

MITESH KUMAR J. SHA

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v.

THE STATE OF KARNATAKA & ORS.

(Criminal Appeal No. 1285 of 2021)

OCTOBER 26, 2021

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**[S. ABDUL NAZEER AND KRISHNA MURARI, JJ.]**

*Code of Criminal Procedure, 1973: s.482 – Complaint by respondent no.2 against appellant alleging that the appellant-builder company had sold four excess flats beyond its share, in terms of the agreements entered into between them – Appellant filed s.482 application before High Court which was dismissed – Hence instant appeal – Held: The facts did not show that appellants deceptively or intentionally tried to sell excess flats as contended by respondent No. 2 – Although, there is no doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other – In the instant case, the actual question which required consideration was not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case were even prima facie made out – Based on the facts, clearly no cogent case regarding a criminal breach of trust or cheating was made out – Dispute could at best be termed as one involving breach of contract – Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed – Therefore, it is the intention which is the gist of the offence – Applying this dictum to the instant factual matrix, the key ingredient of having a dishonest or fraudulent intent under ss.405, 419 and 420 was not made out – Criminal proceedings initiated against appellant quashed – Penal Code, 1860 – ss.405, 419 and 420.*

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*Abuse of the process of law: Imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute – Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety – Code of Criminal Procedure, 1973 – s.482.*

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A **Allowing the appeal, the Court**

- HELD:** 1.1 The complaint levelled against the appellants is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under section 405 of the Indian Penal Code, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under section 415 of the Indian Penal Code, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed 'dishonest intention', as a pre-condition for even *prima facie* establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties, the question whether actions of the appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny. [Para 28][888-C-E]

- 1.2 Upon a careful assessment of such facts, by no stretch can it be concluded that the Appellants have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent No. 2. Subsequent to the revocation of GPA, it was the Appellants who had first resorted to arbitration proceedings on 02.03.16 for redressal of dispute between the parties, to which Respondent No 2 had accordingly filed his statement of objections dated 09.03.16. It was only on 29.03.16 that Respondent No. 2 had filed the FIR in question bearing Crime No. 185/2016 against the Appellants. Moreover, it was Respondent No. 2 who had withdrawn his prayer with respect to selling of four excess flats by the Appellants, only to pursue the same in civil proceedings. [Para 35][889-F-H]

- 1.3 Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether

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the relevant ingredients for a criminal case are even *prima facie* made out. Relying on the facts clearly no cogent case regarding a criminal breach of trust or cheating is made out. The dispute between the parties, could at best be termed as one involving a mere breach of contract. [Paras 37, 38][890-B-D]

2. This Court in the case of *Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar* has observed that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at hand, is a suitable case necessitating intervention of this Court. [Paras 39, 40][890-E-H; 891-A-B]

\**Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr. (2000) 4 SCC 168 : [2000] 2 SCR 859 – relied on*

3. Existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. There has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it. This Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety. [Paras 41, 45, 47][891-B-C; 893-F; 894-C-D]

*M/s Indian Oil Corporation v. M/s. NEPC India Ltd & Ors. (2006) 6 SCC 736 : [2006] 3 Suppl. SCR 704; G. Sagar Suri and Anr. v. State of UP and Ors. (2000) 2 SCC 636 : [2000] 1 SCR 417; State of Haryana & Ors.*

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A *v. Ch. Bhajan Lal and Ors. (1992) SCC (Cri) 426; Randheer Singh v. The State of U.P. & Ors. 2021(12) SCALE 55 – relied on.*

B *Prof. R. K. Vijayasarathy & Anr. v. Sudha Seetharam & Anr. (2019) SCC Online SC 208; State of Karnataka v. M. Devendrappa & Anr. (2002) 3 SCC 89 : [2002] 1 SCR 27; Priti Saraf & Anr. v. State of NCT of Delhi & Anr. 2021 SCC Online SC 206; Sri Krishna Agencies v. State of Andhra Pradesh & Anr. (2009) 1 SCC 69 : [2008] 16 SCR 20 – referred to.*

C Case Law Reference

[2002] 1 SCR 275	referred to	para 19
[2008] 16 SCR 20	referred to	para 22
[2000] 2 SCR 859	relied on	para 39
D [2006] 3 Suppl. SCR 704	relied on	para 41
[2000] 1 SCR 417	relied on	para 43

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1285 of 2021

E From the Judgment and Order dated 13.08.2019 of the High Court of Karnataka at Bengaluru in Criminal Petition No.2691 of 2016.

Shailesh Madiyal, Sudhanshu Prakash, Ms. Rakhi M., Vaibhav Sabharwal, Ms. Sruthi Iyer, Ms. Neha Jain, Advs. for the Appellant.

