

Lee Kun Hee & Ors vs State Of U.P.& Ors on 1 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1007

Author: Jagdish Singh Khehar

Bench: Jagdish Singh Khehar, Asok Kumar Ganguly

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 304 OF 2012
(Arising out of SLP (Criminal) No.9168 of 2009)

Lee Kun Hee & Ors.

... Appellants

Versus

State of U.P. & Ors.

... Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. Leave granted.

2. Sky Impex Limited (as buyer) entered into an agreement with JCE Consultancy (as seller) on 1.12.2001. The sale consideration for the products to be supplied by JCE Consultancy was determined at US\$13,70,000 (approximately Rs.9 crores). The product was to be delivered no later than 30.1.2002. The buyer was to confirm receipt and certify quality and quantity. As per the agreement, the product was to be further transferred by the buyer (Sky Impex Limited) to Samsung Gulf Electronics, Dubai (hereafter referred to as “Samsung, Dubai”), a wholly owned subsidiary of Samsung Corporation, South Korea (hereinafter referred to as “Samsung, South Korea”). Consequent upon supply of the product under the contract/agreement dated 1.12.2001, Samsung Dubai was to issue a bill of exchange valued at US\$14,32,000, in favour of the buyer Sky Impex Limited. Sky Impex Limited was to further endorse the bill of exchange in favour of the seller (JCE Consultancy). Within 72 hours wherefrom the seller was required to transfer to Sky Impex Limited US\$62,000 as commission. Alternatively, the buyer (Sky Impex Limited) could transfer, upon delivery, a sum of US\$13,70,000, as sale consideration for the product. It was also provided in the agreement, that after endorsement of bill of exchange, the liability of the buyer towards the seller would stand exhausted. Thereupon, the seller would hold the bill of exchange, in due course, and get vested with the authority under the Negotiable Instrument Act, to claim value, directly from Samsung, Dubai.

Importantly, the agreement dated 1.12.2001 provided that the contract would be governed by the laws of India. The agreement dated 1.12.2001 being of substantial relevance in the present controversy, is being extracted hereinunder:-

“Sky Impex Limited BVI Agreement No.SA/100/019 This agreement is made this day December the 1st 2001 between M/s. Sky Impex Ltd., having its registered office at Omer Hodge Bldg., 2nd Floor, Wickham’s Cay1, P.O. Box-985, Road Town, Tortola, British Virgin Islands, herein referred to as the ‘the Buyer’ and M/s. J.C.E. Consultancy a proprietorship Company having its office at 108, Rohini Complex, WA-121, Shakarpur, Delhi-110092, India, herein referred to as ‘the Seller’.

The Agreement between the two parties constitute the following:

1. The buyer has agreed to purchase Coke Calcination packages from the Seller to the value of USD 1,370,000 as per order sheet dated November, 25th, 2001 and duly acknowledge by the Seller.
2. The above packages will be delivered by the Seller to the Buyer, no later than January, 30th 2002. The packages shall be handed over by the Seller to the Buyer’s representative as per communication in writing to be sent by the Buyer to the Seller.
3. The Buyer should provide a Performance Certificate to the Seller, confirming that the above packages are in accordance with the order placed and thereafter the Buyer shall not have any claims against the Seller in respect to the quality of the packages and quantity ordered.
4. it is understood by the Seller that the said packages are to be further transferred by the Buyer to M/s. Samsung Gulf Electronics, Dubai, a company registered under the laws of Dubai, UAE and which is a wholly owned subsidiary of Samsung Corporation, South Korea.
5. The Buyer shall receive from Samsung Gulf Electronics, Dubai a Bill of Exchange for the value of approx. USD 1,432,000 due for payment of July, 2002 and shall endorse the same to the seller as consideration for the sale of the packages to the Buyer. Within 72 hours of receiving settlement of the said Bill of Exchange the Seller shall transfer to the Buyer the amount of USD 62,000 to the nominated account of the Buyer as his commission. Alternatively the Buyer shall transfer to the Seller the sum of USD 1,370,000 against delivery of goods to a Bank account that shall be nominated by the Seller.
6. After endorsement of the said Bill of Exchange, the liability of the Buyer towards the Seller ceases and the Seller shall become holder in due course of the Bill of Exchange with all the rights as per the Negotiable Instrument Act to claim value directly from the Samsung Gulf Electronics, Dubai.

7. The Buyer, however, in good faith shall follow up with Samsung Gulf Electronics, for payment of the said Bill of Exchange at maturity expected in July, 2002 and shall in good faith keep the Seller informed of any development in respect of settlement of the Bill.

8. This contract is governed by the Laws of India.”

3. Through a delivery receipt dated 28.1.2002, Sky Impex Limited confirmed having received the product valued at US\$13,70,000 under the contract/agreement dated 1.12.2001. The buyer neither complained about quality nor quantity. There was also no protest that the goods/product was not received in time. The aforesaid receipt of goods implies the delivery of the product by JCE Consultancy to Sky Impex Limited. On 1.2.2002, Samsung, Dubai executed a bill of exchange valued at US\$14,32,745 in favour of the buyer Sky Impex Limited. This implies further delivery of goods/product from Sky Impex Limited to Samsung, Dubai. The said bill of exchange was then endorsed in favour of the seller JCE Consultancy, in terms of agreement dated 1.12.2001.

4. Allegedly, on account of Samsung, Dubai not honouring its commitment under the bill of exchange dated 1.2.2002, a legal notice dated 20.12.2004 was issued by JCE Consultancy (the seller) through counsel, on instructions from M.A. Packir (Shaikh Allaiddin Paker Maiddin - sole proprietor of JCE Consultancy) to Samsung, Dubai. Through the aforesaid notice Samsung, Dubai, was called upon to make payment of US\$14,32,000 to JCE Consultancy within 48 hours, either by way of bank draft or other smart investment.

Samsung, Dubai, was warned, that in case of non-receipt of payment, JCE Consultancy would be constrained to take recourse to legal remedies, both civil and criminal. The legal notice issued by JCE Consultancy dated 20.12.2004 was responded to by Samsung, Dubai, through counsel on 21.12.2004. In response, it was inter alia asserted:

“...that a Credit Note was already been issued by the beneficiary for the Bill of Exchange, Sky Impex Limited on 22 June 2002 and before the due date of payment. Therefore, our client has no commitment or responsibility to pay your client any amount in relating to the above mentioned Bill of Exchange and your client can simply demand the amount of the Bill of Exchange from Sky Impex Limited, who mislead your client...” It is therefore apparent, that in its response Samsung, Dubai, acknowledged execution of a bill of exchange valued at US\$14,32,000, in favour of Sky Impex Limited, and thereby, its liability under the contract dated 1.12.2001. In spite thereof Samsung, Dubai, as a matter of defence, in order to avoid liability, took up the position, that the bill of exchange executed by it in favour of Sky Impex Limited had been satisfied, and the beneficiary (Sky Impex Limited) had already issued a credit note in its (Samsung, Dubai) favour on 22.6.2002.

5. JCE Consultancy filed a criminal complaint (complaint no.30 of 2005) under Sections 403, 405, 415, 418, 420 and 423 read with Sections 120B and 34 of the Indian Penal Code before the VIIth Additional Chief Judicial Magistrate, Ghaziabad. In the complaint filed by Shaikh Allaiddin Pakir Maiddin - the sole proprietor of JCE Consultancy, Samsung, Dubai, was impleaded as accused no.1 (appellant no. 5, herein); Byung Woo Lee, Managing Director of Samsung, Dubai, was impleaded as accused no.2 (appellant no.3, herein); Lee Kun Hee, President, Samsung Corporation, was impleaded as accused no.3 (appellant no.1, herein); Yon Jung Yung, Vice President and Chief Executive Officer, Samsung Corporation, was impleaded as accused no.4 (appellant no. 2, herein); Dong Kwon Byon, Ex. Managing Director, Samsung, Dubai, was impleaded as accused no.5 (appellant No. 4, herein); S.C. Baek, ex. Financial Advisor, Samsung, Dubai, was impleaded as accused no.6; Sky Impex Limited, was impleaded as accused no.7; and the Chairman of Sky Impex Limited, was impleaded as accused no.8. Since the contents of the complaint are of substantial relevance to the present controversy, the same are being extracted hereunder:

“1. That the complainant company is dealing in consultancy in the Engineering Field and Sh.Sheikh Allaiddin Pakir Maddin is its sole Prop. Who has been authorized on behalf of the company to sign, verify and present the complaint and is empowered to do all the acts.

