

Reserved on : 29.07.2026
Pronounced on : 16.10.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.8419 OF 2025

C/W

CRIMINAL PETITION No.4215 OF 2021

R

IN CRIMINAL PETITION No.8419 OF 2025

BETWEEN:

- 1 . MR.ALKESH VINOD SHAH
AGED ABOUT 41 YEARS
S/O MR. VINOD KANJI SHAH,
RESIDING AT 'KALPAVRUKSH HOMES'
NO.5, 1ST FLOOR, 1ST MAIN
UPPER PIPE LINE ROAD,
KUMARA PARK WEST,
BENGALURU – 560 020.

ALSO AT:
RESIDING AT 'KALPAVRUKSH HOMES'
NO.51, 1ST FLOOR
CHAKRAVARTHY IYENGAR EXTENSION
SHESHADRIPURAM
BENGALURU – 560 020.

Digitally
signed by
CHETAN B C
Location:
High Court
of Karnataka

- 2 . VINOD KANJI SHAH
AGED ABOUT 68 YEARS
S/O LATE MR. KANJI DEVSHI SHAH
RESIDING AT NO.7
KUNAL UPPER PIPELINE ROAD
KUMARAPARK WEST
BENGALURU – 560 020.
- 3 . M/S VKS INCENSE
PRIVATE LIMITED,
(NOW KNOWN AS
SHALIMAR INCENSE PRIVATE LIMITED)
HAVING REGISTERED OFFICE AT
SHALIMAR HOUSE NO.32 AND 33,
3RD CROSS, SRIRAMPURAM,
BENGALURU – 560 021.

REPRESENTED BY ITS
MANAGING DIRECTOR
MR. ALKESH VINOD SHAH

... PETITIONERS

(BY SRI ASHWIN PRABHU K., ADVOCATE FOR P-1 AND 3;
SRI ANGAD KAMATH, ADVOCATE A/W
SRI BALA NIKIT, ADVOCATE FOR P-2)

AND:

- 1 . STATE OF KARNATAKA
SRIRAMPURA POLICE STATION
REPRESENTED BY
THE SPP,
HIGH COURT OF KARNATAKA,
BENGLAURU – 560 001.
- 2 . NITIN KANJI SHAH
S/O LATE KANJI DEVSHI SHAH
AGED ABOUT 58 YEARS

RESIDING AT NO.70
KUNAL, 1ST FLOOR
UPPER PIPELINE ROAD
KUMARA PARK WEST
BENGALURU – 560 020.

... RESPONDENTS

(BY SMT.WAHEEDA M.M., HCGP FOR R-1;
SRI MAHESH S., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,/READ WITH SECTION 528 OF BNSS PRAYING TO 1.QUASH THE FIR BEARING NO.50/2021 REGISTERED AGAINST THE PETITIONERS BY THE 1ST RESPONDENT IN SRIRAMAPURA POLICE STATION , III ADDL. CHIEF METROPOLITAN MAGISTRATE AND IPC UNDER SECTION 120(B), 403, 406, 420, 468, 471, 417, 470, 469, 423, 379, 380, 415; 2. SET ASIDE THE ORDER DATED 27.12.2023 IN PCR 6431/2021, PASSED BY THE LD.III A.C.M.M REJECTING THE B REPORT FILED BY THE 1ST RESPONDENT POLICE; 3.QUASH ALL PROCEEDINGS IN PCR NO.6431/2021 PENDING BEFORE THE LD.III A.C.M.M.

IN CRIMINAL PETITION No.4215 OF 2021

BETWEEN:

SANDEEP HARAKCHAND SHAH
S/O HARAKCHAND SHAH,
AGED ABOUT 50 YEARS,
RESIDING AT FLAT NO.1101,
11TH FLOOR, EMERALD TOWER,
PARK WEST APARTMENT,
1/1 BINNYPET ROAD,
BINNYPET,
BENGALURU – 560 023.

... PETITIONER

(BY SRI ANGAD KAMATH, ADVOCATE FOR

SRI BALA NIKIT AND
SRI ASHWIN PRABHU K., ADVOCATES)

AND:

1 . STATE BY
SRIRAMPURA POLICE STATION,
NO.47, 9TH MAIN ROAD,
DAYANANDA NAGAR,
SRIRAMPURA,
BENGALURU – 560 021.

2 . NITIN KANJI SHAH
S/O LATE KANJI DEVSHI SHAH,
AGED ABOUT 54 YEARS,
RESIDING AT NO.07, KUNAL,
1ST FLOOR,
UPPER PIPELINE ROAD,
KUMARA PARK WEST,
BENGALURU – 560 020.

... RESPONDENTS

(BY SMT.WAHEEDA M.M., HCGP FOR R-1;
SRI MAHESH S., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO I. QUASH THE ORDER DATED 19.04.2021 IN CR.NO.7522/2021 PASSED BY THE IV ADDL.C.M.M., AND THE REGISTRATION OF THE FIR NO.50/2021 REGISTERED AGAINST THE PETITIONER BY THE 1ST RESPONDENT AND ALL THE SUBSEQUENT PROCEEDING EMANATING THEREFROM; II. QUASH THE COMPLAINT FILED BY THE 2ND RESPONDENT IN CR.NO.7522/2021 PENDING BEFORE THE IV ADDL.C.M.M., BENGALURU AGAINST THE PETITIONER AND ALL THE SUBSEQUENT PROCEEDINGS EMANATING THEREFROM.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.07.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Criminal Petition No.4215 of 2021 is preferred by accused No.4 in Crime No.50 of 2021 renumbered as Crime No. 7522 of 2021 and the companion petition Criminal Petition No.8419 of 2025 is preferred by accused Nos.1, 2 and 3 in Crime No.50 of 2021 arising from PCR No.6431 of 2021. The complainant in both these cases is common and the transactions between the two, that have raised these crimes are also common. Therefore, the two are taken up together and considered by this common order.

2. Heard in both the cases, Sri **Angad Kamath**, learned counsel appearing for the petitioners; Smt **Waheeda M.M**, learned High Court Government Pleader appearing for respondent No.1 and Sri **Mahesh S**, learned counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

Criminal Petition No.4215 of 2021:

3.1. The petitioner/accused No.4 and the 2nd respondent/complainant are in the business of supply of raw materials, including raw sticks for preparation of incense sticks and agarbattis through the proprietorship concern of the petitioner 'Sandeep Agarbatti Co'. The petitioner has been supplying raw materials to 'Shalimar Agarbatti Co.', a registered partnership firm for two decades. The said firm has three partners, one Nitin Kanji Shah, Vinod Kanji Shah and Alkesh Vinod Shah. The complainant is the brother of Vinod Kanji Shah and uncle of Alkesh Vinod Shah. The petitioner is the son of Vinod Kanji Shah's sister. Therefore, the complainant and the petitioner are members of the same family.