F V. N. Raghupathy, Md. Apzal Ansari, Advs. for the Respondents.

The Judgment of the Court was delivered by

**KRISHNA MURARI, J.**

1. Leave granted.

G 2. This appeal is directed against the judgment and order dated 13.08.2019 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 2691 of 2016, filed by the Appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as

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‘CrPC’) challenging the FIR No. 185/2016 dated 29.03.2016 implicating the appellants for offences under Section 420 read with Section 34 IPC and to quash the proceedings in C.C. No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, initiated pursuant to charge sheet dated 29.03.2017 against the appellants for offences punishable under Sections 406, 419, 420 read with Section 34 of IPC. The High Court vide order impugned herein dismissed the same.

3. Pending instant appeal before this Court, Appellant No. 1 has died and his name has been deleted vide order dated 29.09.2021. The term ‘Appellants’ used herein should thus be construed to include only Appellant No. 2.

#### **Facts**

4. On 07.08.13 Respondent No. 2 had initially executed a Joint Development Agreement (JDA) for developing a particular property with the company of the Appellants (The Appellants being directors in this company), i.e., Rajarajeshwari Buildcon Private Ltd. (hereinafter referred to as ‘the builder company’). The property was to be developed either entirely as residential apartments, or as residential apartments with commercial complex. In furtherance of the Joint Development Agreement, a General Power of Attorney (GPA) was also executed on the same date. Respondent No. 2 thereafter also entered into a Supplementary Agreement with the Appellants specifying their respective shares in undivided area and super built up area.

5. Further, on 19.02.15 a Memorandum of Understanding (MoU) was entered into by Respondent No. 2 with the builder company, whereby the company was authorized to sell 8000 sq. ft out of respondent No.2’s share in the undivided area and super built up area. The MoU was entered into by Respondent No. 2 for the purpose of making partial payment of a loan borrowed by him from one Religare Finvest Ltd. Pursuant to the MoU, Appellants had to obtain NOC for 15 flats by making payment of Rs. 40,00,000/- for each flat.

6. The Appellants herein contend at this juncture, that it was verbally agreed between the parties, that the company would be entitled to adjust the payments made to Religare Finvest Ltd., by way of selling additional flats beyond its share, i.e., an additional 8000 sq.ft of built up area would be allotted to the company’s share in lieu of the partial payment of loan borrowed by Respondent No. 2 from Religare Finvest Ltd.

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- A 7. Eventually, at the instance of Respondent no. 2, the said developer company thereby executed sale-deeds for two flats, Flat No. 202 & 203 in favour of the daughter and son-in-law of Respondent No. 2. The company further executed a sale deed for another flat bearing No. 301 in favour of one Smt. Yashoda Sundararajan on 27.08.15.
- B 8. Thereafter, vide an email the company informed Respondent no. 2 to execute and register the above said flats comprising 6821 sq. ft. (out of the 8000 sq. ft. given to the company as per the MoU dated 19.02.15) in favour of the relevant purchasers and to further make payments to Religare Finvest Ltd. At this juncture, Respondent no. 2 issued a letter to the Appellants contending that the company had not adhered to the terms of the JDA, and consequently revoked the GPA.
- C 9. Aggrieved, the company filed an application for arbitration under section 9 of the Arbitration Act, praying for injunction restraining Respondent No. 2 from alienating or creating third party rights over the property. Respondent No. 2 on the other hand filed a police complaint claiming that the sale of flats was in excess of the share agreed between the parties. The complaint (Respondent No.2), *inter-alia*, had two contentions-
- First, that the GPA was not executed in favour of the company, therefore, company could not have sold the said apartments.
  - Secondly, flats sold by the company belonged to Respondent no. 2's share. Flats alleged to have been sold in excess bearing No. 002, 301, 304, 404.
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- F 10. Pursuant to this complaint, FIR No. 185/2016 dated 29.03.2016, was registered against Appellant No. 1 and 2 for offences punishable under section 420 read with 34 of Indian Penal Code. Appellants herein, thereby approached the High Court of Karnataka seeking quashing of the said FIR invoking Section 482 of CrPC. Further on 29.03.17 charge sheet was filed against the appellants for offences under sections 406, 419, 420 read with Section 34 of the Indian Penal Code, which was also sought to be quashed in the said proceedings.
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- H 11. Meanwhile, in the arbitration proceedings, the arbitrator partly allowed the claims of the Appellants as well as Respondent No. 2. The arbitrator held that unilateral revocation of GPA by Respondent no. 2 was illegal and that the company had the right to effectuate sale

agreements/sale deeds in terms of MoU. Furthermore, regarding the question of sale of four excess flats by the Appellants, the question was left unanswered in the arbitral award as Respondent No. 2 had withdrawn his claim prayed for in paras (e), (f) and (g) of the written submissions in light of pending civil proceedings, with liberty to pursue the issue in those proceedings. Prayer in para (f) in particular being:-

