

Ravinder Pal Singh S/O Shri Shangar ... vs State Of Rajasthan on 6 November, 2024

Author: Sameer Jain

Bench: Sameer Jain

[2024:RJ-JP:43794]

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 4394/2023
Ram Singh S/o Kundan Singh, Aged About 58 Years, R/o 382-A
Shrinath Puram, Kota (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City, Raj.

----Respondents Connected with S.B. Criminal Miscellaneous (Petition) No. 6799/2023 Ravinder Pal Singh S/o Shri Shangar Singh, Aged About 35 Years, Territory Manager, (Retail) Bharat Petroleum Corporation Ltd., Territory Office Village Brijeshpura (Tathed) Baran Road, Nh-27, Kota-325201 Having Registered Office At Bharat Bhawan, 4 And 6 Currimbhoy Road, Ballard Estate, Mumbai.

----Petitioner Versus

1. State Of Rajasthan, Through Secretary Home Department, Rajasthan State Secretariat, Jaipur.
2. Director General Of Police, State Of Rajasthan, Jaipur.
3. Superintendent Of Police, Distt. Kota City, Kota.
4. Inspector General Of Police, Kota Range, Kota.
5. S.h.o. P.s. R.k. Puram, Kota City, Kota.
6. State Of Rajasthan, Through P.p.

----Respondents S.B. Criminal Miscellaneous (Petition) No. 4762/2023 Harmeet Singh S/o Palwinder Singh, Aged About 28 Years, R/o Om Enclave Flat No. C-514 Anantpura, Kota (Raj).

----Petitioner Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City (Raj).

----Respondents S.B. Criminal Miscellaneous (Petition) No. 4763/2023 Rajbir Singh S/o Niranjan Singh, Aged About 25 Years, R/o 382 A Shrinathpuram , Kota (Raj).

[2024:RJ-JP:43794] (2 of 20) [CRLMP-4394/2023]

----Petitioner Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City (Raj).

----Respondents S.B. Criminal Miscellaneous (Petition) No. 5150/2023 Rashpal Singh S/o Nirmal Singh, Aged About 28 Years, R/o Village Maloowali Ghuman, Gurdaspur, Distt. Punjab.

----Petitioner Versus

1. State Of Rajasthan, Through P.p.

2. Ravinder Singh S/o Shangar Singh, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City(Raj.)

----Respondents S.B. Criminal Miscellaneous (Petition) No. 5151/2023 Amarjeet Singh S/o Joginder Singh, Aged About 50 Years, R/o 17/2 Pwd Colony, Vigyan Nagar, Kota(Raj.)

----Petitioner Versus

1. State Of Rajasthan, Through P.p.

2. Ravinder Singh S/o Shangar Singh, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City(Raj.)

----Respondents S.B. Criminal Miscellaneous (Petition) No. 5441/2023 Jagir Singh S/o Tara Singh, Aged About 50 Years, R/o Badgaon, Gurdwara Ke Samne, Bundi Road, Kota, Raj.

----Petitioner Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City (Raj).

----Respondents S.B. Criminal Miscellaneous (Petition) No. 5442/2023 Gurjeet Singh S/o Heera Singh, Aged About 30 Years, R/o Badgaon, Gurdwara Ke Samne, Bundi Road, Kota, Raj. [2024:RJ-JP:43794] (3 of 20) [CRLMP-4394/2023]

----Petitioner Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City (Raj).

----Respondents S.B. Criminal Miscellaneous (Petition) No. 5443/2023 Malkeet Singh S/o Jagir Singh, Aged About 28 Years, R/o Badgaon, Gurdwara Ke Samne, Bundi Road, Kota, Raj.

----Petitioner Versus

1. State Of Rajasthan, Through Public Prosecutor.

2. Ravinder Singh S/o Shangar Singh, Aged About 35 Years, R/o At Present Pradisik Manager, Tagore Nagar Petrol Pump, R.k. Puram, Kota City, Permanent Address Sky Park, Subhash Nagar, Anantpura, Kota City (Raj).