3.2. In 2017, the complainant owing to some disputes between the partners of the firm was expelled from the firm. Subsequently in early 2018 Vinod Kanji Shah and Alkesh Vinod Shah approached the petitioner informing him that they were incorporating a new Company and offered the petitioner some shares. The petitioner being related to one of the persons in the family of the complainant decided to purchase 100 shares out of

10,000 shares in the new incorporated company called 'VKS Incense Private Limited'. After its incorporation, the said Company enters into a Business Transfer Agreement with the firm of the petitioner i.e., Shalimar Agarbatti Company. The firm then gets embroiled in legal tussle on account of several crimes registered by the family of the complainant. The complainant is expelled from the firm. After his expulsion, certain disputes which had to be resolved are being resolved by an Arbitrator appointed at the hands of this Court in C.M.P.No.246 of 2017. Upon settlement of claims being filed by the complainant, the petitioner and another filed their statement of objections and counter claims informing the Arbitral Tribunal and the complainant regarding execution of a Business Transfer Agreement, at the instance of the complainant himself. Since the firm was not made a party in the arbitration proceedings initially, the complainant impleaded the firm by naming the petitioner as the Director of the firm. Be that as it may, the arbitration proceedings are even as on date continuing before the Arbitrator.

3.3. During the subsistence of the said arbitration, a private complaint comes to be registered invoking Section 200 of the Cr.P.C., in P.C.R.No.6431 of 2021, in which the learned Magistrate refers the matter for investigation. The matter then becomes a crime in Crime No.50 of 2021 for it having been registered on 23-04-2021. On 11-06-2021 the subject petition is preferred and a coordinate Bench of this Court which grants an interim order of stay on 29-06-2021 by a detailed order. The said interim order is subsisting even today.

Criminal Petition No.8419 of 2025:

3.4. The subject petition is preferred by accused 1, 2 and 3 in the very same crime in Crime No.50 of 2021. The facts in the subject petition commence from the date on which the aforesaid interim order is granted at the hands of this Court. After the grant of the interim order in Criminal Petition No.4215 of 2021, a 'B' report is filed by the Police on 25-09-2021. The complainant then prefers a protest petition on 14-11-2022. All this while the petitioners and the complainant were fighting their battle in arbitration proceedings. The 'B' report so filed by the Police comes

to be rejected by the concerned Court. By then, several crimes had been registered against each other. On 26-03-2025 joint affidavit is filed by the parties by mutual consent seeking quashment of 6 crimes in several writ petitions. But, the learned Magistrate had by then rejected 'B' report and took cognizance of the offence in terms of his order dated 27-12-2023. It is this order that is called in question in the subject petition by the other accused who were not petitioners in the companion petition, in whose favour an interim order is operating. Therefore, the two petitions arise at different circumstances over a solitary crime in Crime No.50 of 2021.

4. The learned counsel Sri Angad Kamath, appearing for the petitioners in both these cases would vehemently contend that the petitioners and the respondent/complainant either through their firm or individually are before the Arbitrator on day today proceedings. Even on the date on which the matter was being heard, the arbitration proceedings were on. Though 6 crimes were registered against each other and have all stood closed by filing joint affidavits, now the complainant wanting to pursue this matter, notwithstanding the fact that the entire issue is completely arising

out of civil transaction or financial transaction between the parties. The learned counsel for the petitioners submits that the subject proceedings must not be permitted to be continued even. He would contend that the concerned Court ought not to have rejected the 'B' report and taken cognizance of the offence in the teeth of subsistence of the interim order.

5. The learned counsel appearing for the 2nd respondent/ complainant would vehemently refute the submissions in contending that it is settled principle of law that a civil case and a criminal case can go hand in hand. It is not that merely because civil proceedings have been instituted the criminal proceedings must be terminated. He would submit that this Court had granted interim order of stay in the earlier petition which did not stop the concerned Court in accepting or rejecting the 'B' report since Police had filed the 'B' report. He would further contend that after rejection of the 'B' report, by a separate order cognizance is taken which is challenged by the petitioner. Therefore, Criminal Petition No.4215 of 2021 at least must be dismissed as nothing survives in the said petition. He would submit that the crime must be

permitted to be taken to its logical conclusion by the concerned Court and the petitioners having liberty to knock the doors of the appropriate *fora* in the event of need, this Court must not exercise jurisdiction under Section 482 of the Cr.P.C.

6. The afore-narrated facts are a matter of record. The genesis of the problem is a Business Transfer Agreement that is entered into between the protagonists of the crime on 24-01-2018. Then dispute arose between the two. An Arbitrator is appointed in C.M.P. No.246 of 2017 at the hands of this Court. The claimant is the complainant. The claim before the Arbitrator is as follows:

"WHEREFORE the Claimant prays that this Hon'ble Tribunal be pleased to pass the following award:

- a) Dissolving the Firm Shalimar Agarbatti Company as per dissolution Notice dated.28/7/2017 under Document. No.51 issued by the Claimant in terms of Clause 2 of the Partnership Deed dated 1/1/2016 or in the alternative dissolve the Firm by an order of this Hon'ble Tribunal;
- b) Appointing a Receiver in order to take over the business, affairs and assets of the Firm i.e. Shalimar Agarbatti Company for its proper management including taking of its accounts:
- c) Directing the Respondents to pay an amount of Rs. 14,77,72,328 towards his share in the Firm;

- d) Directing the Respondents to handover 50% of the "Landed Properties of the Firm Shalimar Agarbatti Co in favour of the Claimant;
- e) Directing the Respondents to pay amount of Rs. 86,84,03,065/- towards the Goodwill of the Firm;
- f) Directing the Respondents to pay an amount of Rs. 2,17,78,000/- (Rupees Two Crore Seventeen Lakhs Seventy Eight Thousand Only) to the Claimant towards the 15% share for the period of 7 years;
- g) Directing the Respondents to pay 50% share in the profits for the financial year 2017-2018 to the Claimant;
- h) Directing the Respondents to return 15% of the share in the Firm to the Claimant;
- i) Declaring that the 1st Respondent is not a partner of the Firm and the 2nd Respondent and the Claimant are the only partners of the Firm having 50% of the share in the same;
- j) Restraining the Respondents or their agents or anyone acting on their behalf from dealing with the assets of the Firm in any manner whatsoever either in the course of business or otherwise;
- k) Restraining the Respondents or their agents or anyone acting on their behalf from carrying on any business in the name of the Firm i.e. Shalimar Agarbatti Company holding themselves as partners of the Firm or in any manner whatsoever with anyone whomsoever and including the banking transactions;
- l) Restraining the Respondents or their agents or anyone acting on their behalf from preventing the rights of the Plaintiff from entering into the premises of the Firm and discharging his duties as a partner of the Firm and also not to do any such acts which prevents the Claimant to continue and function as a partner in the Firm viz., Shalimar Agarbatti Company in any manner whatsoever till the completion of the winding up proceedings;

