

Yogesh Agarwal vs State Of Karnataka on 24 September, 2020

Equivalent citations: AIRONLINE 2020 KAR 1896

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2020

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BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION NO.3197/2020

BETWEEN :

1. Yogesh Agarwal
Aged about 30 years
S/o.Bhagwati Prasad Agarwal
R/at. Villa No.20, Gran Carmen
Sarjapur Road
Opp. Decathlon, Mulluru
Carmelaram
Bengaluru-560 035
2. Kulin Shah
Aged about 37 years
S/o.Chandrakant Jamnadas Shah
R/at. Flat No.E-311, Pine Block
Raheja Residency, 7th Cross
3rd Block, Koramangala
Bengaluru-560 034
3. Bhagwati Prasad Agarwal
Aged 62 years
R/at. No.12A, Duad Ali Dutta
Sarani Sukeas, Row
Calcutta Central Div.
West Bengal-700 006

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4. Uma Agarwal
Aged about 59 years
Wife of Bhagwati Agarwal Prasad
R/At. No.12A, Daud Ali Dutta
Sarani Sukeas, Row
Calcutta Central Div.

West Bengal-700 006

5. Sunita Poddar
Aged about 33 years
W/o.Yogesh Agarwal
R/at Villa No.20
Gran Carmen, Sarjapur Road
Opp.Decatholon, Mulluru
Carmelaram
Bengaluru-560 035

... Petitioners

(By Sri Uday Holla, Senior Counsel for
Sri Smaran Shetty, Advocate)

AND :

1. State of Karnataka
Rep. herein by:
The Investigation Officer
Cyber Crime Police Station (CID)
Rep.by SPP
High Court Building
Bengaluru-560 001
2. Mr.Ashwin Ramaswamy
Authorized representative of
Acko General Insurance Limited
S/o. K.K.Ramaswamy
Major
No.A-301, Manthri Classic Apartment
1st Main, 8th Cross

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Koramangala, 4th Block
Bengaluru-560 034

... Respondents

(By Sri H.R.Showri, HCGP for R1
Sri C.V.Nagesh, Senior Counsel for
Sri/Smt.Chinmayi J. Mirji, Advocate for R2)

This Criminal Petition is filed under Section 482 of
of Cr.P.C praying to quash the entire proceedings in
CR.No.7219/2020 presently on the file of the I ACMM,
Bengaluru including the complaint and FIR in
CR.No.6/2020 on the file of the Cyber Crime Police
Station (CID), for the offences punishable under Sections
403, 406, 408, 426, 120B r/w.34 of IPC and Sections 66
and 72 of IT Act.

This Criminal Petition having been heard and
reserved on 08.09.2020 coming on for pronouncement of

orders this day through 'Video Conference', the Court made the following:-

ORDER

This petition is filed by accused Nos.1 to 5 under Section 482 of Cr.P.C. praying to quash the entire proceedings in Crime No.7219/2020, pending on the file of I Additional Chief Metropolitan Magistrate, Bengaluru, arising out of Crime No.6/2020 of Cyber Crime Police Station (CID) for the offences punishable under Sections 403, 406, 408, 426, 120B r/w.34 of IPC and Sections 66 and 72 of Information Technology Act, 2000.

2. I have heard Sri Uday Holla, learned Senior Counsel on behalf of Sri Smaran Shetty for the petitioners-accused No.1 to 5, Sri C.V.Nagesh, learned Senior Counsel on behalf of Smt. Chinmayi Mirji, for respondent No.2-complainant virtually and Sri H.R.Showri, learned HCGP for respondent No.1-State

3. Though this case is listed for orders, with the consent of both parties, the same is taken up for final disposal.

4. Brief facts of the case are that the complainant Acko General Insurance Limited is a Company incorporated under the provisions of the Companies Act, 2013. It is wholly owned by subsidiary of Acko Technology and Services Private Limited (Acko Tech). It is further alleged Acko GI is engaged in the business of manufacturing and selling insurance and is an entity licensed by Insurance Regulatory and Development Authority of India. Acko GI was founded in the year 2016 and has invested more than 800 Crores of rupees and within two years of its establishment, is able to develop unique developed complex actuarial and data science models which predicts various key metrics across sectors like travel, health, mobile, commerce. It has also developed very sensitive information including list of clients, business models, business strategy and other trade secrets. All these data and formulae form part of confidential information of Acko Group. It is further alleged that confidential information is proprietary information of Acko Group exclusively owned by it.