2. That the accused no.1 is a Multi National Company who have business in Foreign Countries and is reputed. Accused No.2 is the Managing Director of accused No.1, Accused No.3 the President, Accused No.4 the Vice President and Chief Executive Officer, Accused No.5 the Ex. Managing Director, Accused No.6 the Ex-Financial Controller, who are being officers of the company and are responsible each and every done by the company.

3. That on dated 25.11.2011, the Accused no.7 placed order for supply of Coke Calcination package with complainant company and was told to make supply of the said items to accused no.1 which paper is Annexure K-1. In this regard an agreement (contract) between Accused No.7 and the complainant company was executed vide L.A./100/019 dt.1.12.01 which was signed by the Accused No.7 and the authorized signatory of the complainant company which paper is Annexure K-2.

4. That in compliance of the order dt.25.11.01 complainant company supplied the ordered goods to Accused No.7 the acknowledgement receipt was given by Accused No.7 vide letter dt.28.1.02 which paper is Annexure K-3.

5. That the Accused No.7 handed over the supplied goods by the complainant company to Accused No.1 and the handig over – taking over receipt was acknowledged by the Accused No.1 vide letter dt.1.2.02 in favour of the Accused no.7 which paper is Annexure K-4.

6. That as per the clause No.5 of the agreement executed between the complainant company and the Accused no.7 the due payment of the received goods was to be made by the Accused No.1 in the form of Bill of Exchange through Accused No.7. The accused No.7 was to endorse the bill of Exchange in favour of the complainant company so received by the Accused No.7.

7. That the Accused No.1 in its Board Meeting of the company passed a resolution on 15.8.01 by virtue of which Accused No.6 in addition to other works was also authorized to sign Bill of Exchange. The said resolution has been signed by Accused No.5 in the capacity of Director and Secretary, the same is Annexure K-5.

8. That in accordance with aforesaid resolution, Accused No.1 intimated their Bank Manager vide their letter dt.26.1.02 informing that Accused No.6 is authorized to issue Bill of Exchange on behalf of Accused No.1 and the signatures of the Accused No.6 were also attested vide the abovesaid letter. The signature of Accused no.6 have been attested by the Bank Officer of Accused No.1 which is Annexure K-6.

9. That Accused no.6 for and on behalf of Accused No.1 issued Bill of Exchange No.S.M.I.C. dt:1.2.02 for Rs.14,32,745/- American Dollars under his signature in favour of Accused No.7 after having received the ordered goods and on being satisfied of its quality, the same was endorsed by the Accused No.7 in favour of the complainant company in view of the agreement executed between him and the complainant company which is Annexure K-7.

10. That the complainant company made demand of payment from the Accused No.1 against the Bill of Exchange issued in favour of the Accused No.7 and endorsement thereon which the Accused No.1 did not pay despite repeated demands from time to time. The complainant company sent a legal demand notice dt: 20.12.04 through their Advocate to Accused No.1 on not receiving the due payment which is Annexure K-

8, and a reply to the same was sent by Accused No.1 on 21.12.04 through their Advocate stating therein that the payment of the alleged Bill of Exchange has already been made in favour of Accused No.7 on 22.6.02, they, therefore, have no liability to discharge with regard to payment. The reply to notice is Annexure K-9.

11. That the aforesaid statement of Accused No.1 is illegal and contrary to law. The complainant company is the real holder of the Bill of Exchange. Till the demand for payment against the Bill of Exchange is made there is no question of payment of the same. Only the holder is entitled to receive the payment, therefore, the Accused No.1 along with Accused No.7 do not want to make the payment to the complainant company and they want to misappropriate the same.

12. That the complainant company is entitled to receive the payment against the supplied goods which amounts to 14,32,745/- American Dollars from the Accused no.1 personally and jointly and

the accused persons have deliberately not paid the same.

13. That the accused persons have committed the above offence punishable under Sec.403, 405, 415, 418, 420, 423, 120B, 34 Indian Penal Code.

It is therefore prayed that this Hon'ble Court may be pleased to summon the accused persons and on proof they be punished." Shaikh Allaiddin Pakir Maiddin - the sole proprietor of JCE Consultancy, examined himself under Section 200 of the Code of Criminal Procedure before the VIIth Additional Chief Judicial Magistrate on 7.1.2005. In his testimony he, inter alia, asserted that accused nos.2 to 6 were individually and jointly liable/responsible for the activities of accused no.1 (Samsung, Dubai). He deposed that on 25.11.2001 accused no.7 Sky Impex Limited had placed an order with the complainant, whereupon an agreement dated 1.12.2001 was executed between Sky Impex Limited (as buyer) and the complainant - JCE Consultancy (as seller). He maintained, that the complainant delivered the contracted goods to accused no.7 (Sky Impex Limited), who further delivered the contracted goods to accused no.1 (Samsung, Dubai). He affirmed, that a receipt of the goods was also issued by accused no.7 (Sky Impex Limited) vide a letter dated 1.2.2002. It was maintained, in the statement of Shaikh Allaiddin Pakir Maiddin, that accused no.1, in a Board meeting, approved the proposal to authorize accused no.6 (S.C. Baek, ex.-Financial Advisor, Samsung, Dubai) to sign and issue bills of exchange, for and on behalf of Samsung, Dubai. He also asserted, that a bill of exchange for US\$14,32,745 was signed and issued by accused no.6 on behalf of Samsung, Dubai, to accused no.7 (Sky Impex Limited). He also deposed, that the said bill of exchange was endorsed in favour of the complainant - JCE Consultancy, by accused no.7 (Sky Impex Limited). Shaikh Allaiddin Pakir Maiddin averred, in his statement, that despite repeated demands made to accused no.1, to honour the bill of exchange dated 1.2.2002, no payment came to be made by accused no. 1 to the complainant. Resultantly, on 20.12.2004 the complainant sent a legal notice, through counsel, to accused no.1. In its response dated 21.12.2004, through counsel, it was stated on behalf of the accused (Samsung, Dubai), that the amount of the said bill of exchange had already been made over to accused no.7 on 22.6.2002. He also asserted, that in reply to the notice, the accused adopted the position of no liability towards the complainant under the bill of exchange dated 1.2.2002. Shaikh Allaiddin Pakir Maiddin, in his statement under Section 200 of the Code of Criminal Procedure, contested the stance adopted by the accused in response to the legal notice, by testifying that the complainant company was the holder of the bill of exchange, consequent upon an endorsement made thereupon by Sky Impex Limited. As such, the complainant - JCE Consultancy maintained, that it was entitled to payment under the bill of exchange. He also averred, that accused no.1 (Samsung, Dubai), in collusion with accused no.7 (Sky Impex Limited), in order to deny payment to the complainant, had adopted the aforesaid position. He asserted, that the complainant - JCE Consultancy was entitled to recover payment under the bill of exchange, individually and jointly from the accused. Besides recording his statement under Section 200 of the Code of Criminal Procedure, Shaikh Allaiddin Pakir Maiddin also tendered copies of the order sheet dated 2.11.2001, the agreement dated 1.12.2001, the delivery receipt dated 28.1.2002, the performance certificate dated 1.2.2002, proceedings of the Board meeting of accused no.1 approving the proposal to authorize accused no.6, the letter dated 26.1.2002 (issued by accused no.1 to its banker, informing its banker that accused no.6 was its authorized signatory), the bill of exchange dated 1.2.2002 in the sum of US\$14,32,745 (issued in favour of Sky Impex Limited, duly endorsed to JCE Consultancy),

the legal notice dated 20.12.2004 and its reply dated 21.12.2004.