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*“directing the Applicant/Developer to evict and remove the present occupants of Flat No. 002, 301, 304 & 404 and deliver possession of the said Flats, redoing and refurbishing the interiors, as if it was a new Flat, with Occupancy Certificate in respect of the said Flats.”*

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12. Aggrieved by the award, Respondent no. 2 preferred a challenge to the said award under section 34 of the Arbitration Act.

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13. Eventually, the quashing petition also came up before the High Court, which was disposed of by observing that dispute regarding alienation of flats by the Appellants herein has not been answered by the arbitrator and was not a subject matter of the arbitration suit pending between the parties. It was further observed that since there are allegations against the Appellants for having sold the flats contrary to the terms of MoU, there were no grounds to interfere with the matter. The Appellants herein, thereby approached this court by way of the present Special Leave Petition.

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#### **Contentions made on behalf of the Appellant**

14. The Appellants herein have contended that the sequence of events in the instant case do not fulfill the necessary ingredients of an alleged offence, therefore Respondent No. 2 has been simply trying to impart criminal color to a civil dispute. It is contended that the issue of alienation of flats had not been responded to by the arbitrator since Respondent No. 2 had withdrawn his claim in respect of the said flats from arbitral proceedings with liberty to pursue his case in pending civil proceedings. Furthermore, since Respondent No. 2 had decided to pursue his claim by way of a civil suit, therefore criminal complaint on the same issue should be quashed.

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15. It is further submitted that the entire dispute between the parties pertains to an alleged sale of flats in excess of the share agreed between the parties, and that the complaint is filed by Respondent No. 2 for settling scores in a dispute which is entirely of civil nature.

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A 16. The Appellants placed reliance on the judgment of this Court in case of *Prof. R. K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr.*<sup>1</sup>, to substantiate the above stated argument. The relevant paras referred are as hereunder:-

B “23. *The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.*

C 24. *In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed.”*

D 17. Learned counsel for the appellant further submits that E Respondent No. 2 has neither denied execution of MoU nor grant of marketing rights to the company of the Appellants. It is further submitted that since variation in supplementary agreement, allotting an additional area of 8000 sq. ft to the Petitioner Company in lieu of partial payment made to Religare Finvest Ltd. was not made in writing, therefore, F Respondent No. 2 has made an attempt to cloak the transactions of the G Appellants as a criminal offence. It is also contended that since the dispute between the parties had any way been adjudicated by the arbitrator therefore the existing criminal complaint is liable to be quashed.

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H <sup>1</sup> (2019) SCC Online SC 208

**Contentions made by Respondent No. 2 appearing in person** A

18. Respondent No. 2 who appeared in person on the contrary submits that the developer company of the Appellants being entitled to sell only 9 flats has executed a sale deed for 13 flats in all. Further the sale of 4 flats (flat nos. 002, 301, 304 & 404) beyond the 9 flats is in excess of the Appellants company's share and therefore Respondent No. 2 has been constrained to lodge a complaint for cheating against the Appellants. B

19. Respondent No. 2 in his objection to the contention of the Appellants that civil dispute is being given a criminal color, relying upon the dictum in *State of Karnataka Vs. M. Devendrappa & Anr.*<sup>2</sup>, submits that reliance must be placed on whether the complaint spells out the ingredients of a criminal offence or not, and not on the defenses available to an accused, which if established in trial may lead to his acquittal. C

20. It is further submitted that the Appellants after selling a property which they were unauthorized to sell cannot evade a criminal case merely on the contention that the person whose property has been sold has filed a civil suit for recovery of the said property. The Respondent further relies upon the judgment of this Court in *Priti Saraf & Anr. Vs. State of NCT of Delhi & Anr.*<sup>3</sup>, wherein it was observed that :- D

