NEUTRAL CITATION
2026:GUJHC:41451

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 20012 of 2013

With
CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2016
In R/CRIMINAL MISC.APPLICATION NO. 20012 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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DUCATI MOTOR HOLDING S.P.A THRO' RITESH KUMAR & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR DHAVAL M BAROT(2723) for the Applicant(s) No. 1,2
MR.VISHAL J DAVE(6515) for the Respondent(s) No. 2
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 02/07/2026

ORAL JUDGMENT

1. The petitioners before this Court are original accused Nos. 5 and 2, namely Ducati Motor Holding S.P.A. (through Mr. Ritesh Kumar – constituted Attorney) and Mr. Mirko Bordiga, respectively, in Inquiry Case No.5 of 2012, lodged before learned Metropolitan Magistrate Court, Ahmedabad, which was lodged as a private complainant as defined under Section 2(d) of the Criminal Procedure Code, on 16.02.2012, for the offence punishable under Sections 406, 420 read with Sections 120(b), 418, 504 and 114 of the Indian Penal

Code, and after taking verification, the inquiry was ordered to be carried out and report to be submitted within 60 days, and pursuant to the report submitted by the Investigating Officer, vide order dated 06.09.2013, the summons came to be issued to the present petitioner, hence the present petition to quash and set aside the said complaint and consequential proceedings arising therefrom.

2. The complaint runs into 21 pages, however, in nutshell what has been alleged is that, the complainant is working as General Manager (Account and Administration) in M/s. Cama Motors Pvt. Ltd. since last 24 years and has personal knowledge what has been stated in the complaint, and on the basis of the authority has lodged the present complaint.

2.1. It is alleged that accused No.7 – company is run by accused Nos. 1, 3 and 4, and similarly, accused No.2 runs the administration of accused No.5 – company. It is further alleged in the verification that accused No.7 has power to appoint dealer on behalf of accused No.5 – company, and has contacted the company for the purpose of selling bikes in the name and style of Ducati and then by misrepresentation and giving lucrative offers has tried to enter into business relationship, and thus, letter of intent came to be entered on 24.06.2010. On the based of such document, the company of the complainant was appointed as a dealership to sell bikes of the accused company. The accused persons who are knowing right from the beginning that bike is not marketable and that they are not having enough quantity to supply the same on time. However, by suppressing such facts, a letter of intent was entered into with the complainant company, it is also make understood at that time that dealership agreement would be entered into later on, however, till date, has not been entered into. That, the accused has also not stated with regards to the bank guarantee, however, in the letter of intent was entered into such condition was pressed into, for which the complainant has also raised grievance, since bank guarantee as per letter of intent to the tune of Rs.1,10,00,000/-. The complainant has submitted that they would be taking delivery of bikes after paying 100% advance, and that, the condition of bank guarantee be removed, at that time, the accused persons replied and has given assurance that, as and when the dealership agreement would be entered into, the condition of bank guarantee shall be removed.

2.2. Based on the promise made by the accused persons, the complainant has invested huge amount and also has established infrastructure facilities including renovation of the showroom and office. Thereafter, the accused persons stated that only if the 100% amount is paid in advance, the bikes would be delivered. Though the bank guarantee was already given on 16.11.2010, pursuance to which the accused persons did not deliver the bikes as per the order placed by the complainant company, however, delivered different models other than which were ordered, and the bikes were also not delivered despite of laps of substantial time and also delivered defective goods and also not delivered spare-parts. Thus, in connivance by the acts of the accused persons, the complainant has to suffer huge loss, and has also lost his reputation, and hence stated that they have committed offence as stated in the complaint.