5. It is further alleged that the petitioner No.1- accused No.1 joined Acko GI as its full time employee in the position of Actuarial Associate on 17.3.2017. Later he resigned and started his own firm and had entered into consultant agreements dated 1.8.2018 and 1.4.2019 with Acko Group. It is further alleged that he was working on various projects and advising Acko Group. Subsequently, accused No.2-petitioner No.2 was employed as Vice- President of New Business and Partnerships at Acko Group on 4.9.2017. They have signed corporate governance document in relation to code of conduct, antifraud and information and data security policies of Acko Group. Accused No.1 is bound by Clause-6 of the agreement about the confidential information and non- disclosure of confidential information. Accused No.2 is also bound by the said agreement to maintain confidentiality and non-compete clause under Agreement No.2. It is further alleged that accused Nos.1 and 2 during their tenure with Acko Group were entrusted with confidential information which they had to use exclusively for the benefit of Acko Group and were bound not to disclose such information to any

person or third party- company. Under such circumstances, accused Nos.1 and 2 in collusion with one Mr.Bhagwati Prasad Agarwal and Ms.Uma Agarwal Mrs.Sunita Poddar, wife of accused No.1 hatched a criminal conspiracy to cheat and fraud Acko Group to steal the confidential information and start their own competitive business by using confidential information taken from Acko Group. The said information has been stolen during their course of engagement and employment. It is further alleged that accused No.1 through his parents and wife has set up a competitor company under the name "Onsurity Services Private Limited incorporated on 15.5.2019 when he was working with Acko Group. It is further alleged that accused Nos.1 and 2 fraudulently disclosed the confidential information stolen by them to Onsurity Services Private Limited to make illegal financial gain.

6. It is further alleged that accused No.1 had terminated his consultancy contract with Acko Group on 30.9.2019. However, accused No.2 continued his employment with Acko Group with criminal intention to pass on the confidential information from Acko Group to accused No.1 to build a rival business venture. Accused No.2 continued stealing of confidential information till he had enough data to set up their competitor company. After they got sufficient data and information they set up a company under the name and style "Onsurity Technologies Private Limited on 5.2.2020 in which accused No.1 is the Director, accused No.2 is a co- founder and shareholder. Subsequently accused No.2 also gave resignation on 14.1.2020. It is further alleged that during notice period, accused No.2 was permitted to hand over the confidential information to Acko Group which was entrusted to him. Accused No.2 without the permission of Acko Group unauthorisidely downloaded the confidential information and has illegally disclosed and transmitted to Onsurity Technologies Private Limited. It is further alleged that when the Google log was checked and verified, it is noticed that he has downloaded huge data of key confidential information from 14.2.2020 to 24.2.2020 during his notice period. He had an intent to conceal his illegal activities and had tampered and deleted his operating system from Acko Group laptop assigned to him. It is further alleged that accused Nos.1 and 2 with an intent to set up a rivalry business after stealing confidential information from Acko Group, they have done the said act. It is further alleged that the said records disclosed the confidential information which has been stolen and they had made financial illegal gain from the same. It is further alleged that subsequently it came to the knowledge of the complainant that the accused persons replicated investor memorandum/pitch deck of Acko Group and have raised Rupees 20 Crores from Nexus Ventures. It is the copy of Acko Group. It is further alleged that accused Nos.1 and 2 in collusion with accused Nos.3 to 5 have been soliciting the existing clientel/investors of Acko Group through telephonic calls and personal meetings to cause

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them to stop doing business with Acko Group with an intention to cause wrongful financial loss and hardship to the Acko Group. Accused No.2 is also using the stolen information and confidential information to develop the pirated products which are infringing upon the rights of Acko Group. The above said act has been done with conspiracy of all the accused persons with an intention to make gain and cause illegal loss to the complainant. On the basis of the complaint a case has been registered in Crime No.6/2020 of Cyber Crime Police Station (CID) for the offences punishable under Sections 403, 406, 408, 426, 120B r/w. Section 34 of IPC and Sections 62 and 72 of

Information Technology Act, 2000.

