

# Texmaco Rail And Engineering Ltd vs State Of Chhattisgarh on 14 June, 2022

**Author: Narendra Kumar Vyas**

**Bench: Narendra Kumar Vyas**

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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 07-04-2022

Delivered on 14-06-2022

WPCR No. 463 of 2021

1. Texmaco Rail And Engineering Ltd. R/o Plot No. 750, Urla Industrial Estate, Ring Road No. 2, Village - Sarora Raipur, Tahsil And District Raipur, Chhattisgarh. Reg. Office - Belgharia Kolkata (West Bangal) - 700056 Through - Director, Saroj Kumar Poddar, Aged About 75 Years, S/o Late B.P. Poddar, R/o Poddar Niket 2, Gurusaday Road, Ballygunge Kolkata 700019.
2. Akshay Kumar Poddar S/o Shri Saroj Kumar Poddar Aged About 44 Years R/o Poddar Niket 2, Gurusaday Road, Ballygunge Kolkata 700019.
3. Amalchandra Chakrabortti S/o Late G. C. Chakrabortti Aged About 90 Years R/o 22/2 A, Gora Chand Road Entally, Circus Avenue, Kolkata 700014.
4. Utsav Parekh S/o Shri Narottamdas Parekh Aged About 38 Years R/o 2/3 Sarat Bose Road Kolkata 700020.
5. Sunil Mitra S/o Late Sukhendra Nath Mitra Aged About 69 Years R/o Chirantan, 241, Shantipally, 2nd Floor, Behind Acropolis Mall, Rajdanga, Kolkata 700107.
6. D. R. Kaartikeyan S/o Late Ramasamy Kaarthikeyan Aged About 81 Years R/o 102, Ground Flor, Lgf Anand Lok New Delhi 110049.
7. Damodar Hazarimal Kela S/o Late Hazarimal Kela Aged About 80 Years R/o 86, Ballygunge Place Ballygunge Kolkata 700019.
8. Ashok Kumar Vijay S/o Late Kishori Lal Vijay Aged About 67 Years R/o 12, Park Street, Queens Mansion, Police Station Shakespeare Sarani Kolkata 700071.
9. Indrajit Mookerjee S/o Late Mohajit Mookerjee Aged About 73 Years R/o BL-T-5 3rd Floor Fl - 0303, 783 Anandapur Madurdaha. E.K.T., Kolkata 700107
10. Virendra Sinha S/o Shri Krishna Murari Sinha Aged About 66 Years R/o Flat No. 4, Block B, 1st Floor, Tripure Enclave, 59 A Ballygunge Circular Road, Kolkata 700019.
11. Mridula Jhunjunwala W/o Shri Punit Jhunjunwala Aged About 51 Years R/o Jhunjunwala House, 7 Jadulal Mullick Road, Kolkata

700006

12. Ashish Kumar Gupta S/o Shri Vijay Kumar Gupta Aged About 50 Years R/o Bl-T-5 3rd Floor Fl-0303, 783 Anandpur Madurdaha, E.K.T., Kolkata 700107.
13. Rusha Mitra W/o Shounak Mitra Aged About 36 Years R/o P-97 Kalindi House Estate, North 24 Parganas, Lake Town, Kolkata, West Bangal 700089

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Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home / Police, Mahanadi, Mantralaya, Police Station And Post Rakhi, New Raipur, District Raipur, Chhattisgarh.
2. Superintendent Of Police District Durg, Chhattisgarh.
3. Station House Officer, Police Station Supela, District Durg, Chhattisgarh.
4. Smt. Sangeeta Ketan Shah, W/o Ketan M. Shah Aged About 43 Years R/o A-5 Surya Vihar Colony, Junwani, Bhilai, Supela, Durg, Chhattisgarh.

---- Respondents

For petitioners : Mr. Mahesh Jethmalani Sr. Advocate along with Ms. Monika Thakur, Mr. Harshmander Rastogi, Mr. Arshdeep S. Khurana, Mr. Tanvi Sharma, Mr. Ankur Chawla, Mr. Aamir Khan and Mr. Mugda Pandey, Advocates.

For respondents No. 1 to 3 : Mr. Sandeep Dubey, Dy. Advocate State General and Mr. Avinash K. Mishra, Govt. Advocate.

For respondent No. 4 : Mr. Kishore Bhaduri, Sr. Advocate along with Dr. Farukh Khan & Mr. Pankaj Singh, Advocates.

Hon'ble Shri Justice Narendra Kumar Vyas CAV ORDER

1. The petitioners have preferred the instant Writ Petition (Cr.) under Article 226 of the Constitution of India, challenging the registration of First Information Report bearing No. 359 of 2021 (Annexure P/1) lodged by respondent No.4 who is the Managing Director of Simplex Casting Limited at Police Station Supela, District Durg (CG) against the petitioners for the offence punishable under Sections 406, 420 read with Section 34 of IPC.

2. The brief facts as reflected from the writ petition are that the petitioner No.1 is a Chairman of the Adventz Group and other petitioners are the Senior Executives of the Company. There was a business transfer agreement (for short, "BTA") between the petitioners' company and Simplex Casting Limited which was filed as Annexure P/2 along with the writ petition. BTA has various clauses which provide the manner, procedure to be followed for execution of BTA, purchase and its consideration. Clause 3 of BTA provides purchase consideration which reads as under:-

3.1 The consideration for the sale and transfer of the undertaking as a going concern basis shall be a lump sum amount of INR 57,50,00,000 (Indian Rupees Fifty seven crore and fifty lakh only) net of working capital utilisation of INR 30,00,00,000 (Indian Rupees Thirty crore only) which shall stand transferred to the purchaser along with the undertaking with the condition that there shall be positive net current assets as per the sanction terms of the working capital lenders to justify such working capital limits ("Purchase Consideration"). 3.2 Such Purchase consideration shall be paid by the purchaser to the seller in the following manner:

(1) INR 25,00,00,000 (Indian Rupees twenty five crore only) shall be paid to the seller by the purchaser in the following manner.

(a) INR 11,55,00,000/-Indian Rupees Eleven Crore Fifty lac only) payable on the effective date by way of electronic transfer/NEFT/RTGS in favour of Bank of Baroda, Emerging Corporate Bank, Pandry, Raipur.

(b) INR 5,50,00,000 (Indian Rupees Five crore fifty lac only) payable on "April 20, 2019, by way of a cheque drawn in favour of The State Bank of India, Commercial Branch, Pujari Chambers, Pachpedi Naka, Raipur.

(c) (i) INR 1,89,00,000 (Indian Rupees One crore eighty-nine lac only) payable on April 29, 2019;

(ii) INR 1,89,00,000 ( Indian Rupees One crore eighty-nine lac only) payable on May 4, 2019.

(iii) INR 1,89,00,000 ( Indian Rupees One crore eighty-nine lac only) payable on May 10, 2019;

by way of cheques drawn in favour of the seller towards the consideration payable by the seller to Melbrow, represented by the seller to be its full and final settlement amount against termination of the working agreement dated March 25, 2019, entered into by and between the seller and Malbrow, pursuant to which Melbrow shall have no claim of whatsoever nature, neither against the Undertaking, nor against the Purchaser; and

(d) INR 2,28,00,000 (Indian Rupees two crore twenty eight lac only) payable on April 30, 2019 by way of a cheque drawn in favour of the Seller.

(ii) INR 24,00,00,000/- (Indian Rupees twenty four crore only) shall be paid to the Seller by the Purchaser on or before June 15 2019, subject to satisfactory completion of the Diligence Exercise by the Purchaser and such adjustments as may be determined by the Purchaser pursuant to such Diligence Exercise ("Deferred Consideration"); and

(iii) INR 8,50,00,000 (Indian Rupees Eight crore fifty lac only) by way of transfer of the term loan from the bank(s)/lender(s) of the Seller (in respect of which loan such lenders hold an executive

charge over the assets of the Undertaking) to the name of the Purchaser being a liability that pertains/relates to the Undertaking. The parties shall make their best efforts to get such term loan transferred in favour of purchaser as soon as practicable.