6. Based on the aforesaid criminal complaint, the statement of Shaikh Allaiddin Pakir Maiddin under Section 200 of the Code of Criminal Procedure, as also, the supporting documents, the VIIth Additional Chief Judicial Magistrate, Ghaziabad passed an order dated 12.1.2005 summoning the accused under Sections 403, 405, 420 and 423 read with Sections 120B and 34 of the Indian Penal Code for 3.2.2005. The order passed by the VIIth Additional Chief Judicial Magistrate, Ghaziabad was first assailed by the five appellants herein before the High Court of Judicature at Allahabad by filing Criminal Miscellaneous Application No. 11404 of 2006. The aforesaid Criminal Miscellaneous Application was disposed of on 13.11.2009. Through the instant appeal the appellants have assailed the order passed by the High Court on 13.11.2009.

7. The primary contention advanced at the hands of the learned counsel representing the five appellants before this Court was based on an admitted sequence of facts. It was submitted, that none of the appellants is an Indian citizen. It was also submitted, that none of the appellants have resided in India, either before, or after the execution of the agreement dated 1.12.2001, nor during its implementation. It was submitted, that neither the criminal complaint nor the pre-summoning evidence recorded under Section 200 of the Code of Criminal Procedure, attributes any act of omission/commission, within the territorial jurisdiction of India, to any of the five appellants herein. As such, according to learned counsel, the provisions of the Indian Penal Code cannot be relied upon to determine the culpability of the appellants. In order to substantiate the instant contention, our attention was invited by the learned counsel for the appellants, to Section 2 of the Indian Penal Code, which reads as under:

“2. Punishment of offences committed within India – Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

Based on the Section 2 of the Indian Penal Code, it was sought to be emphasized, that culpability of an accused under Section 2 of the Indian Penal Code can only be relatable to an act “...of which he shall be guilty within India”. Based on aforesaid legal and factual position, it was sought to be emphasized, that the appellants having not committed any act within the territorial jurisdiction of India, cannot be blamed of being guilty of an act “within India”, and as such, cannot be proceeded against in a Court in India for facing prosecution under the provisions of the Indian Penal Code.

8. In order to support the aforesaid primary contention, it was also emphasized, that appellant nos. 1 to 4 are all foreign citizens, whereas, appellant no. 5 is a foreign company incorporated in Dubai. Appellant no. 1, we are told, was Chairman and Director of Samsung, South Korea. It is contended, that he has had nothing to do with Samsung, Dubai. We are informed, that he lives in South Korea. Appellant no. 2, we are informed, was a former Vice Chairman and CEO of Samsung, South Korea. He also has had nothing to do with Samsung, Dubai. He too lives in South Korea. Learned counsel for the appellant contends, that on the date of the execution of the agreement dated 1.12.2001, appellant no. 3 was the Managing Director, of Samsung, Dubai. He is no longer so. He too now

resides in South Korea. Likewise, according to learned counsel, appellant no. 4, on the date of execution of the agreement dated 1.12.2001, was ex- Managing Director of Samsung, Dubai. He also resides in South Korea. Appellant no. 5, we were told, is a foreign company incorporated in Dubai (in the United Arab Emirates). It has its registered office at Dubai. It is also asserted, that the five appellants herein, have no concern with the other accused, in the criminal complaint filed by JCE Consultancy.

9. Additionally, it was submitted, that respondent no. 2-JCE Consultancy, is a proprietary concern under the sole ownership of Shaikh Allauddin Pakir Maiddin. The aforesaid concern according to the appellants carries on its business activities either in Delhi or at Ghaziabad, in India. It was contended on behalf of the appellants, that as per the averments made in the complaint, it was Sky Impex Limited which had placed an order with JCE Consultancy under the agreement dated 1.12.2001. Sky Impex Limited, according to the learned counsel for the appellants, is a foreign company registered in the British Virgin Islands. It was submitted, that the complainant has not disclosed where and how the agreement was executed. It was submitted, that there is no averment at the hands of the complainant, that the agreement dated 1.12.2001 was executed in India. It was asserted, that even according to the averments made in the complaint, the goods were supplied to Sky Impex Limited, and not to any one or more of the appellants herein. It was pointed out, that the complaint does not even narrate how or from where the goods were exported from India. Or how, and from where, delivery was taken by Sky Impex Limited. It was contended, that the complainant has merely asserted, that the goods were delivered by Sky Impex Limited to Samsung, Dubai. It is pointed out, that the complaint does not disclose how and where, the delivery of goods was made by Sky Impex Limited to Samsung, Dubai.

10. We shall now endeavour to deal with the primary contention advanced on behalf of the appellant. The instant contention has a jurisdictional flavour. We shall deal with the matter, firstly on the basis of an analysis of some of the provisions of the Code of Criminal Procedure. For the instant purpose reference may first of all be made to Section 4 of the Code of Criminal Procedure which is reproduced hereunder :

4. Trial of offense under the Indian Penal Code and other laws-

1. All offences under the Indian Penal Code (45 of 2860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

2. All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.” It is apparent, from a perusal of Section 4, that inquiry and trial of offences contemplated under the Indian Penal Code, are to be conducted in the manner stipulated under the Code of Criminal Procedure. The offences in this case, as noticed above, have been framed under sections 403 (dishonest misappropriation), 405 (criminal breach of trust), 420

(cheating) and 423 (dishonest/fraudulent execution of an instrument containing a false statement relating to consideration) of the Indian Penal Code. The denial of liability by the accused under the agreement dated 1.12.2001 is allegedly the basis of the criminal complaint lodged by JCE Consultancy. The place where the agreement was executed, as well as, the places where different constituents of the agreement were carried out, are material factors to determine the relevant court(s) which would/could have jurisdiction in the matter. The place where the consequence of the criminal action (alleged in the complaint) ensues, may also be relevant for the said purpose. And finally, place(s) of receipt and dispatch of communications exchanged by the rival parties, revealing deception as an ingredient of cheating alleged by the complainant, can also be relevant to identify the court(s) having jurisdiction in the matter. The aforesaid relevance becomes apparent from Sections 179, 181 and 182 of the Code of Criminal Procedure, which we shall presently examine.

11. The aforesaid examination has to be based on certain salient facts, which we may first recapitulate. The complaint alleges the execution of a contract dated 1.12.2001, wherein consideration in the form of goods/product produced in India, by the seller (JCE Consultancy) stationed in India, were to be supplied to the buyer (Sky Impex Ltd.), in Dubai. The reciprocal consideration in the agreement was in the form of a monetary payback, by the eventual recipient of goods (Samsung, Dubai), to the seller in India (JCE Consultancy). The complaint narrates a circuitous passage of the goods from the seller (JCE Consultancy) to the eventual buyer (Samsung, Dubai), as also, the return consideration from the said buyer (Samsung, Dubai) to the seller. Both the aforesaid transactions, according to the complainant, passed through an intermediary – Sky Impex Limited. The agreement, according to the complainant, also contemplates commission for the intermediary (Sky Impex Ltd.). There is definiteness in the complainant's allegations of the transfer of goods from India, as also, the receipt of monetary consideration in India. The complainant has supported his allegations on the basis of documents, wherein each document connects the passing of goods from the seller, and of the reciprocal monetary consideration from the eventual buyer (Samsung, Dubai) to the seller (JCE Consultancy) through a fine unbroken chain of events. The foundation of the complaint has been laid on the basis of the agreement dated 1.12.2001, whereby the complainant wishes to establish the corresponding obligations of the rival parties. Through the delivery receipt dated 28.1.2002, the complainant desires to demonstrate communication of the goods by the seller, as also, their receipt by the buyer. Based on the execution of the bill of exchange on 1.2.2002 by, the authorized signatory of Samsung, Dubai, and the endorsement of the bill of exchange on 1.2.2002 itself by Sky Impex Limited, in favour of the complainant JCE Consultancy as reciprocal consideration; exactly in the manner contemplated under the agreement dated 1.12.2001; the complainant desires to establish the liability of Samsung, Dubai, under the agreement dated 1.12.2001.