3. Learned Senior Advocate Mr. Tejas Barot assisted by learned advocates Mr. Sumeet Lall, Mr. Sidhart Kapoor, Mr. Dhaval Barot, Ms. Palak Rawat, Mr. Jineesh Vadodaria and Ms. Rhea Chokshi, for the petitioners would submit that from the entire reading of the complaint, there is not an iota of evidence against the present petitioners – original accused Nos. 2 and 5, that they had promised to deliver the goods of certain numbers and certain quality on a certain dates, and in absence of any allegations qua the present petitioners, merely stating that entering into a letter of content with the company of original accused No.7 represented by accused No.1 – who is the CEO and was the distributor of Ducati, and had nothing to do with the promises made by him to the dealer, and for which, a separate exclusive distribution agreement was also entered into with accused No.7 – Prisison Moters India Pvt. Ltd. signed by accused No.1 – Ashish Choradiya, which clearly stipulates that any engagement that has been written by the distributor, namely accused No.7 in the name on behalf of Ducati shall not bind Ducati in any way and the distribution shall hold Ducati harmonious for any damage deriving from it.

3.1. Learned Senior Advocate would further draw the attention of this Court towards recital 6.2, which states that Ducati may accept and, once accepted, perform all, some or none of the distributors purchase orders depending on its production capacity, without any responsibility for Ducati. Learned Senior Advocate would further draw the attention of this Court towards, paragraph 13.2, which states that the distributor shall undertake to furnish Ducati at the beginning of each year with a list of names and addresses of its retailers to permit Ducati to directly contact said retailers with prior notice of the distributor and verify, among other things, the efficiency of technical assistance to customers. He would further submitted that the letter of intent entered between the complainant and accuse Nos.1 and 7, which has nothing to do with the petitioner – company or the petitioner No.2 herein. Inasmuch as the factum of email would reflect that the difficulties faced by the complainant, company had tried to be solved, however, that itself cannot be made basis of having committed offence, as alleged in the complaint. He would further submit that the cognizance taken by the learned Magistrate by isssuing summons, is non-application of mind inasmuch as from reading of the entire complaint, there are vague allegations, not connecting with the alleged crime with accused Nos.2 and 5. Inasmuch as the factum of Ducati, having appointed accused Nos.1 and 7 as exclusive distributor by itself would not amount to attracting the provisions of the IPC as alleged in the complaint. Learned Senior Advocate would further submit that without there being any specific allegations, as to how provisions of Section 418 of the IPC would be attracted, since, the petitioners are neither bound by law or by any legal contract, directly to supply of any goods or to offer any services or any raw materials, and that if at all, if there is any breach, would be that of a civil nature for which civil suit is also filed bearing Civil Suit No.2572 of 2011, before the City Civil Court, Ahmedabad, on 17.11.2011. Pursuant to which, the present private complaint is lodged on 16.02.2012 with an ulterior motive to pressurize the present petitioners, to see that the disputes with the accused Nos.1 and 7 with the complaint are settled.

3.2. Learned Senior Advocate for the petitioners would rely upon the judgments in the case of **Vijay Kumar Ghai and Others v. State of West Bengal and Others**, reported in **(2022) 7 SCC 124**; in the case of **Satishchandra Ratanlal Shah v. State of Gujarat and Another**, reported in **(2019) 9 SCC 148**; in the case of **V. Ganesan v. State Represented by the Sub Inspector of Police and Another**, reported in **2026 SCC OnLine SC 444**; in the case of **Delhi Race Club (1940) Limited and Others v. State of Utar Pradesh and Another**, reported in **(2024) 10 SCC 690**.

4. *Per contra*, learned Advocate Mr. Vishal J. Dave for the complainant – respondent No.2 herein and learned Additional Public Prosecutor Mr. Rohan N. Shah for the respondent – State would submit that the complaint is only at the stage of inquiry and at the

stage of inquiry, the learned Magistrate has only to see as to whether a *prima facie* case as alleged in the complaint is made out or not. And if there is sufficient ground to proceed, it cannot be said that the learned Magistrate has committed any error in issuing summons to the accused persons, inasmuch as, there are clear averments against all the accused persons. To butter the said argument they would rely upon the judgment dated 12.06.2013 passed by the coordinate bench of this Court in **Criminal Misc. Application (for Quashing & Set Aside FIR/Order) No.6565 of 2012**, wherein at paragraph No.11 it is observed as under:

