

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.11774 OF 2021(GM – RES)

BETWEEN:

MR.ARUN NARAYANAN
AGED ABOUT 53 YEARS
S/O MR. KUTTAPPA KURUP
HAVING ITS ADDRESS AT
SEA FACING BLOCK, 4TH FLOOR
BHAVANI, TECHNO PARK CAMPUS
KARIYAVATTOM, TRIVANDRUM
KERALA - 695 581.

... PETITIONER

(BY SRI C.V.NAGESH, SR.ADVOCATE A/W
SRI NIKHILESH RAO M., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY SOUTH CEN CRIME POLICE STATION,
BANASHANKARI, BENGALURU.
2. TE CONSULTING (INDIA) PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
15, 15TH CROSS ROAD,
MG LAYOUT, JP NAGAR 6TH PHASE,

BENGALURU – 560 078.
REPRESENTED BY
MR.SOMANNA CHENDIRA
MANDANNA AND
MR. SHOUVIK BHATTACHARYA.

3. THIRD EYE INC.
A COMPANY REGISTERED UNDER
THE LAWS OF THE UNITED STATES
OF AMERICA
HAVING ITS HEAD OFFICE AT
15950, DALLAS PARKWAY
SUITE 400, DALLAS
TX 75248, UNITED STATES
ALSO HAVING ITS LOCAL OFFICE AT
15, 15TH CROSS ROAD
MG LAYOUT, J.P.NAGAR
6TH PHASE,
BENGALURU - 560 078
REPRESENTED BY
MR. SOMANNA CHENDIRA MANDANNA
AND MR. SHOUVIK BHATTACHARYA.
(DELETED VIDE ORDER DATED 26.05.2022)

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS IN CRIMINAL COMPLAINT BEARING CRIME NO.0056/2021 PENDING BEFORE THE I ADDITIONAL CHIEF METROPOLITAN JUDGE BENGALURU; QUASH THE CRIMINAL COMPLAINT BEARING CRIME NO.0056/2021 PENDING BEFORE THE I ADDITIONAL CHIEF METROPOLITAN JUDGE BENGALURU (AT ANNEXUER-A) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.56 of 2021 for offences punishable under Sections 419 and 420 of the IPC and Sections 65 and 66 of the Information Technology Act, 2008 ('the Act' for short), pending before the I Additional Chief Metropolitan Magistrate, Bangalore.

2. Heard Sri C.V.Nagesh, learned senior counsel appearing for the petitioner and Sri K.P.Yashodha, learned High Court Government Pleader appearing for respondent No.1.

3. Brief facts that lead the petitioner to this Court in the subject writ petition, as borne out from the pleadings, are as follows:-

The petitioner avers that he is a senior employee of US Technology International Private Limited ('the Company' for short), a company that is incorporated under the laws of India on 12th April, 2005. He claims to be working in the said Company since

2000 and has produced certain salary slips from April, 2014 to November, 2020, to demonstrate his relationship with the Company of being an employee. It appears that the name of the Company is changed from 'U.S.Software Resources Private Limited' to 'U.S. Technology International Private Limited' ('the Company' for short) in terms of the fresh certificate of incorporation dated 12.04.2005. The company was only one of the constituents of US Technology Group, which comprises of several other companies such as accused Nos.1 and 2 i.e., UST Global Incorporation and US Technology Resources Private Limited.

4. The 2nd respondent/TE Consulting (India) Private Limited is the complainant and a part of Third Eye Inc. group of companies controlled and promoted by the 2nd respondent. Accused Nos.1 and 2 - companies enter into transactions for providing staffing services to, and from the Third Eye Incorporation – complainant, outside India and inside India respectively. Therefore, it is a transaction between accused Nos.1 and 2 and the complainant. Between the month of June, 2013 and end of 2018, Third Eye Incorporation appears to have defaulted in various payments for the services

provided by accused No.1 outside India. Between August, 2015 and August, 2017 accused No.2 had deputed various employees in India to the complainant and it appears that on deputation of such human resources, it raised invoices upon the complainant totally amounting to Rs.10,28,41,345.67. It is contended that the complainant did not pay accused No.2 - company. Therefore, the complainant is, as allegedly defaulted in payment both to accused No.1 and accused No.2. Based upon the aforesaid contract between the parties and the claim, accused No.1 instituted arbitration proceedings on 18-09-2020 in California, a State in United States of America against Third Eye Incorporation for non-payment of invoice dues towards services rendered by accused No.1 to the complainant - Company outside India. In the same way accused No.2 filed a Pre-Institution Mediation Application in India in terms of Commercial Courts Act, 2015 against the complainant seeking recovery of monetary dues totally amounting to Rs.17 + crores towards providing human resource services in India. Third Eye Incorporation files its answering statement cum-counter claim before the Arbitrator in the U.S.A. and later, made belated allegations against accused No.1 along with accused Nos.4 to 13