12. On the question of jurisdiction, based on the factual position indicated above, reference may first be made to Section 179 of the Criminal Procedure Code which is being reproduced hereunder:-

“179. Offence triable where act is done or consequence ensues:

When an act is an offence by reasons of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued." In Section 179 aforesaid, two phrases need to be noticed. Firstly, "anything which has been done", with reference to the offence. And secondly, "consequence which has ensued", also with reference to the offence. Both the aforesaid phrases substantially enlarge and magnify the scope of jurisdiction contemplated under Section 179 aforesaid, so as to extend the same over areas contemplated by the two phrases. In so far as the present controversy is concerned, the offence(s) alleged in the complaint emerge from the fact, that even though the complainant faithfully performed its obligations under the agreement/contract dated 1.12.2001, the accused dishonestly/fraudulently/falsely denied/avoided the reciprocal obligation(s) which they were obliged to perform thereunder. In our view, the words "anything which has been done", for the present controversy, would extend to anything which has been done in furtherance of the execution of the agreement dated 1.12.2001. The facts constituting the performance of obligations by the complainant, actually constitute the foundational basis for the criminal accusation levelled against the accused (in refusing to honour the corresponding obligation). The instant foundational basis for establishing the commission of the offence, in our view, would fall within the ambit of the words "anything which has been done" used in the aforesaid provision. In the absence of the instant affirmation of the factual position, in the present controversy, the culpability of the accused cannot be established. In the complaint it is asserted, that the contracted goods/product were/was supplied by JCE Consultancy from Ghaziabad in India. The factum of having supplied the goods/product to Samsung, Dubai through Sky Impex Limited, is sought to be established not only through a delivery receipt dated 28.1.2002 (issued by the intermediary buyer - Sky Impex Limited), but also, on the basis of the bill of exchange executed on 1.2.2002 by Samsung, Dubai (the ultimate beneficiary), constituting the payment for the goods/product purchased. The factum of supply of goods from Ghaziabad (in India) to Dubai (in the United Arab Emirates), as an essential component of the offence(s) allegedly committed by the accused, in our view, is relatable to the words "anything which has been done" used in Section 179 aforesaid. This factual position, in our view, is sufficient to vest jurisdiction under Section 179 of the Code of Criminal Procedure, with a competent Court at Ghaziabad.

13. Besides the aforesaid, under Section 179 of the Code of Criminal Procedure, even the place(s) wherein the consequence (of the criminal act) "ensues", would be relevant to determine the court of competent jurisdiction. Therefore, even the courts within whose local jurisdiction, the repercussion/effect of the criminal act occurs, would have jurisdiction in the matter. The reciprocal consideration, flowing out of the agreement dated 1.12.2001, is comprised of a monetary payback. The aforesaid monetary payback was allegedly transmitted by the recipient of goods (Samsung, Dubai) to the intermediary buyer (Sky Impex Limited), by way of a bill of exchange valued at US\$ 14,32,745, on 1.2.2002. The aforesaid bill of exchange was then endorsed by Sky Impex Limited, to the complainant-JCE Consultancy. JCE Consultancy maintains, that it holds the said bill of

exchange at Ghaziabad in India. The execution of the bill of exchange (by Samsung, Dubai) and its endorsement (by Sky Impex Limited) is in consonance with the terms and conditions of the agreement dated 1.12.2001. Upon alleged denial of payment to JCE Consultancy (under the bill of exchange dated 1.2.2002), a legal notice dated 20.12.2004 came to be issued demanding payment. In its response dated 21.12.2004, Samsung, Dubai, allegedly dishonestly/fraudulently/falsely denied liability/responsibility. Since the complainant is allegedly holding the bill of exchange dated 1.2.2001 at Ghaziabad in India, the consequence emerging out of the said denial of encashment of the bill of exchange, in our view, would be deemed to “ensue” at Ghaziabad in India. In the instant view of the matter, the competent Court at Ghaziabad in India, in our view, would have jurisdiction in the matter under Section 179 of the Code of Criminal Procedure.

14. Insofar as Section 181 of the Code of Criminal Procedure is concerned, while inviting our attention to the same, learned counsel for the complainant-JCE Consultancy, in order to emphasize the issue of jurisdiction, brought to our notice sub-section (4) thereof. Section 181(4) of the Code of Criminal Procedure is being extracted hereunder:-

181. Place of trial in case of certain offences – (1)

(2)

(3)

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

A perusal of the aforesaid provision leaves no room for any doubt, that in offences of the nature as are subject matter of consideration in the present controversy, the court within whose local jurisdiction, the whole or a part of the consideration “...were required to be returned or accounted for...” would have jurisdiction in the matter. In the present case, a bill of exchange dated 1.2.2002 was issued on behalf of Samsung, Dubai, to Sky Impex Limited; Sky Impex Limited, in terms of the agreement dated 1.12.2001, endorsed the aforesaid bill of exchange in favour of the complainant-JCE Consultancy; JCE Consultancy claims to be holding the aforesaid bill of exchange at Ghaziabad in India. Being holder of the bill of exchange dated 1.2.2002, JCE Consultancy demanded the right of payment thereunder, which is being denied by the accused. Since the bill of exchange issued by Samsung, Dubai, dated 1.2.2002 for US\$14,32,745 was received, and is allegedly being held by JCE Consultancy at Ghaziabad in India; the aforesaid bill of exchange, according to the complainant, has to be honoured/realized at the place where it is held (i.e. at Ghaziabad, in India). In the instant alleged factual background of the matter, we are of the view, that the competent court at Ghaziabad in India, would have jurisdiction to hold the trial of the complaint under Section 181(4) of the Code of Criminal Procedure.

15. Lastly, reference may be made to section 182 of the Criminal Procedure Code which is being reproduced hereunder:-

182. Offences committed by letters, etc. – (1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by first marriage has taken up permanent residence after the commission of offence.” A perusal of section 182 (extracted above) reveals that the said provision can be invoked to determine jurisdiction in respect of a number of offences which include cheating as a component. When acts of fraud/dishonesty/deception, relatable to the offence(s), contemplated under Section 182 aforementioned, emerge from communications/messages/letters etc., the place(s) from where the communications/messages/letters etc. were sent, as also, the places at which the same were received, would be relevant to determine the court of competent jurisdiction. The allegations contained in the complaint reveal, that the complainant-JCE Consultancy, addressed a legal notice dated 20.12.2004 to Samsung, Dubai, calling upon Samsung, Dubai, to honour its reciprocal commitment of the monetary payback contemplated under the agreement dated 1.12.2001. In its response dated 21.12.2004, Samsung, Dubai, denied liability, by asserting that Samsung, Dubai, had no commitment/responsibility towards JCE Consultancy, under the bill of exchange dated 1.2.2002. The aforesaid denial according to the complainant, constitutes the basis of the criminal complaint filed against the accused. The place at which the said response on behalf of Samsung, Dubai, was received, in our view, would be relevant to determine the Court of competent jurisdiction, under Section 182 of the Criminal Procedure Code. Even if the response was received by the counsel for JCE Consultancy in a place other than Ghaziabad (though in India), still the competent court at Ghaziabad in India, in our view, would be vested with jurisdiction, as under Section 178 (d) of the Code of Criminal Procedure, in cases where an offence consists of several acts carried out under different jurisdictions, a court having jurisdiction where any one of such acts was committed, will be competent to try the same.