----Respondents For Petitioner(s) : Dr. Mahesh Sharma with Ms. Harshita Sharma For Respondent(s) : Mr. Rishi Raj Singh Rathore, PP with Mr. M. S. Shekhawat, PP Mr. Manish Sharma, RPS, CO IV Kota City Mr. V. R. Bajwa, Sr. Advocate with Mr. Amar Kumar & Ms. Savita Nathawat Ms. Sonal Singh for Mr. Alok Garg HON'BLE MR. JUSTICE SAMEER JAIN Judgment Reserved on :: 16/10/2024 Pronounced on :: 06/11/2024

1. A present bunch of petitions, sharing identical factual matrix and grounds, are filed before this Court. In one of the petition nos. 6799/2023, titled as Ravindra Pal Singh Vs. State of Rajasthan, filed under Section 482 of Cr.P.C, before this Court, with a prayer to transfer the investigation to the cyber cell for fair, independent, [2024:RJ-JP:43794] (4 of 20) [CRLMP-4394/2023] and efficacious investigation. Moreover, the abovementioned prayer is made by the Bharat Petroleum Corporation Limited (BPCL) a public sector company, through its Competent Officer (complainant) whereas, the connected bunch of petitions in the instant matter are filed with a prayer to quash the FIR, on the

ground that civil/ contractual matters are given a color of criminal jurisprudence wherein, criminal proceedings are initiated.

2. With consensus of the parties, SBCRLMP No. 4394/2023 titled as Ram Singh Vs. State of Rajasthan, is designated as a lead file, accordingly the instant bunch of petitions are taking up for final disposal.

3. The nitty-gritty of the instant matter is that the public sector company Bharat Petroleum Cooperation Limited (for short "BPCL"), which, for the benefit of its customers, through a marketing scheme, launched an advanced loyalty program on 17th December 2021. This program, designed as a closed loop wallet (Prepaid Payment Instrument) serves both B2B (business to business specifically transporters) and B2C (Business to Consumer, individual Customers) segments.

4. Through this scheme, customers can register themselves by providing their credentials, thereafter, on successful registration, a fleet account is created with the wallet in BPCL's loyalty application which is seamlessly integrated with Razorpay and Pinelabs payment gateway for recharge wherein, loyalty customers have to login in their account in the application using their credentials to facilitate a fund transfers from their bank account/UPI/ debit/credit card to Razorpay payment gateway. [2024:RJ-JP:43794] (5 of 20) [CRLMP-4394/2023]

5. Thereafter, the customer account wallet can be recharged for an amount via payment gateway interface modes, for instance net banking, UPI, credit/ debit card, and Razorpay transfers the corresponding amount to BPCL bank account. Subsequently, on recharge of the said account, the amount in the wallet was utilized for the purchase of fuel only at BPCL fuel station, and all the fuel purchase transactions were made through OTP/PIN authentication process by the customers.

6. The controversy in this matter arose on March 31, 2023, when Razorpay's risk assessment team notified BPCL of observed anomalies and potential security concerns within the existing integration framework between the BPCL loyalty application and the Razorpay payment gateway, resulting in unauthorized and irregular recharge process that may lead to unauthorized or undue credits or recharge to customer account wallet.

7. Subsequently, upon receiving serious suspicion and concern, BPCL conducted a meticulous analysis of their data, and found that in approximately 1093 customer's wallets various recharge amounting to the tune of approximately Rs. 130 Crores, were made without receipt of corresponding amount in BPCL's bank account, therefore indicating a shortage of approximately Rs. 130 Crores. Moreover, from the analysis of the said data, it was deduced that 28 customers primarily located in Kota region, have allegedly engaged in fraudulent activities amounting to approximately Rs. 23 crores, resulting in wrongful loss to BPCL and suggesting a deliberate scheme intended to induce this financial harm.

[2024:RJ-JP:43794] (6 of 20) [CRLMP-4394/2023]

8. Consequently, based on the aforesaid, FIR No. 204/2023 and other FIRs were lodged, for the offences punishable under Sections 420, 406, 418 and 120B of IPC, thereafter, Investigating Officer served notices upon the complainant under Section 91 of Cr.P.C to furnish certain documents, and a detailed reply to the said notice along with the documents was provided to the investigating officer qua the said fraud.