alleging that they had diverted confidential information of customers and caused losses to Third Eye Inc. Between 12-11-2020 and 18-02-2021, multiple mediation sessions were held for several months between the complainant and accused No.2. During the pendency of these proceedings, the complainant registers a complaint on 11.02.2021 before the South CEN Crime Police Station, Bengaluru, alleging that the Third Eye's confidential information was stolen by accused Nos.1 and 2 between 03.10.2014 and 05.10.2020. It is alleged that the petitioner got to know of it only shortly before the complaint came to be registered on 11-02-2021. This becomes a crime in Crime No.56 of 2021 for offences punishable under Sections 419 and 420 of the IPC read with Section 65 and 66 of the Act. The petitioner is made accused No.3. The registration of crime against the petitioner is what drives him to this Court in the subject petition.

5. The learned senior counsel Sri C.V.Nagesh, appearing for the petitioner would contend with vehemence that if the complaint is perused in its entirety, there is not even a mention of the name of the petitioner in the entire complaint. Without there being any

allegation against the petitioner in the complaint, he is dragged into these proceedings merely because he is the President of UST Global Inc. while the transaction is between accused Nos.1 and 2 and the complainant. He would contend that to avoid arbitration proceedings in which an arbitral award was to be passed, the complaint comes to be registered to arm twist accused Nos.1 and 2, who claim certain amounts from the complainant/Company. It is his emphatic submission that a contractual matter or a commercial dispute between the parties is sought to be given a colour of crime and seeks its quashment. He would seek to place reliance on the judgments rendered by the Apex Court in the case of **WYETH LIMITED AND OTHERS v. STATE OF BIHAR AND ANOTHER – Criminal Appeal No.1224/2022 decided on 11.08.2022 (arising out of SLP.No.10730/2018)**.

6. The learned High Court Government Pleader would seek to refute the submissions of the learned senior counsel for the petitioner to contend that the matter is at the stage of investigation and the complaint clearly makes out an offences under Sections 65 and 66 of the Act as the accused have taken away the information.

Offences under Sections 419 and 420 IPC is also seen to be alleged in the complaint. Therefore, she would submit that the petitioner is not guilty of any act. The Police will necessarily file a report in his favour. It is not a stage at which this Court would interfere with the investigation. She would seek dismissal of the petition.

7. Notice issued to the 2nd respondent/complainant by this Court was returned with a shara as 'unclaimed' on 09-09-2022. When the matter was listed before the Court on several occasions thereafter *i.e.*, 13-09-2022, 14-09-2022, 16-09-2022, 19-09-2022, 20-09-2022, 21-09-2022 and 22-09-2022, there was no representation on behalf of the 2nd respondent, ostensibly so, as he did not claim the notice. Later, on 30-09-2022, the matter was reserved for its orders upon hearing on behalf of the petitioner and the State.

8. This Court while entertaining the petition has granted an interim order of stay *qua* the petitioner on 21-12-2021 and the same is in operation as on date.

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

10. The 2nd respondent is the complainant. Who is the 2nd respondent is what is required to be noticed. His description bears presence in the complaint itself. Therefore, the complaint dated 11-02-2021 is quoted hereunder for the purpose of quick reference:

"To

February 11, 2021

*The Inspector,
CEN Bengaluru Police Station,
Banashankari,
Bengaluru-560 028.*

Respected Madam,

1. My name is Somanna Chendira Mandanna and I am an employee of TE Consulting (India) Pvt.Ltd.,('TE India), having its office at #15, 15th Cross Road, MG Layout, JP Nagar Phase-6, JP Nagar, Bengaluru-560 078. TE India is a subsidiary of the Third Eye, Inc. ("Third Eye"), a company registered in the United States of America.

2. I am authorized to file this complaint on behalf of the CEO of TE India, Mr.Shouvik Bhattacharya, who is resident of USA, and therefore, a Letter authorizing me is attached herewith as Annexure-1.