*"32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.* E

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<sup>2</sup>(2002) 3 SCC 89

<sup>3</sup>2021 SCC Online SC 206

- A      *33. We have perused the pleadings of the parties, the complaint/FIR/charge-sheet and orders of the Courts below and have taken into consideration the material on record. After hearing learned counsel for the parties, we are satisfied that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. The High Court was not justified in quashing the criminal proceedings in exercise of its inherent jurisdiction. The High Court has primarily adverted on two circumstances, (i) that it was a case of termination of agreement to sell on account of an alleged breach of the contract and (ii) the fact that the arbitral proceedings have been initiated at the instance of the appellants. Both the alleged circumstances noticed by the High Court, in our view, are unsustainable in law. The facts narrated in the present complaint/FIR/charge-sheet indeed reveal the commercial transaction but that is hardly a reason for holding that the offence of cheating would elude from such transaction. In fact, many a times, offence of cheating is committed in the course of commercial transactions and the illustrations have been set out under Sections 415, 418 and 420 IPC. Similar observations have been made by this Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors.*(supra) :-*
- B      *9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335]."*
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21. It has been further argued that reliance made by the Appellants on the judgment of this Court in *Prof. R K Vijayasarathy & Anr Vs. Sudha Seetharam & Anr.*<sup>4</sup> is misplaced, as the said case was decided on different facts, wherein criminal proceedings were instituted as late as three years after the institution of civil proceedings, and the necessary ingredients to constitute an offence were also not made out in the complaint. On the contrary, in the instant case, relevant ingredients to constitute an offence under section 405 and 415 have clearly been made out.

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22. Placing reliance upon *Sri Krishna Agencies Vs. State of Andhra Pradesh & Anr.*<sup>5</sup>, it is further contended by Respondent No. 2 that criminal proceedings cannot be quashed solely because the dispute was referred to arbitration and that arbitration proceedings had taken place thereafter. Para 7 of the said judgment has been particularly emphasized upon by Respondent No. 2, wherein it has been observed as under :-

*“On behalf of respondent No. 2, the submissions which had been urged before the High Court, were reiterated, which, however, appears to be unacceptable having regard to the decision cited by Mr. Adhyaru. We are also of the view that there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action. The decision in Trisuns Chemical Industry’s case (Supra) appears to squarely cover this case as well.”*

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23. To simply put, what has been argued on behalf of Respondent No. 2 is that cause of action in civil and criminal proceedings instituted by Respondent No. 2 are separate and independent of each other, i.e., liability for breach of agreement is independent of the liability for commission of offence under sections 405 and 415 of the Indian Penal Code. Therefore, criminal proceedings so instituted against the Appellants herein cannot be quashed.

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24. It is further contended that sale deed in respect of 8000 sq. ft. area cannot be executed by the Appellants as Respondent No 2 had not given GPA to sell the said area. Therefore, the sale made by the

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<sup>4</sup>2019 SCC Online SC 208

<sup>5</sup>(2009) 1 SCC 69

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A Appellants in excess of their authority is unlawful and is indicative of the criminal intent of the appellants. Moreover, the said excess four flats sold by the Appellants, have also been taken out of the arbitral proceedings and therefore the Appellants herein can place no reliance on the arbitral proceedings.

B **Contentions made on behalf of Respondent No. 1-State**

25. Counsel appearing for the State of Karnataka i.e. Respondent No. 1 submits that, as far as the argument of the Appellants that Respondent No. 2 has merely made an attempt to cloak a dispute of civil nature is concerned, the High Court has held that in the instant circumstances there being clear allegations that the appellants had executed sale deed of the said flats without authority, there were no grounds to interfere with the matter. It is further submitted that in the instant facts clear ingredients of offences punishable under sections 406, 419 and 420 read with section 34 of Indian Penal Code have been made out.

D **Issues**

26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:

- E - Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are *prima facie* made out?
- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?
- F - Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

**Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are *prima facie* made out?**

G 27. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the appellants herein had been charged with, are *prima facie* made out. The relevant sections read as follows:-

- H *“405. **Criminal breach of trust**—Whoever, being in any manner entrusted with property, or with any dominion over property,*

*dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".* A

*[Explanation 1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]* B

**406. Punishment for criminal breach of trust**—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. G

**419. Punishment for cheating by personation**—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. H

- A **420. Cheating and dishonestly inducing delivery of property—**  
*Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*
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- C 28. In the instant case, the complaint levelled against the Appellants herein is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under section 405 of the Indian Penal Code, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under section 415 of the Indian Penal Code, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other
- D party to deliver any property to a specific person. Both the sections clearly prescribed 'dishonest intention', as a pre-condition for even *prima facie* establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the Appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.
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- F 29. Coming to the facts of the case at hands, the contested contention between the parties is that the builder company had sold four excess flats beyond its share, in terms of the JDA and supplementary agreement entered into between the parties. Respondent No. 2 contends that builder company which was entitled to sell only 9 flats in its favour, has instead executed sale deed for 13 flats in total. Thus, the company simply could not have sold the flats beyond 9 flats for which it was authorized and resultantly cannot evade criminal liability on a mere premise that a civil dispute is already pending between the parties.