9. In light of the aforementioned facts and allegations, learned counsel appearing for the accused-petitioners, i.e. Ram Singh & Ors., had submitted that the accused-petitioners engaged in the transaction in good faith, following evaluation of their credentials. Moreover, the petitioner-accused had been using the said 'Fleetcard' since 2021, with no intention to defraud or to cheat the complainant company, moreover if the accused-petitioners had intended to deceive BPCL, the company could have withdrawn or cancelled the said "Fleetcard" or otherwise restricted the petitioners from purchasing fuel.

10. It was further submitted that BPCL in their intimation letter dated 02.04.2023 to the accused-petitioner (Annexure-2), admitted that suspicious transactions have occurred due to system error and relieved accused-petitioner from the accusation qua fraud. Moreover, the contents of the said letter makes it clear that the recovery was initiated for a particular period for the excess credit which was apprehended on recharge transaction, therefore registration of FIR in these facts and circumstances, is abuse of process of law, and is against the dictum laid down in the judgments of Rana Ram Vs. State in SBCRP No. 4893/2024, [2024:RJ-JP:43794] (7 of 20) [CRLMP-4394/2023] Hon'ble Apex Court judgment in SLP No. 1570/2021 titled as Naresh Kumar Vs. State of Karnataka, Radhey Shyam Vs. State of Raj. in Criminal Appeal No. 3020/2024 and Lalit Chaturvedi Vs. State of UP in SLP No. 13485/2023.

11. Learned counsel appearing for the accused-petitioner had placed reliance on the abovementioned judgments and submitted that the essential ingredients of Section 420, 406 of IPC i.e. neither the dishonest inducement nor delivery of property are made out in the instant matter. Moreover, the present matter does not pertain to cheating or dishonest inducement, rather it pertains to a civil nature dispute qua recovery wherein, civil dispute and legal notice(s) are already filed and served respectively by the accused-petitioner against the company i.e. BPCL, which is pending, and company had duly participated in the civil proceedings. Therefore, the present proceedings are not tenable.

12. Additionally, it was submitted that wherever there was a short payment, out of 28 petitioners, 8 accused-petitioners, who had deposited the due amount under influence and pressure, were enlarged on bail, therefore the criminal proceedings abusing the process of law, are wrongfully initiated giving a color of civil transaction and is merely used as a recovery proceeding.

13. In this background, the learned counsel had prayed that present proceedings are not tenable, and FIR registered by BPCL against the petitioners-accused ought to be quashed and set aside.

14. Per contra, learned counsel appearing for the complainant who is a competent officer representing the company i.e. BPCL [2024:RJ-JP:43794] (8 of 20) [CRLMP-4394/2023] has filed

petition SBCLMP 6799/2023, with a prayer seeking directions for fair, efficacious and speedy investigation, as despite their representation dated 08.09.2023 filed before Superintendent of Police, the said dispute is not yet transferred to the Cyber Cell and there is ignorance of the provisions of Information Technology Act, 2000 (for short, "the Act") more particularly Section 2(HA) (NB)(I), 2(T), 65, 66, 78 and others. Whilst placing reliance upon the same, it was submitted that in a recent Circular of Director General of Police dated 08.07.2024 and in light of the provisions of B.N.S.S. 2023, whereby it is stated that the cybercrimes in the facts and circumstances ought to be referred to the cyber cell, a specialized wing.

15. The learned counsel had further contented that considering the provisions of the Information Technology Act, a scam and fraud upon the Public Sector Company, is a commercial fraud and a white collar crime wherein, an enormous amount of money upto the tune of approximately Rs. 25 Crores is involved only qua accused petitioners located in Kota region and on PAN India basis, different FIRs are registered. Hence, present SBCLMP No. 6799/2023 qua transfer of investigation to cyber cell ought to be allowed.

16. Heard and considered the rival arguments advanced by the respective sides, after an assiduous scanning of the records and considering the judgments cited at the Bar, this Court has noted the following facts:

[2024:RJ-JP:43794] (9 of 20) [CRLMP-4394/2023] 16.1 BPCL is a public sector company dealing in marketing and sale of oil petroleum products, referred to as complainant in the present matter.