7. It is the submission of Sri Uday Holla, learned Senior Counsel appearing on behalf of the petitioners- accused Nos.1 to 5 that the contents of the complaint are very vague allegations. Accused No.1 was appointed on 17.3.2017 and subsequently he resigned during the year

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2018 and no serious allegations have been made as against him. It is his further submission that accused No.2 resigned on 14.1.2020. When accused No.2- petitioner No.2 got relieved through relieving letter dated 13.3.2020, no such objections or complaints have been alleged about misuse of his possession, on the contrary his work has been appreciated. Only because they have set up a competitor company and gained popularity, in order to tarnish their name and business, the present complaint has been filed. It is his further submission that the basic ingredients of the alleged offence have not been made out in the complaint. Under such circumstances, proceeding against the petitioners- accused No.1 to 5 is nothing, but an abuse of process of law. It is his further submission that the complaint has been registered as against accused Nos.1 and 2 after they left the complainant-Company 2½ years and 2½ months later respectively. The said delay has not been explained. It is his further submission that only to

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destroy the business of the petitioners-accused vague allegations have been made. It is his further submission that only with vendetta to harass the accused persons the present complaint has been filed. It is his further submission that the complainant has approached the High Court of Judicature at Bombay by filing original suit seeking various reliefs. The present complaint is filed only to agitate civil dispute through the police though the entire matter is of a civil nature and civil transactions have been involved. It is his further submission that when the allegations made in the complaint do not disclose the commission of offence, then this Court can exercise the power under Section 482 of Cr.P.C. to quash the proceedings. In order to substantiate the said arguments, the learned Senior Counsel for the petitioners relied upon a decision in the case of Pratibha Vs. Rameshwari Devi & Others, reported in 2007(12) SCC 369.

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8. It is his further submission that when the matter is of civil nature and if it is given a cloak of criminal offence and when civil remedy is available, then under such circumstances, this Court can exercise the power under Section 482 by holding that it is abuse of process of law. In order to substantiate the said arguments, he relied upon a decision in the case of Paramjeet Batra Vs. State of Uttarakhan and Others, reported in (2013)11 SCC 673.

9. It is his further submission that if early reporting of occurrence of information is not there and there is delay in filing the complaint and in the absence of any explanation for the said delay which is said to be deliberate, it is fatal to the case of the complainant. Under such circumstances, the

Court has to quash the proceedings. In order to substantiate the said contention, he relied upon the decision in the case of Kishan Singh (dead) through LRs. Vs. Gurpal Singh

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and Others, reported in (2010)8 SCC 775. It is his further submission that the complainant did not tolerate the success of the petitioners-accused and in that light, a mala fide complaint has been filed by the complainant. It is his further submission that when all the rights of the parties have been seized in the civil suit before Bombay High Court, then under such circumstances, there is no investigation of case by the police. What the police have investigated is a question and that itself creates a doubt. On these grounds, he prayed to allow the petition and to quash the proceedings.

10. Per contra, Sri C.V.Nagesh, learned Senior Counsel for respondent No.2-complainant has vehemently argued and submitted that petitioners Nos.1 and 2-accused Nos.1 and 2 are the former employees who had been entrusted with all the confidential records and material while they were working in the complainant- Company. Accused No.1 resigned in the year 2018,

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whereas accused No.2 continued the job. They came and joined the complainant-Company only with clandestine action and after downloading the confidential information illegally they got transmitted the said information to Onsurity Technologies Private Limited wherein accused Nos.1 to 5 who are all relatives only with an intention to cheat the complainant-Company have constituted the said Company and stolen the confidential information from Acko Group. It is his further submission that the contents of the complaint disclose the ingredients of the offence for having stolen the confidential information which has been acquired by them during the course of employment and the same has been misused by cheating the complainant-Company. It is his further submission that they have stolen the intellectual property which is the property of the complainant-company. Accused Nos.1 and 2 have downloaded the confidential information and subsequently they have deleted the data which has been dumped in their laptops, that is a matter

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which requires consideration and investigation. It is his further submission that accused No.2 though resigned on 14.2.2020, during his notice period, he logged in the confidential information and unauthorizedly downloaded and transmitted the same to Onsurity Technologies Private Limited wherein he is also one of the active partners. It is his further submission that the official laptop which was given to accused No.2 itself indicates downloading of confidential information by him and thereafter the same has been transmitted and deleted. In order to know the said aspects, the said records have to be retrieved by using technology which is a matter of investigation which cannot be considered and appreciated in commercial suit which has been filed before the Bombay High Court. It is his further submission that the said suit is filed only to get the stay and appointment of Commissioner for search and seizure. When the accused persons committed a criminal offence by conspiring with each other, then under such circumstances, the Court

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cannot interfere with such proceedings. It is his further submission that while exercising the power under Section 482 of Cr.P.C., three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought the relief. It is further submitted that if the Court is satisfied that there is prima facie case existing against the accused on evaluation of the material, then the Court cannot interfere by exercising the power under Section 482 of Cr.P.C. In order to substantiate his contention, he relied upon the decision in the case of Chilkamarthi Venkateshwarlu and Another Vs. State of Andhra Pradesh and Another, reported in 2019 SCC Online SC 948.

