

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 14333 of 2011****With****R/CRIMINAL MISC.APPLICATION NO. 14334 of 2011****With****R/CRIMINAL MISC.APPLICATION NO. 14335 of 2011****With****R/CRIMINAL MISC.APPLICATION NO. 14336 of 2011****With****R/CRIMINAL MISC.APPLICATION NO. 14337 of 2011****With****R/CRIMINAL MISC.APPLICATION NO. 14338 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

AMITBHAI HARILAL RUPARELIA & 2 other(s)**Versus****STATE OF GUJARAT & 1 other(s)****Appearance:****MS MEENA VYAS(3315) for the Applicant(s) No. 1,2,3****MR PAVAN S GODIAWALA(2936) for the Respondent(s) No. 2****MR VIMAL A PUROHIT(5049) for the Respondent(s) No. 2****MS MD MEHTA, APP for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 19/04/2022**

ORAL JUDGMENT

1. Heard learned Advocate Ms.Meena Vyas on behalf of the applicants, learned APP Ms.M. D. Mehta for the respondent State and learned Advocate Mr.Vimal Purohit for respondent No.2 – original complainant.
2. Issue **Rule** returnable forthwith. Learned Advocates appearing for the respective respondents waive service of Rule. With the consent of the parties, the present applications are taken up for final hearing.
3. By way of **Criminal Misc. Application No.14333 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-140/2011 registered with Katargam Police Station, Surat on 26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC; by **Criminal Misc. Application No.14334 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-141/2011 registered with Katargam Police Station, Surat on 26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC; by **Criminal Misc. Application No.14335 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-142/2011 registered with Katargam Police Station, Surat on 26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC; by **Criminal Misc. Application No.14336 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-143/2011 registered with Katargam Police Station, Surat on

26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC; by **Criminal Misc. Application No.14337 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-144/2011 registered with Katargam Police Station, Surat on 26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC and by **Criminal Misc. Application No.14338 of 2011**, the applicants pray for quashing of the Criminal Complaint being C. R. No.I-145/2011 registered with Katargam Police Station, Surat on 26.7.2011 for the offences punishable under Sections 406, 420, 114 and 120B of IPC.

4. Since facts of all the applications are almost similar and controversies involved are more or less same, all the applications are being decided by this common judgement and Criminal Misc. Application No.14333 of 2011 is taken up as lead matter.
5. The allegations levelled in the FIRs in brief are that the complainant – Jaydeep Jashwantlal Dawar being the Director of one M/s.P.L. Dawar Silk Mills Pvt. Ltd., states that the company is engaged in the business of manufacturing cloth as per orders received by it and selling it to exporters. It is alleged that the accused had approached the complainant for sale of grey cloth. It is alleged that the complainant as per the instructions of the accused would send grey cloth to various processing units in Ahmedabad at the responsibility of the accused and the accused

were to look after the processing and payment thereof. It is further alleged that after the goods were processed, the same were exported. It is submitted that the office and the factory of the accused are located at Indore, Mumbai, and Bhivandi and whereas initially the accused would make payments on advance basis to the complainant and on basis of such advance payment, the accused induced the complainant to enter into large scale transactions with the accused and at the instance of the accused, between February 2009 to March 2010 grey cloth worth lacs of rupees had been sent to various processing units, matter-wise details of the same, as produced by the learned Advocate, are as under:-

- a) Cr.M.A. No.14333 of 2011 : Rs.74,64,718.00
- b) Cr.M.A. No.14334 of 2011 : Rs.10, 31,981.00
- c) Cr.M.A. No.14335 of 2011 : Rs. 1, 96,093.00
- d) Cr.M.A. No.14336 of 2011 : Rs. 1,89,533.00
- e) Cr.M.A. No.14337 of 2011 : Rs. 5,81,329.00
- f) Cr.M.A. No.14338 of 2011 : Rs. 5,82,851.00

