by the Company Law Board was confirmed.

The Division Bench of the Madras High Court while confirming the view taken by the Company Law Board held that both parties cannot jointly run the business and, therefore, to ensure smooth exit of ORE and Athappan, the Company Law Board passed the order. The said order of the Division Bench passed in appeals, however, was not challenged by respondent No.1 K.C. Palanisamy.

46. The appellant filed execution case, which is pending. It further appears that a suit was also filed being O.S.No.90 of 2007 before the District Munsiff Court.

47. Instead of complying with the order of the Company Law Board and the directions and observations made by the Madras High Court in the aforementioned Company Appeals, respondent No.1 started filing several criminal complaints against the appellant. The first complaint was filed by the respondent before the Economic Offences Wing, Chennai, alleging that ORE invested only Rs. 75 crores and for not bringing Rs. 300 crores in Joint Venture Company. The petition filed in the High Court seeking direction to EOW to take action on the complaint was, however, withdrawn. Respondent No.1 then filed a second complaint before the Judicial Magistrate, Perundurai which was dismissed after examining respondent No.1 and his two witnesses. The respondent then filed another complaint before the Judicial Magistrate, Kangeyam without disclosing the dismissal of the earlier complaint filed before the Judicial Magistrate, Perundurai. The said complaint finally came to be registered as FIR No.7 of 2007. The appellant moved the High Court for quashing the said FIR. In the said petition, the High Court, after noticing the similar complaint filed earlier by respondent No.1 in the court of Judicial Magistrate, Perundurai, finally observed that the second criminal proceeding initiated by respondent No.1 has no merit. The court further passed a stringent remark against the conduct of respondent No.1 for filing cases on the same issue.

48. Respondent No.1 then moved this Court by filing SLP(Crl.) No.9853 of 2010 alleging the pendency of the protest petition and non-closure of the criminal case. This Court refused to interfere with the order but observed that if any protest petition is pending the same shall be disposed of in accordance with law.

49. Curiously enough, on the report of Superintendent of Police, Tiruppur, the criminal case in FIR No.7 of 2007 was directed to be reopened for re-investigation. On this FIR, the Magistrate before whom the criminal case was pending passed various orders which were time to time challenged by the aggrieved party before the High Court and before this Court. Simultaneously, the appellant also filed counter criminal cases against the respondent which were also proceeded and are pending in those criminal courts.

50. In a nutshell, the dispute arising out of Joint Venture Agreement has been fully and finally settled by the Company Law Board and also the High Court and several directions were issued for compliance including the return of the amount by respondent No.1 to the appellant and to become the sole owner of those companies.

51. It is pertinent to mention here that in course of arguments the action of Superintendent of Police was challenged by the learned counsel appearing for the appellant. In order to justify the action of the Superintendent of Police in directing the investigation, Mr. P.S. Narsimhan, learned senior counsel submitted that on the instruction of Inspector General of Police such reinvestigation was directed by the Superintendent of Police. However, no such letter of instruction has been produced before us by the learned counsel. At this juncture, we reiterate that the power of Police Officers in the field of investigation of a cognizable offence is not unlimited. Hence, the power during the investigation must be exercised strictly within the limitation prescribed in the Code of Criminal Procedure and such power may not result in destroying the personal freedom of a citizen.

52. As noticed above, after the dispute was finally settled by the Company Law Board and the Madras High Court in appeal, the respondent approached the Economic Offences Wing, who refused to entertain the complaint. The respondent then moved the complaint before the Judicial Magistrate, Perundurai for initiating criminal action against the appellant for breach of contract, which was dismissed by the Magistrate holding the same as nothing but to take vengeance. The Magistrate further held that if the conditions of the agreement are violated the respondent has to seek remedy under the Contract Act or the Company Law instead of filing criminal case. Suppressing the said complaint and the order passed by the Magistrate, the respondent tried again by filing a complaint before the Judicial Magistrate, Kangayam for initiating criminal action against the appellants for the breach of contract and conspiracy. Although the FIR was registered, but a closure report as a mistake of fact was prepared. The High Court while passing the order observed that the Court would frown upon the conduct of the complainant in indulging in repeated harassment of the petitioners-appellants. Irrespective of the dispute with regard to the closure of the case, a fresh life was given to the criminal case at the instance of Superintendent of Police, who directed re-investigation and in course of the said criminal proceeding irrespective of FIR No.7/2007 the appellants were harassed and on technicalities various orders for surrender, arrest and their detention had been passed. As noticed above, in the three writ petitions filed by

respondent No.1, though not against the appellant but against the C.B.I. in respect of different transactions, the High Court dismissing all those writ petitions observed that the modus operandi of the writ petitioner (respondent No.1) was to defraud the person or entity and thereafter approach the Courts with multiple proceedings in order to distract attention from his own misdeeds.