11. It is his further submission that on perusal of the complaint if it discloses prima facie offence alleged

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against the accused the correctness or otherwise of the allegations are to be decided only at the time of trial and not at this stage. In order to substantiate the said contention, he relied upon the decision in the case Kamal Shivaji Pokarnekar Vs. State of Maharashtra and Others, reported in (2019)14 SCC 350. It is his further submission that the power given under Section 482 of Cr.P.C. is a wider power which requires great caution and it has to be carefully exercised by the High Court. In order to substantiate his arguments he relied upon the decision of this Bench in the case of Shri A.Anup Vs. The Station House Officer, Station Bazaar Police Station, Kalaburagi, reported in 2017 SCC Online Kar 3327. It is his further submission that execution of the order passed by the Bombay High Court through the Commissioner was done with great difficulties and the conduct of the accused in execution is also very much necessary to be considered for the purpose of disposal of this case. It is his further

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submission that already Bombay High Court has issued injunction order and warrant of execution to execute its order. The Commissioner has also given his report for having committed the alleged offence by the accused which requires investigation. On these grounds, he prayed to dismiss the petition.

12. By supporting the arguments of the learned Senior Counsel for respondent No.2-complainant, the learned HCGP has submitted that if a case is having concurrent criminal and civil liabilities, there is no bar to initiate criminal proceedings as against the accused. Under such circumstances, the proceedings cannot be quashed. In order to substantiate the said contention, he relied upon the decision in the case of Arun Bhandari Vs. State of U.P & others, reported in 2013(2) SCC

801. It is his further submission that if there is dispute arising out of breach of contract and the offence has also been committed in the said transaction, criminal trial is

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not barred if the allegations disclose the criminal offence. In that light, he relied upon the decision in the case of Indian Oil Corporation Vs. NEPC India Limited & Others, reported in 2006 (6) SCC 736. On these grounds, he prayed to dismiss the petition.

13. I have carefully and cautiously gone through the submissions made on behalf of both the parties and have given thoughtful consideration to the decisions quoted by them.

14. It is the contention of the learned Senior Counsel for the petitioners-accused Nos.1 to 5 that the allegations made in the complaint are so vague and they do not disclose the commission of offence so also the basic ingredients of the offences have not been made out. In order to substantiate his contention, he relied upon the decision in the case of Pratibha Vs. Rameshwari Devi & Others (cited supra), wherein at paragraph-12, it has been observed as under:-

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"12. From the principles laid down in the abovementioned decisions, it is clear that the Court is entitled to exercise its inherent jurisdiction for quashing a criminal proceeding or an FIR when the allegations made in the same do not disclose the commission of an offence and that it depends upon the facts and circumstances of each particular case. We also feel it just and proper to refer to a leading decision of this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] in which this Court pointed out certain categories of cases by way of illustrations wherein the inherent power under Section 482 of the Code can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The same are as follows: (SCC pp. 378-79, para 102) "(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

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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

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inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

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

15. It is the contention of the learned Senior Counsel for respondent No.2-complainant that the accused Nos.1 and 2 are former employees of the

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complainant-Company and they have stolen the confidential and secret information which was acquired by them and they have also stolen the intellectual property of the complainant-Company. What is the relevancy of the contents of the complaint and FIR for the purpose of finding out of cognizable offence, this Court has to exercise its power and look into the allegations made in the complaint as to whether prima facie case has been made out by the complainant or not. This proposition is also laid down in the case of Pratibha Vs. Rameshwari Devi & Others (cited supra), wherein at paragraph-22, it has been observed as under:-

"22. For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers under Section 482 of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable

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offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not."