16. In view of the aforesaid deliberations, it is not legitimate for the appellants to contend, that the actions attributed by JCE Consultancy to the accused, have no connectivity to territorial jurisdiction in India. Section 179 of the Code of Criminal Procedure vests jurisdiction for inquiry and trial in a Court, within whose jurisdiction anything has been done with reference to an alleged crime, and also, where the consequence of the criminal action ensues. Section 181(4) of the Code of Criminal Procedure leaves no room for any doubt, that culpability is relatable even to the place at which consideration is required to be returned or accounted for. Finally, Section 182 of the Code of Criminal Procedure postulates that for offences of which cheating is a component, if the alleged act

of deception is shown to have been committed, through communications/letters/messages, the court within whose jurisdiction the said communications/letters/messages were sent (were received), would be competent to inquire into and try the same. Thus viewed, it is not justified for the appellants to contend, that the allegations levelled by the complainant against the accused, specially in respect of the five appellants herein, are not relatable to territorial jurisdiction in India, under the provisions of the Code of Criminal Procedure.

17. Our deliberations in the preceding paragraphs are based on the facts of the present case, as also, the offences which have been incorporated in the impugned summoning order. We would have had to examine the scope of Section 2 of the Indian Penal Code, which constitutes the plank on which submissions advanced on behalf of the appellants rest. But that may not really be necessary, as our research lead us to the decision rendered by this Court in *Mobarik Ali Ahmed vs. The State of Bombay* (1958) SCR 328. This Court in the aforesaid judgment held as under:-

“(24) It would be desirable at this stage to notice certain well- recognised concepts of International Law bearing on such a situation. Wheaton in his book on Elements of International Law (Fourth Edition) at page 183, dealing with criminal jurisdiction states as follows:

“By the Common Law of England, which has been adopted, in this respect, in the United States, criminal offences are considered as altogether local, and are justiciable only by the courts of that country where the offence is committed.” At page 182 thereof it is stated as follows :

“The judicial power of every independent State, extends (with the qualifications mentioned earlier) to the punishment of all offences against the municipal laws of the State, by whomsoever committed, within the territory.” In Hackworth’s Digest of International Law (1941 Edition), Vol.II, at page 188 there is reference to opinions of certain eminent American Judges. It is enough to quote the following dictum of Holmes J. noticed therein :

“Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power.” In Hyde’s International Law (Second Edition), Vol.I, at page 798, the following quotation from the judgment of the permanent Court of International Justice dated September 7, 1927, in the case relating to *S.S. Lotus* (Publications, Permanent Court of International Justice, Series A, Nos.10, 23) is very instructive :

“It is certain; that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more

especially its effects, have taken place there.” This quotation is also noticed in Openheim’s International Law (Eighth Ed.), Vol.I at page 332 in the footnote. In noticing the provisions of International Law in this context we are conscious that what we have to deal with in the present case is a question merely of municipal law and not of any International Law. But as is seen above, the principles recognized in International Law in this behalf are virtually based on the recognition of those principles in the municipal law of various countries and is really part of the general jurisprudence relating to criminal responsibility under municipal law. No doubt some of the above dicta have reference to offences actually committed outside the State by foreigners and treated as offences committed within the State by specific legislation. But the principle emerging therefrom is clear that once it is treated as committed within the State, the fact that he is a foreigner corporeally present outside at the time of such commission is no objection to the exercise of municipal jurisdiction under the Municipal law. This emphasizes the principle that exercise of criminal jurisdiction depends on the locality of the offence and not on the nationality of the alleged offender (except in a few specified cases such as Ambassadors, Princes etc.).

25. Learned counsel for the appellant has relied on various passages in the judgment of Cockburn, C. J., in the well-known case *The Queen v. Keyn* (Franconia’s case) [(1876) 2 Ex D 63]. Fourteen learned Judges participated in that case and the case appears to have been argued twice. Eight of them including Cockburn, C. J., formed the majority. Undoubtedly there are various passages in the judgment of Cockburn, C. J., which prima facie seem capable of being urged in favour of the appellant’s contention. In particular the following passage at p. 235 may be noticed:

“The question is not whether the death of the deceased, which no doubt took place in a British ship, was the act of the defendant in such ship, but whether the defendant, at the time the act was done, was himself within British jurisdiction.” The learned Chief Justice, however, recognized at p. 237 that there were certain American decisions to the contrary. Now the main debate in that case was whether the sea upto three mile limit from the shore is part of British territory or whether in respect of such three mile limit only limited and defined extraterritorial British jurisdiction extended which did not include the particular criminal jurisdiction under consideration. In respect of this question, as a result of the judgment, the Parliament had to enact the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73) which in substance overruled the view of the majority and of the learned Chief Justice on this point. The main principle of criminal jurisdiction, however, relevant for our purpose was enunciated in the minority judgment of Amphlett, J. A., at p. 118, that “it is the locality of the offence that determines the jurisdiction” implying by contrast that it is not the nationality of the offender.

26. The question, however, that still remains for consideration is whether there is anything in the language of the sections of the Indian Penal Code relating to the general scheme of the Code which compels the construction that the various sections

of the Penal Code are not intended to apply to a foreigner who has committed an offence in India while not being corporeally present therein at the time. For this purpose we are not concerned with such of the sections of the Penal Code, if any, which indicate the actual presence of the culprit as a necessary ingredient of the offence. Of course, for such offences a foreigner *ex hypothesi* not present at the time in India cannot be guilty. The only general sections of the Indian Penal Code which indicate its scheme in this behalf are Sections 2, 3, and 4 and as they stand at present, they are as follows:

“2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

3. Any person liable, by any Indian Law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

4. The provisions of this Code apply also to any offence committed by-

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.

Explanation:— In this section the word ‘offence’ includes every act committed outside India which, if committed in India, would be punishable under this Code.” Sections 3 and 4 deal with offences committed beyond the territorial limits of India and Section 2 obviously and by contrast refers to offences committed within India. It appears clear that it is Section 2 that has to be looked to determine the liability and punishment of persons who have committed offences within India. The section asserts categorically that every person shall be liable to punishment under the Code for every act or omission contrary to the provisions of the Code and of which he shall be guilty within India. This recognises the general principle of criminal jurisdiction over persons with reference to the locality of the offence committed by them, being within India. The use of the phrase “every person” in Section 2 as contrasted with the use of the phrase “any person” in Section 3 as well as Section 4 (2) of the Code is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code. Learned counsel for the appellant suggests that the phrase “within India” towards the end of Section 2 must be read with the phrase “every person” at the commencement thereof. But this is far-fetched and untenable. The plain meaning of the phrase “every person” is that it comprehends all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed. This section must be understood as comprehending every person without exception barring such as may be specially exempt from criminal proceedings or punishment thereunder by virtue of the Constitution (See Article 361(2) of the Constitution) or any statutory provisions or some well-recognised principle of international law, such as foreign

sovereigns, ambassadors, diplomatic agents and so forth, accepted in the municipal law.

27. Learned counsel drew our attention to a number of sections in the Penal Code, viz., Sections 108-A, 177, 203, 212, 216, 216-A and 236. The argument based on reference to these sections is that wherever the legislature in framing the Penal Code wanted to legislate about anything that has reference to something done outside India it has specifically said so and that therefore it may be expected that if it was intended that the Penal Code would refer to a person actually present outside India at the time of the commission of the offence, it would have specifically said so. We are unable to accept this argument. These sections have reference to particular difficulties which arose with reference to what may be called, a related offence being committed in India in the context of the principal offence itself having been committed outside India — that is for instance, abetment, giving false information and harbouring within India in respect of offences outside India. Questions arose in such cases as to whether any criminal liability would arise with reference to the related offence, the principal offence itself not being punishable in India and these sections were intended to rectify the lacunae. On the other hand, a reference to Section 3 of the Code clearly indicates that it is implicit therein that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were not so, the legal fiction implicit in the phrase “as if such act had been committed within India” in Section 3 would not have been limited to the supposition that such act had been committed within India, but would have extended also to a fiction as to his physical presence at the time in India.