> *"(11) On bare perusal of the impugned complaint, it appears that the complaint is filed by respondent No.2 against the seven accused. On examining the complaint as it is on its face value, it is found that the allegations are made against all accused, including the present applicants. As observed hereinabove, specific allegations are made in the complaint, more particularly in Paragraph Nos. 8-12 and 24-30 and thus, according to the complainant, the applicants have committed offences as alleged in the impugned complaint."*

4.1. Thus, it would argue that when the coordinate bench while rejecting the quashing petition of co-accused has observed that allegations are made against all the accused, including the petitioners who had appeared before the Court for quashing, under such circumstances, the present petitioners cannot take advantage of arguing that no case is made out.

4.2. Learned Advocate for the complainant would further submit that for exercising power under Section 482 of the Cr.P.C. the Court is not bound to conclude that whether conviction would entail or not, since it is a matter of evidence, and when a *prima facie* case is made out, quashing of the complaint is not permissible. He would further argue that accused No.5 is manufacturer of Ducati Bikes, who had appointed accused No.7 – company represented by the CEO – accused No.1 as a distributor, and through which dealers' network was also created, and thus, the business was spread across whole India. Under such circumstances, the petitioners cannot claim any immunity, relying upon the agreement entered into between accused Nos.1 and 7. Leaned Advocate would draw attention to various emails written by accused No.2 to the complainant, to point out that the accused No.2 was in constant touch with the complainant – company, to see that the worsening situation is taken care of, and has also visited Ahmedabad, and thus, is involved right from the beginning, even prior to entering into the signing of letter of intent with accused Nos.1 and 7. He would further draw the attention to one of the emails, more particularly, dated 16.12.2010, to point out that the first Ducati Cafe was to be opened in Ahmedabad, for which the email was written to the present complainant. He would further point out email dated 24.10.2011 written by the complainant to petitioner No.2, wherein the detail representation was made with regards to the grave concern having huge financial implications that the company was facing because of non-availability of required models, colours, special tools and equipments, accessories and apparels, none ability of space, no reconciliation of account, and signing of letter of intent only till 12.12.2010, pointing out internal shortcomings, and thus, would argue that when accused No.2 representing accused No.5 – company were well aware with regards to the difficulties faced by the complainant – company, and when the accused No.2 was involved in the setting up of the retailership of Ducati at Ahmedabad, right from the beginning, it cannot be said that the averments made in the complaint are short of any allegations against the petitioners.

4.3. To buttress his argument would rely upon the judgments in the case of **Mahesh Chaudhary v. State of Rajasthan and Another**, reported in **(2009) 4 SCC 439**, and in the case of **Jairam s/o Nathu Salunke v. State of Maharashtra and Another**, reported in **(2017) 2 SCC 371**.

5. Heard learned advocates for the respective parties and learned Additional Public Prosecutor for the respondent – State.

6. At the outset, it is required to be noted that the complaint runs into 21 pages, the allegations are against all the accused persons, including the present petitioners being original accused Nos. 2 and 5, however, the specific allegations against accused Nos.2 and 5 are noted down in the said complaint on page No.3, it has been stated

that, the accused No.2 is responsible for day to day work and administration of accused No.5 – company.

6.1. At page No.8, para No.7, it has been stated that, “as a representative of accuse No.1, accused No.2 had visited the showroom of the complainant, and at that time, accused No.2 had entered into deep friendship and had given wrong promises that you don't have to worry”.

6.2. At page No.10, par No.9, it has been stated that “after the showroom was started, the accused persons used to impose conditions which were irresponsible that the complainant used to as per the say of the accused persons that because of the blockage of the money and not having entered into any dealership agreement, the complainant raised objections, however, accused No.2 and 3 had given promise that the letter of credit is only as a part of company's policy, and dealership agreement would be entered into after some time”.

6.3. At page No.10, para No.10, it has been alleged that “despite of having no condition stated in the L.O.I., the accused No.2 compelled accused No.1 to continue the business”.