16.2 That in the connected petitions, accused-petitioners like Ram Singh, are customers of the said oil company, who have availed the facility launched by the company in the year 2021 i.e. Loyalty Scheme.

16.3 That according to the report submitted by the Razorpay (one of the stake holders or app providers), it is revealed that on a PAN India basis there is a short payment, and a commission of fraud, on account of approximately 1093 customers out of which 28 customers pertain to Kota region alone, who belong to the same community and are having nexus as alleged. The tabular chart in this regard, is reproduced as below:

Sr. FA/CC FA Name Excess CMS Recovery Pending on Pending as No. ID Credit Amount made 01.04.2022 on date of without from 3 FIR Deducting wallet (12.06.20 Customer balance at 23) Bank Account time of from first fraud blocking date till on 31.03.2023 31.03.2022 1 FA2000 Sukhraj 1045000 63443 981557 979319 218246 Singh 2 FA2000 Ram Singh 8826799 35638 8791161 6598900 581866 3 FA2000 Praveen 2848996 702160 2146836 2138441 601177 Kumar 4 FA2000 Dhillon 6897488 14183 6883305 6857944 511911 Goods Carrier 5 FA2000 Sukhdev 1755000 702 1754298 1597441 612000 Singh 6 FA2000 Mamraj 6149990 64 6149926 3033702 670008 Choudhary 7 FA2000 Pragat Singh 2099995 71142 2028853

2027700 687705 8 FA2000 Malkeet 5503000 148458 5354542 5335188 [2024:RJ-JP:43794] (10 of 20) [CRLMP-4394/2023] 691962 Singh Pannu 9 FA2000 Radhey 1910000 1488273 421727 412397 701035 Shyam Gurjar 10 FA2004 Heera Singh 25778865 71055 25707810 25702432 140909 11 FA2004 Cheema 68208899 5699861 62509038 62305615 496053 Transport 12 FA2005 Rajbir Singh 26580099 3097467 23482632 22614502 112493 13 FA2010 Hardev 280000 4154 275847 142343 740494 Singh 14 FA9000 Harmeet 1652800 17604 1635196 1028798 094771 Singh 15 FA3000 Satya 4496997 1783 4495214 4191862 094819 Narayan Gurjar 16 FA3001 Sukhpal 2267000 218363 2048637 2041596 43750 Singh Sekhan 17 FA3000 Jagvinder 24275108 15408 24259700 24172489 154690 Singh 18 FA3000 Amrjit Singh 20580000 798977 19781023 19709917 156326 19 FA3000 Sawraj 480000 2816697 1983303 1976174 156333 Singh 20 FA3000 Jagir Singh 7161000 942626 6218374 6196017 156578 21 FA3000 Khalsa 4268000 75778 4192222 4177109 163319 Transport Company 22 FA3000 Sukhdeep 188000 2566 185434 184767 163543 Singh 23 FA3000 Kailash 1600000 55966 1544034 1538478 165813 Chand 24 FA3000 Jaspal Singh 371000 1401 369599 368303 169687 Sekho 25 FA3000 Sukhpal 3199000 321440 2877560 2866500 170059 Singh Sekhan 26 FA3000 Gurjit Singh 1500000 41700 108300 107953 170262 27 FA3000 Akshay Kant 100000 527 99473 99132 170461 Sharma 28 FA3000 Jaideep 350000 49021 300979 300174 170536 Nawar 233343036 1675645 2165865 2087051 16.4 That it is observed that the crime alleged in instant matter pertains to a cybercrime.

[2024:RJ-JP:43794] (11 of 20) [CRLMP-4394/2023] 16.5 Upon consideration of definition of communication device, computers, cyber security, provisions qua electronic record, provisions of Section 65, 66 of the Information Technology Act, and aim and intention of the said Act, it is noted that the offence in the instant matter can be termed and understood as an alleged cybercrime. The said definitions and provisions are reproduced herein for the sake of convenience: -

Section 2(ha)- Communication device-

Communication device means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.

Section 2(i)- Computer- Computer means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network.

Section 2(nb)- Cyber security - Cyber security means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption,

modification or destruction.