28. In the argument before us, there has been some debate as to what exactly is the implication of the clause “of which he shall be guilty within India” in Section 2 of the Code. It is unnecessary to come to any definite conclusion in respect thereto. But it is clear that it does not support the contention of the appellant's counsel. We have, therefore, no doubt that on a plain reading of Section 2 of the Penal Code, the Code does apply to a foreigner who has committed an offence within India notwithstanding that he was corporeally present outside.

... ..

32. After giving our careful consideration to the questions raised before us, we are clearly of the opinion that even on the assumption that the appellant has ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Indian Penal Code notwithstanding his not being corporeally present in India at the time.” (emphasis is ours) We are in respectful agreement with the conclusion drawn in Mobarik Ali Ahmed’s case (supra). It is unnecessary for us to again repeat the same. In view of the above, we are satisfied that all components of the submissions advanced on behalf of the appellants, more particularly their foreign nationality, their residence outside India, and the fact that they were not present in India when the offence(s) was/were allegedly committed, are of no consequence, in view of the aforesaid decision rendered by this Court. We, therefore, find no merit in the first contention advanced on behalf of the appellants in the instant case, that the Court of the VIIth Additional Chief Judicial Magistrate could not have entertained the complaint filed by JCE Consultancy against the appellants.

18. Another allied submission (the second submission), advanced on the same lines as the first contention was, that consequent upon the passing of goods/product to Samsung, Dubai, S.C. Baek (accused no. 7) is said to have paid the consideration amount through a bill of exchange. It was submitted, that even as per the averments made by the complainant-JCE Consultancy, the aforesaid bill of exchange was executed by S.C. Baek in Dubai. And as such, that liability under the aforesaid bill of exchange would ensue only at Dubai. It was also contended, that the aforesaid bill of exchange was allegedly drawn on behalf of Samsung, Dubai, which is a company registered at Dubai (in the United Arab Emirates). According to the learned counsel representing the appellants herein, even the consideration, as per the averments made in the complaint, was liable to pass from Samsung, Dubai, to Sky Impex Limited at Dubai (in the United Arab Emirates). It is submitted, that thereafter the said bill of exchange came to be settled between the executor thereof (Samsung, Dubai) and the beneficiary thereunder (Sky Impex Limited), inasmuch as, Sky Impex Limited, consequent upon the settlement of the said bill of exchange, allegedly executed a credit note in favour of Samsung, Dubai on 22.6.2002. This credit note was also allegedly executed at Dubai. It is further submitted, that the aforesaid bill of exchange was stated to have been endorsed in favour of the complainant by Sky Impex Limited. This endorsement, according to the learned counsel for the appellants, was also made at Dubai (in the United Arab Emirates). As such, it was contended by the learned counsel for the appellants, that even the passing of consideration in furtherance of the alleged contract dated 1.12.2001, took place beyond the territorial barriers of India. It was, therefore, asserted on behalf of the appellants, that Courts in India, by no stretch of imagination, can have jurisdiction over the matter.

19. It is not necessary for us to re-examine the issue projected at the hands of the learned counsel for the appellants, in terms of the factual position noticed in the foregoing paragraph, because the instant submission, is in sum and substance, exactly akin to the one raised on behalf of the appellants as their primary submission. Having threadbare examined the primary contention, we are satisfied in rejecting the instant contention of the appellants, for exactly the same reasons which had weighed with us while dealing with the primary contention raised on behalf of the appellants.

20. The third submission advanced at the hands of the learned counsel for the appellants was, that the complaint lodged by JCE Consultancy was based on an agreement dated 1.12.2001. The aforesaid agreement was between JCE Consultancy and Sky Impex Limited. It was submitted, that the appellants herein are not privy to the aforesaid contract/agreement. Accordingly, it was contended, that the grievance of the complainant, if any, could have been raised only as against Sky Impex Limited. It was asserted, that the appellants are independent of the persons who are privy to the agreement dated 1.12.2001. It is asserted, that only such persons who are privy to the contract/agreement dated 1.12.2001, can be proceeded against for breach of the same. Stated differently, it is contended, that even if the parties to the contract/agreement dated 1.12.2001 had breached the same, the appellants could not be held liable therefor. Accordingly, it is asserted, that the appellants herein having no role to play under the contract/agreement dated 1.12.2001, have been wrongfully involved in the controversy by the complainant-JCE Consultancy.

21. Having perused the pleadings filed before this Court, and having heard the learned counsel for the complainant-JCE Consultancy, as also, Sky Impex Limited, it becomes necessary for us to record

their respective stances in respect of the involvement of the five appellants, with the allegations made by JCE Consultancy. First and foremost, it is necessary to mention, that in the complaint filed by JCE Consultancy, it was expressly averred in paragraph 1, that all the appellants herein were involved in “each and every act done by the company” (Samsung, Dubai). In the statement recorded under Section 200 of the Code of Criminal Procedure, Shaikh Allaiddin Paker Maiddin on 7.1.2005 deposed, that the appellants herein were individually and jointly liable for the commission of offences emerging from the complaint. How they were liable (if at all), is a question of evidence, which would emerge only after evidence is recorded by the trial court. But what is interesting is, that Sky Impex Limited, though an accused in the complaint filed by JCE Consultancy, has totally supported the accusation(s) levelled by the complainant against the appellants. In a detailed response to the culpability of the appellants herein, Sky Impex Limited has adopted a firm stance, wherein it has averred as under:-

“10. It is submitted that the applicant, through other group companies Sky Impex Isle of Man, had been conducting business with petitioner/accused since the year 1999. Various other bills of exchange had been drawn by the applicant and accepted by S.C. Baek- accused with complete authority vested in him via Board resolutions issued by petitioner/accused and substantiated by petitioner/accused through Board resolution of their parent company in South Korea.

11. It is further pertinent to mention here that the applicant also had been involved in a bonafide discounting of bill numbers SM 4B for USD 2,550,432 (Rs.11 crores approx.) and SM 3B for USD 2,448,340 (Rs.11 crores approx.) maturing July 20th, 2002 with Bankhaus Wolbern in Germany and HSBC Bank (Hong Kong and Shanghai Bank) in London/Dubai, which bills had been duly accepted by petitioner/accused with full knowledge of petitioner/accused, based at the head office in South Korea. It is submitted that in one of the cases, on July 24, 2002 Bankhaus Wolbern a bank in Germany, to whom the bills were endorsed by the applicant in 2002 made a demand for payment of bill numbers SM 4B and SM 3B to the office of petitioner/accused in South Korea as petitioner/accused was trying to renege on their bonafide obligation to discharge the bills in their capacity as the acceptor. The bank after making their investigations concluded that operational control of these transactions were vested with the offices of the petitioner/accused in Seoul, South Korea and accordingly issued threat for legal action to the petitioner/accused at their Head Office in Seoul, to black list the Samsung Group. A true copy of the said letter dated July 24th, 2002 is being filed as Annexure A-8. It is submitted that within a short time span of receiving the said letters from Bankhaus Wolbern, USD 3.6 million (Rs.16.2 crores) the bills were paid by accused No. 1 through Emirates International Bank transfer signed jointly by accused no. 5 and to Bankhaus Wolbern on Aug. 14, 2002. A true copy of said transaction is being filed as Annexure A- 9.....

12. It is submitted that in Nov. 2003 HSBC Bank Dubai was paid USD 4.85 million (approx. 21.8 crores) by accused no. 1 through bank transfer from Emirates Bank International instructions to discharge bill numbers SM 2A for USD 2,440,925

(approx. 11 crores) – drawn July 8th, 2002, No. SM 17 for USD 1,038,725 (approx. 4.6 crores) drawn July 14th, 2002 and No. SM 18 for USD 1,095,070 (approx. 5 crores) drawn July 14, 2002. It is submitted that these bills of exchange were from the same series as the bill of exchange drawn by the applicant and accepted by Mr. S.C. Baek (accused no. 6) that is now the subject of the criminal case filed at Ghaziabad by the complainant/respondent.