3.3 Parties agree that the purchase consideration has been determined basis the Management Certified Financial Statement, and is subject to adjustments basis the Diligence Exercise and verification of assets and liabilities stated therein (which the Seller/Promoters shall cause to happen to the satisfaction of the Purchaser), which adjustments shall be effected /adjusted against the Deferred Consideration.

3.4 The purchaser consideration has been determined for the Undertaking as a whole and no individual values have been assigned/attribution to individual assets or liabilities of the Undertaking.

3.5 For effecting the transfer of such assets, where separate instrument of transfer if necessarily required to be executed, parties may assign such notional values (subject to applicable law) as they may deem fit to such assets, in such separate instrument of transfer, solely for the purpose of determining stamp duty payable thereon, however, no such notional allocation/assignment of value shall adversely affect the "slump sale" nature of the sale and transfer of the Undertaking as the same is meant only for the purpose of adjudication of stamp duty payable on such instrument of transfer.

3.6 The purchaser shall be free to allocate the purchase consideration on the basis of purchase price allocation in its books of accounts. Any difference in the purchase consideration over the fair value of net assets (both tangibles) recorded by the Purchaser shall be allocated towards goodwill or capital reserve, as the case may be.

3. BTA also defines "Closing" and "Effective Date" which read as under.

"Closing: means the completion of the transfer and delivery of the undertaking by the seller to the purchaser, to the satisfaction of each other, as agreed herein.

"Effective Date" Means April 26, 2019 or such other date as may be mutually agreed to by the Parties with effect from which date, the sale and transfer of the Undertaking by the Seller to the Purchaser shall be deemed to have taken place, irrespective of the date on which Closing occurs.

Closing

"4.1 Closing contemplated under this Agreement shall take place at the office of the Purchaser on the Effective Date itself.

4.2 At the closing, the Undertaking shall be transferred by the Seller and received and acquired by the Purchaser as a going concern, on a slump sale basis with the intended effect that all the property, rights, title, interest therein stand transferred to the Purchaser, and the Purchaser becomes the absolute, sole and exclusive owner of the Undertaking upon such delivery and transfer, with effect from the Effective Date. 4.3 To the above intent and effect, the following actions inter alia shall be

taken at Closing or as soon as reasonably practicable thereafter.

(i) The Seller shall handover the Undertaking Contracts to the Purchaser, and shall dispatch a letter of novation in respect of each Undertaking Contract to the relevant counter-party (jointly executed and confirmed by the Purchaser) to novate the Undertaking Contracts in favour of the Purchaser with effect from the Effective Date such that all rights and obligations of the Seller therein are assumed by the Purchaser with effect from the Effective Date.

(ii) The Seller shall give permission of all Undertaking Assets which are movable in nature or otherwise capable of transfer by endorsement and/or delivery through physical delivery such that the same become the absolute property of the Purchaser with effect from the Effective Date and the Purchaser shall receive physical delivery and possession of the movable Undertaking Assets.

(iii) The Seller shall handover possession of all Undertaking Assets which are immovable in nature to the Purchaser.

(iv) The Seller shall deliver the Undertaking Books and Records in original copies thereof, as may be feasible, pertaining to the Undertaking. In case any register/documents pertaining to the Undertaking is inseparable from the books and records to the Seller, copies of the relevant pages shall be provided.

(v) The Seller shall handover full and complete records relating to the Undertaking Employees, including offer letters, employment agreements, employment policy, etc. to the Purchaser. The Seller shall issue letters to each of the Undertaking Employees, informing them of the transfer of their employment to the Purchaser with effect from the Effective Date on continuity of service basis and on terms and conditions no less favourable in aggregate than those applicable to their employment with the Seller. The Purchaser shall issue fresh appointment letters to the Undertaking Employees as soon as practicable after the Effective Date. If any employee of the Seller is not agreeable to be appointed by the Purchaser, or the Purchaser identifies any employee not to be part of the Undertaking the Seller shall cause such employee(s) to be removed from the Undertaking, which will enable the Purchaser to acquire the Undertaking as per its agreed employee(s).

(vi) Subject to Applicable Laws, all Undertaking Licenses and Approvals shall be transferred to the Purchaser to the extent applicable. Seller and Purchaser shall jointly make and complete any applications/ notifications or other procedural requirements, as may be required for transfer of Undertaking Licenses and Approvals to the Purchaser in terms of Applicable Laws.

(vii) The Purchaser shall issue (along with a confirmation from the Seller) individual intimations / notices to each of the customers and distributors pertaining to the Undertaking, informing them of the transfer of the Undertaking through appropriate means, as they may deem fit".

4. Clause 5 of BTA defines "Diligence Exercise" which read as under.

'DILIGENCE EXERCISE'

After the closing, the Purchaser shall, subject to the Seller promptly providing the information/documents as may be required by the Purchaser in relation to the Undertaking, conduct an appropriate diligence on the undertaking as it may deem fit, including legal, technical, financial, accounting, taxation, operational and any other relevant perspective on or before May 31, 2019 ("Diligence Exercise") and the Deferred Consideration shall be subject to adjustments as deemed appropriate by the purchaser, in terms of the findings of the Diligence Exercise.

5. The said BTA was executed on 26-4-2019 at Kolkatta and thereafter closing memorandum and agreement was also executed between the petitioner company and respondent Simplex Casting Limited on 16-7-2019. Clause 1 defines "Adjustments to the Purchase Consideration" which reads as under:-

"1.1 The Purchase Consideration specified in the BTA was computed basis inter alia that (a) working capital facility (utilisation) of Rs.30,00,000 (Rupees thirty crore only) along with the relevant drawing power, and (b) term loan(s) from the bank(s) /lenders(s) of the Seller of Rs.8,50,00,000 (Rupees eight crore fifty lac only) shall stand transferred to the purchaser along with the undertaking. However, parties have agreed to amend the aforesaid understanding such that;

(i) working capital facility (utilisation) of Rs.15,00,00,000 (Rupees fifteen crore

(ii) term loan(s) from the bank(s) lender(s) of the Seller of Rs.7,13,00,000 (rupees seven crore thirteen lac only) shall stand transferred to the Purchaser, as part of the Undertaking.

Accordingly, the "Purchase Consideration" stands revised from Rs.57,50,00,000 (Rupees Fifty seven crore and fifty lac only) to Rs.72,50,00,000/- (Rupees seventy two crore fifty lac only) on account of the aforementioned working capital facility.

1.2 Parties acknowledge that (I) the purchase has remitted certain amogunts to the seller (or towards the liabilities of the Seller, as applicable) from time to time since the Effective Date till the date hereof and (ii) pursuant to the Diligence Exercise, Parties have agreed to certain adjustments to be made to the purchase consideration (and hence to the deferred considerationo as tabulated below:

Rs. in crore Enterprise value 87.50 Less:

Bank loan(s) /term loan(s) being (7.13) transferred to Texmaco Working capital limit/facility (utilized) (15.00) being transferred to Texmaco Impact of Diligence Exercise - (1.65) adjustments agreed between the parties Amount already paid by Texmaco to third (24.95) parties as per BTA Direct payments already made by (7.67) Texmaco to Simplex Receipts by Simplex from customers (6.35) (from sale of goods from the Undertaking post Effective Date) GST credit available to Simplex on (0.28)

account of Texmaco Advance from customers appropriated by (1.03) Simplex on behalf of Texmaco Unpaid salary/wage of understanding (2.98) employees upto Effective Date Leave and Gratuity dues of Undertaking (3.17) Employees upto Effective Date Other non-current liabilities agreed to be (0.01) adjusted Add Interest borne by Simplex post Effective 0.08 Date.