Section 65- Tampering with computer source documents.- Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation- For the purposes of this section, □computer source code means the listing of programmes, computer commands, design and layout [2024:RJ-JP:43794] (12 of 20) [CRLMP-4394/2023] and programme analysis of computer resource in any form.

Section 66- Computer related offences. - If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation- For the purposes of this section, -

(a) the word □dishonestly shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) the word □fraudulently shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860)."

16.6 Upon a meticulous analysis of the Act it is further noted that according to the provisions of Section 78 of the Act, a specialized investigation Inspector shall investigate the matter, not below the same rank. For ease of reference, the same is reproduced below:

Section 78- Power to investigate offences. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of (Inspector) shall investigate any offence under this Act."

16.7 This Court has further taken into consideration that as per the provisions of newly introduced B.N.S.S. Act, Circular No. 2990/2024, pertaining to cybercrime is issued wherein, the instant matter can be dealt by cyber police stations, after permission of Superintendent, considering the gravity and seriousness of offences.

17. In the above stated facts and circumstances, the petition i.e. SBCRLMP 6799/2023, wherein prayer for transfer of investigation for fair, speedy, expeditious investigation to cyber cell, as the [2024:RJ-JP:43794] (13 of 20)

[CRLMP-4394/2023] offence alleged in the instant matter pertains to alleged cybercrime wherein an amount of approximately Rs. 130 Crores is involved, and qua approximately 28 customers who specifically belong to Kota region, an amount of approximately Rs. 25 Crores is involved. Moreover, no concurrent results are provided by the Investigating Authorities till date, and the case is not dealt with in a manner, i.e. considering the application of the Information Technology Act, which is agonizing, stirring, infelicitous, loathsome and undesirable and are inconsistent and do not align with the seriousness of the white collar pre-planned commercial crime, as alleged in the instant matter. Therefore, for the stated reasons above, this Court deems it apposite to allow the SBCRLMP 6799/2023.

18. Qua the petitions for quashing of the FIRs i.e. S.B. Criminal Miscellaneous (Petition) No. 4394/2023, this court in the facts and circumstances, is of the opinion that the said petitions are not tenable, for the reasons stated below: -

18.1 That in the stated facts and circumstances, it is analyzed that the books of accounts and notices qua BPCL reflects said petitioners-accused and shortage of amount on their part.

18.2 That the petitioner-accused has nowhere displayed in their books of account denying the above fact.

18.3 That the suit initiated, and the legal notice filed are vague, ambiguous and merely to confuse, obfuscate and muddle the Court proceedings.

18.4 That the judgments relied upon by the petitioners pertain to the different factual matrix and do not pertaining to the [2024:RJ-JP:43794] (14 of 20) [CRLMP-4394/2023] issue in hand i.e. cybercrime on Public Sector Company. The judgments cited pertains to individual disputes and are private in nature, and are primarily related to the isolated transactions pertaining to the land qua purchase or sale of a particular commodity, whereas the present matter pertains to a recurring transaction over a period of approximately two years, in-between the group of particular person wherein, there is a misuse of information technology facilities and despite of software being framed in such a way that debit and credit is reflected on a momentary basis, no amount qua payment is received at the end of BPCL.

18.5 That the accused-petitioner has refuted the said contentions qua legal notice and civil suit or mention of same in the record.

18.6 That out of 28 parties, some of the parties (approximately 8 parties) have deposited the said due amount and have not opposed the conditional bail order/release order.

18.7 In the facts and circumstances of the case, apart from notice dated 02.04.2023, the subsequent proceedings are not brought on record before this Court by the accused-petitioners.

18.8 In this regard, this Court has relied upon the dictum enunciated in the judgment passed by Hon'ble Apex Court reported in (2020) 14 SCC 52 titled as K. Jagdish Vs. Uday Kumar, wherein it was opined that civil and criminal proceedings are both maintainable in respect of same set of facts, even if civil remedy is availed to the party, he is not precluded from initiating or setting in motion criminal proceedings, and for the same [2024:RJ-JP:43794] (15 of 20) [CRLMP-4394/2023] following principles are enumerated. Reference in this regard is made to the relevant para(s), which are reproduced as under:

"9. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

10. In Pratibha Rani v. Suraj Kumar and another, this Court summed up the distinction between the two remedies as under:

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred.