- G 30. The Appellants on the other hand contend that in terms of a subsequent MoU dated 19.02.15, it was mutually agreed between the parties, that partial payment for a loan amount borrowed by Respondent No. 2 from Religare Finvest Ltd., would be paid out from the sale proceeds of the said development project undertaken by both the parties. Pursuant to this MoU, the Appellants had agreed to get an NOC for 15 flats by making payment of Rs. 40,00,000/- for each flat.
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31. The key contention, and also the central point of dispute, made by the Appellants is that, it was specifically agreed between the parties that the Appellants would be entitled to sell additional flats beyond their share, as adjustments for payment made to Religare Finvest Ltd on behalf of Respondent No. 2. It is further contended that Respondent No. 2 had also agreed to execute a ratification deed to the JDA and GPA eventually, which would have formally authorised the Appellants to sell additional apartments.

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32. Nonetheless, the ratification deed was never made and Respondent No. 2 subsequently even revoked the GPA unilaterally, contending that the terms of JDA were not followed.

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33. It was only after revocation of GPA that the company filed an application for arbitration seeking interim orders to restrain the Respondent No. 2 from alienating the disputed property. Simultaneously, while this dispute was pending adjudication before the arbitrator Respondent No. 2 filed a criminal complaint against the Appellants.

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34. At this juncture, it further becomes pertinent to mention that eventually though both the parties partly succeeded before the arbitrator, in terms of their respective claims, the arbitrator observed that GPA indeed could not have been revoked unilaterally at the instance of Respondent No. 2. Aggrieved, Respondent No. 2 thereafter even preferred a challenge to the award passed by the arbitrator. Moreover, pending arbitration proceedings issue regarding selling of excess flats at the instance of Appellants, was also withdrawn by Respondent No. 2 seeking liberty to pursue his claim with regard to selling of four excess flats in pending civil proceedings.

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35. Upon a careful assessment of such facts, by no stretch can it be concluded that the Appellants herein have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent No. 2. Here, it must also be borne in mind that subsequent to the revocation of GPA, it was the Appellants herein who had first resorted to arbitration proceedings on 02.03.16 for redressal of dispute between the parties, to which Respondent No 2 had accordingly filed his statement of objections dated 09.03.16. It was only on 29.03.16 that Respondent No. 2 had filed the FIR in question bearing Crime No. 185/2016 against the Appellants. Moreover, it was Respondent No. 2 who had withdrawn his prayer with respect to selling of four excess flats by the Appellants, only to pursue the same in civil proceedings.

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- A 36. At this stage, by placing reliance on the judgment of this Court in *Priti Saraf & Anr. Vs. State of NCT of Delhi & Anr. (Supra) and Sri Krishna Agencies Vs. State of Andhra Pradesh & Anr. (Supra)*, it has been further submitted by Respondent No. 2 that Appellants cannot evade a criminal case by merely contending that the person whose property has been sold has filed a civil suit for recovery of the property, or that the dispute had been referred to arbitration.
- B 37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even *prima facie* made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.
- C 38. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs.

**E      Whether sale of excess flats even if made amounts to a mere breach of contract?**

- E 39. This Court in the case of *Hridayan Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.*<sup>6</sup>, has observed:-
- F      “15. ....that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise...”

H      <sup>6</sup>(2000) 4 SCC 168

40. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at hand, in our considered opinion is a suitable case necessitating intervention of this Court. A

**Whether the dispute is one of entirely civil nature and therefore liable to be quashed?** B

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of *M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.*<sup>7</sup>, as under :- C

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

42. It was also observed:-

*“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”* F G

A 43. On an earlier occasion, in case of **G Sagar Suri and Anr. Vs. State of UP and Ors.**<sup>8</sup>, this Court has also observed:-

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

D 44. Furthermore, in the landmark judgment of **State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.**<sup>9</sup> regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

E “(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;

F (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

G (3) where the uncontested 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;

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H <sup>8</sup>(2000) 2 SCC 636  
<sup>9</sup>(1992) SCC (Cri) 426

(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; A

(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; B

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party; C

(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.” D

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it. E F

46. Recently, this Court in case of **Randheer Singh Vs. The State of U.P. & Ors.**<sup>10</sup>, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:- G

“33. ....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise

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<sup>10</sup> Criminal Appeal No. 932 of 2021 (decided on 02.09.2021) H

- A *to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."*
- B
- C 47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.
- D 48. In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section E 34 IPC stands quashed.
49. As a result, appeal stands allowed.

Devika Gujral

Appeal allowed.