6.4. At page No.11, para No.12, it has been stated that “accused Nos.3 and 4 being representatives of accused No.1 - company, were bound to resolve the problems, however, was informed that the complainant directly talked with accused No.2, and thus, emails were also sent to accused No.2 that no one was ready to work as dealer, with accused No.2 and had also received information that, the company to which dealership was given a Delhi that is also stopped, and no one is ready to accept the dealership".

6.5. It has been further alleged that at para No.12, page No.12, to the effect that "when Shreyans was delivered more than 60 bikes by accused No.1 – company, the complainant had also received information that the bank guarantee issued to accused No.1 was used by him to increase business with accused No.5 – company for purchasing bikes."

6.6. At page No.13, para No.15, it has been stated that "the complainant had been also called to meet at Milan–Italy, for which the information was also given to accused Nos.1 and 2, however, as there was no confidence, he did not attend the meeting and on 24.10.2011, one email to accused Nos.1 and 2 with regards to the complaints."

6.7. The reference has been also made at page No.14, para No.15 of the complainant that the complainant had sent an email on 24.10.2011 to accused Nos.1 and 2. Similarly, in para No.7, page No.14, it has been averred that "email was sent to accused Nos.1 and

2 on 08.11.2011 that without resolving the old dispute, the complainant is not ready to follow the new terms, and at that time, had threat dead, if order of 100 bikes is not given, the S.B.L.C. will not be renewed, and the supply of bikes will be stopped." At para No.22, page No.18 of the complaint, there is also mentioned about Civil Suit No.2572 of 2011.

7. Except for the aforestated allegations, no specific role has been attributed to accused Nos.2 and 5. This Court has not entered into the other allegations as stated in the complaint, since the compliant is challenged by original accused Nos.2 and 5 only, and therefore, allegations qua against accused Nos.2 and 5 have taken into considered, for deciding the present petition. Without looking into any other documents, if the complaint is read as it is, except for vague allegations, that too also have stated hereinabove, do not attract any other penal provisions, more particularly, Sections 418 and 420 and 415 of the IPC. Inasmuch as Section 418 reads as under:

> **"418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect —**
>
> Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished

with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

8. Whereas Section 420 reads as under:

"420. Cheating and dishonestly inducing delivery of property —

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

9. Section 415 defines cheating which reads as under:

"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."

10. Hon'ble Supreme Court in ***Pradeep Kumar Kesarwani v. State of Uttar Pradesh [AIROnline 2025 SC 956]*** recently synthesized the jurisprudence governing Section 482 of the Code and formulated a strict four-step analytical framework to evaluate petitions seeking the quashing of criminal trials at their inception. The framework dictates:

> "*20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the CrPC:*
>
> > *(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?*
> >
> > *(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
> >
> > *(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*
> >
> > *(iv) Step four, whether proceeding with the trial would*

> *result in an abuse of process of the court, and would not serve the ends of justice?*
>
> *If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial..."*

11. To attract the provisions of Section 418, a person to be held liable is bound either by law or by legal contract, to protect the interesting transactions to which the cheating relates, only then the provisions of Section 418 would be attracted. Merely, by making averments against accused Nos.2 and 5 as stated hereinabove, would not attract the ingredients of Section 418, inasmuch as the complainant himself in para No.3 of the complaint states that he had entered into the letter of intent on 24.06.2010 with accused No.1. What has been projected by the complainant in his argument is to the effect that accused No.1 is the agent being a distributor and accused No.5 is the company, who is represented by the CEO – accused No.2 is the principal, and for the acts of agent, the principal is duty bound under law though not under contract in the present case to protect the interest. Assuming for the sake of argument that accused No.1 representing accused No.7 – company, is an agent of accused No.5 – company represented by accused No.2, there is not an iota of evidence in the complaint with regards to any promise, commitment or any false promise being made by accused No.2 to the

complainant, inasmuch as, the letter of intent is entered by the complainant with accused No.7 – company represented by accused No.1 on 24.06.2010, whereas the exclusive distribution agreement specifically is between accused No.7 and accused No.5 – company.