-on term loan(s) transferred to Texmaco as a part of the undertaking On Corporate loan (s) transferred to 0.10 Texmaco as a part of Undertaking On working capital facility being 0.25 transferred to Texmaco as a part of the Undertaking Additional amount agreed to be paid by 1.80. Texmaco on request of Simplex Net Deferred Consideration payable 19.50 1.3 Accordingly, the "Deferred Consideration" shall hereafter mean Rs.19,50,00,000 (Rupees nineteen crore fifty lac only) which deferred consideration (less the Holdback Amount) shall be remitted by the Purchaser to the seller as follows:

(I) Rs.4,00,00,000 (Rupees four crore only) on July 23, 2019.

(ii) Rs..4,00,00,000 (Rupees four crore only) on July 27, 2019. &

(iii) the balance amount of Rs.11,50,00,000 (Rupees eleven crore fifty lac only) in the manner as mentioned in Clause 2.8 herein below:

2.8 Parties have agreed that purchaser shall hold-back Rs.11,50,00,000 (Rupees eleven crore and fifty lac only) from the deferred consideration as mentioned in Clause 1.3 (iii) above, in view of various liabilities and covenants of the Seller as specified herein ("Holdback"), which shall be payable as follows:

(i) Rs.5,00,00,000 (Rupees five crore only) to be payable to the lenders of Simplex, at the instruction of Simplex, upon lenders releasing the title documents of the Undertaking land, and

(ii) Rs.4,00,00,000 (Rupees Four crore only) shall be paid to Simplex, upon Texmaco receiving an appropriate letter from the Department of Commerce and Industries, Government of Chhattisgarhi, and /or from the Chhattisgarh State Industrial Development Corporation, confirming that the leasehold rights in the entire land pertaining to the Undertaking shall be transferred in the name of Texmaco with no further action to be performed by Simplex in this regard; and

(iii) Rs.2,50,00,000 (Rupees two crore fifty lac only) shall be paid to Simplex upon actual transfer of the aforementioned leasehold rights in the land in favour of Texmaco.

6. Accordingly, as per BTA and closing memorandum and agreement as mentioned in affidavit filed by the petitioners on 6-4-2022, the petitioners have paid Rs.71,75,11,422/- against the total

purchase consideration of Rs.87,50,00,000/-. It is also mentioned in the affidavit that as per various terms of BTA and closing memorandum dated 16-7-2019, details of all such payments, adjustment cumulative amounting to Rs.13,24,00,000/- have also been paid. This amount of Rs. 13,24,00,000/- includes the additional payments/ adjustments have been made from the total purchase consideration on account of expenses incurred, unpaid salary wages, advance credit received by respondent No. 4 as per various terms of BTA. The details have been mentioned in the affidavit, which reflects that Rs. 6.35 crores has been received by respondent No. 4 directly from the customers on account of the petitioners company as per clause 1.2 of closing memorandum dated 16.07.2019. Rs. 1.03 crores is the advance received by respondent No. 4 from customers. Rs. 20 lacs is GST credit available posts 26.04.2019 (effective date as per BTA). Rs. 1.65 crores has been adjusted for agreed impact of due diligence as per clause 1.2 of the closing memorandum. Rs. 2.98 crores paid by the petitioner company against the unpaid salary and wages of respondent No. 4, which was acknowledged by respondent No. 2 as per clause 1.2 of the closing memorandum. Rs. 3.17 crores has been adjusted as leave and gratuity liability of respondent No. 4. Out of this, Rs. 3.5 crores was subsequently paid by the petitioners company after transfer to gratuity fund in the name of petitioners company. Rs. 1 lac has been adjusted for non-current liability of respondent No. 4, Rs. 8 lac has been adjusted for interest on term loan paid by respondent No. 4 on 26.04.2020. Rs. 10 lacs has been adjusted for interest on corporate loan. Rs. 25 lac has been adjusted on working capital demand loan paid by respondent No. 4 on 26.04.2020. Rs. 1.8 crores is the additional amount that was paid by the petitioner company on the request of respondent No. 4. Thus, the total amount of Rs.84,99,11,428/- has been paid to respondent No.4 by the petitioners. It has been further contended in the affidavit that as per BTA and closing memorandum, only upon registration of land deed in favour of the petitioners Rs.2,50,88,572/- is payable. The petitioners have filed their affidavit wherein details of payments of amount have been mentioned. Respondent No. 4 has not filed any affidavit to rebut the said contents of the affidavit.

7. Learned Senior Advocate appearing for the petitioners would submit that despite having aware of the fact that the petitioners have already paid 84,99,11,428/- (Rupees eighty four crores, ninety lakhs, eleven thousand four hundred twenty eight) out of Rs.87.5 crores, but for registration of FIR by respondent No.4 on 29-5- 2021 with mala fide intention under Section 406, 420 read with Section 34 of IPC just to adopt arm twisting procedure and only to foist criminal liability on the petitioners by converting a purely civil dispute into criminal act alleged to have been committed by the petitioners though prima facie, no case under Section 406, 420 read with Section 34 of IPC is made out. He would further submit that on account of business rivalry and a growing tendency in unethical business entities of converting a purely civil dispute into a criminal one, the dispute between the parties which is utterly of civil nature has been given a criminal colour. He would further submit that no factual foundation for offence under Sections 406 & 420 of IPC is being laid down and even from the records and documents annexed with the petition, it appears that a predominantly civil wrong could at the best be made out with no element of criminality as the basis ingredients of criminal offence have not been made out and the petitioners have not committed any breach of contract for cheating the respondents, therefore, FIR registered against the petitioners at Police Station Supela deserves to be set aside. In support of his contentions, he has relied upon the judgments of Hon'ble Supreme Court in Vesa Holding (P) Ltd., vs. State of Kerala<sup>1</sup>, B. Suresh Yadav vs. Sharifa Bee<sup>2</sup>, Suresh vs. Mahadevappa Shivappa Danannava<sup>3</sup>, International Advanced Research



Centre for Powder Metallurgy and New Materials (ARCI) and others vs. Nirma Cerglass Technics Private Ltd., and another 4, Indian Oil Corporation vs. NEPC India Ltd.,<sup>5</sup>, G. Sagar Suri vs. State of Uttar Pradesh<sup>6</sup>, Anil Mazhajan vs. Bhor Industries Ltd.,<sup>7</sup>, Balai Bhusan Dutta vs. State of West Benal<sup>8</sup>, Y.V. Jose vs. State of Gujarat<sup>9</sup>, Devendra and others vs. State of Uttar Pradesh and another<sup>10</sup>, S.W. Palantikar and others vs. State of Bihar and another<sup>11</sup>, Binod Kumar and others vs. State of Bihar and another<sup>12</sup>, Rex vs. John Mc. Iver<sup>13</sup>, Vadivel vs. Bagialakshmi<sup>14</sup>, Shri Venkata Sarveasam Sastry Tejomurty vs. State of Chhattisgarh and others<sup>15</sup>, State of Haryana vs. Ch. Bhajanlal<sup>16</sup>, Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre<sup>17</sup>, Sunil Bharti Mittal vs. CBI<sup>18</sup>, Niharika Infrastructure Pvt. Ltd., vs. State of Maharashtra and others<sup>19</sup>, A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association vs. Ramesh Kumar Bung and others<sup>20</sup>, Radox Tradex Private Limited and others vs. State of NCT of Delhi<sup>21</sup>, Vijay Kumar Ghai & others vs. The State of West Bengal and others<sup>22</sup>, All 1 (2015) 8 SCC 293 2 AIR 2008 SC 210 3 (2005) 3 SCC 670 4 (2016) 1 SCC 348 5 (2006) 6 SCC 736 6 (2000) 2 SCC 636 7 (2005) 10 SCC 228 8 2008 SCC Online Cal 947 9 (2009) 3 SCC 78 10 (2009) 1 SCC 495 11 (2002) 1 SCC 241 12 (2014) 10 SCC 663 13 1936 SCC Online Mad 11 14 1995 SCC Online Mad 303 15 2015 SCC Online 815 16 AIR 1992 SC 604 17 (1988) 1 SCC 692 18 (2015) 4 SCC 609 19 2021 SCC Online SC 315 20 2021 SCC Online SC 475 21 WP (Cri) 1312/2021 22 Criminal (A) 463 of 2022 Cargo Movers Pvt. Ltd., vs. Dhanesh Baranwal Jain<sup>23</sup> and Hridaya Ranjan Prasad Verma vs. State of Bihar<sup>24</sup>.