53. Neither the High Court nor the Magisterial Court have ever applied their mind and considered the conduct of the respondent and continuance of criminal proceedings in respect of the disputes, which are civil in nature and finally adjudicated by the competent authority i.e. the Company Law Board and the High Court in appeal.

54. We are of the definite opinion that the complainant has manipulated and misused the process of Court so as to deprive the appellants from their basic right to move free anywhere inside or outside the country. Moreover, it would be unfair if the appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction. Hence, allowing the criminal proceedings arising out of FIR No.7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed. Since the High Court failed to look into this aspect of the matter while passing the impugned order, in our opinion, the same could not be sustained in law.

55. For the reasons aforesaid, the appeals arising out of SLP (C) No.13120 of 2013, SLP (Crl.) Nos.3273-3274 of 2013 and SLP (Crl.) Nos.1947- 1948 of 2013 are allowed, whereas the appeals arising out of SLP (Crl.) Nos.1924-1926 of 2013 and SLP (C) Nos.11342-11343 of 2013 are dismissed. There shall be no order as to costs.

56. Although we do not appreciate the action of a senior Superintendent of Police, but in view of the order passed in these appeals, we do not want to proceed any further in Contempt Petition (C) No.166 of 2013, which stands disposed of.

.....J. (P. Sathasivam)J. (M.Y. Eqbal) New Delhi, May 09, 2013.

ITEM NO. IE
(FOR JUDGMENT)

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.4540 OF 2013 @

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.13120/2013 |CHANDRAN RATNASWAMI |.. |Appellant(s) | | Versus | | K.C. PALANISAMY & ORS |.. |Respondent(s) | WITH CRIMINAL APPEAL NOS.736-737 OF 2013 @ SLP(CRL.)NOS. 3273-3274/2013 CRIMINAL APPEAL NOS.731-733 OF 2013 @ SLP(CRL.)NOS.1924-1926/2013 CIVIL APPEAL NO.4537-4538 OF 2013 @ SLP(C)NOS.11342-11343/2013 CRIMINAL APPEAL NO.734-735 OF 2013 @

SLP(CRL.)NOs.1947-1948/2013 CONTEMPT PETITION(CIVIL) NO.. 166/2013 IN
SLP(CRL.)NO.9853 OF 2010 DATE : 09/05/2013 These matters were called on for pronouncement
of judgment today.

For Appellant(s) Mr. E.C. Agrawala,Adv.

For Respondent(s) M/s. Mahalakshmi Balaji & Co.

Mr. Subramonium Prasad,AAG
Mr. M.Yogesh Kanna,Adv.
Mr. A.Santha Kumaran,Adv.
Ms. Sasi Kala,Adv.

Mr. Senthil Jagadessan,Adv.

...2/-

Hon'ble Mr. Justice M.Y. Eqbal pronounced the judgment of the Bench comprising Hon'ble Mr.
Justice P. Sathasivam and His Lordship.

Leave granted.

The appeals arising out of SLP (C) No.13120 of 2013, SLP (Crl.) Nos.3273-3274 of 2013 and SLP
(Crl.) Nos.1947-1948 of 2013 are allowed, whereas the appeals arising out of SLP (Crl.)
Nos.1924-1926 of 2013 and SLP (C) Nos.11342-11343 of 2013 are dismissed. There shall be no order
as to costs.

Although we do not appreciate the action of a senior Superintendent of Police, but in view of the
order passed in these appeals, we do not want to proceed any further in Contempt Petition (C)
No.166 of 2013, which stands disposed of.

| [Madhu Bala]
|Sr.PA

| | [Savita Sainani]
| |Court Master

[Signed reportable judgment is placed on the file]