12. Though this Court is not here to conduct a *mini trial*, however, when the complaint is file with some misunderstanding, which would result into the unnecessary harassment to the petitioners, more particularly, having failed to meet with the commitments if at all made by accused Nos.2 and 5, this Court is bound to look into the documents, which are uncontroverted by the complainant, more particularly, the exclusive distribution agreement, which specifically states that each agreement undertaken by the distributor in the name or on behalf of Ducati shall not bind Ducati in any way being recital No.2.3 of the said agreement. If at all, some commitments are made by accused No.2, then also, subsequent nonfulfillment of those commitments cannot be said to be criminal breach of trust or forgery or attracting provisions of Sections 418 and 420 of the IPC, inasmuch as, the complainant has entered into the letter of intent that with accused No.7 – company signed by accused No.1. Merely cleverly drafting the complaint by stating “All the accused persons”, by itself, would not attract penal provisions. When *prima facie*, it appears that accused Nos.2 and 5 have tried see that the problems are solved, which would be evident from the reading of the emails placed on record by the complainant in his affidavit in reply.

13. The visit of accused No.2 and communication through emails, in no manner could be said to be attracting any penal provisions or direct business transaction with the complainant, inasmuch as, the allegations, if are taken into consideration, read with the exclusive agreement between accused No.5 – company and accused No.7 – company, mainly the exclusive distribution agreement would make it clear that accused Nos.2 and 5 are not directly involved in any manner whatsoever of either directly supplying any goods, raw materials, spare-parts, etc. to the complainant. The visits made by accused No.2 to the showroom of the complainant and promise if any made, is also not clear as to what type of promises were made, from the complaint itself, would not amount to attracting any of the penal provisions. This Court is of the considered opinion that though the complainant may have burnt his finger because of some commitments made by accused No.7 – company through the CEO – accused No.1, which at this stage if discussed, would prejudice the case of the either side. However, there seems to be no promises or commitments or even direct business relationship with the complainant by the present petitioners, though being a retailer and having entered into letter of intent with accused No.7 – company through accused No.1. The visits by the accused No.2 to the showroom and various communications mainly the emails pointed out by the learned advocate for the complainant, would in no manner, could be said that false promises were made and that accused Nos.2 and 5 and thereby cheated the complainant.

13.1. Thus, tested on the anvil of the principles laid down in the case of Pradeep Kumar Kesarwani (supra), firstly, the documents relied upon by the present petitioners are indoubtable; secondly, reading of the agreement and the email conversation between the parties, would rule out the charges levelled against the present petitioners, and thus, the factual assertion contained in the complaint would falsify acquisitions qua the petitioners herein; thirdly, the material relied by the accused are not refuted by the complainant; and lastly, based on such documents, it is found that the trial if proceeded would certainly amounts to abuse of process of court and its continuity would not serve the end of justice.

14. As far as learned Senior Advocate appearing for the petitioner has relied upon the judgment in the case of Vijay Kumar (supra) is concerned, at paragraphs 34, 35, 36 and 39 of the said judgment, it is held as under:

> *"34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.*
>
> *35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be*

proved:-

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam, the ingredients to constitute an offence under Section 420 are as follows:-

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to;

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

39. In Vesa Holdings (P) Ltd. v. State of Kerala, this Court made the following observation:- (SCC pp. 297-98, para 13)

> *"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very*

inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence under Section 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."

14.1. Thus, for establishing the offence of cheating, in inducing the delivery of property, the ingredients required would be representation made by the person was false, had prior knowledge that representation he made was false, accused made false representation with dishonest intention in order to deceive the person to whom it was made, and pursuant to which the accused induced the person to deliver the property or to perform or to abstain from any act which is the person would have not done or had otherwise committed. Thus, cheating being essential ingredient for an act to constitute an offence under Section 420, and having examined the entire complaint, it does not disclose any criminal offence whatsoever much less the offence punishable under Section 418 read with Section 420. And the only allegations made against the present petitioners as stated hereinabove, would fall short of attracting these penal provisions.