8. On the other hand, Mr. Sandeep Dubey, learned Dy. Advocate General and Mr. Avinash K. Mishra, Govt. Advocate appearing for respondents No.1 to 3/State would submit that on the basis of a complaint lodged by respondent No.4, FIR has been registered and the matter is still under investigation and the statements of witnesses are yet to be recorded for complete investigation in order to file final report, therefore, at this initial stage the writ petition (cr) challenging the registration of FIR is not maintainable as the investigation is under initial stage. This court while hearing the writ petition (cr) cannot meticulously examine facts or material collected during investigation, therefore, writ petition (cr) deserves to be dismissed. He would further submit that the petitioners have already been granted protection from the courts, therefore, this writ petition has lost its significance and deserves to be dismissed. Learned State counsel has also submitted the written synopsis wherein he quoted the FIR and also relied upon the judgments of Hon'ble Supreme in Lalit Kumari vs. Government of UP and others<sup>25</sup>, Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others<sup>26</sup>, Kaptan Singh vs. State of UP and others<sup>27</sup>, K. Jagdish vs. Uday Kumar GS and others<sup>28</sup>, State of Karnataka vs. M. Devendrappa and another<sup>29</sup>, Priti Saraf and another vs. State of NCT of Delhi and another<sup>30</sup>, S.K. Alagh vs. State of UP and others<sup>31</sup>, Prof. R.K. Vijayasarthi and another vs. Sudha Seetaram and another<sup>32</sup>, Hridaya Ranjan Prasad Varma and others vs. State of Bihar and another<sup>33</sup>, Sri Krishna Agencies vs. State of Andhra Pradesh and another<sup>34</sup> and the 23 (23007) 14 SCC 776 24 (2000) 4 SCC 168 25 (2014) 2 SCC 1 26 2021 SCC online SC 315 27 (2021) 9 SCC 35 28 (2020) 14 SCC 89 29 (2002) 3 SCC 89 30 2021 SCC Online SC 206 31 (2008) 5 SCC 662 32 (2019) 16 SCC 739 33 (200) 14 SCC 168 34 (2009) 1 SCC 69 judgment passed by this Court in Bjilkish Begum vs. State of Chhattisgarh and others<sup>35</sup>, Ambika Prasad Dewangan vs. State of Chhattisgarh and another<sup>36</sup>, Sheikh Salim Raza vs. State of Chhattisgarh and others<sup>37</sup>, Balram Rathore and another vs. State of Chhattisgarh<sup>38</sup>, Sanjay Kumar Vaid vs. Champa Lal Vaid and another<sup>39</sup>, Gopal Agrawal and another vs. State of Chhattisgarh and others<sup>40</sup>, Bhupesh Goyal and another vs. State of Chhattisgarh and others<sup>41</sup> and Royden Harold Buthello and

another vs. State of Chhattisgarh and others<sup>42</sup>.

9. Mr. Kishore Bhaduri, learned Sr. Advocate assisted by Dr. Farukh Khan & Mr. Pankaj Singh, counsel for respondent No.4 has filed detailed return denying the allegations made in the writ petition and would submit that as per the judgment of Hon'ble Supreme Court in Lalita Kumari (supra), if any complaint disclosing the commission of cognizable offences is reported to the Police, the concerned Police Station is duty bound to register the FIR and to investigate the matter in accordance with law. At this juncture, the investigation is at initial stage, therefore, FIR has been rightly registered in conformity with the judgment of Hon'ble Supreme Court. Since the investigation is under initial stage, therefore, the present writ petition quashing of FIR is not maintainable. It has been further contended that the petitioners have taken over the possession of the Undertaking and started operation from "Effective Date" i.e., on 26-4-2019 against payment of Rs.11,55,00,000/- only as against total consideration of Rs.87.50 crores, as such, they have played fraud with the respondents and ingredients of Sections 415, 420 & 406 of IPC are very much available as they have cheated, dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything. They have taken over the entire property of the company. Thus, prima facie, offence under Sections 35 2021 SCC Online Chh 3739 36 2021 SCC Online Chh 3198 37 2021 SCC Online Chh 2453 38 2021 SCC Online Chh 2906 39 2021 SCC Online Chh3601 40 2021 SCC Online Chh 3008 41 2021 SCC Online Chh 2535 42 2022 SCC Online 25 415, 420 & 406 of IPC is made out. He would further submit that the said taken over of the property is also against the provisions of Section 54 of Transfer of Property Act, and Sections 17 & 18 of the Registration Act read with Section 2 (10) and Article 5 (c) of Schedule 1 of the Stamp Act as they have not affixed the stamp on the entire value of the property mentioned in BTA. It has been further submitted that on the one hand the petitioners are generating huge revenue for themselves from the said Undertaking by acquiring wrongful gain to themselves while on the other the petitioners intend to cause wrongful loss to Government by avoiding the stamp duty and registration charges payable to the Government against the said transaction. It has been further contended that the said undertaking has been taken over by them under full control since 26-4-2019 and without obtaining licence they have started operation, as such they have played fraud with the public exchequer also. It has been further contended that the petitioners have played fraud upon the answering respondents. As per Rule 10 of the Madhya Pradesh Factories Rules, 1961, the holder of a factory licence may, at any time, before the expiry of the term of licence, apply for permission to transfer his licence to another person. It is further contended that such application has to be made along with Form 4 prescribed under Rules 6, 7, 9 & 10. That such Form 4 needs to be appended with certain prerequisite documentation like title deeds, electricity connection in the name of transferee etc. and Form 4 has to be signed by the Factory Manager and the occupier of the existing transferor company i.e., the answering respondents. The petitioners fraudulently got the said Form 4 signed by one P.K. Sukumaran Nair and One Damodar Hazarimal Kela who were officials of the company, as such there is not only fraud and the petitioners also cheated the Government. It has been further contended that the original title deeds with respect to said undertaking is lying in possession of bank as such the respondent No.4 is unable to comprehend on what shred of title of ownership documents, the Directorate of Industries mutated the ownership of the said undertaking in favour of the petitioners. Though, no registration deed was executed in BTA, but assumes the colour of conveyance as it is an unstamped, unregistered document. Thus, it is a clear case of fraud committed by the petitioners. It has been

further contended that either the Bank officials of SBI led consortium Bank were in active connivance and collusion with the petitioners and that the original title deed were available by the bank to the petitioners for purpose of mortgage/hypothetical created on the said undertaking by Shinhan Bank or that Shinhan Bank in lieu of heavy returns of interest on loan amount, deliberately ignored the mandatory requirement of scrutiny of original title deeds and went forward in creating mortgage / hypothecation on the undertaking. It is required to be investigated, thus, prima facie, case is made out against the petitioners and prayed for dismissal of the writ petition. In support of his contention, he relied upon the judgments of Hon'ble Supreme Court in State of Haryana vs Ch. Bhajan Lal 43, Renu Kumari vs. Sanjay Kumar<sup>44</sup>, State of AP vs. Golconda Linga Swamy<sup>45</sup>, State of Kerala vs. O.C. Kuttan<sup>46</sup>, State of U.P vs. O.P. Sharma<sup>47</sup>, State of H.P. vs. Pirthi Chand<sup>48</sup>, Rashmi Kumar vs. Mahesh Kumar Bhada<sup>49</sup>, Mohd. Ibrahim vs. State of Bihar<sup>50</sup>, Indiazn Oil Corporation vs. NEPC India Ltd<sup>51</sup>, Anwar Chand Sab nanadikar vs. State of Karnataka<sup>52</sup>, Kirender Sarkar vs. State of Assam<sup>53</sup>, CBI vs. Tapan Kumar Singh<sup>54</sup> and State of Madhya Pradesh vs. Kunwar Singh<sup>55</sup>.