6. It is alleged that the accused had promised the complainant that they would be making payment of the goods within one month of the cloth being sold to the accused and on the basis of such promise, the

complainant had given to the accused cloth of a large value and whereas it is alleged that the accused had sold cloth to other persons and they had misappropriated the amount and thus, cheated the complainant and had also committed a breach of trust. It appears that while the impugned FIR had been filed in the month of July 2011, even prior to filing of the FIR, a written complaint had been submitted by the complainant to Katadargam Police Station, and according to the accused, the said application had been inquired into by the Police Officer of the Katadargam Police Station. It is submitted that at the relevant point of time, it was opined that the dispute between the parties was an *inter se* dispute with regard to recovery of money and the Police were not required to do anything with regard to the same. Such report was sent by the Police Officer on 10.2.2011 to the Police Inspector, Katadargam Police Station. It appears that the complainant had approached the learned Magistrate, Surat by preferring a Criminal Misc. Application No.798 of 2011 and whereas upon direction of the learned Judicial Magistrate dated 21.7.2011, Katadargam Police had registered the impugned FIRs under Section 154(1) of Cr.P.C., as referred to herein above. The said complaints are the subject matter in the present applications.

7. Heard learned Advocates for the parties.

8. Learned Advocate Ms.Meena Vyas on behalf of the applicants – original

accused would submit that the complainant and the accused were having business transactions since 2005 till 2010, and whereas according to learned Advocate Ms.Vyas, the transactions between the complainant and the accused for all these five years were valued at approximately Rs.16 crore. Learned Advocate Ms.Vyas would submit that while the accused used to intermittently make payments to the complainant, it is on account of the material, sent by the complainant, being defective and sub-standard, at the relevant point of time the goods had not been paid for by the accused. Learned Advocate would further submit that as per the Books of Accounts of the present applicants, an amount of Rs.29,50,406/- is remaining to be paid to the present complainant, more particularly in view of the goods, which were supplied to various companies upon instructions of the present accused. Learned Advocate Ms.Vyas would submit that insofar as the offence punishable under Section 420 of IPC is concerned, law in this regard is well settled. According to the learned Advocate, the intention of the accused to induce the complainant should be seen from the inception of the transaction. Learned Advocate would submit that the applicants having made payments intermittently to the complainant, such an intention to cheat the complainant is not made out. Insofar as offence punishable under Section 406 is concerned, learned Advocate would submit that essential requirement of offence punishable under Section 406 of IPC is criminal breach of trust and whereas in the instant case, according to the

learned Advocate, there is no entrustment on basis of which offence of breach of trust could be alleged. Learned Advocate would emphasize by submitting that a pure civil and commercial transaction between the parties is attempted to be given a criminal colour and on such ground itself the impugned FIR may be quashed by this Court.

9. As against the same, the application is strongly opposed by the learned Advocate Mr.Vimal Purohit for respondent No.2. Learned Advocate Mr.Purohit would submit that the applicants have come up with a peculiar case. Learned Advocate Mr.Purohit would submit that while it is true that the applicants and the complainant had a commercial transaction, but that by itself would not be an impediment for the complainant to file a complaint or filing an FIR. Learned Advocate would further submit that as such the allegation of the applicants that the goods sent by the complainant are sub-standard and defective, is nothing but an excuse coming as an after-thought by the applicants. Learned Advocate would submit in this regard that while the fact of transactions between the parties is not denied, at the same time, it also required to be noted that the accused had misappropriated the entire goods. Learned Advocate would submit that as per the arrangements between the parties, the complainant would transport the grey cloth to the factory/processing units as suggested by the accused, and whereas such shifting of material was upon assurance of the accused and it was the accused, who was responsible for processing of the cloth as well as making payment

thereof. Learned Advocate would submit that while in the past insofar as defect or sub-standard material are concerned, which had been allegedly supplied by the complainant company, the same was returned back to the complainant company, and whereas the same was accepted by the company and the accused would be compensated by delivering a fresh lot of grey cloth etc. Learned Advocate Mr.Purohit would further submit that insofar as the present transaction is concerned, while the value of the goods itself is quite high, learned Advocate would submit that this Court vide an order dated 18.12.2015 had suggested a via media, more particularly as per the submission of the learned Advocate Mr.Purohit, that via media being to test the *bona fide* of the applicants. Learned Advocate would submit that vide the order dated 18.12.2015, learned Coordinate Bench of this Court (Coram : Mr. Justice K. S. Jhaveri, as he then was) had recorded the statement of the learned Advocate for respondent No.2 that he was ready to receive the goods back in grey form or in the very same condition as it was sent, more particularly the goods which had been unprocessed i.e. not coloured, not printed, and not torn or cut into pieces. It was further directed in the said order that in case the goods were not returned in the same condition, then it was open for the respondent No.2 – original complainant not to accept the same. It was further directed that the PSI, Katargam Police Station should also remain present on 28.12.2015 at the place where the exchange of goods were to take place. This Court also