15. So far as the judgment in the case of Satishchandra (supra) is concerned, wherein at paragraphs Nos.13 and 14, it is held as under:

> *"13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contracts and cheating would depends upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar.) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.*
>
> *14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to Gain Singh v. State of Punjab). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC."*

15.1. Thus, this Court cannot be carried away by the moral element involving the breach of promise, if any, made by the petitioners herein, inasmuch as, despite of having failed to point out any such promise by accused Nos.2 and 5, if it all such promises made, would fall short of the offence alleged.

16. So far as the judgment in the case of V. Ganesan (supra) is concerned, wherein at paragraphs Nos.12 and 14, it is held as under:

> *12. In Iridium India Telecome Ltd. v. Motorola Inc., this Court laid down the ingredients of an offence of cheating as defined in Section 415 of IPC. It was observed that Section 415 of IPC has two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Besides, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, deception is a necessary ingredient for the offence of cheating under both parts of this section. Besides, the complainant must allege/prove that the inducement had been caused by the deception exercised by the accused. In other words, such deception must produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from such deception. The explanation to the section clarifies that non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.*

14. In Vesa Holding Private Limited v. State of Kerala, this court held that every breach of contract would not give rise to an offence of cheating. Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made about failure on part of the accused to keep his promise, in absence of a dishonest on part of the accused to keep his promise, no offence under Section 420 of IPC is made out."

16.1. In the aforestated judgment also, the principals are reiterated and also taken considered by deciding the present petition.

17. Learned Senior Advocate for the petitioners has also relied on the judgment in the case of Delhi Race Club (supra), more particularly, paragraphs Nos.13, 24, 41, 43, which reads as under:

"13. If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.

24. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the

Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Appellant Nos. 2 and 3, respectively, herein who are none other than office bearers of the Appellant No. 1 Company. When Appellant No. 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practiced by the office bearers.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and

> *he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."*

17.1. Considering the principles laid down in the said judgment, merely by making averments in the complaint that right from the beginning, the accused persons i.e. including the present petitioners, were knowing that their goods are not marketable, and they are short of supply, would not attract cheating or misleading representation since inception, inasmuch as, on perusal of the content of the email relied by learned Advocate for the complainant would reveal that, accused No.2 has tried to see that problems, if any, are tried to set right, though, have no direct business relation by way of contract, or as an agent through accused Nos.1 and 7. Under the circumstances, for the sake of argument, even if there is a breach of a contract, cannot attract the offence of cheating, since, what has to be looked into, is the conduct at the time of the so called inducement, subsequent conduct, and considering conduct of the petitioners herein, what is to be seen, is the intention right from the beginning, and the aspect of deception right from the beginning is lacking in the facts of the case, thus, no offence as alleged in the complaint are attracted.

18. Whereas the judgments relied upon by the learned Advocate for the complainant are concerned, he has relied in the case of Mahesh Chaudhary (supra), more particularly, paragraphs Nos.12,

14, 16 and 17, which reads as under:

> *12. It is also well settled that save and except very exceptional circumstances, the court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or Complaint Petition fulfill the ingredients of the offences alleged against the accused.*
>
> *14. While saying so, we are not unmindful of the limitations of the court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole. In Kamaladevi Agarwal v. State of W.B. this Court opined: (SCC pp. 559-60, para 7)*
>
>> *"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken it at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."*
>
> *It was furthermore observed that the High Court should be*

slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.

16. Recently in R. Kalyani v. Janak C. Mehta this Court laid down the law in the following terms: (SCC p. 523, para 15-16)

"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 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.*
> *16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and*

> *object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."*

17. The charge-sheet, in our opinion, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, in our opinion, no exception thereto can be taken. We, therefore, do not find any legal infirmity in the impugned orders."