10. I have heard learned counsel for the parties and perused the records of the case.

43 1992 Supp 91) SCC 335 44 (2008) 12 SCC 346 45 (2004) 6 SCC 522 46 (1999) 2 SCC 651 47 (1996) 7 SCC 705 48 (1996) 2 SCC 37 49 (1997) 2 SCC 397 50 (2009) 8 SCC 751 51 (2006) 6 SCC 736 52 (2003) 10 SCC 521 53 (2009) 12 SCC 342 54 (2003) 6 SCC 175

11. Before advertng to the legal submissions raised by the parties, it is expedient for this court to extract relevant portion of FIR and relevant provisions of Sections<sup>406</sup>, <sup>415</sup> and <sup>420</sup> of IPC which are quoted as under:

"v/kksgLrk{kjh laxhrk dsru 'kkg W/o dsru ,e-'kkg izca/k funs'kd<sup>1/2</sup>] fIEisysDI dklLVaax fyfeVsM dh vksj ls ;g f'kdk;r fy[k jgh gwaA fIEIysDI dklLVax fyfeVsM ,d ifCyd fyfeVsM daiuh <sup>1/4</sup>vkxs daiuh ds :i esa lanfHkZr<sup>1/2</sup> gS vkSj bls daiuh vf/kfu;e] 1956 ds izko/kkuksa ds rgr fnukad 30-01-1980 dks fof/kiwoZd fuxfer fd;k x;k Fkk] fildk CIN No. L27320MH1980PLC067459 gSA daiuh ,d izhfe;j fofuekZ.k daiuh gS vkSj dklV vk;ju QkmaM<sup>ah</sup> LVhy ,aM vy; QkmaM<sup>ah</sup>] gSoh bathfu;fjax ,aM Qsfcdzs'ku IyakV ds fy, midj.k fuekZ.k fofHkUu vkS|ksfxd {ks=ksa esa fLFkr fofuekZ.k lqfo/kkvksa ds lkFk lajpukRed fuekZ.k tSlh xfrfof/k;ksa esa layXu gS vkSj ckEcs LVkd ,Dlpsat ds lkFk lwphc) gSA blds 'ks;j turk vkSj fofHkUu foRrh; laLFkkuksa }kjk xzg.k fd, x, gSA esjk eq[; vkfQl <sup>1/4</sup>dkiksZjsV dk;kZy;<sup>1/2</sup> f'koukFk dEiysDI th-bZ-jksM lqisyk fHkykbZ ftyk nqxZ N- x- esa fLFkr gSA ;g fd foxr dqN o"kksZa ls esjh daiuh o`Rrh; lalk/kuksa ds vkHkko ds dkj.k ?kkVs esa Fkh bl nkSjku eSa csgn ijs'kku Fkh blh chp vukosndx.k esjs laidZ esa vk, tks fd gekjs iwoZ ls dLvej Hkh Fks tks fd gekjh fLFkfr ls voxr Fks ftUgksaus bl ekSds dk Qk;nk mBkrs gq, gesa ?kkVs ls mckjus gsrq gj laHko enn vkfn rjg&rjg ds izyksHku nsdj daiuh cpkus esa ennxkj lkfer gksus okys dbZ lkjs >wBs vk'oklu fn, ,oa eq>s bl lksns ds fy, lger djok, vkSj mijk fLFkr gekjh daiuh bZdkbZ&2 dks ch-Vh,-, cukdj feuk vkfFkZd 'krksZa dh iwfrZ fd;s dCtk dj fy;k vkSj eq>s daiuh dh enn dk izyksHku ,oa >wBk vk'oklu nsrs jgs vkSj fnukad 27 vizsy 2019 ls esjs ;wfuV esa u dsoy uktk;t dCtk fd, cfYd esjh daiuh dk lapkyu dj ykHk vftZr dj mldk Hkksx fd;s tk jgs gSSa vkSj gesa bl izdkj mPpLrjh dkiksZjsV tkylkth esa