- m) Directing the respondents not to carry on any transaction pertaining to the firm without the permission and consent of the claimant and further to do so only with the joint signature of the claimant in all the business and banking transactions till the appointment of the Receiver:
- n) Grant permanent injunction against the defendants not to alienate any of the properties or assets of Firm in any third parties favour in whatsoever nature:
- o) To render and submit the daily accounts of the Firm before this Hon'ble Tribunal;
- p) Declare the Business Transfer Agreement dated 24-1-2018 produced at Document No. 57 by the Respondents as illegal, nor binding either on the firm or the Claimant;
- q) Declare that the (1) Sale Deed dated 5-3-2018 registered in the office of the Sub-Registrar, Rajajinagar, Bangalore, vide Doc. No. RJN-1-04874/2017-18, Volume No. I, Stored in CD No. RJND310, (2) sale deed dated 5-3-2018 registered in the office of the Sub-Registrar, Rajajinagar, Bangalore, vide Doc. No. RJN-1-04873/2017-18, Volume No. I. Stored in CD No. RJND310, (3) sale deed dated 5-3-2018 registered in the office of the Sub-Registrar, Rajajinagar, Bangalore, vide Doc. No. RJN-1-04878/2017-18, Volume No. I, Stored in CD No. RJND310 and (4) sale deed dated 5-3-2018 registered in the office of the Sub-Registrar, Rajajinagar, Bangalore, vide Doc. No. RJN-1-04876/2017-18, Volume No. I, Stored in CD No. RJND310 execute by Shalimvar Agarbatti Co in favour of Ms.V.K.S. Incense Pvt Ltd are null and void and not binding on the claimant;
- r) Declare that all the business, goodwill, properties both moveable and immovable, all other assets of the Firm which was standing as on 31-3-2017 continues to be that of the Firm and the claimant has 50% share in the same:
- s) Restrain M/s.V.K.S. Incense Pvt Ltd. its Directors, agents, or anyone attached to it or acting under it from alienating all such moveable, immovable properties, assets,

business that it has acquired from the Firm Shalimar Agarbatti Co in whatsoever manner in favor of any third parties in whatsoever manner;

- t) Pass such other further orders/directions as may be deemed fit in the interest of justice and equity.

SCHEDULE

SHALIMAR AGARBATHI CO., "Shalimar House" P.B. No 2114, 32 & 33, 3rd Cross, Srirampuram, Bengaluru – 560 021."

One of the prayers is to declare the Business Transfer Agreement as not binding on the firm. The said matter is still being arbitrated before the sole Arbitrator – a retired Judge of this Court, Justice Keshavanarayana. In the teeth of the subsistence of arbitration proceedings, a private complaint comes to be registered by the 2nd respondent/complainant invoking Section 200 of the Cr.P.C. In a lengthy complaint, the gist of the allegation is as follows:

"....

- 6) I humbly submit that as demonstrated above, I reasonably infer that right from the inception, that the Accused had conspired with each other and hatched a plan to cheat me in order to knock of the business, properties and finances of the firm. With a view to do so, by their words and promises, the Accused No. 1 and 2 had induced me to part with his 15% of the shares promising that they would return it to me. Further they have also promised to pay 15% of the proportionate profits. However, after the said period, when I requested them to return my shares and also to make payment of profit of Rs. 2.17 crores, they have unleashed serious illegal acts and also denied to return 15% and the said amounts,

thus cheating me. Further after the I initiated the legal proceedings, the 1st and 2nd and Accused conspiring with 4th and 5th accused, have illegally formed the 4th accused on 23-1-2018 and on the very next date i.e. on 24-1-2018, they have created a fraudulent Business Transfer Agreement and are claiming that they have transferred the entire business of the firm to the 4th accused. In this regard, as stated above, it is the 1st and 2nd accused representing the firm, have sold to themselves representing the 4th accused. As stated, in the 3rd accused company, 1st and 2nd accused almost holds the entire shares. Apart from the same 1st and 2nd accused have sold the immovable properties of the firm in favour of the 3rd accused who are nothing but themselves. Even the 4th and 5th accused were aware of my rights and the firm and were also aware that the properties of the firm cannot be sold to anyone without my consent or permission. However, when the entire worth of the firm was Rs.235 crores they have stated that they have sold it to Rs. 35 crores. Apart from the same, the 1st and 2nd accused have claimed that the firm was suffering losses when they have utilised the said amount for themselves. Furthermore as demonstrated above, they have purchased luxury cars for their usage from and out of the monies of the firm which belongs to me also and are using the Firm's funds for their purposes and luxuries. Apart from the above, as proved, 1st and 2nd accused have withdrawn crores of rupees from the firm illegally. As stated above, when the dispute is pending with regard to the firm and its properties, the right title and interest and ownership of the complainant over the properties and assessts of the firm continues and without my consent the same cannot be moved in any manner whatsoever and such movement without my prior consent amounts to theft. I had implicit faith in the 1st and 2nd accused that during the pendency of the litigation till its finality, the accused who have entire dominion and control over the business of the firm would act legally, however illegally they have committed the above said crime to make unlawful gains for themselves while causing wrongful loss to the complainant. In order to achieve their objective, they have also committed several other criminal act, which is pending consideration before the Hon'ble Courts. Hence the above acts of the Accused No. 1 and 2 including that of other accused, attracts the provisions of conspiracy, criminal breach of trust, cheating, causing

mischief, creation of fraudulent documents and using it as genuine, among other offences which attracts the provisions of Sec. 403, 406, 415, 420, 468, 471, 417, 120B of IPC among other penal offences for which the accused have to be tried.

- 7) I state that despite of the commission of the above offences by the Accused which are cognizable, the jurisdictional police have not registered the Fir and investigating the same.
- 8) I am filing this affidavit in compliance with the directions of the Hon'ble Supreme Court of India in the case of in the case of Priyanka Srivatsa & Anr V/s State of U.P reported in 2015 Cri L. J 2396

I pray that his Hon'ble Court be pleased to accept the complaint and initiate necessary criminal proceedings against the accused in the interest of justice.

I swear that this is my name and signature and the contents of this affidavit are true and correct to the best of my knowledge, information and belief."