18.1. In the judgment itself, in paragraph 16 after referring to R. Kalyani v. Janak c. Mehta, reported in (2009) 1 SCC 516, in paragraph 16 of the said judgment, it is held that the Court while exercising its inherent jurisdiction, would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. This Court finds it appropriate in the facts and circumstances, to exercise jurisdiction being an appropriate case for the reasons stated hearing above, and thus, the quoted judgment is of no help to the complainant.

19. The next judgment relied by the learned Advocate for the complainant, in the case of Jairam (supra), wherein learned Advocate relied paragraphs Nos.7 and 8, which reads as under:

> *"7. We have gone through the record and considered rival submissions. The High Court found three infirmities namely that Onkargiri, predecessor of the plaintiffs in Regular Civil Suit No.81 of 1993 did not have any title; that no sale deed was executed by the plaintiffs in favour of said three persons; and that the document of lease stated to be in favour of the appellant did not mention any rent at all. In the face of these observations it cannot be said that the dispute in question was purely of civil nature. If on the basis of false and fraudulent documents a claim is made which leads to award of compensation in land acquisition matter, the interest of the State is certainly compromised or adversely affected. The matter cannot then be termed as a civil dispute simplicitor. The crime was therefore rightly registered.*
>
> *8. Affirming the view taken by the High Court, we do not find any reason to quash the criminal proceedings. The appellant is certainly entitled to present his view on merits which will be gone into and considered by the concerned Court at the appropriate stage. We thus find no merit in the matter and dismiss the present appeal."*

19.1. Though this Court is bound by the ratio laid down in the aforestated judgment, and this Court is also mindful of the fact that merely because there is a civil dispute, it cannot be said that a criminal complaint is not maintainable, however, it all depends on facts and circumstances of the each case. More particularly, in the said case 3 infirmities namely, that *"Onkargiri, predecessor of the plaintiffs in Regular Civil Suit did not have any title; that no sale deed was executed by the plaintiffs in favour of the three persons; and that the document of lease stated to be in favour of the appellant did not mention any rent at all"*. In face of these observations, the Hon'ble Supreme Court held that the disputing question was not purely civil in nature. However, in the facts of the cases as stated hereinabove, for the purpose of excising jurisdiction under Section 482 of the Cr.P.C., this Court is also required to consider, as to whether the allegations made in the complaint fulfilled the ingredients of offence alleged against the accused – petitioners or not. Having stated hereinabove, the allegations do not attract any of the ingredients of IPC, more particularly Sections 418 and 420 read with Sections 120 and 114, and merely, the presence of accused No.2 at Ahmedabad with the representative of accused No.1 or with the accused No.1 at the showroom of the complainant by itself would not amount to criminal conspiracy or abetment as defined under Section 107 read with Section 108 of the IPC.

20. As far as the observation made in Criminal Misc. Application No.6565 of 2012, while rejecting the said petition by the coordinate bench of this Court by judgment dated 12.06.2013 is concerned, the said observations relates only to the petitioners who had approved for quashing and not the present petitioners, coupled with the fact

that, while rejecting the petition, the coordinate bench had specifically noted that the said application was filed at a very primitive stage, even before the cognizance was to be taken, and found that, no interference was called to excise in inherent powers. Under the circumstances, the observation mentioned therein, more particularly, paragraph No.11 would be of no relevance.

21. Under the circumstances, the present petition stands allowed. The Inquiry Case No.5 of 2012, lodged before learned Metropolitan Magistrate Court, Ahmedabad, and consequential proceedings arising therefrom are quashed and set aside qua the petitioners.

22. It is made clear that the learned Magistrate without being influenced by the observation made hearing, may proceed against other accused, in accordance with law, since these observations are made only qua the present petitioners.

23. Rule is made absolute to the aforesaid extent. Direct service is permitted.

24. In view of the aforesaid order passed in main application, the Criminal Misc. Application No.1/2016 does not survive and stands disposed of, accordingly.

(P. M. RAVAL, J)

NITIN MAKWANA