16. Keeping in view the submissions made by both the Senior Counsel and on perusal of the complaint, it indicates that it is not in dispute that accused Nos.1 and 2 are the former employees of the complainant- Company and subsequently they have resigned to the said posts. They have also

established a Company under the name style "Onsurity Services Private Limited". It is also not in dispute that accused Nos.3 and 4 are the parents of accused No.1 and accused No.5 is the wife of accused No.1. It is alleged in the complaint that unauthorizedly accused No.2 has downloaded the confidential information and has illegally disclosed and transmitted the same to Onsurity Technologies Private

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Limited. When the Google log was checked, it was seen that accused No.2 has downloaded huge data, dumped up key confidential information from 14.2.2020 to 24.2.2020 during his notice period after his resignation. The laptop and other things are going to disclose the said fact. When there are specific allegations made for having cheated the complainant and accused Nos.1 and 2 stolen the confidential information, then under such circumstances, without expressing anything on merits of the case, I am of the considered opinion that there appears to be prima facie case made out in the complaint in this behalf.

17. It is the contention of the learned Senior Counsel for the petitioners that when a civil dispute is filed before the Bombay High Court and the present dispute is also of a civil in nature, then this Court has to see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. If the dispute

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is essentially of a civil nature and is given a cloak of criminal offence, then under such circumstances, the proceedings initiated have to be quashed. In order to support his arguments he relied upon the decision in the case of Paramjeet Batra Vs. State of Uttarakhan and Others (cited supra), wherein at paragraph-12, it has been observed as under:-

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil

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remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

18. It is his further submission that the pending civil suit will take care of all the issues including forging, fabricating and stealing of the said information and continuation of criminal proceedings is abuse of process of law. In that light, he also relied upon the very same decision, i.e., Paramjeet Batra Vs. State of Uttarakhan and Others (cited supra), wherein at paragraphs-13 and 14, it has been observed as under:-

"13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the

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appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.

14. In the circumstances, the impugned order dated 29-9-2011 [Paramjeet Batra v. State of Uttaranchal, Criminal Miscellaneous Application No. 287 of 2005, order dated 29-9-2011 (Utt)] passed by the Uttarakhand High Court is set aside. The entire proceedings of Criminal Case No. 723 of 2005 (Charge-sheet No. 32 of 2005), and the order of cognizance dated 22-3-2005 passed thereon by the Judicial Magistrate, Khatima, District Udham Singh Nagar against the appellant, Respondents 3 and 4 and against accused Rajpal for the offences punishable under

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Sections 406, 420, 467, 468, 471, 447, 448 read with Section 34 IPC are quashed and set aside. This order will however have no effect on the pending civil suit between the parties. Needless to say that the court, seized of the said suit, shall decide it independently and in accordance with law."

19. It is the submission of the learned Senior Counsel for respondent No.2-complainant that when the material produced is of both civil remedy as well as the remedy under criminal law, then under such circumstances, on the basis of the allegation of criminality the criminal proceedings can also be initiated. It is his further submission that while exercising the power under Section 482, the Court has to be satisfied prima facie about the existence of sufficient ground for proceeding against accused and detailed enquiry is not necessary. In this regard, he relied upon the decision in the case of Chilkamarthi Venkateshwarlu and Another Vs. State of Andhra Pradesh and Another

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(cited supra), wherein at paragraphs-14 to 16 it has been observed as under:-

"14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.

15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of

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the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharful Haque*1."

20. It is his further submission that after perusal of the prima facie material if the offence is going to be constituted, the correctness or otherwise has to be decided only during the course of trial and not at this premature stage. In that light, he relied upon the decision in the case of *Kamal Shivaji Pokarnekar Vs. State of Maharashtra and Others*, (cited supra), wherein at paragraph-9 it has been observed as under:-

"9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the trial court issuing summons to the respondents. A perusal of the complaint discloses prima facie, offences that are alleged against the respondents. The correctness or otherwise of

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the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a

civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

21. It is the submission of the learned HCGP that if there is concurrent civil and criminal liability, it is not a bar to the criminal proceedings and the Court can proceed with the said aspect. In that light, he relied upon the decision in the case of Arun Bhandari Vs. State of U.P & others (cited supra), wherein at paragraphs-25 to 35 it has been observed as under:-

"25. Coming to the facts of the present case, it is luminescent from the FIR that the allegations against Respondent 2 do not only pertain to her presence but also about her total

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silence and connivance with her husband and transfer of property using power of attorney in favour of Monika Goel. It is also graphically clear that the complainant had made allegations that Raghuvendra Singh and his wife Savita Singh, had met him at the site, showed the registered agreement and the cash and cheque were given to them at that time. It is also mentioned in the FIR that on 28-7-2008, Savita Singh had received the possession of the said plot and on the same day it was transferred in the name of Monika Goel. It is also reflectible that on 28-2-2007 Raghuvendra Singh and Savita Singh had got prepared and registered two documents in the office of the Sub-Registrar consisting one agreement to sell in favour of Raghuvendra Singh and another general power of attorney in favour of the wife. The allegation of collusion by the husband and wife has clearly been stated. During the investigation, as has been stated earlier, many a fact emerged but the same were ignored and a final report was submitted. In the protest petition the complainant had asseverated everything in detail about what emerged during