These bills were endorsed to HSBC Bank in London and were duly and legally paid by accused number 1 under instructions from the office of the petitioner/accused under whose orders other set of bills amounting to USD 3.6 million (16.2 crores) had been paid by accused no. 1 as indicated in para 11 above. The transfer instructions were duly signed jointly by accused no. 5, the Managing Director of accused no. 1 alongside accused Mr. S.C. Baek. The documents including the bills of exchange, and the instructions to remit are money are collectively filed and marked as Annexure A-10..... It is quiet apparent that had the bills really been part of a criminal enterprise, as alleged, no corporation big or small would voluntarily pay out without protest or demur, these sums to the tune of approximately 18 crores to Bankhaus Wolbern in Germany and 21.8 crores to HSBC in Dubai. It would be pertinent to mention here that the bills to Bankhaus Wolbern were paid in August 2002 almost 18 months before the police complaint was filed in Dubai on January 7th, 2004 against the applicant and accused no. 6, Mr. S.C. Baek who continued in his job as Financial Controller with accused no. 1 right until Dec. 2003 i.e. sixteen (16) months after the bills were paid to Bankhaus Wolbern by accused no. 5 the Managing Director of accused no. 1.” (the term applicant in the extract, is a reference to Sky Impex Limited; and the term petitioner/accused, is a reference to the appellants).

Even though it was wholly unnecessary for us to examine, at the present juncture, the involvement or the culpability of the appellants herein, in the background of the accusations levelled by JCE Consultancy, and the supporting stance of Sky Impex Limited, we are of the view, that even the pleadings before us, prima facie demonstrate the connectivity of the appellants, with the foundational basis expressed in the complaint. We are, therefore, satisfied, at the present juncture, that it is undesirable to exculpate the appellants from the proceedings initiated by JCE Consultancy before the VIIth Additional Chief Judicial Magistrate, Ghaziabad. Needless to mention, that the issue under reference may be reagitated, after evidence has been produced by the rival parties before the trial court.

22. The fourth contention advanced at the hands of the learned counsel for the appellants was aimed at demonstrating; firstly, that the charges, as have been depicted in the summoning order, were not made out; secondly, that the appellants herein were functionaries of a company, and therefore, per se could not be made vicariously liable for offences emerging out of actions allegedly taken in furtherance of the discharge of their responsibilities towards the company; and thirdly, that none of the appellants had any concern whatsoever (even as functionaries of the concerned company), with the allegations levelled by the complainant. To the credit of the learned counsel representing the appellants, we must place on record, that reliance was placed on legal precedent, to substantiate the aforesaid submissions. We are however of the view, that it is not necessary for us at the present juncture to deal with any of the aforesaid submissions, in view of the legal position expressed by this

Court in its recent judgment in *Iridium India Telecom Limited vs. Motorola Incorporated and others*, (2011) 1 SCC 74, wherein while examining a matter similar to the one in hand, this Court examined at great length, not only the scope of interference under Section 482 of the Code of Criminal Procedure (including that under Articles 226 and 227 of the Constitution of India), but also, the culpability of a body corporate/company, including its functionaries, in respect of criminal charges. The only difference between the present controversy, and the one adjudicated upon by this Court in *Iridium India Telecom Limited's case* (supra) is, that while in the present controversy the accused have approached this Court, consequent upon the denial of reliefs sought from the High Court; in *Iridium India Telecom Limited's case* (supra) the claim raised by the accused had been accepted by the High Court, whereupon, the complainant had approached this Court. The submissions which came to be dealt with by this Court in *Iridium India Telecom Limited's case* (supra), at the behest of the complainant party, are summarized in paragraph 23, which is being reproduced hereunder:-

“23. The submissions made by Mr Jethmalani although very elaborate, may be summed up as follows:

(i) The power to quash a criminal complaint that too at the stage of cognizance, is an extreme power, which must be exercised very sparingly and with abundant caution; that too in the rarest of rare cases.

(ii) In exercise of its power under Section 482, the High Court has to consider the complaint as a whole, without examining the merits of the allegations i.e. genuineness of the allegations is not to be examined at this stage.

(iii) The complaint is not required to verbatim reproduce the legal ingredients of the offence. If the necessary factual foundation is laid in the complaint, proceedings should not be quashed.

(iv) Quashing of a complaint is warranted only where the complaint is so bereft of even basic facts which are absolutely necessary for making out an offence; that it would be a miscarriage of justice to permit the proceedings to continue.

(v) In support of the aforesaid submissions, Mr Jethmalani has relied on the following judgments of this Court: *Nagawwa v. Veeranna Shivalingappa Konjalgi* (1976) 3 SCC 736, *MCD v. Ram Kishan Rohtagi* (1983) 1 SCC 1, *Dhanalakshmi v. R. Prasanna Kumar* 1990 Supp. SCC 686 and *State of Haryana v. Bhajan Lal* 1992 Supp.(1) SCC 335.” In paragraphs 24 to 30, this Court in *Iridium India Telecom Limited's case* (supra) noticed the facts pertaining to the controversy, and the emerging legal technicalities canvassed at the hands of the appellants. In paragraph 31 to 37, this Court recorded the response thereto, at the behest of the accused. Thereupon, this Court in *Iridium India Telecom Limited's case* (supra) made the following observations in paragraph 38 :-

“38. We have considered the submissions made by the learned Senior Counsel. A bare perusal of the submissions would be sufficient to amply demonstrate that this cannot be said to be an “open and shut” case for either of the parties. There is much to be said on both sides. The entire scenario painted by both the sides is circumscribed by “ifs” and “buts”. A mere reading of the 1992 PPM would not be sufficient to conclude that the entire information has been given to the prospective investors. Similarly, merely because there may have been some gaps in the information provided in the PPM would not be sufficient to conclude that the respondents have made deliberate misrepresentations. In such circumstances, we have to examine whether it was appropriate for the High Court to exercise its jurisdiction under Section 482 CrPC to quash the proceedings at the stage when the Magistrate had merely issued process against the respondents.” In paragraphs 39 to 51, this Court examined the parameters, of the scope of exercise of jurisdiction in proceedings initiated to quash criminal charges/proceedings, under Section 482 of the Code of Criminal Procedure (and/or under Articles 226 or 227 of the Constitution of India). In this behalf, reliance was placed on past precedent including the decision rendered by this Court in *State of Haryana vs. Bhajan Lal* 1992 Supp.(1) SCC 335, wherein this Court inter alia held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice." While dealing with the various judgments rendered by this Court on the subject, reference was also made to the decision in M.N. Ojha vs. Alok Kumar Srivastav, (2009) 9 SCC 682. In M.N. Ojha's case (supra) similar views as in Bhajan Lal's case (supra) came to be recorded in the following words :

"25. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realised that the complaint was only a counterblast to the FIR lodged by the Bank against the complainant and others with regard to the same transaction.

* * *

27. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinise even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

28. The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic

facts which were placed before it for its consideration.

29. It is true that the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending.

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in the progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.” In dealing with the issue under reference, this Court in *Iridium India Telecom Limited’s case (supra)* also examined the scope of a body corporate/company being proceeded against in criminal cases, on the canvassed premise, that no mens rea could be attributed to them, and as such, criminal action could not be taken against them. For the said purpose reference was made to the legal position on the subject prevailing in the United Kingdom, the United States of America and Canada, and thereupon, this Court dealt with the declaration of the legal position on the subject, at the hands of this Court. Whereupon, its conclusion was recorded in paragraph 66 as under :

“66. These observations leave no manner of doubt that a company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. We are of the considered opinion that in view of the aforesaid judgment of this Court, the conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous.” In sum and substance, all the pleas canvassed on behalf of the complainant (already extracted above) were upheld by this Court in *Iridium India Telecom Limited’s case (supra)*.