The matter is referred for investigation by the learned Magistrate which then becomes a crime in Crime No.50 of 2021 for the offences punishable under Sections 120B, 403, 406, 417, 420, 468 and 471 of the IPC. The crime was registered on 23-04-2021. Criminal Petition No.4215 of 2021 is preferred on 11-06-2021. The coordinate Bench by a detailed order, after hearing the parties, grants an interim order on 29-06-2021. The interim order reads as follows:

"Heard the learned senior counsel for the petitioner, learned HCGP for the first respondent and learned counsel for the second respondent-complainant.

Learned senior counsel appearing for the petitioner submits that the complainant is none other than the partner of the partnership firm known as Shalimar Agarbatti Company of which accused nos.1 & 2 were also the partners. There was some dispute between the partners of the said firm which has resulted in the complainant dissolving the firm and thereafter initiating proceedings under the arbitration and conciliation Act claiming his right in the assets of the partnership firm. He submits that the arbitration proceedings has been initiated in the year 2017 and the said proceedings is at an advanced stage. He submits that to wreck vengeance the complainant has now filed a private complaint alleging that his partners who are accused Nos.1 & 2 have transferred entire assets of partnership firm to the newly constituted company known as VKS Incense Private Limited and the allegations against the petitioner is that he being 1% share holder of the company has conspired with accused Nos.1 & 2 and has illegally transferred all the assets to deprive him of his rightful share. The complainant has rightful share in partnership assets. He submits that only with an intention to coerce the person named in the complaint, the present private complaint is filed and even if the allegation in the complaint is prima facie taken to be true, no case can be made out against the petitioner who is the only 1% share holder in the company for the offences alleged against him.

Per contra, learned counsel appearing for respondent No.2-complainant submits that the petitioner is a close relative of the accused Nos.1 & 2 and he had all the knowledge about the transactions of the partnership firm. He submits that the petitioner had played pivotal role in constituting the company and transferring the assets of the partnership firm to the company and he being the 1% share holder is a beneficiary of the assets of the company. Therefore, he is required to be tried for the offences alleged. He submits that there are prima facie materials in the complaint that would attract alleged offences even against the petitioner and therefore, prays to dismiss the petition.

The dispute between the accused Nos.1 & 2 and the complainant prima facie appears to be with regard to the assets of the partnership firm and arbitration proceedings initiated by the second respondent-complainant is already pending consideration before the learned Arbitrator who has been appointed by this Court. Even in respect to for the allegations in the complaint with regard to the transfer of the assets of the partnership firm clandestinely to the newly constituted company of the accused Nos.1 & 2, on the face of it no case for the alleged offences can be made out against the petitioner who is only 1% person share holder in the company.

Matter needs consideration. Therefore, there shall be an interim order as prayed for insofar as the petitioner is concerned till the next date of hearing.

List this matter on 09.08.2021.

The interim order granted herein shall not come in way of the investigation officer continuing the investigation insofar as the other accused persons are concerned."

The interim order was restricted only to the petitioner and against others the investigation was permitted to be continued. The continuation of investigation led the Police to file a 'B' report against others and not the petitioner. The concerned Court then rejects 'B' report by the following order:

"ORDER ON 'B' REPORT

The complainant has filed this private complaint against accused persons for the alleged commission of offences punishable under Sections 379, 380, 403, 406, 415, 420, 423, 469, 470, 471, 120B of IPC. This court referred the matter for investigation to the Srirampura PS for investigation under Section 156(3) of CrPC. The IO registered the FIR in Cr.No.50 of 2021 investigated the matter and submitted 'B' report.

2. In the B report IO submitted that the case is in civil nature hence offences not attracted. On perusal of the B report, wherein he clearly disclosed that the accused are the partners and directors of the Shalimar Agarbathi Company and father of the complainant was one of the partner. The accused have removed the father of complainant from the partnership but whether amount of investment returned or not is not disclosed. As per the allegation the accused misappropriated the investment of complainant's father. When he asked the amount he threatened the complainant. In this regard admittedly there are some criminal cases have been pending before different Courts. But the IO not disclosed any document subject matter in civil nature. Only on the basis of transaction is concerned he came to the conclusion that matter is civil in nature. Therefore, it is necessary to give an opportunity to the complainant to prove his case. Hence, I proceed to pass the following:

ORDER

'B' report filed by the IO is hereby rejected.

The complainant is permitted to prove his case of examining himself and other witnesses.

For sworn statement.

Call on 09-02-2024."

By a separate order, the concerned Court takes cognizance of the offence. The rejection of the 'B' report and taking of cognizance of the offence happens on 27.12.2023. But, the companion petition is preferred on 16-06-2025. The reason is interregnum proceedings pending between the parties.

7. There were about 6 crimes pending in (i) FIR No.162 of 2017 dated 25-07-2017 filed by Mr. Nitin Kanji Shah; (ii) FIR No.165 of 2017 dated 26-07-2017 filed by Mr. Nitin Kanji Shah; (iii) FIR No.166 of 2017 dated 26-07-2017 filed by Mr. Vinod Kanji Shah; (iv) FIR No.172 of 2017 dated 29-07-2017 filed by Mrs. Digna Alkesh; (v) FIR No.181 of 2017 dated 11-08-2017 filed by Mr. Nitin Kanji Shah; and (vi) FIR No.182 of 2017 dated 11-08-2017 filed by Mr. Alkesh Vinod Shah. All these crimes come to be closed by entering into settlements between each other, all on the score that the matter was pending adjudication before the Arbitrator. This crime No.50 of 2021 is sought to be continued by the complainant despite the aforesaid facts.

8. The fulcrum of the crime is a dispute arising out Business Transfer Agreement. The claim before the Arbitrator is that the Business Transfer Agreement is not binding upon the complainant and several other monetary reliefs are sought before the Arbitrator. In the same breath the complainant registers the crime invoking offences under Sections 420 and 468 of the IPC viz., cheating and forgery. In the considered view of this Court and in

the teeth of aforesaid fact of several crimes pending between the parties, if further proceedings are permitted to continue under the umbrella of criminal law, it would become an abuse of the process of law. It is no doubt true that in a given circumstance an incident may give rise to a civil wrong as well as criminal law. This is not one such case. This is a case where criminal law is being set into motion on a business arising out of Business Transfer Agreement and monetary claims, all of which are pending before the Arbitrator not today, but for the last 8 years.

9. Jurisprudence is replete with the judgments of the Apex Court on the issue, as to whether criminal proceedings must be permitted to be continued before the concerned Court, notwithstanding the fact that the issue is completely civil which is dressed with a colour of crime.

9.1. The Apex Court in the case of **ANUKUL SINGH v. STATE OF UTTAR PRADESH**¹, has held as follows:

" "

11.5. Thus, the cumulative principles that emerge are: while the jurisdiction under Section 482 Cr.P.C. is

¹ 2025 SCC OnLine SC 2060

extraordinary and must be exercised sparingly, it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial.