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the course of investigation. The learned Chief Judicial Magistrate after perusal of the case diary and the FIR has expressed the view that a case under Sections 406 and 420 IPC had been made out against both the accused persons. The learned Sessions Judge, after referring to the ingredients and the role ascribed, concurred with the same. The High Court declined to accept the said analysis on the ground that it was mere presence and further there was no privity of contract between the complainant and Respondent 2.

26. At this stage, we may usefully note that sometimes a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from Mohd. Ibrahim

v. State of Bihar [(2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] : (SCC p. 754, para 8)

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"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Indian Oil Corpn. v. NEPC India Ltd. [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188])"

27. In this context we may also usefully refer to a paragraph from All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain [(2007) 14 SCC 776 : (2009) 1 SCC (Cri)

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947 : AIR 2008 SC 247] : (SCC pp. 781-82, para 16) "16. ... Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice."

28. In Rajesh Bajaj v. State (NCT of Delhi) [(1999) 3 SCC 259 : 1999 SCC (Cri) 401 : AIR 1999 SC 1216] , while dealing with a case where the High Court had quashed an FIR, this Court opined that the facts narrated in the

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complaint petition may reveal a commercial transaction or a money transaction, but that is hardly a reason for holding that the offence of cheating would elude from such a transaction. Proceeding further, the Bench observed thus:

(SCC p. 263, para 11) "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."

29. We have referred to the aforesaid decisions in the field to highlight about the role

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of the court while dealing with such issues. In our considered opinion the present case falls in the category which cannot be stated at this stage to be purely civil in nature on the basis of the admitted documents or the allegations made in the FIR or what has come out in the investigation or for that matter what has been stated in the protest petition. We are disposed to think that prima facie there is an allegation that there was a guilty intention to induce the complainant to part with money. We may hasten to clarify that it is not a case where a promise initially made could not be lived up to subsequently. It is not a case where it could be said that even if the allegations in entirety are accepted, no case is made out. Needless to emphasise, the High Court, while exercising power under Article 226 of the Constitution or Section 482 CrPC, has to adopt a very cautious approach.

30. In CBI v. Rav iShankar Srivastava [(2006) 7 SCC 188 : (2006) 3 SCC (Cri) 233] the Court, after referring to Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC

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(Cri) 36] and Raghubir Saran v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] , has observed that the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles and such inherent powers should not be exercised to stifle a legitimate prosecution. This Court has further stated that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It has been further pronounced that it would be erroneous to assess the material before it and conclude that the complaint could not be proceeded with. The Bench has opined that the meticulous analysis of the case is not necessary and the complaint has to be read as a whole and if it appears that on consideration of the allegations in the light of the statement made on oath of the

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complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

31. In *R. Kalyani v. Janak C. Mehta* [(2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567], after referring to the decisions in *Hamida v. Rashid* [(2008) 1 SCC 474 :

(2008) 1 SCC (Cri) 234] and *State of Orissa v. Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272], this Court eventually culled out the following propositions:

(*R. Kalyani case* [(2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567], p. 523, para 15) "15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and

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taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

It is worth noting that it was observed therein that one of the paramount duties of the superior court is to see that a person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint.

32. Recently in *Gian Singh v. State of Punjab* [(2012) 10 SCC 303 : (2012) 4 SCC

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(Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] a three-Judge Bench has observed that: (SCC pp. 339-40, para 55) "55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it

exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."

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33. Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing the appellant to hand over a huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the power of attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28-7-2008 cannot be brushed aside at this stage.

34. Therefore, we are disposed to think that the High Court, while exercising the

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extraordinary jurisdiction, had not proceeded on the sound principles of law for quashment of order taking cognizance. The High Court has been guided by the non-existence of privity of contract and without appreciating the factual scenario has observed that the wife was merely present. Be it noted, if the wife had nothing to do with any of the transactions with the original owner and was not aware of the things, possibly the view of the High Court could have gained acceptance, but when the wife had the power of attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficult to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of Respondents 2 and 3 would show that a prima facie case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. That being the position, the decision in Hridaya Ranjan Prasad Verma [(2000) 4 SCC 168 : 2000 SCC (Cri) 786 : AIR 2000 SC 2341] which is commended

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to us by Mr Sharma, learned Senior Counsel, to which we have adverted to earlier, does not really assist the respondents and we say so after making the factual analysis in detail.