3. The accused persons listed in the Annexure-1 have together conspired against Third Eye and have stolen confidential information belonging to the Company. Subsequently, the Accused persons have been responsible to

fraudulently maneuvering the Company into financial losses, and diverting in excess of Rs.18 crores to their accused Companies account with the help of individual accused persons.

4. UST Global, and US Technology Resources Pvt.Ltd. have placed their key employee Siddharth Srivastava in Third Eye's office in Bengaluru. Sidharth Srivastava gained the trust of Third Eye's CEO Mr. Shouvik Bhattacharya, and became the de facto head of India operations of Third Eye India. Interestingly, Siddharth Srivastava was an employee of UST Global and US Technology Resources Pvt.Ltd. while all the three accused convinced Mr. Shouvik Bhattacharya to make him the de facto head of Third Eye's India operations.

5. Siddharth Srivastava is a known criminal, and other criminal cases have been registered against him, and this fact was concealed by UST Global and US Technology Resources Pvt.Ltd. with the Company while Siddharth Srivastava was working at Third Eye's premises in India. I state that UST Global and US Technology Resources Pvt. Ltd., conspired with a known criminal to steal the proprietary information of Third Eye and divert money belonging to Third Eye to their own or their accomplices accounts.

6. That based on the facts stated in Annexure-3, I hereby urge you to take cognizance of the fraud, cheating, criminal conspiracy, misappropriation and theft of confidential, proprietary information and trade secrets, theft of clients, tortuous interference in the business and stealing of clients and employees related offences committed by all the accused mentioned in the attached Annexure-1 (List of Accused).

7. I request you to register an FIR for offences committed by the accused under Section 65 and Section 66 of the Information Technology Act, 2000 and Section 43 read with Section 120A and 120B (ii), Section 405, Section 408 and Section 420 of Indian Penal Code and register an FIR and

arrest the accused persons and punish them according to the law.

*Sincerely,
Sd/- (Somanna Chendira Mandanna),
Near Banaswadi Police Station, Bangalore North,
Bangalore Kalyananagar, Karnataka 560 043
For SHOUVUK BHATACHARYA
CEO TE CONSULTING (India) Pvt.Ltd."*

(Emphasis added)

The complainant describes himself to be an employee of TE Consulting (India) Pvt. Ltd., a subsidiary of Third Eye Incorporation, a company registered in USA.

11. For the complaint to be registered, a little walk in the history is necessary to be taken. In the early 2000, the petitioner was an employee of one US Technology International Private Limited. There is no direct connection between the complainant and the petitioner. The petitioner is accused No.3. The 2nd respondent/complainant is a company and as described by it in the complaint, it is a part of Third Eye Group of Companies and it is the complainant's case that he controls both the companies. Accused Nos.1 and 2 are in the business of supply of staffing services or human resources in India and outside India. Between June 2013 to the end of 2018, both the accused Nos.1 and 2 supplied manpower

or staffing services to Third Eye Incorporation and the company of the complainant - TE Consulting (India) Pvt. Ltd. both outside India and inside India. Against the services so rendered by accused Nos.1 and 2, the complainant had defaulted in various payments. Both accused Nos.1 and 2 began registration of claims for their money, which the complainant was in default. Trouble appears to have been brewed at this juncture. Accused No.2 claims an amount of Rs.10,28,41,345.67 and accused No.1 claims close to Rs.17+ crores. For not paying the amount, accused No.1 institutes arbitration proceedings before the Arbitrator in the jurisdiction of the State of California, USA, against Third Eye Incorporation on 18-09-2020. Likewise, accused No.2 wanting to initiate arbitration proceedings institutes a Pre-Institution Mediation Application in terms of Commercial Courts Act, 2015 in India against the complainant for recovery of money, which by then had risen to mountainous proportion i.e., Rs.17 crores and odd.

12. The Third Eye Incorporation filed its counter-claim before the Arbitrator in the USA alleging that accused Nos.4 to 13 had diverted confidential information of customers of Third Eye Inc. and

caused huge loss to Third Eye Inc. This was concerning accused No.1. Accused No.2 in India had initiated a Pre-Institution Mediation Application in which several sessions were held between the complainant and accused No.2. In the teeth of pendency of the aforesaid proceedings, the afore-quoted complaint comes about by the complainant. This is the history of the complainant.