Qalkdj xaHkhj /kks[kk/kM+h dk f'kdkj fd;s gSaA muds }kjk esjs lkFk Ny dj le; ij iSlS u fn;s tkus ds dkj.k esjh daiuh iqu% ,u-ih,- gks xbZ vkSj eq>s djksM+ksa dk u dsoy vkfFkZd uqdlku gqvk oju esjh daiuh dh izfr"Bk dks Hkh Bsl igqaph gSA daiuh dks gky gh esa fo"ka;fdr vfHk;qDr O;fDr;ksa }kjk jph xbZ lksph&le>h lqfu;ksftr lkft'k dk f'kdkj cuk;k x;k gSA vkjksfi;ksa }kjk vius vR;f/kd ykHkizn okf.kfT;d izfr"Bkuksa ds ek;/e ls daiuh dks /kks[kk nsus vkSj vkSj mls Bxus ds fy, "kM+;a= jpk x;ka gekjh bl f'kdk;r ds vk/kkjHkwr rF; vkSj ifjLFkfr;ka fuEukuqlkj gS% ;g fd o"kZ 2019 dh igyh Nekgh esa daiuh dks fofHkUu ckgjh dkjdxsa ls Hkkjh foRrh; dfBukb;ksa dk lkeuk djuk iM+ jgk Fkk tks daiuh izca/ku ds fu;a=.k ls ijs Fkha ml nkSjku daiuh ds vf/kdkfj;ksa ls vkjksih O;fDr;ksa }kjk daiuh ds O;olk; dks iquthZfor djus vkSj foRrh; rjyrk dks izokfgr djus ds & laidZ fd;k x;k Fkka dEiuh dks iquthZfor djus ds mn~ns'; esa lgk;d izrhr gks jgs] vkjksfi;ksa ds izLrko ds vk/kkj ij fnukad 26-04-2019 dks ,d fctusl V<sup>a</sup>kalQj ,xzhesaV <sup>1</sup>/<sub>4</sub>ckn esa BTA ds :i esa lanfHkZr<sup>1</sup>/<sub>2</sub> fu"ikfnr fd;k x;k Fkk ftlds rgr daiuh] viuh ,d egRoiw.kZ fofuekZ.k bdkbZ] tks ,d LVhy dkfLVx QkmaM<sup>ah</sup> gSA rFkk mijk baMfLV<sup>a</sup>;y ,LVsV] jk;iqj & 493221] NRrhlx<+ esa LFkkfir gS <sup>1</sup>/<sub>4</sub>ckn esa midze ds :i esa lanfHkZr<sup>1</sup>/<sub>2</sub> dks pkyw laLFkku dh vo/kkj.kk ds vk/kkj ij LyEi lsy ds ek;/e ls fodz; izfrQy 57]50]00]000@& <sup>1</sup>/<sub>4</sub>lRrkou djksM+ ipkl yk[k<sup>1</sup>/<sub>2</sub> rFkk 30]00]00]000@& <sup>1</sup>/<sub>4</sub>rhl djksM+<sup>1</sup>/<sub>2</sub> dh 'kq) dk;Z'khy iwath mi;ksx ds lkFk vfHk;qDr la;/k 1 VsDleSdks jsy ,aM bathfu;fax fyfeVsM dks cspus vkSj gLrkarfjr djus ds fy, lger gqbZ Fkh ;g fd daiuh us ln~HkkoukiwoZd vkjksfi;ksa ij fo'okl djrs gq, mDr chVh, esa izos'k fd;k Fkka vkjksih O;fDr;ksa us vius vkd"kZd vk'okluksa] fjiiztsaVslu vkSj cM+s&cM+s oknksa ds }kjk foRrh; dfBukb;ksa esa Qalh dEiuh dks csgn de dher ij mldh ,d vR;f/kd ewY;oku bdkbZ dks cspus dk dBksj dne mBkus ds fy, izsfjr vkSj ijHkkfor Fkka rRdkyhu ifjLFkfr;ksa esa daiuh dks O;olk; ds nkSjku xaHkj foRrh; dfBukb;ksa dk lkeuk djuk iM+ jgk Fkk ftlds varxZr etnwjksa }kjk vius osru vkSj etnwjh ds foyafer Hkqxrku ds dkj.k Vwy Mkmu rFkk dEiuh ds oS/kkfud nkf;Roksa ds lkFk&lkFk okf.kfT;d \_k vkSj vU; nsunkfj;ksa dk fuiVkj djus esa vleFkZrk Hkh 'kkfey Fkha ;g fd chVh, fu"ikfnr djus dk dEiuh dk mn~ns'; rRdkyhu vkfFkZd ladV ls ckgj fudyuk vkSj viuh foRrh; rkdr dks iqu% izkIr djuk Fkka mDr chVh, ds rgr LyEi lsy ds ek;/e ls fodz; izfrQy :i esa ,deq'r jkf'k dk Hkqxrku daiuh dks le; ij fd;k tkuk vR;ar vko';d Fkk rkfd egRoiw.kZ vkfFkZd rjyrk dh miyC/krk daiuh dks iqu% ,d LoLFk dk;Ziz.kkyh gkfly djus esa l{ke cuk ldsA ijarq chVh, dh fu/kkZfjr 'krksZa dk iw.kZ mYya?ku djrs gq, vfHk;qDr O;fDr;ksa us daiuh dks /kks[kk nsus vkSj Ny djus ds fy, viuh lkft'k dks vkxs ckr gq, tkucw>dj vkSj mn~ns';iw.kZ rjhds ls daiuh ds Hkqxrku dks jksds j[kk vkSj mls tkjh djus esa uktk;t nsjh dh A lkFk gh vfHk;qDr O;fDr;ksa us ,d nwljs ds lkFk lfdz; feyhHkxr djds u dsoy f'kdk;rdrkZ daiuh ds lkFk Ny fd;k vkSj /kks[kk fn;k cfYd] f'kdk;rdrkZ daiuh ds iwjs O;olk; dks Hkh gM+ius vkSj gfFk;kus ds fy, ,d vkSj cM+h lkft'k jphA vkjksih O;fDr] f'kdk;rdrkZ daiuh dks lCtckx fn[kkrs jgs vkSj f'kdk;rdrkZ daiuh dks bl opuc)rk ds ckgus chVh, esa izos'k dj;k fd vkjksih O;fDr f'kdk;rdrkZ daiuh ds foRrh; iqu:)kj esa lqfo/kk vkSj lgk;rk iznku djsaxs ijarq chVh, fu"ikfnr gksus ds ckn vkjksihx.k nqHkkZouk ls izsfjr gksdj vius vk'okluksa vkSj oknksa dk [kqys vke mYya?ku djrs gq, iyV x, rFkk tkucw>dj vkSj diViwoZd dEiuh ds i{k esa fd, tkus okys Hkqxrku dks yacs le; rd jksds j[kk rkfd f'kdk;rdrkZ daiuh fo?kVu ,oa fnokfy;siu dh fLFkfr esa vk tk,A ;gka ;g mYys[k djuk mfpr gS fd vkjksih daiuh]

ftldk uke VsDleSdks gS] f'kdk;rdrkZ daiuh ds izfrLi/khZ O;olk; esa gS vkSj f'kdk;rdrkZ dh lVhd vk'kadk gS fd vkjksih O;fDr;ksa }kjk f'kdk;rdrkZ daiuh dks chVh, esa izos'k djus ds fy, izsfjr fd;k tkuk f'kdk;rdrkZ daiuh dks {kfr igqapkus ds fy, ;kstukiwoZd rS;kj fd, x, ,d "kM+;a= dk urhtk FkkA ;g fd Hkqxrku djus esa vkjksih O;fDr;ksa }kjk nqHkkZoukiwoZd vuqfpr foyac fd, tkus ds dkj.k daiuh vius fofHkUu foRrh; nkf;Roksa dk leqfpr fuoZgu djus esa vleFkZ gks xbZA ;g /;ku fn;k tkus ;ksX; gS fd vfHk;qDr O;fDr;ksa us tkucw>dj] /kks[kk ls] diViwoZd vkSj mn~ns';iw.kZ rjhds ls daiuh ds iqu:)kj vkSj iquxZBu dh izfdz;k dks ckf/kr djds daiuh dks xaHkj vkSj viwj.kh; uqdlku igqapkus ds ,dek= bjknk ls Hkqxrku esa nsjh dh tks fd BTA dh 'krksZa dk mYya?ku FkkA daiuh ds vf/kdkfj;ksa vkSj izfrfuf/k;ksa ds dbZ vuqjks/kksa vkSj Lej.k i=ksa ds ckotwn vkjksihx.k chVh, ds rgr fu/kkZfjr nkf;Roksa dk ikyu djus vkSj mUgSa iwjk djus esa cqjh rjg ls foQy jgsA ;g fd vkjksih O;fDr;ksa us daiuh ds iw.kZ fu;a=.k dks gM+ius vkSj gFfK;kusa ds fy, viuh rkdr vkSj igqap dk xyr bLrseky fd;k vkSj blh ds fy, vkjksih O;fDr;ksa us daiuh ds vf/kdkfj;ksa dks mDr chVh, dks fu"ikfnr djus ds fy, izsfjr vkSj izHkkfor fd;k vkSj /kks[kk fn;k rkfd daiuh ds iqu:)kj vkSj iquxZBu dh izfdz;k ckf/kr gksA gkykafd] chVh, ds fu"iknu ds ckn ls gh vkjksih O;fDr;ksa us daiuh ds fo?kVu ds mn~ns'; ls BTA ds fu;eksa vkSj 'krksZa ds fuoZgu esa nsjh dh vkSj O;o/kku tkjh j[kkA blds vykok vkjksih O;fDr;ksa us tkucw>dj vkSj xyr bjknksa ds lkFk] daiuh ds vflRro dh dher ij] vius Lo;a ds ykHk ds fy, BTA dh 'krksZ dh euekuh O;k[k dh rFkk chVh, ds fdz;kUo;u dh 'krksZa dks viuh euethZ ls la'kksf/kr fd;kA ;g fd BTA ds fu"iknu ls igys gqbZ ppkZ dks daiuh ds vf/kdkfj;ksa }kjk izekf.kd rjhds ls vkSj vPNs fo'okliw.kZ ekgkSy esa] ikjLifjd :i ls ykHkdkjh O;oLFkk dh mEehn esa vk;ksftr fd;k x;k Fkk tks fd BTA ds fu"iknu ls laHko gksrk ijarq vkjksih O;fDr;ksa dh vksj ls /kks[kk/kM+h vkSj xyrc;kuh ds dbZ mnkgj.kksa ds dkj.k ;g Li"V gks x;k gS fd vkjksih O;fDr;ksa us chVh, ds rgr fu/kkZfjr vius nkf;Roksa dks bZekunkjh ls fuoZgu djus dk bjknk ugha Fkk cfYd dEiuh dks vkxs vkSj uqdlku igqapkus vkSj dEiuh dh fLFkfr dks vkSj detksj djus dh lkft'k dj jgs Fks rkfd vkjksih O;fDr varr% daiuh dk lEiw.kZ fu;a=.k izkIr dj ldsA ;g fd mijksDr ds vykok] vkjksih O;fDr;ksa us voS/k :i ls vkSj xyr rjhds ls midze dh Hkwfe dks jktLo vf/kdkfj;ksa ds lkFk feydj vkjksih O;fDr;ksa ds i{k esa ukekUrfjr djok fy;k bl rF; ds ckotwn fd bl flyflys esa dHkh Hkh fdLh Hkh dfUo;sUl MhM dk fu"iknu fd;k gh ugha x;kA ;g Kkr gks fd jktLo izkf/kdj.k@jktLo U;k;ky; esa Hkwfe ,oa vpy laifRr dk ukekarj.k dsoy ,d lewfpr duos;Ul MhM ds fu"ikfnr gksus vkSj iathd`r gksus ds ckn gh ykxw gks ldrk gS ftlds fy, LVkai 'kqYd dh vkuqikfrd jkf'k ds Hkqxrku ns; gksrk gS tks ljdkj ds fy, jktLo gSA bl izdkj vius xSjduwuh vkSj xyr vkpj.k ls vkjksih O;fDr;ksa us ljdkj dks Hkh vius jktLo ls oafpr dj fn;kA cgqr laHko gS fd vkjksih O;fDr;ksa us midze dh tehu dks ljdkjh fjdMZ esa vius i{k esa ukekUrfjr djkus ds fy, vkSj VsDleSdks ds uke ls Qsdzh ykblsal izkIr djus ds fy, dbZ tkyh nLrkost Hkh x<+s gksaA f'kdk;rdrkZ dks ;g ekuus dh mfpr vk'kadk gS fd daiuh ds vf/kdkfj;ksa ds dwVjfr gLrk{kj vkSj QthZ eksj dks Hkh bLrseky djrs gq, vkjksih O;fDr;ksa }kjk muds ukid ealweksa vkSj voS/kkfud mn~ns';ksa dh iwfrZ dh xbZ gks ldrh gSA ;g fd f'kdk;rdrkZ ;gka vk'kadfr gS fd bl foLr`r /kks[kk/kM+h vkSj f'kdk;rdrkZ ds f[kykQ vkjksih O;fDr;ksa }kjk jph vkSj fu"ikfnr dh tk jgh xgjh lkft'k dh lgh lhek vkSj ifjek.k dk rc rd [kqyklk ugha gksxk tc rd fd mfpr izkf/kdkjh }kjk bl ekeys dh iwjh rjg ls foLr`r tkap ugha dh tkrh gSA mijksDr