35. In view of our aforesaid analysis we allow the appeal, set aside the order [Criminal Miscellaneous WP No. 69 of 2011, order dated 29-1-2011 (All)] passed by the High Court and direct the Magistrate to proceed in accordance with law. However, we may clarify that we may not be understood to have expressed any opinion on the merits of the case one way or the other and our observations must be construed as limited to the order taking cognizance and nothing more than that. The learned Magistrate shall decide the case on its own merits without being influenced by any

of our observations as the same have been made only for the purpose of holding that the order of cognizance is prima facie valid and did not warrant interference by the High Court."

22. It is trite law that in exercise of the power by the High Court under Section 482 of Cr.P.C., it cannot

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undertake a detailed examination of the facts contained in FIR by acting as an appellate Court and draw its conclusion. It is only when no prima facie cognizable case is made out on its mere reading, then under such circumstances, it can exercise its power, otherwise it cannot quash the proceedings. In that light, I want to rely upon the decision in the case of Chirag M. Pathak & Others Vs. Dollyben Kantilal patel & Others, reported in (2018)1 SCC 330, wherein at paragraphs- 23, 24 and 31 it has been observed as under:-

"23. The High Court, in exercise of its powers under Section 482 of the Code, cannot undertake a detailed examination of the facts contained in the FIRs by acting as an appellate court and draw its own conclusion. It is more so when investigation in other societies is not yet complete.

24. In our considered opinion, it is only when on reading the FIR, a sheer absurdity in the allegations is noticed and when no prima facie

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cognizable case is made out on its mere reading due to absurdity in the allegations or when facts disclose prima facie cognizable case and also disclose remarkable identity between the two FIRs as if the first FIR is filed second time with no change in allegations then the court may, in appropriate case, consider it proper to quash the second FIR. Such is not the case here.

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30. xxx xxx xxx

31. In view of the foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court in the impugned judgment [Kantilal Ambalal Patel v.State of Gujarat, 2013 SCC OnLine Guj 8799] . The appeals thus succeed and are allowed. The impugned judgment

[Kantilal Ambalal Patel v. State of Gujarat, 2013 SCC OnLine Guj 8799] is set aside."

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23. It is also trite law that if there are serious triable allegations in the complaint, it is a matter to be investigated into. Under such circumstances, the Court cannot exercise its extraordinary jurisdiction for quashing the proceedings. In that light, I want to rely upon the decision in the case of Pramod Suryabhan Pawar Vs. State of Maharashtra & Another, reported in (2019) 9 SCC 608, wherein at paragraphs-6 to 8 it has been observed as under:-

"6. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal

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proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and reiterated by this Court. In Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] , this Court observed: (SCC p. 10, paras 23-24) "23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.

Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when

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exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

7. Given the varied nature of cases that come before the High Courts, any strict test as to when the court's extraordinary powers can be exercised is likely to tie the court's hands in the face of future injustices. This Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The Court in *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 :

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1992 SCC (Cri) 426] noted that quashing may be appropriate where: (SCC pp. 378-79, para 102) "102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

*** (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."

8. In deciding whether to exercise its jurisdiction under Section 482, the Court does

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not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in *Dhruvaram Murlidhar Sonar v. State of Maharashtra* [*Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] , (*Dhruvaram Sonar*): (SCC para 13) "13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

24. I want to rely upon one more decision of the Hon'ble Apex Court in the case of XYZ Vs. State of Gujarat & Another, reported in (2019) 10 SCC 337,

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wherein at paragraphs-14 and 16 it has been observed as under:-

"14. Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order [Kenal Vrajmohan Shah v. State of Gujarat, 2018 SCC OnLine Guj 432] granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a

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roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.

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15. xxx xxx xxx

16. Though the learned Senior Counsel Shri Mukul Rohatgi relied on the judgment of this Court dated 21-8-2019 in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC

(Cri) 903] , but we are of the view that the said judgment would not render any assistance to support his case. Whether in a given case power under Section 482 is to be exercised or not, depends on the contents of the complaint, and the material placed on record. In that view of the matter, we are of the view that it is a fit case to set aside the order passed by the High Court and allow the investigating agency to proceed with the further investigation in accordance with law.