observed that once the goods were returned and accepted by the complainant, the complainant should withdraw the complaint. Learned Advocate Mr.Purohit would submit that upon such an order being passed, but not having been complied with by the applicants, the complainant had preferred Criminal Misc. Application No.21482 of 2017 in Criminal Misc. Application No.14333 of 2011. That vide an order dated 5.9.2017, learned Coordinate Bench of this Court had *inter alia* noted that the applicants had stated that the goods received from the complainant had been supplied to various manufacturers over all the country and perhaps it might not be possible for the manufacturers to send back the goods in its original form. It appears that while this Court had clearly noted that the effort to reconcile as directed vide order dated 18.12.2015 had not materialized, therefore, while not granting the prayers as mentioned in the order itself, the respondent No.2 was permitted to seek for final hearing on a day convenient for both the sides. Learned Advocate would submit that on the one hand while it is being attempted to be stated by the applicants that the transaction between the applicants and the respondent No.2 was commercial transaction, and whereas the cloth sent by the Respondent No.2 was defective and whereas the respondent No.2 had agreed to accept the goods back, if they were in their original condition, as per the order dated 18.12.2015, for having the issue reconciled between the parties, yet when the question of actual returning back the goods had arisen,

which were worth Rs.75,00,000/-, the applicants had back-tracked from their promise. Learned Advocate Mr.Purohit would submit that while before this Court in the Criminal Misc. Application preferred by the complainant it was attempted to be urged by the petitioners that they had supplied goods to various manufacturers over all the country and, therefore, it might not be possible for them to send back the material in its original form. Learned Advocate would submit in this regard that while the proposition of the intention to cheat being present from the inception of the transaction itself, being one of the most post essential requirements for an offence punishable under Section 420 of IPC, but according to the learned Advocate, that may not be the sole criteria. Learned Advocate Mr.Purohit would submit that the respondents not returning the cloth even as per the direction of this Court, would clearly show that the respondents have dishonestly misappropriated the property which had been entrusted to the applicants by the complainant. Learned Advocate would also draw the attention of this Court to the affidavit-in-reply filed by the respondents, whereby the respondents have *inter alia* contended that the transaction was not only as stated by the applicants. Learned Advocate would submit that while in case of damage/sub-standard cloth, the arrangement had been made between the parties in that regard, but at the same time, none of the goods, which were allegedly sub-standard or defect goods, had been either returned back or any arrangement made by the accused for the said goods.

10. Learned Advocate would further submit that while the transaction is *prima facie* a commercial transaction but at the same time the nature of transaction would not preclude the complainant from filing an FIR for the offence as made out. Thus, learned Advocate has requested this Court not to interfere with the impugned FIR.
11. Learned APP Ms.Mehta for the respondent State has submitted that *prima facie* the transaction appears to be a commercial transaction between the parties and whereas the impugned FIR appears to have been filed for recovery of dues. Hence, the learned APP would submit that this Court may quash the impugned FIR.
12. Heard learned Advocates for the parties, who have not submitted anything else.
13. From the averments made in the complaint, it appears that the parties were engaged in a commercial transaction. It also appears from the fact that while an application had been made before the Police Inspector of the Katargam Police Station with regard to the transactions, the same had been directed to be filed merely by holding that the transaction between the parties was commercial in nature and entire dispute appears to be a civil dispute. While the fact of the transaction between the parties being a commercial or a civil transaction appears to be a settled position, but at the same time it also requires to be mentioned that for the very same set of transactions the remedies to a

party may occur in civil as well as in criminal proceedings and whereas even if civil remedy is availed by a party is not precluded from filing of proceedings in criminal law. The Hon'ble Apex Court in case of **K. Jagadish Vs. Udaya Kumar G. S. and Another, reported in (2020) 14 SCC 552** having observed at paragraphs 8 and 9 which are quoted herein below for benefits:-