12. The specific case of the appellant is that his father purchased land comprised in Khasra Nos. 18, 19, 20, 21 and 22 situated at Village Sherpur Mafi, District Moradabad, from one Akil Hussain. This land was used for the purposes of Qurbani. According to the appellant, in order to usurp the said property, the Shaher Imam of Bilari, in collusion with the district administration and under pressure exerted upon the local police, ensured that a series of false criminal cases were foisted against him. **As many as eight FIRs were lodged against the appellant, including the present one, all of which, in substance, arise out of a civil dispute relating to ownership and possession of the property. Initiation of the present criminal proceedings, therefore, amounts to a clear abuse of the process of law, squarely falling within the illustrative categories delineated in *Bhajan Lal*, particularly where the dispute is manifestly civil in nature and the prosecution is maliciously instituted with an ulterior motive.**

13. The record reveals that within a short span, as many as eight FIRs were registered against the appellant. The gravamen of the allegations in the present FIR is that Respondent No. 2/complainant approached the appellant for a loan of Rs. 2,00,000/-, but was allegedly advanced only Rs. 1,40,000/-. It is further alleged that, in connection with the said transaction, an agreement to sell dated 09.11.1998 was executed in respect of a plot owned by the complainant, and that the appellant procured three cheques from Respondent No. 2, which, upon presentation, were dishonoured for insufficiency of funds. **Even if accepted in entirety, these allegations disclose, at best, a civil dispute and do not *prima facie* constitute the essential ingredients of the criminal offences alleged.**

14. It is significant to note that prior to registration of the present FIR, the appellant had already initiated proceedings against Respondent No. 2, namely a complaint under Section 138 of the N.I. Act (Complaint No. 2402840/2005) before the N.I. Court, Moradabad, as well as FIR No. 120/2002, in which, the complainant himself was arrested. The present FIR was lodged nearly three months after the filing of the Section 138 complaint and seven months after FIR No. 120/2002. The plea that the FIR is a retaliatory counterblast to the proceedings legitimately initiated by the appellant, therefore, carries substantial weight.

15. The mala fide nature of the complaint is further fortified by the fact that, by judgment dated 15.01.2025, the trial Court convicted Respondent No. 2 under Section 138 of the N.I. Act, sentencing him to one month's imprisonment and imposing a fine of Rs. 90,000/-. This conviction lends strong support to the appellant's case that the initiation of the present FIR was a retaliatory measure, maliciously instituted with an ulterior motive to neutralise the lawful action taken by him.

16. Despite this background, the police proceeded to file a charge sheet dated 16.04.2003 against the appellant for offences under sections 420, 467, and 468 IPC. **Even if the allegations are assumed to be true, they unmistakably arise out of a commercial/contractual transaction relating to loan and repayment, which has been given a criminal colour. The case thus falls squarely within categories (1) and (7) of *Bhajan Lal*, namely, where the allegations do not disclose the commission of an offence, and where the proceedings are maliciously instituted with an ulterior motive. Continuation of such prosecution would amount to an abuse of process of law and consequently, warrant quashing under Section 482 Cr.P.C.**

17. This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In *Indian Oil Corporation v. NEPC India Ltd.*, it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of

process. The following paragraphs from the decision are apposite:

"9. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

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

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

*(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. **Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.***

(v) A given set of facts may make out:
 (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. **A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.**

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

18. Similarly, in *Inder Mohan Goswami v. State of Uttaranchal*, it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In *Ganga Dhar Kalita v. State of Assam*, this Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in *Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh*, this Court disapproved the practice of using criminal proceedings as

a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in *Bhajan Lal*. The following paragraphs are relevant in this context:

"9. What we have been able to understand is that there is an oral agreement between the parties. The Respondent No. 4 might have parted with some money in accordance with the oral agreement and it may be that the appellant - herein owes a particular amount to be paid to the Respondent No. 4. However, the question is whether prima facie any offence of cheating could be said to have been committed by the appellant.

10. How many times the High Courts are to be reminded that to constitute an offence of cheating, there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR does not disclose any element of criminality.

11. The entire case is squarely covered by a recent pronouncement of this Court in the case of "Delhi Race Club (1940) Limited v. State of Uttar Pradesh", (2024) 10 SCC 690. In the said decision, the entire law as to what constitutes cheating and criminal breach of trust respectively has been exhaustively explained. It appears that this very decision was relied upon by the learned counsel appearing for the petitioner before the High Court. However, instead of looking into the matter on its own merits, the High Court thought fit to direct the petitioner to go for mediation and that too by making payment of Rs. 25,00,000/- to the 4th respondent as a condition precedent. We fail to understand why the High Court should undertake such exercise. The High Court may either allow the petition saying that no offence is disclosed or may reject the petition saying that no case for quashing is made out. Why should the High Court make an attempt to help the complainant to recover the amount due and payable by the accused. It is for the Civil Court or Commercial Court as the case may be to look into in a suit that may be filed for recovery of money or in any other proceedings,

be it under the Arbitration Act, 1996 or under the provisions of the IB Code, 2016.

12. Why the High Court was not able to understand that the entire dispute between the parties is of a civil nature.

13. We also enquired with the learned counsel appearing for the Respondent No. 4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for recovery of money till this date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of the process of law.

14. We could have said many things but we refrain from observing anything further. If the Respondent No. 4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings.

15. We are quite disturbed by the manner in which the High Court has passed the impugned order. The High Court first directed the appellant to pay Rs. 25,00,000/- to the Respondent No. 4 and thereafter directed him to appear before the Mediation and Conciliation Centre for the purpose of settlement. That's not what is expected of a High Court to do in a Writ Petition filed under Article 226 of the Constitution or a miscellaneous application filed under Section 482 of the Criminal Procedure Code, 1973 for quashing of FIR or any other criminal proceedings. What is expected of the High Court is to look into the averments and the allegations levelled in the FIR along with the other material on record, if any. The High Court seems to have forgotten the well-settled principles as enunciated in the decision of this Court in the "State of Haryana v. Bhajan Lal", 1992 Supp (1) SCC 335"

20. Applying the above principles to the facts of the present case, it is manifest that the dispute - concerning repayment of loan money and the alleged coercion in execution of documents - is purely civil in character. The

essential ingredients of cheating or forgery are not *prima facie* made out. The institution of multiple FIRs in quick succession, particularly after the appellant had already initiated lawful proceedings, reinforces the inference of mala fides.

21. The High Court, in refusing to quash the proceedings, misdirected itself in law by failing to apply the ratio laid down in *Bhajan Lal*, and the subsequent authorities referred to above, which uniformly hold that the machinery of criminal law cannot be permitted to be misused for settling civil disputes or to wreak vengeance.