It is made clear that we have not expressed any opinion on the merits of the complaint, and it is open to the investigating agency and competent court, to proceed in accordance with law."

25. It is also trite law that minute consideration of the evidence and the defence put forth by the parties has

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to be tested after appreciating the evidence during the trial and at the premature stage, the Court cannot test the defence on the basis of the allegations made in the complaint. In that light, I want to rely upon the decision in the case of Central Bureau of Investigation Vs. Arvind Khanna, reported in (2019)10 SCC 686, wherein at paragraphs-17 and 18 it has been observed as under:-

"17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order [Arvind Khanna v. CBI, 2015 SCC OnLine Del 13651 :

(2015) 153 DRJ 350] passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the

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defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for."

26. I also want to rely upon the decision in the case of Dr.Lakshman Vs. State of Karnataka & Others, reported in (2019)9 SCC 677, wherein at paragraph-8, it has been observed as under:-

"8. It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant in Ballur Village, Anekal

Taluk, Bangalore Urban District and the respondents have received the amount of Rs 9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are

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schedules mentioned to the agreements as per which the respondents have agreed to procure of Ballur Village apart from other lands. In a petition under Section 482 CrPC it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the schedule, the High Court has disbelieved such schedule to the agreements. It is the specific case of the appellant that the lands covered by Survey Nos. 115 and 117 of Ballur Village were sold even prior to the first agreement, as such the respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by the respondent-accused by way of security for the amount of Rs 9 crores which is advance but the account of such cheques was closed even prior to entering into the agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey

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Nos. 115 and 117 of Ballur Village. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the NI Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal conspiracy are alleged against the accused, for advancing a huge sum of Rs 9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482 CrPC. It is fairly well settled that power under Section 482 CrPC is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any schedules were appended to the agreement or not, a finding is required to be recorded after full-fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating

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and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the NI Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 CrPC, we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent

agreement entered into on 8-11-2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482 CrPC."

27. It is not the duty of the Court to see only on the face of reading of the complaint and FIR whether the allegations constitute cognizable offence or not and it should not adjudicate upon the veracity of offence alleged and it cannot appreciate the other aspects. In that light, I want to rely upon paragraphs-6 to 8 of the

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decision in the case of Pramod Suryabhan Pawar Vs. State of Maharashtra & Another (cited supra), which are already extracted above.

28. Keeping in view ratio laid down in the aforesaid decisions and on perusal of the records, it indicates that there is prima facie material as against the petitioners- accused Nos.1 to 5 and that is a matter which requires to be investigated into by the Investigating Agency. It is well settled proposition of law that remedy under criminal law is not barred if the allegations disclose a criminal offence. In that light, I want to rely upon the decision in the case of Indian Oil Corporation Vs. NEPC India Limited & Others, wherein at paragraphs-11 and 12 it has been observed as under:-

"11. The High Court by a common judgment dated 23-3-2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said

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order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration:

(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Re: Point (i)

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few--Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupn Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC

194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v.

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Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining

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the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed.

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Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the

mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

29. Keeping in view the law laid down by the Hon'ble Apex Court and on perusal of the facts on hand,

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though it indicates that civil suit has been filed before the Bombay High Court wherein injunction has been granted and a Commissioner has also been appointed, when it is specifically alleged that intellectual property has been stolen by the petitioners and the same has been made use of for the purpose of their Company "Onsurity Technologies Private Limited", a fair investigation requires to be done in this behalf. When both the remedies are available, one under the civil and another under the criminal law and allegations constitute an offence, then under such circumstances, it is not a case to quash the proceedings. It is trite law that on plain reading of the contents of the complaint, if no case is made out and the investigation and trial are not going to serve any purpose, then under such circumstances, the Court can quash the proceedings. The Court can also quash the proceedings if there is an abuse of process of law. In that light, if the entire facts and material are perused, there is a prima facie material as against the

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petitioners-accused for having committed the offence. There is no abuse of process of law to show that civil dispute has been given a cloak of criminal offence. It appears that no mala fides have been alleged except saying that only with an intention to tarnish the success of the Company established by the petitioners, the complaint has been filed.

Taking into consideration of the aforesaid facts and circumstances of the case and the proposition of law, I am of the considered opinion that the petitioners-accused have not made out any grounds to quash the proceedings. Hence, petition being devoid of merits is liable to be dismissed and accordingly, the same stands dismissed.

Sd/-

JUDGE *ck/-