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

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

“21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under [Section 406 IPC](#) or render the ingredients of [Section 405 IPC](#) nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

14. In the instant case, it appears that the complainant had sent goods i.e. grey cloth amounting to Rs.75,00,000/- approximately to various processing units at the instance of the accused. The FIR *inter alia* states that the accused having induced the complainant to enter into large scale

business transaction with a view to earn huge profits. It also appears that the complaint also alleges that the applicants, having got the goods sent by the complainant, had sold the goods and had misappropriated the proceeds of the sale.

15. At this stage, it would also be relevant to mention one of the most crucial aspects that this Court vide an order dated 18.12.2015 had recorded that at the suggestion of this Court, the complainant was ready and willing to receive back the goods in the grey form or in the very same condition as it was sent, and whereas after the goods were returned, the complaint was to be withdrawn by the respondent No.2. It appears that the suggestion had been made in context of the averments made in the application that the goods supplied by the respondent No.2 were found to be sub-standard and were not accepted by the applicants and the respondent No.2 had been intimated by the applicants to take back the goods and whereas the respondent No.2 – complainant had chosen not to take back the goods. It appears that since the order of this Court dated 18.12.2015 had not been complied with, the complainant had preferred a Criminal Misc. Application No.21481 of 2017 *inter alia* for directing the original applicants to comply with the said order. It appears that in the said application it had been stated by the learned Advocate for the applicants that while they have furnished details about the manufacturers from whom goods were to be received and whereas since the petitioners had supplied the goods to various manufacturers

over all the country, therefore, perhaps, it may not be possible for the manufacturers to send back the goods in its original form.

16. Thus, it appears that on one hand it was contended by the applicants that on account of the sub-standard quality of the goods, they had rejected the same and whereas upon intervention of this Court when the complainant had agreed to receive back the goods if it were returned to the complainant in the same condition and also agreeable for disposal of the FIR, on the other hand, the applicants seem to state that the goods may not be available in the same form, meaning thereby that the goods have been utilized by the manufacturers to whom it had been sent by the petitioners. Thus, it appears that there is substance in the allegations made in the FIR that the applicants – accused having received the goods, had sold it to manufacturers/processing units and had misappropriated the sale consideration.

17. At this stage, this Court deems it appropriate to rely upon the decision of the Hon'ble Apex Court in case of **Rajesh Bajaj Vs. State NCT of Delhi and Ors, reported in (1999) 3 SCC 259**. Paragraphs 10, 11, and 12 of the judgement being relevant for the present purpose is quoted herein below for benefits:-

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

One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

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

12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved."

18. The Hon'ble Apex Court has *inter alia* observed that what would be relevant is the intention of the person who induced the victim of his representation and not the nature of the transaction, which would be the decisive factor in discerning whether there was a commission of offence or not. As in the FIR impugned before this Court, the complainant in the complaint before the Hon'ble Apex Court had also mentioned that he was induced by the accused to believe that the accused would honour payment of receipt of invoices and that the complainant later on realises that the intentions of the accused were not clear. The complainant therein as in the instant case, had also mentioned that the respondent after receiving the goods had sold them to others and still did not pay the money. The Hon'ble Apex Court based on the said

averments had come to a conclusion that such averments would *prima facie* make out a case for investigation by the authorities.

19. Having regard to the observations made by the Hon'ble Apex Court as above, and further appreciating the law laid down by the Hon'ble Apex Court in the said judgement that the High Court was not justified in its endeavour at the stage of investigation to minutely test the allegations as levelled in the FIR to find out whether ingredients under Section 415 of IPC would be made out or not.

20. In this view of the matter, more particularly since it clearly appears that the accused having received the goods as mentioned in the FIR and having sold the same, did not make payment to the complainant, in the instant case, in the considered opinion of this Court, no interference is warranted.

21. Having regard to the discussion, reasoning and conclusions as recorded herein above, in the considered opinion of this Court, the present group of applications being meritless, the same are rejected. Rule is discharged.

Sd/-
(NIKHIL S. KARIEL,J)

V.V.P. PODUVAL