22. Accordingly, the impugned judgment dated 22.10.2019 of the High Court is set aside. FIR No. 47 of 2003 dated 05.02.2003 and the consequential charge sheet dated 16.04.2003, pending before the trial Court, are hereby quashed. This judgment, however, shall not preclude the parties from pursuing civil remedies as may be available to them in accordance with law."

9.2. The Apex Court in the case of **INDER CHAND BAGRI**

v. JAGADISH PRASAD BAGRI², has held as follows:

"....

24. The complainant/respondent No. 1 has an alternative remedy of filing a civil suit to set aside the sale deed dated 20.06.2011 and claim damages for the alleged violation of his contractual rights which he is already pursuing *vide* Title Suit No. 160 of 2012 against the appellant-accused which is currently pending adjudication and hence the route through criminal proceedings, when no ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant-accused therefore, in our view, could not be attributed any *mens rea* and therefore, the allegations levelled by the

²2025 SCC OnLine SC 2529

prosecution against the appellant-accused are unsustainable.

25. Furthermore, in *Inder Mohan Goswami*, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant-accused herein would cause undue harassment to him because as observed hereinabove, no *prima facie* case for the offence under Sections 406 or 420 of the IPC is made out.

26. In this regard, it would be apposite to rely on the judgment in the case of *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 ("*Bhajan Lal*") with particular reference to paragraph 102 therein, where this Court observed:

"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 have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

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

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

27. On a careful consideration of the aforementioned judicial dicta, we find that none of the offences alleged against the appellant-accused herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant-accused herein have been made with a *mala-*

fide intent and therefore, the judgment of this Court in the case of *Bhajan Lal* extracted above, squarely applies to the facts of these cases. It is neither expedient nor in the interest of justice to permit the present prosecution to continue.

28. At this juncture, we find it apposite to mention the observations of this Court in *Vishal Noble Singh v. State of Uttar Pradesh*, (2024) 14 SCC 112 wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No. 1 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts."

9.3. The Apex Court in the case of **VANDANA JAIN v. STATE OF UTTAR PRADESH**³, has held as follows:

"....

25. Insofar as the allegation regarding non-fulfillment of contractual obligations is concerned, recourse to appropriate civil remedy was required. Moreover, this is not a case where something emerged quickly after the agreement to indicate that dishonest intention existed from the beginning. The JVA is dated 16th August 2010 whereas the FIR was lodged in 2021. If there was something stark about the dishonest intention on part of one of the parties to the agreement, it would have been reported promptly and not after 10 years. This

³ 2026 SCC OnLine SC 309

clearly indicates that the dispute between the parties was purely of a civil nature.

26. No offence of cheating is made out because, as discussed above, there is no false representation in the JVA. As far as the allegation of false representation about the title is concerned, there is nothing to indicate that what the appellants had stated in the JVA was false. Further, there is no allegation that history of title of the property/land narrated in the JVA contains any false statement. Moreover, the JVA nowhere states that there is no litigation or dispute pending, rather it speaks of indemnifying the complainant party in case of any loss on account of any dispute. The statement in the JVA that there was no restraint order of any court or Government department in respect of dealing with the land is not alleged or shown to be false or incorrect.

27. As far as non-fulfillment of contractual obligations are concerned, recourse can be had to civil remedies. On facts, recourse to criminal proceedings, in our view, is nothing but abuse of the process of law/court. More so, when there is nothing to show that the accused had harbored a dishonest intention from inception.

28. There is no criminal breach of trust because the security amount was not refundable, rather it was adjustable against the share of the first party derived from sale proceeds. Thus, in the event of breach of any of the conditions of the agreement, the appropriate course was to take recourse to civil remedies.

29. For the foregoing reasons, we are of the considered view that dispute between the parties is essentially of a civil nature arising from the JVA. Further, a complete reading of the FIR along with admitted documents, does not disclose commission of offence of either cheating or criminal breach of trust much less creation or using of a false document."

9.4. The Apex Court in the case of **V. GANESAN v. STATE**⁴,
has held as follows:

" "

12. In *Iridium India Telecom 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.**

13. In order to constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

⁴ 2026 SCC OnLine SC 444

14. In *Vesa Holdings 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 intention at the time of making the initial promise, no offence under Section 420 of IPC is made out.

15. Whether non-fulfilment of promise/commitment by the accused is a reflection of his or her dishonest intention at the time of making the promise is ordinarily a matter of trial. However, in our view, where the transaction between the parties is such that fulfilment of the promise is not entirely in the control of the promisor, or there is an inherent risk in fulfilment of the promise, the High Court may, in exercise of its inherent powers under the Code, or under Article 226 of the Constitution, as the case may be, upon consideration of the attending circumstances, take a decision whether the dishonest intention existed or not at the time of making the promise. And, if it comes to the conclusion that the alleged conduct of the parties does not reflect a dishonest intention of the accused from the very beginning, it may quash the criminal complaint/proceedings and relegate the aggrieved party to civil remedies.

16. In the present case, what the High Court overlooked is that money was advanced for movie making and initially the agreement was to share the profits. Importantly, when the first tranche of money was transferred by the de-facto complainant to the accused, the alleged promise was a share in profits. Second tranche of money was transferred when the project could not be completed for want of funds. It also appears from paragraph 2 of the impugned order that before the movie could be released,

de facto complainant took objection to its release. However, when the appellant gave two post-dated cheques, the movie could be released.

17. The aforesaid facts would indicate that the initial payment of money by the de-facto complainant to the appellant was for a movie project on promise of a share in profits. Additional money was paid later for its completion under a promise of an enhanced share in the profits. Thereafter, post-dated cheques were issued to return the principal amount because of an objection taken by the de facto complainant to the release of the movie. Since there is no denial about the completion of the movie and its ultimate release, what is clear is that the promise to make a movie was not false. Therefore, it cannot be said the appellant made a false promise that he would make a movie with the aid of funds received by him. Insofar as promise *qua* sharing of profits is concerned, there are no allegations that the movie earned profits. Therefore, from the allegations made in the complaint it cannot be said that there was any dishonest intention of the appellant in making the promise which remained unfulfilled. In our view, the High Court overlooked that movie making is a high risk business. No one can be sure whether a movie would earn profits or would be a flop. If one agrees to share profits in lieu of his investment in a movie, he takes the risk of a possible zero return. Thus, **the nature of transaction between the parties was a crucial factor in determining whether the investor party should be allowed to bring in a criminal action or pursue civil remedies.** Unfortunately, the High Court overlooked this vital aspect.