fooj.kksa ,oa rF;ksa ds izdk'k esa eSa fouezrkiwoZd iqfyl foHkkx ls vuqjks/k djrH gwa  
fd d`i;k orZeku f'kdk;r dks ,d izkFkfedh ds :i esa ntZ djsa vkSj dkuwu ds vuqlkj  
vkjksih O;fDr;ksa ds f[kykQ leqfpr tkap dkjZokbZ 'kq: djsa rkfd nksf"i;k;ksa dks leqfpr  
vkSj i;kZIr naM fey lds vkSj iqfyl foHkkx dk /;s;okD; ^^ifj=k.kk; lk/kquke\*\* okLrfod  
Lo:i esa pfjrFkZ gks ldsA /kU;okn lfgr] Hkonh;k] laxhrk dsru 'kkg izca/k funs'kd  
fLEiysDl dkfLVax fyfeVsM izfrfyih 1& ekuuh; iqfyl v/kh{kd ftyk nqxZ 2 ekuuh; vfrfjDr  
iqfyl v/kh{kd fHkykbZ ftyk nqxZA"

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

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".  
Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.  
Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(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.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver

the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

12. From the above factual and legal submissions, it is quite vivid that this court while hearing the writ petition under Article 226 of the Constitution of India cannot embark on a detailed examination of the facts contained in the FIR by acting as Appellate Court and it is not in dispute that FIR is not encyclopedia of facts, but it is a well legal position that this court can definitely look into the allegations made in the FIR whether prima facie, offence is made out or not, therefore, this court is not examining other materials placed by the parties, but only examining the contents of the FIR and the facts which have not been disputed by the respondents. Hon'ble Supreme court in Central Bureau of Investigation & another Vs. V. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi & another<sup>56</sup> has held that the High Court while quashing the FIR cannot enquire into the material placed on record and can only consider whether the contents of the FIR as they stand on their face prima facie make out a cognizable offence or not and cannot conduct a mini trial overlooking binding principles, which governed a plea for quashing of an FIR. Hon'ble the Supreme Court has held as under:-

56 Criminal Appeal No.1045 of 2021 (decided on 08-10-2021) "40. From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has completely ignored that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced by the respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be 'known sources of income' within the meaning of Section 13(1)(e) of the PC Act). This exercised has been justified on account of the appellant not having conducted a Preliminary Enquiry and hence, not having addressed the respondents' PART E objections relying upon the documents adduced by them. The reasons provided by the Single Judge for entering

into the merits of the dispute while quashing the FIR are specious, especially so considering our finding that the CBI need not hold a Preliminary Enquiry mandatorily.

While exercising its jurisdiction under Article 226 of the Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR - as they stand and on their face - prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and seven pages (of the paper-book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for quashing an FIR.

41. The judgment of a two Judge Bench of this Court in *Gunmala Sales (P) Ltd. v. Anu Mehta* 61 makes it abundantly clear that the High Court does not conduct a mini-trial or a roving inquiry while exercising its powers under Section 482 of the CrPC. Justice Ranjana P Desai held:

"34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director." (2015) 1 SCC 103 PART E This principle also applies squarely to the exercise of powers by a High Court under Article 226 of the Constitution while considering a writ petition for quashing an FIR.

Further, in numerous judgments of this Court it has been held that a court cannot conduct a mini- trial at the stage of framing of charges 62. Hence, doing so at the stage of considering a petition for quashing an FIR under section 482 of the CrPC or Article 226 of the Constitution is obviously also impermissible. Therefore, we disapprove of the reasoning provided by the Telangana High Court in its impugned judgment dated 11 February, 2020 for quashing the FIR"

13. Learned counsel for respondent No.4 vehemently argued that BTA provides that the Undertaking will be transferred on a slump sale basis. Slump sale basis has been defined in the Income Tax Act, 1961.

"Section 4(42C) of Income Tax Act, 1961 "slump sale" means the transfer of one or more undertaking by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. Explanations 1- For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).



Explanation No.2. For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

Explanation No.3 - For the purpose of this clause, "transfer" shall have the meaning assigned to it in clause (47)".

14. The FIR has been extensively quoted by the court to look into whether prima facie case under Section 406 & 420/34 of IPC is made out or not. In the FIR it is nowhere mentioned that business transfer agreement has been fraudulently signed by the petitioners to get the factory of the respondent No.4. FIR also states that she has consented for execution of BTA and the fact that after execution of BTA, the petitioners have paid Rs.71,75,11,422/- to the respondent No. 4 and as per the affidavit dated 06.04.2022, the petitioners have paid Rs. 13,24,00,000/- on various heads. This fact has not been disputed by respondent No. 4. The respondents have nowhere denied the fact of payment of Rs.71,75,11,428/- on various dates and thereafter Rs. 13,24,00,000/- towards various liability owned by respondent No. 4. Even other wise the respondent No.4 has mentioned in the F.I.R that the act and omission done by the petitioners are against the terms and condition of BTA. Whether the petitioners have acted as per the BTA or not, and whether the amount of Rs. 87,50,00,000/- includes such liability which have been made good by the petitioners to the tune of Rs. 13,24,00,000/- is in accordance with the terms of BTA or not, is a purely interpretation of the terms of the BTA, which cannot be said to be criminal liability. Even otherwise, respondent No.4 has mentioned in FIR that the act and omission done by the petitioners are against the terms and conditions of BTA. It is pertinent to mention here that even the effective date which is 26.04.2019 or such other dates as may be mutually agreed by the party w.e.f. which date the sell and transfer of undertaking by the purchaser shall be deemed to have been taken place irrespective of the date on which closing occurs. As such, as per clause of BTA 26.04.2019, the sell has been deemed to have been taken place, therefore, prima facie, it cannot be said that the petitioners have committed offence of Section 406, 420/34 of I.P.C.