13. The aftermath of the complaint is also required to be noticed. On 18-02-2021, the Mediation Application so filed by accused No.2 against the complainant fails and accused No.2 institutes a commercial suit in O.S.No.176 of 2021 before the Commercial Court at Bangalore. The said suit is pending adjudication. In the USA on 08-04-2021, the Arbitral Tribunal constituted for the purpose of arbitration instituted by accused No.1 categorically ruled that the trade secret claims made by Third Eye Inc. were not even identified with reasonable particularity which would mean that the counter-claim filed by the Third Eye Inc. with regard to breach of confidentiality was not proved. Against the said interlocutory finding of the arbitral Tribunal, the Third Eye Inc. re-agitated the issue before the Arbitrator. The Arbitral Tribunal

rejects the amended trade secret identification claims in terms of another order dated 06-06-2021. During the pendency of all these proceedings, the present writ petition comes to be filed by accused No.3/petitioner. During the pendency of this petition, a final award is passed by the Arbitral Tribunal in USA directing the Third Eye Inc. to pay moneys demanded by accused No.1 and has dismissed the counter-claim against accused No.1 on 13.09.2021.

14. In terms of Arbitration laws of USA, the award of Arbitral Tribunal needs confirmation by a Superior Court. The Superior Court of California affirms the award passed by the Arbitral Tribunal in terms of its order dated 28-03-2022. The final award of the Arbitral Tribunal dated 13-09-2021, reads as follows:

"I, the undersigned arbitrator, having been designated and duly appointed in accordance with Section 12.2 of the Master Services Agreement dated 3-10-2014, by and between Claimant UST Global Inc. ("Claimant" or "UST") and Respondent Third Eye, Inc. ("Respondent" or "Third Eye"), and having duly heard the proofs and allegations of the parties in and prior to the Final hearing, which closed on August 19, 2021, award as follows:

- 1. UST's claim for Breach of Contract is hereby granted, for which UST shall be entitled to recover from Third Eye:***

- a. Contractual damages of \$481,991.00**
- b. Contractual pre-judgment interest of \$515,296.60; and**
- c. Post-judgment interest at 10% simple interest per annum.**

2. With respect to Third Eye's First Counterclaim seeking a declaratory judgment "regarding the manner of payment required for the SOWs at issue in this case," the undersigned determines that cash is the proper method of payment under the Statements of Work at issue in this case and, in addition, the specific declaratory relief sought by Third Eye, including the following declaratory judgments:

- a. UST's SOWs for Project IDs ThDE-002-01-00, THDE-002-02-00, THDE-0006-01-00, THDE-0006-02-00, THDE-0007-01-00, and THDE-0012-01-00 do not specifically provide for payment in cash;
- b. The MSA permits Third Eye to pay for UST's services in Third Eye shares;
- c. Excluding interest, at \$60.00 per share, issuance of 8,037 Third Eye common shares to UST constitutes payment in full for the SOWs; are hereby denied.

3. Third Eye's Second Counterclaim, for Breach of Contract is hereby denied;

4. Third Eye's Third Counterclaim, for Tortious Interference with contract, is hereby denied;

5. Third Eye's Forth Counterclaim, for Tortious Interference with Prospective Economic Advantage, is hereby denied;

6. Third Eye's Fifty Counterclaim, under the California Uniform Trade Secrets Act, Cal.Civ. Code s 3426, et seq., including without limitation Respondent's claim for attorney's fees and expert witness fees pursuant to Cal.Civ.Code s 3426.4 is hereby denied.

7. Third Eye's claims that UST is vicariously liable for the alleged torts of its employees under the doctrine of respondent superior are hereby denied.

8. Third Eye shall take nothing against UST;

9. The compensation and expenses of the arbitrator shall be borne by the parties equally; therefore, because the parties have shared arbitral compensation and expenses

equally to date, neither arbitral compensation nor expenses are due from each party to the other; and

10. The parties have stipulated that neither party continues to assert any claim for attorneys' fees in this matter; therefore, the parties' prior claims for attorneys' fees are denied.

11. The undersigned awards damages to UST in the following amounts, which total \$997,287.60 through September 13, 2021, and continue to accrue as shown below:

- a. Contractual damages of \$481,991.00*
- b. Contractual pre-judgment interest of \$515,296.60;*
- c. Post-judgment interest at 10% simple interest per annum.*

This Final award is in full settlement of all claims and counterclaims submitted to this arbitration."