18. Insofar as dishonour of those two cheques are concerned, it is clear that those were post-dated cheques issued not as an inducement to obtain delivery of money from the de facto complainant but to discharge an existing obligation at a future date. Thus, in essence, those cheques were not by way of inducement to lend money or invest money in the proposed movie. Therefore, dishonour of those cheques, though may give right to initiate proceeding under Section 138 of the Negotiable Instruments Act, 1881, would not *ipso facto* amount to an offence of cheating, inasmuch as for an offence of cheating dishonest intention must exist from the very beginning. Ordinarily, post-dated cheques are issued either by way of

security to discharge an existing or future liability or to discharge the liability at some point of time in future. It is quite possible that at the time of issuance of a post-dated cheque, the drawer may have reason to believe that he would have sufficient balance in his account by the date of the cheque. Therefore, in our view, dishonour of a post-dated cheque by itself is not sufficient to presume existence of a dishonest intention on part of its drawer.

19. In the instant case, there is nothing to indicate that the appellant had a dishonest intention from the very beginning. Had it been a case where the appellant had not made the movie despite borrowing funds to make one, an inference about existence of a dishonest intention was permissible. However, here there is no allegation that movie was not made. Rather, it was made and released. The prosecution case itself is to the effect that further advance was taken to complete and release the movie. However, when complainant took objection to its release, the appellant issued post-dated cheques to repay the principal amount. Thus, those cheques were to discharge an existing liability and not by way of an inducement to take more money.

20. Assuming that by issuance of those cheques, the de facto complainant was led to vacate his objection to movie's release, even then an offence of cheating would not be made out for two reasons. First, those cheques were post-dated therefore, did not carry a representation of sufficient funds in the bank account at the time of its issuance. Second, initial agreement, as per the allegations, was to share profit on release of the movie. Thus, in absence of allegations that movie made profits, in our view, the complaint and the supporting materials failed to indicate that the appellant harboured a dishonest intention from inception. In conclusion, **the allegations only disclosed a civil cause of action and the High Court fell in error in not quashing the criminal proceedings."**

9.5. The Apex Court in the case of **G. SAMINATHAN v. STATE⁵**, has held as follows:

" "

7.1. Section 406 of IPC, as extracted above, prescribes punishment for criminal breach of trust, which may extend to three years imprisonment or with fine or with both, when the ingredients of Section 405 of IPC are satisfied. Thus, for Section 406 of IPC to get attracted, there must be a criminal breach of trust in terms of Section 405 of IPC. The essential ingredients for invoking Section 405 of IPC are as follows:

- (a) the accused was entrusted with property, or entrusted with dominion over property;**
- (b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and**
- (c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.**

In other words, for the invocation of the offence of criminal breach of trust, it is expedient that the use or disposal of the property is made by a person entrusted with or who has dominion over the property. Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust.

⁵ 2026 SCC OnLine SC 1460

7.2. For the invocation of Section 420 of IPC, which provides for cheating and dishonestly inducing the delivery of property, the ingredients of Section 415 of IPC have to be established. To constitute the offence under Section 415 of IPC, it is essential that, by way of certain acts, a fraudulent or dishonest inducement is made and the person so deceived was made to deliver any property on account of such inducement. The said provision lays down two separate classes of acts which the person deceived may be induced to do, as follows:

- i) In the first class of acts he may be induced fraudulently or dishonestly to deliver the property to any person or consent that any person shall retain any property.**
- ii) The second class of acts set forth in the Section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived.**

7.3. While explaining the contours of the said provision, this Court in *Deepak Gaba v. State of U.P.*, (2023) 3 SCC 423 : (2023) 1 SCC (Cri) 714 observed that the *sine qua non* of Section 415 of IPC is “fraudulence”, “dishonesty”, or “intentional inducement” and that the absence of the said elements would debase the offence of cheating.

8. Now coming to the facts of the present case, the complainant has alleged that the accused continued to retain the refundable security deposit even after the planning permission was rejected by the development authority and the project had failed. It was also alleged that, in furtherance of the dishonest intention and despite being bound by the Joint Development Agreement, the accused sold off the disputed property to a third party while not even a single rupee of the refundable security deposit was returned. Thus, the accused committed the offence of criminal breach of trust as defined under Section 405 of IPC. As discussed above, to constitute the offence under Section 405 of IPC, it must be proved that the accused was entrusted with the property and the property so

entrusted was misappropriated, converted or disposed of by the accused with a dishonest intention and in contravention of any law or legal contract prescribing the mode in which such trust was to be discharged. In the present case, mere payment of a refundable security deposit by the complainant to the accused cannot be treated as entrustment of property inasmuch as the same was paid as a consideration in lieu of the execution of GPA in favour of the complainant. Even otherwise the FIR as well as the chargesheet in question are silent on the method and mode in which the appellants-accused misappropriated, converted, or disposed of the so-called entrusted property in the form of refundable security deposit for their own use to the disadvantage of the complainant in contravention of the Joint Development Agreement. Furthermore, a perusal of the legal notice dated 09.01.2018 issued by the accused reveals that the complainant was called upon to return the original title deeds pertaining to the disputed property and to receive the refundable security deposit lying with the accused. In view of the aforesaid circumstances, we are *prima facie* of the view that the allegation of dishonest intention on the part of the accused to retain the refundable security deposit and cause wrongful loss to the complainant is untenable. Therefore, a mere bald and omnibus allegation against the accused with regard to their dishonest intention to misappropriate the refundable security deposit, uncorroborated with any cogent material, cannot by itself sustain the charge under Section 405 of IPC against them.

8.1. In this regard, we find it apposite to refer to this Court's decision in *Binod Kumar v. State of Bihar*, (2014) 10 SCC 663 : (2015) 1 SCC (Cri) 203 wherein it considered a criminal complaint arising out of retention of bill amount in the course of a commercial transaction and found that the essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint missing. The relevant portion of the judgment reads as follows:

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant.

Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."

(underlining by us)

8.2. On a *prima facie* view of the allegations contained in the FIR and the chargesheet, it appears that the complainant has attempted to hold the accused persons criminally liable for breach of a contract. This court in *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786, held that a mere breach of contract cannot give rise to criminal prosecution unless a fraudulent and dishonest intention of the accused is proved from the very inception of the transaction. The relevant portion of the judgment reads as follows:

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."**

8.3. The aforesaid dictum was reiterated by this Court in the case of *Dalip Kaur v. Jagnar Singh*, (2009) 14 SCC 696 : (2010) 2 SCC (Cri) 223, wherein it was held as under:

"10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. **If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating.** Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code."