The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no [2024:RJ-JP:43794] (16 of 20) [CRLMP-4394/2023] offence is committed is to override and distort the real intent of the law."

11. In Rajesh Bajaj v. State NCT of Delhi and others this Court observed:

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now: "(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hyper technical approach and sieved the complaint through a colander of finest gauzes for [2024:RJ-JP:43794] (17 of 20) [CRLMP-4394/2023] testing the ingredients under Section 415 IPC. Such an endeavor may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved."

12. The aforesaid view was reiterated in Kamladevi Agarwal v. State of West Bengal and others as under:

"9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in State of Haryana v. Bhajan Lal and Rajesh Bajaj v. State NCT of Delhi this Court in Trisuns Chemical Industry v. Rajesh Agarwal⁵ held: (SCC p. 690, paras 7-8) "7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal⁴ and Rajesh Bajaj v. State NCT of Delhi⁵). 8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10) '10. It may be that the facts narrated in the present complaint would also reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude such a transaction. In fact, many cheatings were committed in the course of commercial and also money transactions.'"

[2024:RJ-JP:43794] (18 of 20) [CRLMP-4394/2023] After referring to various decisions it was finally concluded as below:

'17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the

appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings'." 18.9 On consideration of the ratio referred above, it is noted that in the instant matter, criminal proceedings are initiated on account of dishonesty and fraud, as referred to under Section 66 of the Information Technology Act.

18.10 That in the facts and circumstances, dishonestly, fraudulently, as per provisions of Section 24 and 25 of IPC are also committed in conjunction with cheating. For clarity, relevant sections are reproduced below: -

Section 24- "Dishonestly"-

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". Section 25- "Fraudulently-

A person is said to do a thing fraudulently if he does that thing with the intent to defraud but not otherwise.

[2024:RJ-JP:43794] (19 of 20) [CRLMP-4394/2023] 18.11 Additionally, upon perusal of the contents of the FIR, it is noted that there is an involvement of inducement and extortion along with other accusations.

18.12 The prayer made in the civil suit filed by the petitioner pertains to the ascertainment of exact liability/recovery, whereas the criminal proceedings demand punitive action for the alleged fraud made upon the BPCL on Pan India basis with the intention of cheating or otherwise.

19. In the facts and circumstances of the present matter, the investigation is at the initial stage and various stakeholders are yet to be thoroughly investigated including BPCL itself, its employees, razorpay, banking authorities, petitioners(accused) (purchasers) and other connected people.

20. This Court at the stage of the investigation and on the ex-

facie perusal of the present FIR, is not inclined to initiate a mini trial or draw any presumption qua anybody or any stake holder. This Court makes it clear that it is the duty of the investigating authorities to disclose and reveal the true and correct facts and provide a fair and independent version of the investigation. Therefore, at this stage, in the above stated facts and circumstances,

this Court is not inclined to entertain the petitions.

21. Accordingly, for the reasons stated above, petitions are dismissed i.e. S.B. Criminal Miscellaneous (Petition) No. 4394/2023 which are filed by the accused-petitioners, having the same set as that of Ram Singh.

22. It is further made clear that the investigating agency which will be a cybercrime agency, as the present matter is alleged to be [2024:RJ-JP:43794] (20 of 20) [CRLMP-4394/2023] a cybercrime, provisions of the Information Technology Act will be applicable along with other relevant laws. In light of the circular dated 08.07.2024, this Court directs that the matter be referred to cyber cell/competent authority in terms of Section 78 of the IT Act. Full cooperation be provided by the present investigators.

23. All the applications and interim orders are disposed of.

24. The Investigating Agency will be at liberty to initiate any act in accordance with law as they deem fit, considering the alleged white-collar crime and commercial fraud of huge nature.

25. S.B. Criminal Miscellaneous (Petition) No. 4394/2023 and SBCRLMP Nos. 4762/2023, 4763/2023, 5150/2023, 5151/2023, 5441/2023, 5442/2023, 5443/2023, are dismissed.

(SAMEER JAIN),J Pooja /54-62 Powered by TCPDF (www.tcpdf.org)