(Emphasis added)

and confirmation order dated 28-03-2022, passed by the Superior Court of California, County of Orange reads as follows:

"Petition to Confirm Arbitration Award

Before the Court in UST Global Inc.'s ("UST") Petition to confirm the September 13, 2021 Arbitration Award and Third Eye, Inc.'s ("Third Eye") Cross-Petition to vacate the award.

The Court is inclined to confirm UST's Petition to confirm the award and deny the Cross-Petition.

... ..
Timeliness of UST's Response

... ..
Merits

Moving to the merits, Claimant UST Global Inc. and Respondent Third Eye Inc. arbitrated UST's claims in Aliso Viejo on August 17 through 19, 2021 in person before

arbitrator John DeGroote, DeGroote Partners (based in Texas), pursuant to AAA rules.

On September 13, 2021, the arbitrator awarded UST \$997,287.60 with 10% per year interest against Third Eye. Both petitions are timely.

The matter stemmed from a Master Services Agreement, effective 10-03-2014 where UST contracted with Third Eye to create trade secret software solutions for Third Eye.

UST sued for breach of contract. Third Eye counterclaimed for declaratory relief, breach of contract, tortious interference with contract, tortious interference with prospective economic advantage, trade secret violations. UST was entirely successful. Third Eye obtained nothing from the arbitration.

UST filed a petition in this Court to confirm the award. Within days of the filing, Third Eye filed a "request for the trial de novo" and a Cross-Petition to vacate the award on the grounds that the arbitrator exceeded his authority and refused to hear evidence. (ROA 9. 10).

Third Eye makes three general arguments as to why the court should not confirm the award, none of which the court find persuasive.

...

...

...

CCP s 1286.2(a)(6)

Third, and finally, following the close of evidence, but before rendering his Final Award, the Arbitrator was appointed to serve as mediator in a matter in which counsel for UST represented a party. Third Eye argues that this potential engagement was required to be disclosed pursuant to Section 7(d)(5) of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, as adopted by the California Judicial Council. No such disclosure was made, and thus Third Eye argues that it was not afforded the opportunity to disqualify the Arbitrator pursuant to Section 1281.9 of the California Code of Civil Procedure.

Section (a)(6) allows a court to vacate the arbitration award if an arbitrator making the award...: "(A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware."

Section 1281.9 provides, in turn: "the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be impartial, including....[a]ny matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to t his chapter" (CCP s 1281.9(a)(2).)

The Ethics Standards for Neutral Arbitrators in Contractual Arbitrations require an arbitrator to disclose all matters in which "(t)he arbitrator is serving or has served as a dispute resolution neutral.... involving a party or lawyer for a party and the arbitrator received or expects to receive any form of compensation for serving in this capacity". (Ethics standards For Neutral Arbitrators in Contractual Arbitrations s 7(d)(5).)

Evidence in the final hearing closed on August 19, 2021. The Arbitrator's Final Award was due within thirty (30) days from the date. While the Arbitrator was evaluating the evidence and considering the Final Award, he was appointed to serve as mediator in Southwest Airlines Company v. Kiwi.com and Kiwi.com SRO, Case No.3:21-cv-0098-E, in the United States District Court for the Northern District of Texas ("Southwest Airlines"). The Arbitrator issued the Final Award on September 13, 2021. No party filed an application to correct the award with the arbitrator. (Gaudioso Decl., /3.)

Two days later, one of the attorneys representing UST entered an appearance as additional counsel for defendants in Southwest Airlines. (See Exhibit "N").

Third Eye failed to establish that the Arbitrator began "serving" as the mediator in another case before the conclusion of the arbitration proceeding."

The suit in Commercial Court i.e., O.S.No.176 of 2021 is referred to arbitration, pursuant to an application filed by the complainant himself under Section 8 of the Arbitration and Conciliation Act, 1996. This has been challenged by accused No.2 before this Court in Writ Petition No.17934 of 2022. Therefore, Third Eye Inc. is now saddled with payment of huge moneys by the Arbitrator, which is confirmed by the Superior Court of California, County of Orange. Therefore, a sword of one proceeding is hanging on the head of the complainant. Insofar accused No.2 is concerned, on its seeking arbitration for the amounts that are to be paid to it, the matter is referred to arbitration and its challenge is pending before this Court.