(underlining by us)

8.4. It is trite law that for establishing the offence of cheating, the complainant was required to show that the accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the joint development agreement. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the present case, the accused and the complainant entered into an unregistered Joint Development Agreement on 23.05.2012 with the objective of carrying out construction, development and promotion of the disputed property into residential flats. For the said purpose, the accused executed a GPA bearing Document No. 711 of 2012 in favour of the complainant, and on the same day, the complainant, by way of two cheques, paid a refundable security deposit to the accused in terms of the development agreement. Thus, it cannot be said that the accused at the time of entering into the agreement had a fraudulent and dishonest intention to induce the complainant to part with the refundable security deposit inasmuch as both parties, pursuant to the execution of the development agreement, acted with the intention of performing their respective contractual obligations. It is only when the planning permission application sought by the complainant came to be rejected that the project was stalled. The complainant has alleged that the accused had knowledge that the disputed property was part of an unapproved layout,

yet they suppressed the said fact from the complainant at the time of entering into the Joint Development Agreement. It is trite that before entering into a venture, the developer ought to conduct a comprehensive due diligence of the land sought to be developed. In the present case, the complainant failed to carry out a comprehensive due diligence before entering into the joint development agreement with the accused. In the aforesaid circumstances, any subsequent defects or legal flaws with respect to the disputed property could not have been used by the complainant as a means to criminally prosecute the accused-owners.

8.5. We therefore find force in the argument advanced by the learned counsel for the accused that the inability of the complainant to obtain planning permission from the development authority cannot give rise to criminal prosecution against the accused inasmuch as their obligation was limited to furnishing the required documents for the complainant to apply before the Development Authority. Furthermore, viewed in the backdrop of the totality of the circumstances, the mere allegation that the disputed property was subsequently sold to a third party, by itself, does not *prima facie* disclose the commission of the offence of cheating. We are therefore of the *prima facie* view that the allegations against the accused in the FIR as well as the chargesheet do not satisfy the ingredients for constituting the offence of cheating as defined under Section 415 of IPC.

....

8.8. This Court, in the case of *Delhi Race Club*, while explaining the difference between the offences of criminal breach of trust and cheating, observed that to constitute the offence of cheating, it has to be sufficiently proved that the offender fraudulently or dishonestly induced a person by deceiving him to deliver any property and that the said dishonest intention was from the very inception of the transaction. Whereas, in the case of criminal breach of trust, what is to be proved is the act of dishonest misappropriation of the property which the offender was legally entrusted with, but illegally misappropriated or converted it to his own use against the terms of the contract. Thus, in view of the aforesaid

fundamental distinction between the offences of criminal breach of trust and cheating, this Court in the abovementioned case observed that *both the offences cannot co-exist simultaneously*. On a careful perusal of both the provisions as well as the aforesaid dictum of this Court, we find that with regard to the same property and on the same set of facts, the offences of criminal breach of trust and cheating cannot be sustained as against the accused. We say so because, on one hand, the prosecution alleges that the refundable security deposit was lawfully entrusted to the accused by the complainant, which the accused continued to retain even after the project had failed and after the disputed property was sold by them to a third party. On the other hand, it is also alleged that the accused cheated the complainant by inducing him to part with Rs. 3,00,00,000/- (Rupees three crore) as refundable security based on a false representation that the disputed property was free from all encumbrances. In other words, the allegation by the prosecution is that the accused was entrusted with the refundable security deposit, which he later on dishonestly misappropriated and the allegation that the accused, with a dishonest intention, induced the complainant to part with the refundable security deposit based on a false representation, are not tenable on the same substratum of facts. If there was a lawful entrustment of Rs. 3,00,00,000/- (Rupees three crore) to the accused under the Joint Development Agreement, it cannot be a case of cheating and if so, the non-return of the amount by the accused as the plan sanction was not granted is not a case of criminal breach of trust. **The dispute between the parties is essentially civil in nature. The subsequent sale of the subject property by the accused to a third party may give rise to a cause of action on the civil side to the complainant but not a case of cheating or criminal breach of trust as the said act of sale *per se* is not a criminal act.**

8.9. Thus, on perusal of the material on record as well as from the aforesaid discussion, we hold that continuation of criminal proceedings instituted against the accused by the complainant would be nothing but a sheer abuse of the process of law inasmuch as on a consideration of the allegations, none of the offences invoked in the FIR as well as the chargesheet appear to be made out against the accused.

8.10. This Court in *Indian Oil Corporation v. NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188, while taking judicial notice of the surge of civil disputes being given a criminal flavour, observed as follows:

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : (2000) 100 COMP CAS 613] this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of

such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

9. We have given our careful consideration to the submissions advanced by the learned counsel for the respective parties as well as the material placed on record and analysed the same. **In our view, the complainant in the present case has sought to give a criminal colour to a purely civil dispute. We must also hasten to add that the accused, in terms of the joint development agreement, has already invoked the arbitration clause, and an arbitral award dated 12.04.2023 has already been passed by the learned arbitrator determining the liabilities of both parties in terms of their contractual obligations. Moreover, the said award has been challenged under Section 34 of the Arbitration Act by the complainant. Thus, while the parties in the present case are also pursuing their civil remedies, we find that it will be in complete disregard of the criminal justice system to permit the continuation of criminal prosecution against the accused herein for the offences under Section 406 and 420 of IPC.** This aspect of the matter has not been noticed by the High Court.

9.1. At this juncture, we find it expedient to refer to the judgment in the case *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, ("*Bhajan Lal*") wherein this Court enumerated the categories of cases warranting the exercise of extraordinary judicial powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of CrPC by the courts either to prevent the abuse of the process of law or otherwise to secure the ends of justice. The relevant para 102 of the said judgment reads as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have

extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

9.2. We find that the categories (1), (3), (5) and (7) enlisted in *Bhajan Lal* are squarely applicable to the facts of the present case, making it a fit case for quashing of the criminal proceedings pending against the accused. Therefore, the High Court, by way of the impugned judgment and final order dated 28.03.2025, erred in dismissing the quashing petition filed by the accused. The High Court overlooked the fact that the allegations in the FIR and the chargesheet did not *prima facie* make out the offences under Section 406 and 420 of IPC. In fact, the allegations on the face of it point to a purely civil dispute between the parties."

(Emphasis supplied at each instance)

If the facts obtaining in the case at hand are considered on the bedrock of the principles laid down by the Apex Court in afore-quoted cases, what would unmistakably emerge is, obliteration of the subject proceedings to save it becoming an abuse of the process of law and result in miscarriage of justice.

10. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petitions are **allowed**.
- (ii) Order dated 19-04-2021 passed by the IV Additional Chief Metropolitan Magistrate, Bengaluru in Crime 50 of 2021 renumbered as Crime No.7522 of 2021 stands quashed. Consequential registration of FIR No.50 of 2021 also stands quashed.
- (iii) Order dated 27-12-2023 and the proceedings pending in PCR No.6431 of 2021 before the IV Additional Chief Metropolitan Magistrate, Bengaluru stands quashed.

Pending applications, if any, also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

BKP
CT:MJ