15. From bare perusal of the affidavit filed on 6/04/2022, which has not been denied by respondent No. 4, it is quite clear that the petitioners have already paid Rs.82.5 crores. From the above stated factual matrix, it is quite clear that there is no ingredient of offence under Sections 406, 420 of IPC is made out, at the best it is a purely civil dispute of interpretation of various clause of BTA and the same has been given criminal colour by the respondents.

16. Hon'ble Supreme Court in Vijay Kumar Ghai and others vs. The State of West Bengal and others (CRA 463 of 2022 arising out of SLP (Cri) No 10951 of 2019) has held in paras 42 and 43 which read as under.

"42. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on

that issue. At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/ or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.

43. In view of the above facts and circumstances, the impugned order dated 01.10.2019 passed by the High Court is set aside. The impugned FIR No. 168 dated 28.03.2013 and proceedings in the file of CMM, Kolkata, West Bengal in pursuance of charge sheet dated 14.02.2017 against the appellants for the offences under Section 406, 420, 120B IPC stands quashed.

17. In Rekha Jain vs. The State of Karnataka and another 57 Hon'ble the Supreme Court has held in paras 8 & 9 which read as under.

"8. At the outset, it is required to be noted that the offence alleged against the appellant - accused - 57(CRA No 749 of 2022 ) Rekha Jain is for the offence under Section 420 of IPC. She has been now charged-sheeted for the said offence. However, considering the allegations in FIR/complaint, it can be seen that the entire and all the allegations are against the accused Kamalesh Mulchand Jain. In the complaint/FIR, there are no allegations whatsoever to the effect that the accused-Rekha Jain induced the complainant to part with the gold jewellery. Therefore, in the absence of any allegation of inducement by the accused Rekha Jain, she cannot be prosecuted for the offence under Section 420 of IPC. There must be a dishonest inducement by the accused. As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. In the present case, there is no allegation at all against accused - Rekha Jain of any inducement by her to deceive and to deliver the gold jewellery. The allegations of dishonest inducement and cheating are against her husband - accused - Kamalesh Mulchand Jain. Therefore, considering the allegations in the FIR/complaint as they are, and in the absence of any allegation of dishonest inducement by Rekha Jain, it cannot be said that she has committed any offence under Section 420 of IPC for which she is now chargesheeted. Therefore, the High Court has committed a grave error in not quashing the criminal proceedings against Rekha Jain for the offence

under Section 420 of IPC. This is a fit case where the High Court could have exercised its powers under Section 482 of Cr.PC and to quash the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC.

9. In view of the above and for the reasons stated above, the present appeal succeeds in part. The criminal proceedings against the appellant - accused - Rekha Jain for the offence under Section 420 of IPC is hereby quashed. However, it is clarified that what is quashed is the criminal proceedings for the offence under Section 420 of IPC only and not for any other offence(s), if any, committed by the accused - Rekha Jain. The present appeal is limited to the offence under Section 420 of IPC only as at present she is chargesheeted only for the offence under Section 420 of IPC. The present appeal is allowed to the aforesaid extent".

18. Hon'ble the Supreme in State of Haryana vs. Bhajan Lal & others<sup>58</sup> has held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

<sup>58</sup> 1992 Supp.(1) SCC 335 (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19. Hon'ble the Supreme Court in M/s Neeharika Infrastructure Pvt.

Ltd. vs. State of Maharashtra and others<sup>59</sup>, has held as under:-

"10 (iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on"

20. The five judges Bench of Hon'ble the Supreme in the matter of Kartar Singh Vs. State of Punjab<sup>60</sup> held as under:-

"459. Law on the subject is fairly settled. In State of Haryana v. Bhajan Lal, a Bench of this Court of which one of us (Pandian, J.) was a member, after detailed examination of the judicial decisions held. "where the allegations made in the first information report or the complaint, even if they were taken at their face value and accepted in their entirety did not prima facie constitute any offence or make out a case against the accused" or "where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there was sufficient ground for proceeding against the accuse", or "where a criminal proceeding was manifestly attended 59 2021 SCC Online SC 315 60 (1994) 3 SCC 569 with mala fides and/or where the proceedings 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:, then the proceedings were liable to be quashed. In Usmanbhai, it was conceded that a petition under Article 226 was maintainable. It was urged that the observation made by this Court in Usmanbhai case, in relation to exclusion of High Court's jurisdiction under Sections 439 and 482 were squarely applicable to Article 226."

Reliance was placed on Narcotics Control Bureau v. Kishan Lal<sup>123</sup> also. It was urged that as far back as Waryam Singh v. Amamath<sup>118</sup> it having been observed by this Court that power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds and their authority and not in correcting errors. The High Court should not be permitted to entertain a petition against rejection of bail under 162 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426 53 (1988) 2 SCC 271 :1988

SCC (Cri) 318 123 (1991) 1 SCC 705: 1991 SCC (Cri) 265 118 1954SCR565: AIR1954SC215 Article 226 and

227. Reliance was also placed on State of Gujarat v. Vakhtsinghji Suringhji Vaghela<sup>119</sup> and Mohd. Yunus v. Mohd. Mustaqim<sup>121</sup>. The power given to High Court under Article 226 is an extraordinary power not only to correct the manifest error but also to exercise it for sake of justice. Under the scheme of the Constitution a High Court is the highest court for purposes of exercising civil, appellate, criminal or even constitutional jurisdiction so far that State is concerned. The jurisdiction possessed by it before coming into force of the Constitution was preserved by Article 225 and by Articles 226 and 227 an extraordinary jurisdiction was conferred on it to ensure that the subordinate authorities act not only in accordance with law but they also function within the framework of law. That jurisdiction of the High Court has not been taken away and in fact could not be taken away by legislation. In England even in absence of Constitution whenever an attempt was made by Parliament to provide that the order was final and no writ of certiorari would lie the High Court always struck down the provision. Since the High Court under the Constitution is a forum for enforcement of fundamental right of a citizen it cannot be denied the power to entertain a petition by a citizen claiming that the State machinery was abusing its power and was acting in violation of the constitutional guarantee. Rather it has a constitutional duty and responsibility to ensure that the State machinery was acting fairly and not on extraneous considerations. In State of Maharashtra v. Abdul Hamid Haji Mohammed<sup>122</sup> this Court after examining the principle laid down in State of Haryana v. Bhajan Lal<sup>159</sup> and Paras Ram v. State of Haryana<sup>163</sup> held that the High Court has jurisdiction to entertain a petition under Article 226 in extreme cases. What are such extreme cases cannot be put in a strait-jacket. But the few on which there can be hardly any dispute are if the High Court is of opinion that the proceedings under TADA were an abuse of process of court or taken for extraneous considerations or there was no material on record that a case under TADA was made out. If it be so then there is no reason why should the High Court not exercise its jurisdiction and grant bail to the accused in those cases where one or the other exceptional ground is made out".

21. Thus, from bare perusal of the FIR, and undisputed facts between parties offence under Sections 406, 420/34 of IPC is not made out against the petitioners. In view of the above discussions, considering the law laid down by Hon'ble the Supreme Court, the FIR bearing Crime No. 359 of 2021 (Annexure P/1) registered against the petitioners at Police Station- Supela, District- Durg (C.G.) for committing offence punishable under Sections 406, 420/34 of IPC is liable to be and is hereby quashed.

22. Accordingly, the instant Writ Petition (Cr.) is allowed.

Sd/-

(Narendra Kumar Vyas) Judge Raju