15. That is all the afore-quoted link in the chain of events, its dates and moneys that are directed to be paid by the competent Court against Third Eye Inc., which the complainant claims to be controlling and the criminal complaint comes to be registered. That several transactions between the parties which are purely commercial in nature, the crime comes to be registered. If it is for other acts to defend themselves, it is the defense that they have to

put up. To continue or permitting continuance of investigation against the petitioner by the Police what is germane to be noticed is, *whether the complaint would make out any offence against the petitioner*. The complaint is quoted hereinabove. There is not even a whisper of any act of the petitioner. Therefore, it is a clear case where the petitioner is hauled into the web of crime without there being any rhyme or reason. Reference is being made to the judgment of the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL¹**, in the circumstances becomes apposite. In the said Judgment, the Apex Court holds as follows:

"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

¹ 1992 Supp (1) SCC 335

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 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.*
- (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."*

(Emphasis supplied)

In the light of 1st clause in the **BHAJAN LAL'S** case (*supra*), even if the complaint is taken as true, it would not make out any

offence alleged against the petitioner. Therefore, if further investigation is permitted to be continued, it would unmistakably lead to proceedings becoming an abuse of the process of law.

16. Yet another factor that would weigh in favour of the petitioner is the preceding analysis, they are purely commercial in nature. In a purely commercial transaction, the complainant seeks to dress those transactions with a robe of crime, which should not be permitted, in terms of the judgment rendered by the Apex Court in the case of **WYETH LIMITED** (*supra*), wherein it is held as follows:

"14. A careful reading of the complaint, the gist of which we have extracted above would show that none of the ingredients of any of the offences complained against the appellants are made out. Even if all the averments contained in the complaint are taken to be true, they do not make out any of the offences alleged against the appellants. Therefore, we do not know how an FIR was registered and a charge sheet was also filed.

15. The contention of the learned senior counsel for respondent No.2 that the Court has to take note of the final report filed by the police along with the statement of witnesses, could have been accepted by us, if the whole thing had emanated from a First Information lodged with the police. Respondent No.2 actually filed a private complaint under Section 200 Cr.P.C, which was referred by the Court under Section 156(3) to the police. When this complaint itself disclosed nothing more than a commercial relationship which broke, it is not possible for

respondent No.2 to enlarge the scope of his complaint by merely adding the language used in the text of the Indian Penal Code.

16. Admittedly appellant No.1 had instituted a civil Suit on the file of the judicature at Bombay and also obtained an order for the appointment of a Court Receiver to take possession of the goods lying in the godown. The appellants have also lodged a criminal complaint, which was refused to be quashed by the High Court of Patna. It is only after the appellants filed a civil suit and a criminal complaint that respondent No.2 chose to file his complaint.

17. The High Court was clearly in error in overlooking the application for bringing on record the subsequent development of the filing of the chargesheet and the prayer for inclusion of the relief of quashing of the chargesheet in the original petition.

18. It is too late in the day to seek support from any precedents, for the proposition that if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed."

The Apex Court, in the aforesaid judgment, clearly holds that the High Court fell in error in overlooking the fact that the criminal complaint is registered after the complainants had filed a civil suit and therefore, the matter was clearly civil in nature. In the case at hand, as narrated hereinabove, the issue cannot but be held to be arising out of commercial transactions between the parties. Therefore, the said commercial transaction or the suits that are filed are sought to be given a colour of crime, which is precisely

held to be contrary to law by the Apex Court in plethora of judgments, apart from the one that is quoted hereinabove. Quoting all the judgments would only render this order to be bulky, as it is by now trite law that the Court exercising jurisdiction under Section 482 of the Cr.P.C. has to step in and obliterate such proceedings, which are civil/commercial in nature and are given a cloak of crime, except in circumstances as elucidated by the Apex Court in those very judgments which would depend upon the facts of each case.

17. In the light of all the aforesaid reasons, permitting further proceedings to continue particularly, against the petitioner would degenerate into harassment, become an abuse of the process of law and ultimately, result in miscarriage of justice.

18. Wherefore, the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The FIR in Crime No.56 of 2021 registered by South CEN Crime Police Station, Bangalore and pending

before the I Additional Chief Metropolitan Magistrate, Bangalore, stands quashed *qua* the petitioner.

- (iii) It is made clear that any observations made in the course of the order, will not bind or influence any other civil proceedings pending between the other parties.

**Sd/-
JUDGE**

nvj
CT: MJ