23. Through the complaint, as also, in the statement of Shaikh Allauddin Paker Maiddin recorded under Section 200 of the Code of Criminal Procedure, JCE Consultancy has categorically asserted, that the appellants herein were jointly or severally liable to honour the bill of exchange dated 1.2.2002, which had been endorsed in its (JCE Consultancy’s) favour. In order to demonstrate the appellant’s

liability, a series of documents were also placed before the Trial Court. The VIIIth Additional Chief Judicial Magistrate, having considered the said material, issued the summoning order. The culpability of the appellants herein would obviously depend upon the evidence produced before the jurisdictional Court. It can definitely be stated from the pleadings before this Court, that one of the accused, namely, Sky Impex Limited, has totally supported the cause of the complainant-JCE Consultancy, through its written reply. Relevant extracts of the said reply have already been reproduced hereinabove (during our deliberations on the third contention). The situation which emerges, in the case in hand, is similar to the one encountered by this Court in Iridium India Telecom Limited's case (supra), wherein, this Court on being confronted with the factual and legal position was constrained to record, that the scenario painted by both the sides is circumscribed by "ifs" and "buts". Herein also, factual details emerging from the evidence to be produced by the rival parties, would be necessary to project a clear picture. It is only thereafter, that a rightful decision on this issue canvassed will be possible. As of now we are satisfied, that the factual foundation/background of the acts of omission and commission presented by the complainant is specific and categoric. We are also satisfied that the allegations levelled by the complainant, fully incorporate all the basic facts which are necessary to make out the offences whereunder the impugned summoning order dated 12.1.2005 has been passed. The instant controversy does not suffer from any of the impairments referred in Iridium India Telecom Limited's case (supra). Accordingly, we leave it open to the appellants to canvass the legal issues, as were canvassed before us, before the trial court. After the rival parties have led their evidence, the trial court will return its finding thereon, in accordance with law, without being influenced by any observations made on the merits of the controversy hereinabove, or hereafter.

24. The last contention advanced at the hands of the learned counsel for the appellants, was based on the assertion, that the complainant – JCE Consultancy had filed a civil suit bearing Commercial Action No.482 of 2005 before the Court of First Instance, Dubai, praying for the recovery of the amount depicted in the bill of exchange dated 1.2.2002. It was submitted, that in the pleadings of the aforesaid civil suit, there was no allegation against the appellants herein, depicting their criminal involvement. It was the contention of the learned counsel for the appellants, based on the averments made in ground D (of the petition for special leave to appeal) filed before this Court, that JCE Consultancy had lead evidence in the aforesaid civil suit, whereupon, the said civil suit was dismissed on 24.9.2008. It is further asserted, that the Court of First Instance, Dubai, while dismissing the civil suit had held, that the bill of exchange dated 1.2.2002 had nothing to do with the alleged supply of goods, by the complainant-JCE Consultancy to Sky Impex Limited. It was also sought to be asserted, that the said bill of exchange was merely an accommodation bill, to enable the complainant-JCE Consultancy "to raise money, and to use the bill of exchange as a collateral". It was further submitted, on behalf of the appellants, that the liability emerging out of the bill of exchange dated 1.2.2002, can either have civil

consequences or criminal liability.

The fact that the aforesaid civil suit came to be filed at the behest of JCE Consultancy, according to learned counsel, is an acknowledgement at the hands of the complainant (JCE Consultancy), that the liability emerging out of the bill of exchange dated 1.2.2002 was civil in nature. As such, it was asserted at the hands of the learned counsel for the appellants, that the very initiation of criminal proceedings by the complainant, against the appellants herein, was misconceived. It is also contended, that the filing of the criminal complaint by JCE Consultancy, must be deemed to be an act emerging out of extraneous considerations, so as to browbeat the appellants herein, and thereby, compel them to succumb to the illegal demands of the complainant-JCE Consultancy. Additionally, it was submitted by the learned counsel for the appellants, that in the civil claim raised by JCE Consultancy before the Court of First Instance, Dubai, from amongst the appellants, only Samsung, Dubai, was impleaded as a defendant, whereas, no action was initiated even for the recovery of the dues under the bill of exchange dated 1.2.2002, against the other four appellants herein. Based on the aforesaid factual and legal submissions, it was the contention of the learned counsel for the appellants, that criminal prosecution initiated by the complainant-JCE Consultancy against the appellants herein, is liable to be quashed.

25. In response to the aforesaid averments made on behalf of the appellants, it was the contention of the learned counsel for the respondents that the civil proceeding initiated by JCE Consultancy in the Court of First Instance, Dubai, is still pending in appeal. In this behalf, it was pointed out, that the Dubai Appeals Court passed an order dated 21.7.2010 directing the reattachment of assets of the defendants in the aforesaid civil suit, in the sum of Dhs.30 million (approximately Rs.45 crores). A copy of the aforesaid order dated 21.7.2010 has been appended to the reply filed by Sky Impex Limited (to the averments made in the petition for special leave to appeal) as Annexure A-11. It was submitted, that consequent upon the passing of the order dated 21.7.2010, the Dubai Judicial Administration executed the attachment of Dhs.30 million. In order to substantiate the aforesaid factual position, Sky Impex Limited has appended to its reply Annexure A-12, a bank guarantee dated 22.9.2010, issued by Emirates Bank International, on behalf of Samsung Dubai, in favour of JCE Consultancy. It is also pointed out by the learned counsel for the respondents, that an act of omission or commission at the hands of a party, may lead to civil, as well as, criminal consequences. In this behalf, learned counsel for the respondents also invited our attention to the order passed by the Dubai Appeals Court dated 21.7.2010, wherein, it was pointed out, that there was no connection between the criminal action brought out by JCE Consultancy (in the proceedings initiated by it, before the VIIth Additional Chief Judicial Magistrate, Ghaziabad) and the civil suit filed by JCE Consultancy (before the Court of First Instance, Dubai). It was also the contention of the learned counsel for the respondents, that the civil liability, in the instant case, was raised as against the eventual purchaser of the goods/product (Samsung, Dubai), in lieu of the goods/product supplied by the complainant-JCE Consultancy, which had passed onto the purchasers under the agreement dated 1.12.2001. Accordingly, the civil liability was only raised as against Samsung, Dubai. However, insofar as the criminal liability is concerned, Samsung Dubai being one of the subsidiary companies of Samsung, South Korea, it was allegedly under the overall control exercised by Samsung, South Korea. Samsung, South Korea, according to the complainant, was instrumental in the eventual decision taken by Samsung, Dubai, to deny the passing of the reciprocal monetary consideration, for

the goods supplied under the agreement dated 1.12.2001. This, according to the respondents, has been the categorical stance of JCE Consultancy in the criminal complaint, as also, in the pre-summoning evidence recorded before the VIIth Additional Chief Judicial Magistrate, Ghaziabad under Section 200 of the Code of Criminal Procedure. These allegations made by JCE Consultancy, are supported by documents furnished to the summoning court. The aforesaid factual position has also been endorsed by Sky Impex Limited, before this Court. According to the learned counsel for the respondents, the culpability of the appellants before this Court, in a series of similar actions, clearly emerges even from documents placed on record of the instant case, by Sky Impex Limited. As such, it is submitted, that the respondents have per se repudiated all the submissions advanced on behalf of the appellant, obviously subject to the evidence which rival parties will be at liberty to adduce before the trial court.

26. We have given our thoughtful consideration to the last contention advanced at the hands of the learned counsel for the appellants. We are of the considered view, that in offences of the nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating, can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief, for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1.2.2001, cannot be claimed in the criminal proceedings, for that relief the remedy would be only through a civil suit. It is therefore not possible for us to accept, that since a civil claim has been raised by the complainant-JCE Consultancy, based on the alleged breach of the agreement dated 1.12.2001, it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Indian Penal Code. It would not be appropriate for us, to delve into the culpability of the appellants at the present juncture, on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn, at the present juncture is, that even on the basis of the last submission canvassed on behalf of the appellants, it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law, after allowing the rival parties to lead evidence to substantiate their respective positions.

27. For the reasons recorded hereinabove, we find no merit in the instant appeal. The same is accordingly dismissed.

.....J. (Asok Kumar Ganguly)J. (Jagdish Singh Khehar) New Delhi;

February 1, 2012.